

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2020-080

In the Matter of Lura Sanborn and Jeffrey Bart

Rule 7 Mandatory Appeal from
6TH Circuit – Family Division – Concord

BRIEF OF APPELLEE, LURA SANBORN

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**PERTINENT NEW HAMPSHIRE CONSTITUTIONAL
PROVISIONS AND NEW HAMPSHIRE STATUTES
AND RULES**

458:16-a Property Settlement. –

I. Property shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties. Intangible property includes, but is not limited to, employment benefits, vested and non-vested pension or other retirement benefits, or savings plans. To the extent permitted by federal law, property shall include military retirement and veterans' disability benefits.

II. When a dissolution of a marriage is decreed, the court may order an equitable division of property between the parties. The court shall presume that an equal division is an equitable distribution of property, unless the court establishes a trust fund under RSA 458:20 or unless the court decides that an equal division would not be appropriate or equitable after considering one or more of the following factors:

- (a) The duration of the marriage.
- (b) The age, health, social or economic status, occupation, vocational skills, employability, separate property, amount and sources of income, needs and liabilities of each party.
- (c) The opportunity of each party for future acquisition of capital assets and income.
- (d) The ability of the custodial parent, if any, to engage in gainful employment without substantially interfering with the interests of any minor children in the custody of said party.
- (e) The need of the custodial parent, if any, to occupy or own the marital residence and to use or own its household effects.

(f) The actions of either party during the marriage which contributed to the growth or diminution in value of property owned by either or both of the parties.

(g) Significant disparity between the parties in relation to contributions to the marriage, including contributions to the care and education of the children and the care and management of the home.

(h) Any direct or indirect contribution made by one party to help educate or develop the career or employability of the other party and any interruption of either party's educational or personal career opportunities for the benefit of the other's career or for the benefit of the parties' marriage or children.

(i) The expectation of pension or retirement rights acquired prior to or during the marriage.

(j) The tax consequences for each party.

(k) The value of property that is allocated by a valid prenuptial contract made in good faith by the parties.

(l) The fault of either party as specified in RSA 458:7 if said fault caused the breakdown of the marriage and:

(1) Caused substantial physical or mental pain and suffering; or

(2) Resulted in substantial economic loss to the marital estate or the injured party.

(m) The value of any property acquired prior to the marriage and property acquired in exchange for property acquired prior to the marriage.

(n) The value of any property acquired by gift, devise, or descent.

(o) Any other factor that the court deems relevant.

II-a. Tangible property shall include animals. In such cases, the property settlement shall address the care and ownership of the parties' animals, taking into consideration the animals' wellbeing.

III. If either or both parties retain an ownership interest in an education savings account held on behalf of a child of the marriage, including a

qualified tuition program under 26 U.S.C. Section 529, the court may, in its discretion, preserve the account for its original purpose or may treat the account as property of the marriage subject to equitable division under this section.

IV. The court shall specify written reasons for the division of property which it orders.

Source. 1987, 278:1. 2000, 178:1. 2004, 136:3, eff. May 19, 2004. 2019, 130:1, eff. Aug. 24, 2019.

458:21 Security. – In all cases where alimony or an allowance shall be decreed for a spouse or children the court may require security to be given for the payment thereof.

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.

Source. 1991, 233:1. 1995, 310:175, 181. 2004, 169:1. 2007, 274:1. 2009, 101:1, eff. June 15, 2009.

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 ON CROSS-APPEAL BY LURA SANBORN

1. The trial court found that the presumptive amount of reasonable medical support obligation was \$206, and that Ms. Sanborn's actual cost to carry insurance for the parties' son on her employer's plan was \$288 per month. Did the trial court err in declining to order an upward deviation from the child support guidelines given the costs of the minor child's medical insurance ordered to be paid by the obligee Ms. Sanborn, where her actual costs are substantially in excess of the reasonable medical support amount. *Preserved by Ms. Sanborn's Motion for Reconsideration at 1.*
2. The trial court found that Mr. Bart had "no credible explanation" for income numbers on his financial affidavit, that his testimony regarding his current income "is not credible," that he did not know his income at the time of trial, that he had undisclosed income of \$7,319.32 in addition to his disclosed income of \$9,259.38 at the time of trial (totaling \$16,578.70), that his income was \$13,559.62 for calculating arrearage. Given these findings and the trial court's conclusions in the Court's narrative order, did the trial court err in calculating obligor's income for child support purposes to be only \$9,718 per month? *Preserved by Ms. Sanborn's Motion for Reconsideration at 2-3.*
3. The trial court found that continuing the temporary alimony order of \$1,500 per month was reasonable, and that the income upon which that \$1,500 was based was \$8,901, less than the trial court's findings concerning Mr. Bart's income at the time of trial. Despite these findings, the trial court entered a final alimony order of \$1,000 per month. Did the trial court err in issuing an alimony order that is inconsistent with and not supported by the trial court's findings, and not consistent with Mr. Bart's actual income at the time of trial of \$16,578.70. *Preserved by Ms. Sanborn's Motion for Reconsideration at 3-4.*
4. The trial court found that Ms. Sanborn's proposed alimony term of 72 months was reasonable. Did the trial court err in subsequently

ordering an alimony term of 69 months? *Preserved by Ms. Sanborn's Motion for Reconsideration at 4.*

5. The trial court found that the parties were in a long-term marriage, that Mr. Bart's income exceeded that of Ms. Sanborn, that Mr. Bart had not accounted for his use business proceeds for personal expenses, including supporting his girlfriend, and that he had spent down the parties' marital and business accounts to nearly zero during the divorce action. The trial court also found that he had taken more than \$230,000 in cash from the parties' business during the marriage, and that he had no credible explanation for where it went or how it was used. By contrast, the trial court found that Ms. Sanborn had not dissipated assets, and had taken off time from her career to stay home and care for the parties' child. Given these findings, as well as others in the record, did the trial court err in awarding Mr. Bart a disproportionate 55% share of the parties' marital estate, and should the trial court have, in fact, awarded a disproportionate distribution in Ms. Sanborn's favor? *Preserved by Ms. Sanborn's Motion for Reconsideration at 4-6.*

6. Mr. Bart's real property appraiser testified that no economic conditions would explain a decrease in value of more than \$130,000 between appraisals prepared by Mr. Bart's expert's firm in 2012 and 2019. Given this fact, as well as others in the record, did the trial court err in valuing the real estate at the lower valuation of \$650,000? *Preserved by Ms. Sanborn's Motion for Reconsideration at 7.*

7. The trial court credited Ms. Sanborn with \$65,000 for attorney's fees paid by Mr. Bart from the parties' assets. However, Ms. Sanborn's attorney's fees payments were several times that amount when pre-trial and trial costs were included. Did the trial court err in failing to consider that the amount of attorney's fees owed by Ms. Sanborn at the time of trial far exceeded the credit that the court gave to her in calculating the amount of her property settlement? *Preserved by Ms. Sanborn's Motion for Reconsideration at 8.*

8. The trial court declined to grant Mr. Bart's request for a finding that he receive an unequal distribution of property based upon the fact that his business interests were inherited. This is consistent with the evidence in the record that Mr. Bart held only a small minority interest in the business at the time of the marriage, acquiring the bulk of his interest—90% of it—during the marriage. Given these facts, and others in the record, did the trial court err in justifying the 55% disproportionate property distribution in Mr. Bart's favor solely upon "the inherited nature of the assets that created his livelihood and supported the marital lifestyle," and should the trial court have in fact awarded a disproportionate distribution in Ms. Sanborn's favor? *Preserved by Ms. Sanborn's Motion for Reconsideration at 5-6.*

STATEMENT OF THE FACTS AND THE CASE

Lura Sanborn and Jeffrey Bart were married in Portland, Maine on July 16, 2005. Appendix to Brief of Appellant Jeffrey Bart at 18 (“Bart App. at ____”), Order of November 4, 2019 at 1 (“Merits Order at ____”). They have one child, a son. *Id.* The parties met when Lura Sanborn worked as a high school student at Mr. Bart’s family business, the Granite State Candy Shoppe LLC (“Candy Shoppe”), on Warren Street in Concord. Merits Order at 2. Mr. Bart, then 27, interviewed her, hired her and supervised her. *Id.* Ms. Sanborn was 18 when they began dating in 1996. *Id.* The parties married in 2005. *Id.* at 1. In September 2017, Ms. Sanborn initiated divorce proceedings due to her belief that Mr. Bart was having an affair. *Id.*; see Tr. at 1101 (Mr. Bart conceding that he was dating the woman in question at least as of the time of the hearing).

Throughout the marriage, the parties maintained separate checking/savings accounts and Ms. Sanborn was never privy to Mr. Bart’s checking statements. Merits Order at 5; Tr. At 577. Each was responsible for certain marital and/or family expenses. Merits Order at 5. Initially, Ms. Sanborn was solely responsible for costs associated with the parties’ son. *Id.* Then, following the advice of a marriage counselor in approximately 2009, Mr. Bart began contributing to their son’s care. *Id.* Specifically, he began giving Ms. Sanborn cash at the end of each calendar year, sometimes as much as \$5,000, in a zipped bag left on her dresser. She used this money to pay for groceries and extra-curricular activities for their son. *Id.* Ms. Sanborn believed that Mr. Bart was being paid an ordinary salary, though she was not aware of how much money Mr. Bart earned. Tr. at 577. She did believe, however that the \$5,000 cash was coming from Christmas

bonuses earned at the Candy Shoppe, or from his other family business, CMJ Associates LLC (“CMJ”) (the entity which owns the Candy Shoppe building on Warren St. in Concord). *Id.*; Tr. at 580.

Mr. Bart kept his business finances secret. Ms. Sanborn was not privy to them until discovery in the divorce action. Tr. at 579-81. Mr. Bart conceded at trial that the annual cash that he gave to Ms. Sanborn was not reported as income on any tax returns but asserted that Ms. Sanborn was aware of it and that he had told her not to deposit it into a bank account. Merits Order at 5. Ms. Sanborn denied this, testifying that she trusted her husband and did not become concerned about the origin of the \$5,000 cash until discovery in the divorce action. Tr. at 581, 583. In addition, there were years during which Mr. Bart signed Ms. Sanborn’s name to tax returns that she had not reviewed. Tr. at 584. Ms. Sanborn testified that she did not find the cash envelopes unusual since Mr. Bart paid for many expenses in cash. Tr. at 689. Once Ms. Sanborn filed for divorce, Mr. Bart stopped providing her with this cash and she did not receive any for 2017. Tr. at 653.

In addition to the \$5,000 per year of zipped bags of cash, Ms. Sanborn learned during discovery in the divorce case that Mr. Bart had been skimming cash from the register at the Candy Shoppe. Tr. at 581. He removed large sums of cash from the register and did not deposit it into the LLC operating account, which resulted in underreported income for the Candy Shoppe, the need to amend tax returns and the imposition of interest and penalties by the Internal Revenue Service. *see e.g.* Appendix of Appellee at 11 (“Sanborn App. at ___”), Petitioner’s Request for Findings and Rulings, Request ¶128 (granted); Tr. at 644-52. This unreported cash

income exceeded \$230,000 from TY 2014-2016. Sanborn App. at 11, Request ¶118 (granted). “There was not a credible response [from Mr. Bart] as to where the money went once Mr. Bart removed it.” *Id.*, Request ¶119; *see, also*, Sanborn app. at 11, Requests ¶¶120, 121, 122 (Mr. Bart’s explanations for what happened to that money lacked specificity and credibility). Ms. Sanborn testified that she had no knowledge of the cash withdrawals until after the divorce action began. Tr. at 581, 583.

Based on Mr. Bart’s and Ms. Sanborn’s testimony concerning such large sums of unreported income, Mr. Bart was found by the trial court not to have been forthright in the disclosure of his finances. Merits Order at 5. The trial court found that Mr. Bart had removed \$230,000 in cash from the marital estate. Sanborn App. at 11. Consequently, it ordered Mr. Bart to pay additional child support, going forward, if his income exceeded the trial court’s finding of an annual income of \$116,616 or \$9,718 per month and established a formula for how that would be calculated on an annual basis. *Id.* at 5-6.

Child Support

With respect to Mr. Bart’s income for child support purposes, the trial court made the following findings of fact: From February 2018 to May 2018, Mr. Bart’s monthly income was \$11,438.41 (including \$3,103.91 in rental and dividend income from Granite State Candy Shoppe and CMJ). Merits Order at 6. From June 2018 to December 2018, Mr. Bart’s monthly income was \$14,771.14 (including \$3,103.91 rental and dividend income and \$3,333.33 in capital account income). *Id.* From January 2019 to June 2019, Mr. Bart’s monthly income was \$11,667.83 (including \$3,333.33 per month in capital account income). *Id.* Mr. Bart’s 2018 income tax returns

were appropriate to calculate his income for child support purposes. Sanborn App. at 7, Request ¶66 (granted). Mr. Bart's income in 2018 exceeded \$9,259/month *by at least* \$7,319.32/month (a total of \$16,578.70 per month). Sanborn App. at 9, Request ¶85 (granted) (emphasis added). Mr. Bart's 2018 income tax returns showed a gross income of \$157,763 for 2018, or \$13,146 per month. See Sanborn App. at 78. Mr. Bart earned \$3,103.91 monthly from rental and dividend income at the time of trial. Sanborn App. at 8, Request ¶70 (granted). Mr. Bart's August 2, 2019 Financial Affidavit, upon which the trial court relied, showed business income from the Candy Shoppe (separate from his monthly rental and dividend income), of \$8,334/month. See Sanborn App. at 71-2. Mr. Bart asserted no request for findings regarding his income and the trial court never granted or denied a request for findings from Mr. Bart regarding his income. See, generally, Bart App. at 73-83. Mr. Bart had no credible explanation for certain income numbers on his March 2019 financial affidavit, his trial testimony regarding his current income was "not credible," his income was "unknown until the Final Hearing," the trial court found that Mr. Bart "has not always been forthright with disclosing his finances," and that there were "challenges with establishing [Mr. Bart's] income." See Sanborn App. at 9, Requests ¶¶90, 91 (granted); Merits Order at 5, 7, 8.

Thus, the trial court made varied and inconsistent findings relating to Mr. Bart's income that established his income at no less than \$11,437.91 per month, possibly \$13,146 per month, and as much as \$16,578.70 per month. Notwithstanding the trial court's own findings of fact, including that Mr. Bart's testimony concerning his current income was "not credible,"

the trial court found Mr. Bart's income for child support purposes to be \$116,616 or \$9,718 per month, a figure taken straight from his August 2, 2019 financial affidavit. Merits Order at 6-7.

While the trial court did rely on Mr. Bart's passive income and his rental and dividend income from his 2018 tax returns, including his Form K-1 from CMJ, the trial court also declined to use Mr. Bart's capital gains income from that same K-1 statement. *See* Merits Order at 1 (denying Ms. Sanborn's Request ¶71 to include capital gain income of \$1,806.58 per month from his 2018 tax return in calculating his income for support purposes); *see* Sanborn App. at 8.

Family Business Interest Distribution

The trial court found that Mr. Bart was entitled to a disproportionate distribution of the marital assets because he had acquired his interest in the Candy Shoppe and CMJ prior to the marriage. Merits Order at 9 ("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."). However, the trial court also made the following findings of fact:

The trial court denied Mr. Bart's request for a disproportionate distribution of property. Bart App. at 81 (Requests ¶¶97, 98 not granted). Mr. Bart acquired only a 25% interest in the Candy Shoppe in 1999, prior to the marriage but while the parties were dating. Bart App. at 76. Mr. Bart and Ms. Sanborn were married in 2005. Merits Order at 1. Through family estate planning, Mr. Bart acquired the majority of his ownership interest in the Candy Shoppe, an additional 65%, in or around October 2014, nine years after Ms. Sanborn and Mr. Bart married. Bart App. at 77.

Mr. Bart gifted a 10% share of the Candy Shoppe to Ms. Sanborn in October 2014 (resulting in a 90% “marital share” for the property). *Id.*; see Merits Order at 9. 65% of Mr. Bart’s (and Ms. Sanborn’s) interest in the Granite State Candy Shoppe was obtained at least nine years into the parties’ marriage.

Similarly, Mr. Bart acquired a 16.5% interest in CMJ in 1999. Bart App. at 79. In 2014, some nine years into the parties’ marriage, Mr. Bart acquired an additional 42% interest from his father Constantine upon the elder Bart’s death in 2014. *Id.* Then, by agreement with his mother, June Bart, Mr. Bart assumed a 95% interest in CMJ in October 2014. *Id.* at 80. Thus, Mr. Bart acquired 78.5% of his interest in CMJ at least nine years into the parties’ long-term marriage.

Alimony

The trial court made a finding in the Merits Order that continuing the temporary alimony order of \$1,500 per month was reasonable, and that the income upon which that \$1,500 order was based was \$8,901, less than the trial court’s findings regarding Mr. Bart’s income, and less than his asserted income at the time of trial. See Sanborn App. at 6, Request ¶54 (“Continuation of the existing alimony order, which was established based upon income less than what the Court finds Mr. Bart to be earning now, is reasonable”); Uniform Alimony Order, Bart App. at 44. The trial court also highlighted, “the challenges with establishing [Mr. Bart’s] income.” Merits Order at 8. Despite these findings, the trial court ordered alimony in the amount of \$1,000, a 33% reduction from the \$1,500 per month it found to be reasonable, using income significantly lower than that used for the child

support calculation and also much lower than the various findings for Mr. Bart's income made by the trial court.

In addition, the trial court found that Ms. Sanborn's proposed alimony term of 72 months was reasonable. Sanborn App. at 7, Request ¶62 ("The amount and duration of alimony sought by Ms. Sanborn is reasonable considering the following factors: the length of the marriage; the occupation, amount and source of income for each party; the property awarded under RSA 458:16-a; employability of the parties; liabilities and needs of the parties; and the opportunity for each to acquire assets and income in the future. RSA 458:19, IV(b)."). Despite that finding, the trial court only granted 69 months of alimony. Bart App. at 44.

Reasonable Medical Support

The trial court granted Ms. Sanborn's Request ¶40 ("Ms. Sanborn carries [the parties' son] and Mr. Bart on her group health insurance plan. The cost to carry [the parties' son] on her health insurance (approximately \$288/month) exceeds her reasonable medical support amount (\$206/month) by approximately \$82/month."). Sanborn App. at 5. But the trial court found, on reconsideration, that the discrepancy between the presumptive medical support figure and the amount Ms. Sanborn was actually paying to be nominal, thereby not justifying a deviation from a guidelines-compliant child support order. Order on Motions for Reconsideration at 5 (revised Uniform Support Order).

The trial in this matter took place over six days, from May 21, 2019 to September 5, 2019. Both parties filed motions for reconsideration. The trial court ruled on the motions for reconsideration on December 31, 2019,

by notice dated January 15, 2020. Mr. Bart's appeal was filed February 13, 2020.

SUMMARY OF THE ARGUMENT

The Court should affirm the trial court order with respect to Mr. Bart's appeals. The trial court's requirements that Mr. Bart disclose his finances annually and that the child support order be readjusted based upon the new annual figures have well-established precedents in New Hampshire law. Automatic escalation clauses that are tied rationally to the obligor's changing income are valid in New Hampshire. The disclosure requirements are a reasonable exercise of the trial court's equitable powers, particularly in a case such as this where Mr. Bart's candor about his income was found by the trial court to be lacking.

Mr. Bart's argument that the trial court erred in not counting Ms. Sanborn's withdrawal of cash to pay her attorneys' fees against her property allocation should be rejected. The trial court may exercise its discretion in making an equitable distribution of the marital estate. Given that Mr. Bart covertly diverted more than \$230,000 from the marital estate, the trial court's order concerning the allocation of marital property to reimburse some (but not all) of Ms. Sanborn's attorneys' fees was justified.

The trial court had jurisdiction to continue the Temporary Decree's allocation of property tax payments between the parties after Mr. Bart had filed his appeal. The trial court's decision is supported by Fam. Div. R. 2.29(B) and by basic principles of fairness. Ultimately, if the Final Decree's allocation of the marital home to Ms. Sanborn was stayed during the pendency of Mr. Bart's appeal, it would be manifestly unfair to require her to pay all the property taxes on the home during that time.

With regard to Ms. Sanborn's appeals, the trial court erred in determining Mr. Bart's gross income for child support and alimony calculations. After numerous granted findings of fact and a narrative order that labeled Mr. Bart's testimony about his income "not credible" and not "forthright," the trial court's adoption of Mr. Bart's testimony concerning his annual and monthly income was an unsustainable exercise of discretion. The only evidence supporting the trial court's determination of Mr. Bart's income was testimony the trial court itself deemed "not credible." The trial court's order is at odds with its own findings of fact and is not sustainable.

The trial court also erred in allocating the marital estate 55% to Mr. Bart. The statutory presumption is that an equal distribution is the equitable distribution in most cases. The trial court may diverge from an equal distribution if it makes specific findings concerning a host of statutory factors. However, all of the factors but one favor an equal distribution between the parties—and some, including Mr. Bart's diminishment of the marital estate by more than \$230,000—actually require a disproportionate distribution to Ms. Sanborn.

The trial court erred in decreeing a \$1,000 per month alimony after finding that \$1,500 a month—the sum granted in the Temporary Decree—was reasonable. In addition, Mr. Bart's income was more—likely substantially more—than the sum upon which the Temporary Decree's alimony award was predicated. Finally, the trial court found that 72 months of alimony would be reasonable, and then ordered Mr. Bart to pay 69 months. Thus, the trial court's own findings do not support the amount of alimony ordered, nor the duration of alimony ordered.

**ARGUMENT IN OPPOSITION
TO BRIEF OF JEFFREY BART**

- I. The trial court's order requiring Mr. Bart to update his income disclosure annually and imposing an automatic recalculation of child support based on the updated income figures was a discretionary decision supported by the record and the equities of the case.

Mr. Bart argues in his brief that the trial court erred in requiring him to update his income figures and recalculate the child support award on an annual basis. *See* Merits Order at 5-6. The trial court's order, however, was specifically crafted to address Mr. Bart's own credibility deficiencies and his failures to disclose income during the litigation process. The trial court wrote:

The Court finds that [Mr. Bart] has not always been forthright in 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 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.

Merits Order at 5-6 (emphasis in original).

The trial court's order was a response to Mr. Bart's own conduct in this litigation. The trial court found that Mr. Bart had removed cash from the register at the Candy Shoppe in the amount of at least \$230,000 and had no credible explanation of where it went. Sanborn App. at 11, Request ¶121 (granted). Mr. Bart testified that Candy Shoppe cash was taken out of the register and put into a safe in the store, then put in a bag and taken to the bank once a week for deposit into the operating account. Sanborn App. at 11, Request ¶122 (granted); Tr. at 1138, 1141. However, the court found, and Mr. Bart testified, that not all of the cash income that was received was deposited into the operating account. Sanborn App. at 10, Request ¶101 (granted); Tr. at 1141. Instead, Mr. Bart testified that he would go into the cash bag, take out some money and deposit the rest, telling his fellow LLC members not to run it through any bank accounts. Tr. at 1148, 1154. This cash income from the Candy Shoppe went unreported for years, until the divorce action brought the unreported income to light as part of the business valuation being performed by Mr. Bart's own valuation expert. Sanborn App. at 10, Request ¶104 (granted); Tr. at 1156, 1157. As a consequence of this discovery Mr. Bart was compelled to amend his and Ms. Sanborn's personal and business tax returns and pay fines and penalties. Sanborn App. at 10, Request ¶112; Tr. 584-586. Ms. Sanborn, though she requested them, was not provided a copy of the amended returns until after they had been filed. Sanborn App. at 10, Request ¶112 (granted); Tr. 584, 585, 586, 644. The court found that the additional tax liability from the underreported income, interest and penalties was paid by CMJ, even though this was not a CMJ liability.

Sanborn App. at 11, Requests ¶¶127, 128, 129 (granted). Thus, he paid these sums from the marital estate. *Id.*

The trial court was clearly concerned about this cash. It found that Mr. Bart had failed to disclose large portions of his income on prior occasions. *Id.* at 9 (Requests ¶¶85, 118 (granted)). It found that Mr. Bart underreported his income. *Id.* at 11 (Request ¶118 (granted)). It found that Mr. Bart had “not always been forthright with disclosing his finances.” Merits Order at 5. It found that it had “challenges with establishing [Mr. Bart’s] income.” *Id.* at 8. It found that Mr. Bart’s income was “unknown until the Final Hearing.” *Id.* at 7. It found that Mr. Bart lacked credibility in testifying about his income. Sanborn App. at 9 (request ¶91 (granted)). In sum, the trial court agreed with Ms. Sanborn that Mr. Bart could not be trusted to tell the truth about his income and would need to update that figure annually.

“[T]he judicial branch family division shall have the powers of a court of equity in cases where subject matter jurisdiction lies with the judicial branch family division[.]” RSA 490–D:3. “Courts of equity have broad discretion in shaping remedies.” *Garcia v. Lawn*, 805 F.2d 1400, 1403 (9th Cir. 1986) (*citing* 27 Am.Jur.2d Equity § 103, at 624 (1966) (“The power of equity is said to be coextensive with the right to relief; it is as broad as equity and justice require.”)). Crafting an order to address a party’s demonstrated deficiencies in honesty, credibility and candor is well within the broad equitable powers of the family division in divorce cases. *See Estate of Mortner v. Thompson*, 170 N.H. 625, 629 (2018) (“Because ‘the need to render equitable orders is inherent in the resolution of divorce matters,’ the legislature has afforded the family division the powers of a

court of equity in exercising this jurisdiction[.]” (quoting *In the Matter of Muller & Muller*, 164 N.H. 512, 518 (2013)).

Trial courts regularly are called upon to craft prospective injunctive relief to prevent future instances of well-substantiated misconduct by the enjoined party and provide mechanisms to police compliance. *Nationwide Biweekly Administration, Inc. v. Superior Court of Alameda County*, 462 P.3d 461, 464 (Cal. 2020) (“At early common law, ‘legal’ causes of action ... typically involved lawsuits in which the plaintiff sought to recover money damages to compensate for an injury caused, for example, by the defendant’s breach of contract or tortious conduct, whereas ‘equitable’ causes of action ... sought relief that was unavailable in actions at law, such as an injunction to prohibit ongoing *or future misconduct* or an order to provide specific performance or disgorge ill-gotten gains.”) (emphasis added). That is what occurred here. In light of Mr. Bart’s well-documented failures to be “forthright” about his finances, the trial court imposed ongoing disclosure requirements and a fixed mechanism for recalibrating child support as necessary. Merits Order at 6. To do otherwise would work a substantial injustice upon Ms. Sanborn.

Contrary to Mr. Bart’s analysis, RSA 458-C does not limit the scope of the family division’s equitable powers, nor does it bar the kind of notice, disclosure and recalculation provision the trial court imposed in this case. First, the trial court’s order to recalibrate the child support amount annually based upon the parties’ respective then-current incomes is analogous to the automatic escalation clause that this Court upheld in *Heinze v. Heinze*, 122 N.H. 358, 361 (1982). In that case, the trial court imposed an automatic, prospective escalation mechanism that increased the obligor’s support

payment at the time of any wage increase. *Id.* This Court affirmed the wisdom of such clauses:

We agree that the inclusion of an automatic escalation clause is a sensible response to the economic pressures that this country has been experiencing for some time. Its use will reduce the need for parties to continually return to court to seek to modify support decrees. The escalation clause provides cost-of-living increases in support payments as the ability of the supporting party to undertake the obligation increases.

Id. at 361. These considerations are all apt to this case.

Furthermore, the Court's analysis of *Heinze* in *In re Donovan*, 152 N.H. 55, 64-65 (2005) illustrates why the disclosure-and-recalculation mechanism imposed by the trial court in this case is rational and permissible. In *Donovan*, the trial court's escalation clause was tied to the consumer price index, not to the parties' incomes. *Id.* Distinguishing the escalation clause in *Heinze*, the Court wrote:

Unlike the escalation clause in *Heinze*, the CPI provision is not tied to changes in the parties' total net income. The CPI provision states that the 'obligor's child support obligation shall be reviewed annually and adjusted for inflation in accordance with the Consumer Price Index.' This escalation clause is inconsistent with the child support guidelines because it requires adjustments to the child support obligation that are independent of actual changes in the parties' incomes.

Donovan, 152 N.H. at 65 (reversing trial court decision). In this case, the trial court's order directly ties the annual adjustment, if any, to the actual changes, if any, in the parties' incomes. Merits Order at 6.¹ Thus, the

¹ RSA 458-C:7 actually makes similar provisions for ongoing review and revision of the child support amount when the payment is being made through the department of health and human services. *Id.* at I. Based on a review of the parties' incomes and financial situations, which is

concerns that justified reversal in *Donovan* are not present here. *Heinze* is squarely on point and the trial court's order should be affirmed.

Second, the trial court order imposes two equitable duties to secure Mr. Bart's payment of child support going forward: (1) that the parties exchange state and federal tax returns and financial information; and (2) that the child support amount be recalculated annually based on the current-year numbers. There is no question that the first of these duties is well within equitable power of the trial court given Mr. Bart's demonstrated, proven, and intentional efforts to withhold his financial information during this litigation and during the marriage. These are equitable duties intended to secure Mr. Bart's child support payment. RSA 458:21 also provides a court wide latitude to secure a child support payment: "In all cases where alimony or an allowance shall be decreed for a spouse or children the court may require security to be given for the payment thereof." As this Court observed in *In re Feddersen*, 149 N.H. 194, 200-01 (2003), this power is not limited to cases where security is necessary to "force a recalcitrant person to honor his or her legal obligation to support his or her children." *Id.* Nor does RSA 458:21, by its own terms, limit the definition of "security" to establishment of a bond or trust. *See In re Sarvela*, 154 N.H. 426 (2006) (party can be compelled to escrow proceeds of property distribution to ensure child support payment permissible); *Leary v. Leary*, 137 N.H. 161 (1993) (party can be compelled to liquidate real property to

required "not less than once every 3 years," the department may seek to amend the child support order so that it reflects the current state of the parties' finances. *Id.* at I(b),(c). Notably, there is no upper limit or minimum period between review-seeking. *Id.* at I(b), (c). Thus, the concept of a rolling review of the obligor's finances and recalibration of the order is not alien to the statutory framework.

secure child support). If it is within the power of the trial court to prospectively require a party to pay a bond, liquidate assets, or create a trust to secure a child support payment, then it is surely within the power of the trial court to order the party to produce evidence of his income on an annual basis and recalibrate the order to match that income.

Third, Mr. Bart or Ms. Sanborn may move to modify the child support order at any time if the circumstances change substantially. RSA 458-C:7, I(a). Either party may also move to modify the order, including its procedural mechanisms, every three years for any reason. *Id.* As it stands, if Mr. Bart's income increases by only a small amount during the year, then any change in the actual payment he would have to make would be nominal regardless. If Mr. Bart's income increases substantially, then it would constitute a substantial change in circumstances justifying a modification of the amount of child support payment regardless. If Mr. Bart's income *decreases*, he may still seek a modification based on a substantial change in circumstances, but the trial court will require him to prove that change, which is reasonable given his reporting failures and gross unreliability regarding the disclosure of financial information in this case. The trial court order does not strip either party of their statutory options to modify the child support order.

Fourth, such a calculation would ensure that Mr. Bart's child support is calculated on his "present income," as required by law. *See, e.g., In re Feddersen*, 149 N.H. 194, 1999 (2003). Mr. Bart's recitation of case law relating to the proposition that a recalculation of child support may only be made from the time an obligor had notice of the request to modify is inapposite. *See* Brief of Jeffrey Bart at 7 ("Bart Brief at __") (citing RSA

458-C:7, II; *In re Birmingham*, 154 N.H. 51, 58 (2006)). RSA 458-C:7, II and related case law stand for the proposition that a court can only order modification of a child support amount retroactively to the date of notice of a request to modify—not to the point at which the income actually rose. The present order serves exactly the same function: the mechanism imposed by the trial court ensures that Mr. Bart will not be required to pay more child support for a given year until April 15th of each year, *even if his income increased substantially* in the 12 months preceding. That is precisely the intent of RSA 458-C:7, II. Thus, the trial court order underscores and reinforces the legal authority relied upon by Mr. Bart in his brief.

Last, Mr. Bart argues that the trial court order is at odds with the objective of RSA 458-C, which is to “establish a uniform system to determine the amount of child support awards.” *See In re Baker & Winkler*, 154 N.H. 186, 187 (2006). The “uniformity” that the legislative scheme enforces is related to the amount of child support, as well as “ensuring that both custodial and non-custodial parents share in the support responsibility for their children according to the relative percentage of each parent’s income.” *In re Barrett & Coyne*, 150 N.H. 520, 523-24 (2004). If these are the twin goals of the uniform system, they are advanced by the trial court’s order in this case. The mechanism the trial court ordered to ensure that Mr. Bart honestly discloses his income annually does not alter the procedure for establishing a child support amount based upon that figure—which is, in this case, strict adherence to the guidelines. *See Merits Order* at 6; RSA 458-C:3, 3-a. Thus, the amount of child support owed by Mr. Bart is determined, under the trial court order, in perfect uniformity

with the statutory scheme (notwithstanding that the trial court used the wrong income figure for Mr. Bart).

Mr. Bart is left to argue that the fact that he must “forthrightly” disclose his income for calculating child-support is unfair. This is also wrong. The trial court’s order goes to great lengths to ensure that both Ms. Sanborn and Mr. Bart “share in the support responsibility for their [child] according to the relative percentage of each parent’s income.” *Barrett & Coyne*, 150 N.H. at 524. The statutory framework calls for uniformity in outcomes, not in procedures.

In sum, the Court has long blessed automatic escalation or recalculation clauses as a way to reduce the need of parties to go to court, and to ensure that the child support amount in a given case remains rationally linked to the parties’ incomes. *Heinze*, 122 N.H. at 361. That is what the trial court did in this case and the Court should affirm.

II. The trial court properly allocated a portion of the property award to Ms. Sanborn to reimburse her for fees already accrued at the time of trial.

Mr. Bart argues that the trial court’s allocation of \$65,000 of the marital estate to Ms. Sanborn to reimburse her for attorneys’ fees was improper because that the sum calculated by the trial court omitted to account for \$53,259 she had used from a marital account to pay for her attorney’s fees earlier in the litigation. *Bart Br.* at 10. In other words, according to Mr. Bart, Ms. Sanborn’s portion of the marital estate was \$53,259 too high because the trial court failed to credit that amount against the \$65,000 it allocated to Ms. Sanborn in reimbursement of her attorneys’ fees. *Id.*

Mr. Bart is challenging a discretionary decision of the trial court regarding how to distribute the parties' marital estate. The trial court was not applying a specific rule that all attorneys' fees expended by the parties must be charged against their portions of the marital estate because there is no such rule. Rather, the trial court made findings that Mr. Bart had almost completely exhausted two formerly robust marital accounts, the CMJ investment account (at Fidelity) and the CMJ bank account (at Merrimack Village Savings Bank). Merits Order at 14. What happened to the CMJ bank account is not clear; as the trial court noted, Mr. Bart had not been "forthright" about his finances. Merits Order at 5. As to the CMJ investment account, Mr. Bart spent \$50,000 to pay back tax liability for CMJ, plus accrued penalties and interest for failing to report significant CMJ income—issues wholly of Mr. Bart's making. Sanborn App. at 11, Request ¶128 (granted); Merits Order at 14. With the balance, Mr. Bart paid his attorney's fees in the amount of \$65,000. *Id.* at 14. The trial court determined this to be an advance on his share of the marital property and decreed that the property distribution should account for that advance by providing an equal amount to Ms. Sanborn. *Id.* It did so, however, noting Mr. Bart's testimony that Ms. Sanborn had used a savings account to pay her legal fees as well.

It was within the trial court's discretion to determine the weight and sufficiency of the evidence. *In re Periano*, 155 N.H. 738, 752 (2007) ("The trial court is in the best position not assess the credibility of witnesses and weight the evidence before it."). There is sufficient evidence in the record, in the form of Mr. Bart's acknowledgment that he used the CMJ investment account to pay his attorneys' fees, Tr. at 1015, to support the trial court's

determination that this justified a set-off from his portion of the marital property distribution. The trial court's evident conclusion that Ms. Sanborn's withdrawal of cash from a savings account did not justify a set-off from her portion of the marital property distribution is also supported by the record, insofar as Mr. Bart apparently plundered CMJ, a marital asset, for years, resulting in the disappearance of in excess of \$230,000 from the marital estate. *See* Sanborn App. at 9, Request ¶89 ("Mr. Bart testified that he paid certain personal expenses from CMJ but the payment of such expenses is not entirely accounted for in his business or partnership tax returns.") (granted), *id.* at 11, Request ¶118 (totaling figures for 2014-16) (granted), ¶119 ("There was not a credible response [from Mr. Bart] as to where the money went once Mr. Bart removed it.") (granted), Request ¶120 ("The Court finds Mr. Bart not to have been credible as regards the extent of his underreporting.") (granted), ¶121 ("Mr. Bart was unable to explain with any specificity where the underreported income went or how it was used.") (granted). By contrast, the trial court found that "There is no evidence to support a finding that Ms. Sanborn dissipated marital assets during the pending divorce action." Sanborn App. at 12, Request ¶134 (granted).

III. The Court's jurisdiction over this appeal does not bar the trial court from modifying or adjusting the temporary orders governing the relations of the parties while the appeal is pending.

Mr. Bart takes issue with the trial court's post-appeal order requiring Mr. Bart to continue sharing the property taxes on the marital home with Ms. Sanborn. He argues that the trial court's Final Decree, which allocated the marital home to Ms. Sanborn, could not be modified by the trial court

after he had sought an appeal of the Final Decree to this Court. Mr. Bart is wrong on the law. In addition, the facts demonstrate that the trial court's decision was just, equitable, and fair.

On February 8, 2018, the trial court issued a Temporary Decree, under which Mr. Bart was obligated to pay half the property taxes on the parties' marital home. Sanborn App. at 44. In the Final Decree, the trial court allocated the marital home to Ms. Sanborn entirely, relieving Mr. Bart of any obligation to pay a share of the property taxes on the marital home. See Merits Order at 8-9; Bart App. at 41 (Final Decree at 5). Five days before the Final Decree became final, February 13, 2020, Mr. Bart appealed the trial court's order.

In his Brief, Mr. Bart suggests that Ms. Sanborn was dilatory in seeking an adjustment in the property taxes only in May 2020, some six months after the trial court's Final Decree. What Mr. Bart fails to reference is that during the trial, he testified that he believed that Ms. Sanborn's expenses were too high and that she could reduce her expenses by a refinance of the term of the former marital home, and that she could and should refinance or sell the marital home to reduce those expenses. Sanborn App. at 54 *et seq.* The Final Decree itself adopted his wish, requiring Ms. Sanborn to "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." Bart. Br. at 41. On March 26, 2020, therefore, Ms. Sanborn acted on Mr. Bart's suggestion and the trial court's binding order. Sanborn App. at 54. She sought the leave of the trial court to sell or refinance the home. *Id.* The trial court then denied her motion on

jurisdictional grounds due to Mr. Bart's appeal to this Court. Sanborn App. at 58 et seq. This left Ms. Sanborn unable to sell or refinance the home, while nevertheless being saddled with the entire burden of high mortgage payments and the property tax under the terms of the Final Decree. Being barred by the trial court itself from performing her obligation to refinance or sell, Ms. Sanborn then reasonably moved for relief from having to bear the entire tax burden during the pendency of the appeal. Sanborn App. at 59. In so doing, she relied upon Fam. Div. R. 2.29(B)(1)(a) for the proposition that, during the appeal, the Temporary Decree remained in effect. *Id.* The trial court granted her motion. Sanborn App. at 67.

Mr. Bart argues that the trial court's decision was in error because it lost jurisdiction over the case when Mr. Bart took his appeal. Bart Br. at 12. He also argues that Fam. Div. 2.29 (B)(1)(d) applies because property taxes are an "on-going expense." Neither point is persuasive.

First, property taxes are not an "on-going expense" under Fam. Div. 2.29(B)(1)(d). The rule must be read as a whole. *In re Parker*, 158 N.H. 499, 502 (2009) ("[W]e ascribe the plain and ordinary meanings to words used, looking at the rule or statutory scheme *as a whole*, and not piecemeal.") (emphasis added, citations omitted). The purpose of Rule 2.29(B) is clearly intended to ensure that maintenance obligations go into effect immediately and that the status quo be preserved during the pendency of an appeal. For this reason, temporary orders, protective orders, custody and parenting orders, and support orders go into effect immediately and continue while the merits of the orders are appealed and adjudicated. Rule 2.29(B)(1). When Rule 2.29(B)(1) speaks of "on-going expenses" it means day-to-day or month-to-month maintenance expenses of a kind borne or

supported by an obligor in a divorce action—the kind for which cash payments for child and alimony support, for example, were intended.

Property taxes, by contrast, are not “on-going expenses” because they are not related to daily and monthly living, but instead are inextricably linked with the parties’ real property interests—*i.e.*, with the marital estate.² This is why the requirement that Ms. Sanborn bear the property taxes associated with the marital home was *paired with* the allocation of the marital home to her in the distribution of the marital estate. *See* Bart Br. at 41. Since the final distribution of the marital home to Ms. Sanborn was stayed during the pendency of appeal under Rule 2.29, the allocation of property taxes to her must also be stayed. *Id.* (“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.”); *see* Sanborn App. at 61. The trial court was barred by Rule 2.29(B)(4) from permitting Ms. Sanborn to sell or refinance the home because it would affect the property division between the parties while the appeal was pending. The trial court correctly agreed with Ms. Sanborn that it would be unjust in the extreme to saddle her with the full burden of the property taxes

² If property taxes were “on-going expenses” within the meaning of Rule 2.29(B)(1)(d), Rule 2.29(B)(1)(a) would have an intrinsic conflict in terms, in which the Temporary Decree and Final Decree would *both* be in effect as to property taxes. This would be an impossibility, as the Temporary Decree calls for Mr. Bart to contribute half the property taxes and the Final Decree does not. The rule should not be read to create an absurd result. *E.g., Favazza v. Braley*, 160 N.H. 349, 351 (2010). The trial court’s order on Ms. Sanborn’s Motion to continue the allocation of property tax payments under the Temporary Decree while the Final Decree was being appealed was a reasonable way to resolve any conflict arising from the purportedly competing requirements of Rule 2.29(B).

while simultaneously denying her full ownership of the home, or the ability to sell or refinance it.

Mr. Bart's reliance on *Rautenberg v. Munnis*, 107 N.H. 446 (1966) is similarly misplaced. Mr. Bart's argument relies upon only half of the relevant quote from *Rautenberg*. The entire passage reads:

'An appeal to this Court from a nisi prius court does not necessarily stay all further proceedings in the trial court, nor does it strip said court of all power over the proceeding in which the appeal has been taken. The trial court may act with reference to matters not relating to the subject matter of, or affecting, the proceeding; make such orders and decrees as may be necessary for the protection and preservation of the subject matter of the appeal; and it may do anything that may be necessary for the presentation of the case in this Court, or in furtherance of the appeal. But, 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.' ... The general rule stated above does not prohibit the Trial Court from passing on collateral, subsidiary or independent matters affecting the case and the Trial Court has adequate authority and jurisdiction to preserve the status quo.

Rautenberg, 107 N.H. at 447–48 (1966) (quoting *Bullock v. Director, etc.*, 190 A.2d 789, 792 (Md. 1963)) (other citations omitted). The trial court's order maintaining the Temporary Decree's property tax allocation during this appeal was a status quo preservation ruling, nothing more. Indeed, it was because the trial court's orders concerning the final disposition of the marital home could not go into effect that the trial court

had to extend the real-estate tax payment provisions of the Temporary Decree. *See* Rule 2.29(B)(4) (“During this period, no orders as to marital status or parentage *or as to property division* shall take effect.”) (emphasis added). It was well within the trial court’s jurisdiction to rule on the ongoing effect of the Temporary Decree during the pendency of the appeal of the Final Decree. *See Rautenberg*, 107 N.H. at 448 (“[T]he Trial Court has adequate authority and jurisdiction to preserve the status quo.”). The Court should affirm the trial court’s order requiring Mr. Bart to continue paying property taxes on the marital home until this appeal is resolved.

ARGUMENT OF LURA SANBORN

- IV. The trial court’s determination of Mr. Bart’s income for child support purposes was contradicted by its own findings of fact, unsupported by any credible evidence in the record, and erroneous in omitting Mr. Bart’s capital gains from the calculation of gross income.

The trial court determined that Mr. Bart’s gross income for child support purposes was \$116,616 annually or \$9,718 per month. This finding contradicted the trial court’s own findings of fact; it was not supported by the evidence in the record; and it omitted capital gains income as required by law. The trial court’s determination of Mr. Bart’s gross income should be reversed and remanded for recalculation based on the trial court’s findings and the evidence in the record.

The trial court found the following facts concerning Mr. Bart’s income.

- From February 2018 to May 2018, Mr. Bart’s monthly income was \$11,438.41 (including \$3,103.91 in rental and dividend income).
Merits Order at 6.

- From June 2018 to December 2018, Mr. Bart's monthly income was \$14,771.14 (including \$3,103.91 rental and dividend income and \$3,333.33 in capital account income). *Id.*
- From January 2019 to June 2019, Mr. Bart's monthly income was \$11,667.83 (including \$3,333.33 per month in capital account income). *Id.*
- Mr. Bart's 2018 income tax returns were appropriate to rely on to calculate his income for child support purposes. Sanborn App. at 7, Request ¶66 (granted).
- Mr. Bart's 2018 income tax returns showed a gross income of \$157,763 for 2018, or \$13,146 per month. Sanborn App. at 77.
- Mr. Bart's income in 2018 exceeded \$9,259/month *by at least* \$7,319.32/month (a total of \$16,578.70 per month). Sanborn App. at 9 (Pet. Req. ¶85 (granted) (emphasis added)).
- Mr. Bart earned \$3,103.91 monthly from rental and dividend income at the time of trial. Sanborn App. at 8 (Pet. Req. ¶70 (granted)).
- Mr. Bart's 8-2-19 Financial Affidavit, upon which the trial court relied, showed a business income, separate from his monthly rental and dividend income, of \$8,334. Sanborn App. at 71.
- Mr. Bart asserted no request for findings regarding his income and the trial court never granted or denied a request for findings from Mr. Bart regarding his income. *See*, generally, Bart App. at 73-83.
- Mr. Bart had no credible explanation for certain income numbers on his March, 2019 financial affidavit. Sanborn App. at 9 (Request ¶90 (granted)).

- Mr. Bart’s trial testimony regarding his current income was “not credible[.]” *Id.* (Request ¶91 (granted))
- Mr. Bart’s income was “unknown until the Final Hearing,” Mr. Bart “has not always been forthright with disclosing his finances,” and there were “challenges with establishing [Mr. Bart’s] income.” Merits Order at 5, 7, 8.

Based on the evidence in the record and the specific findings of the trial court, this is the unusual case where there is no support for the trial court’s determination of gross income in the record. *See In re Lockaby*, 148 N.H. 462, 465-66 (2002) (trial court decision not sustained without a supporting record). The trial court’s conclusion that Mr. Bart’s gross income was \$9,718 per month is an unsustainable exercise of discretion for the following three reasons. *Id.*

First, Mr. Bart’s testimony concerning his income was deemed to be “not credible” by the trial court. *See Sanborn App.* at 9, Request ¶91 (“Mr. Bart’s testimony regarding his total current income is not credible.”) (granted). Mr. Bart testified that his current income was \$9,718 per month. *Tr.* at 877 (discussing financial affidavit). Since that testimony was deemed “not credible,” it was error for the trial court to rely upon this notably “not credible” testimony in determining that his monthly income was \$9,718. The trial court also found discrepancies between his March 14, 2019 and July 24, 2019 financial affidavits for which Mr. Bart “had no credible explanation.” *Sanborn App.* at 9, Request ¶90 (“Mr. Bart had no credible explanation as to why his ‘Rental Income and Business Profits’ income number on his March 14, 2019 FA, Pet. Ex. 61, was different than

that for his July 24, 2019 financial affidavit when both were allegedly based on his 2018 tax returns.”); Sanborn App. at 11, Requests ¶¶119, 120, 121 (granted) (all findings concerning Mr. Bart’s lack of credibility concerning the \$230,000 he disappeared from the businesses).

Second, by contrast, the trial court made numerous findings in the Merits Order, and by granting proposed findings and rulings, which established that Mr. Bart’s 2018 tax returns—and not his testimony (found to be “not credible”)—were an appropriate basis for establishing his child support gross income. *E.g.*, Sanborn App. at 7, Request ¶66 (2018 tax returns were an appropriate basis for determining income) (granted); Sanborn App. at 77 (2018 tax returns show gross income figure of \$157,763 or \$13,146 per month); Sanborn App. at 8, Request ¶70 (“Mr. Bart earned \$3,103.91 monthly from rental and dividend income at the time of trial.”)³(granted).

³ This finding directly undermines the trial court’s erroneous determination of \$9,718 per month because that figure is the total of Mr. Bart’s purported passive income of \$8,334 per month, plus \$1,384 in declared rental and dividend income due to depreciation. *See* Sanborn App. at 71 (Bart August 2, 2019 Financial Affidavit). Mr. Bart’s testimony concerning his financial affidavit—which, again, the trial court found to be not credible—was that he was entitled to a depreciation discount on that figure. Tr. at 877-85. That depreciation is not a factor that the trial court may consider when calculating the actual amount of money available for child support is well-established. “The relevant inquiry is whether the income is available to pay child support.” *In re Albert & McRae*, 155 N.H. 259, 264 (2007). Calculating a parent’s ability to pay child support requires the deduction of legitimate business expenses. *In re Woolsey & Woolsey*, 164 N.H. 301, 306 (2012). Legitimate business expenses are those expenses that are “actually incurred and paid” and “reasonable and necessary for producing income.” *Id.* at 307. Depreciation is a tax benefit, not an actual paid expense necessary for producing income. *See In re Maves*, 166 N.H. 564, 569 (“[T]he respondent’s adjusted gross income for federal tax purposes does not reflect his ‘gross income’ for child support purposes because it includes deductions for such things as *depreciation ...-- expenses that were not necessary for producing income.*”) (emphasis added). The trial court’s finding granting Ms. Sanborn’s Request ¶70 is in keeping with this well-established law. *See* Sanborn App. at 8. The trial court’s final determination that Mr. Bart earned \$9,718 monthly is not. *See* Merits Order at 5.

Based on his 2018 tax returns, therefore, Mr. Bart's gross income for child support purposes should have been at least within the following base range:

- \$11,437.91 per month (Mr. Bart's "not credible" \$8,334 in passive income combined with the trial court's finding of \$3,103.91 monthly in rental and dividend income).
- \$13,146 per month (income taken straight from Mr. Bart's 2018 tax returns).
- \$16,578.70 per month (income based upon the trial court's finding that "Mr. Bart's income in 2018 exceeded \$9,259/month by at least \$7,319.32/month.") (Sanborn App. at 9, Request ¶85) (granted).

Third, to these figures, the trial court also should have added Mr. Bart's capital gain income for 2018, at \$1,806.58 per month. Sanborn App. at 78 (Bart 2018 tax return at line 13). The trial court failed to do so. *See* Merits Order at 1, Sanborn App. at 8 (denying Request ¶71 ("Mr. Bart's income from CMJ should also include net long-term capital gain on Line 9a of \$21,679/year or \$1,806.58/month.")). That was a legal error. *In re Maves*, 166 N.H. 564, 567 ("[W]e conclude that capital gains ... are 'gross income' for the purpose of determining child support.").

In sum, the trial court erred in determining Mr. Bart's gross income for child support purposes based on testimony and evidence the trial court deemed to be "not credible." Instead, the trial court should have determined Mr. Bart's income to be at least \$13,244.49 per month (more or less consistent with his 2018 tax return gross income of \$13,146 per month) and up to \$18,385.28 if the trial court's finding that Mr. Bart's income exceeded his declared income by at least \$7,319.32 per month is correct.

The Court should reverse the trial court's determination of Mr. Bart's income and remand this case to the trial court for recalculation of Mr. Bart's child support on the basis of the trial court's express findings, including capital gain income for 2018.

- V. Given Mr. Bart's unexplained dissipation of marital assets, and the fact that Mr. Bart acquired his primary interest in the Granite State Candy Shoppe nearly ten years into the parties' marriage, the trial court erred in making a disproportionate distribution of the marital estate to Jeffrey Bart.

The trial court's order allocating 55% of the marital estate to Mr. Bart and 45% to Ms. Sanborn was unjust, inequitable and not supported by the facts. Of the factors set forth in RSA 458:16-a that a court may consider in deviating from a presumed equal distribution of the marital assets, nearly all weighed in Ms. Sanborn's favor and in fact support a disproportionate distribution to Ms. Sanborn. The only factor relied upon by the trial court to justify a disproportionate distribution to Mr. Bart was the finding that the Candy Shoppe and CMJ were family businesses that Mr. Bart had "inherited and/or gifted." *See* Merits Order at 9 (*citing* RSA 458:16-a, II(n)). The trial court's finding that Mr. Bart inherited these businesses might support ensuring that he emerge from the divorce with these assets, but not at Ms. Sanborn's expense. All the other factors—including Mr. Bart's wasteful dissipation of marital assets—weigh in favor of Ms. Sanborn. Therefore, the Court should reverse the trial court's allocation of marital property and remand the case for an equal allocation of assets, if not a disproportionate distribution to Ms. Sanborn.

The trial court's finding, or assumption, that "[t]he business and property were inherited and/or gifted to Father" is true, but the vast

majority of his interest in these properties was obtained almost ten years into the parties' marriage. Mr. Bart acquired only 25% of the Candy Shoppe and 16.5% of CMJ prior to the marriage. He received 65% of his interest in the Candy Shoppe and 78.5% of his interest in CMJ in 2014. Notably, the trial court *denied* Mr. Bart's requests for a disproportionate distribution of property. *See* Bart. App. at 81 (Requests ¶¶97, 98 not granted).

While Mr. Bart's interest in Granite State and CMJ may have been "inherited," they were nevertheless marital properties in which both parties earned an equal interest through their diverse contributions to the marriage. Mr. Bart worked long hours at the Candy Shoppe, often working 6-7 days per week. *See* Merits Order at 2. Ms. Sanborn bore responsibility for the home and their son's care during those long hours—in addition to her paid full-time employment outside the home. *See, e.g.,* Sanborn App at 3, Request ¶9. Her homemaker and child rearing contributions made it possible for Mr. Bart to devote such substantial time to the Candy Shoppe. Both the Candy Shoppe and CMJ were every bit as much hers as his. *See* RSA 458:16-a, II(g), (h). It may have been appropriate to ensure that Mr. Bart emerged from this divorce with his family business, but it was unreasonable to credit him with 10% more of the marital estate. There should have been—and were—sufficient marital assets to equalize Ms. Sanborn's portion of the marital estate.

In fact, there was good cause to distribute the marital estate disproportionately to Ms. Sanborn. Once Mr. Bart "inherited" his family businesses, he immediately began to plunder them of assets without informing Ms. Sanborn. Mr. Bart removed \$108,000 from the businesses

in 2014, the year he “inherited” the majority of his interest. Sanborn App. at 11, Request ¶118. He removed \$74,679 in 2015. *Id.* He removed \$48,952 in 2016. *Id.* He failed to report these sums on the business’ federal tax filings, *id.*, thereby resulting in amended tax returns with interest and fines. Tr. at 644-52. Of note, Mr. Bart did not acknowledge that he had removed these funds from the business until after the divorce action had commenced. *See, generally, id.* In fact, he had no explanation for where this income went, what he did with it, or how it was used. Sanborn App. at 11, Requests ¶¶119, 121. Mr. Bart inexplicably gave his girlfriend, who worked, like Ms. Sanborn once did, at the Candy Shoppe, free rent from CMJ and a 46% wage increase at the time Ms. Sanborn filed for divorce. Sanborn App. at 11-12, Requests ¶¶153, 154, 165. Mr. Bart spent down two robust bank accounts belonging to CMJ during the divorce, using these accounts as his personal piggy bank. Sanborn App. at 9, Request ¶88. The trial court should have credited the marital estate with these diverted sums, thereby increasing the value of Ms. Sanborn’s share. In the alternative, this kind of waste and dissipation, or at least diminution, should have compelled an unequal distribution to Ms. Sanborn. *See* RSA 458:16-a, II(f); *In re Martel*, 157 N.H. 53, 59 (2008) (reckless management of assets that diminishes marital estate justifies disproportionate distribution). Conversely, the court agreed that there was no evidence to support a finding that Ms. Sanborn had dissipated assets. Sanborn App. at 12, Request ¶134 (granted). At minimum, the trial court erred in awarding Mr. Bart a disproportionate share of the marital estate from which he had

already stripped—without explanation—at least \$230,000, and likely substantially more.⁴

In addition to this egregious conduct by Mr. Bart, the more quotidian factors relevant to a disproportionate distribution favor Ms. Sanborn (or suggest, at minimum, an equal distribution as the only equitable possibility). This was a long-term marriage. Sanborn App. at 3, Request ¶2 (granted); see RSA 458:16-a, II(a); *Martel*, 157 N.H. at 57 (“[L]ong-term marriage is a factor which justifies an *equal* division of assets.”) (emphasis in original). Mr. Bart’s income exceeds that of Ms. Sanborn, who earns only \$61,000 per year, which is consistent with her educational background. Sanborn App. at 3, Requests ¶¶8, 12 (granted); see RSA 458:16-a, II(b). Ms. Sanborn made disproportionately heavy contributions to the home and family, while working full time, in order for Mr. Bart to succeed at his businesses. Sanborn App. at 3, Request ¶9.

The trial court erred in awarding Mr. Bart a 55% share of the marital estate when virtually all of the factors the trial court is permitted to consider weighed in Ms. Sanborn’s favor. The Court should reverse the trial court’s decision concerning the equitable distribution of the marital estate and remand the case for recalculation based upon the findings of fact, which favor an equal distribution, if not Ms. Sanborn receiving the disproportionate amount.

⁴ As noted previously, Mr. Bart then had to pay taxes, penalties and interest on the unreported income when he later reported it. See, e.g., Sanborn App., Request ¶128).

VI. The trial court erred in ordering alimony for a duration less than its own findings required, at a level below what its own findings required.

The trial court's findings concerning alimony are not supported by the record. When the trial court entered a Temporary Decree, it awarded Ms. Sanborn \$1,500 per month in alimony based on a professed income by Mr. Bart of \$8,901 per month. *See* Sanborn App. at 41 (Temporary Decree). The trial court found that Mr. Bart was earning \$9,718 per month at the time of trial. Merits Order at 5. The trial court agreed that “[c]ontinuation of the existing alimony order, which was established based upon income less than what the Court finds Mr. Bart to be earning now, is reasonable.” Sanborn App. at 6, Request ¶54. Despite that finding, as well as a series of findings, *see supra*, that support a gross monthly income number substantially higher than \$9,718, the trial court lowered Ms. Sanborn's alimony award to \$1,000 per month. Nothing in the record supports that conclusion after the trial court found that continuing the \$1,500 per month award was reasonable.⁵ Sanborn App. at 6, Request ¶54. The trial court's alimony order should be reversed and remanded for recalculation based upon the trial court's own findings.

Similarly, the trial court's determination of a 69-month term for alimony is not supported by its own findings. The trial court found that 72 months of alimony would be reasonable. Sanborn App. at 7, Request ¶62

⁵ In addition, the trial court required Ms. Sanborn to continue carrying Mr. Bart on her employer-provided health insurance plan, effectively reducing her alimony payment \$265.76 per month, a reverse alimony payment. *See* 26 U.S.C. §17 (alimony includes health insurance payments). Thus, Ms. Sanborn's financial obligations toward Mr. Bart under the Temporary Decree were carried over into the Final Decree, but the support she was to receive from Mr. Bart under it was not—despite a gross income on Mr. Bart's part higher than what he admitted at the time of Temporary Decree, and likely substantially greater than that.

(granted). There is no explanation in the trial court order, or the Final Decree itself, for why the trial court settled on a 69-month term for alimony when the only finding touching on the duration of alimony called for a 72-month term. Absent some rationale, duly supported by other evidence in the record—of which there is none—the trial court’s determination of a 69-month term is an unsustainable exercise of discretion. The Court must reverse and remand for the trial court to correct the duration of the alimony award to 72 months.

Conclusion and Request for Relief

Ms. Sanborn requests that the Court deny Mr. Bart’s appeal and affirm the trial court’s decision as to the issues raised in his Brief.

Ms. Sanborn requests that the Court reverse and remand this matter for recalculation of Mr. Bart’s gross income for child support purposes, recalculation of her alimony award, and revision of the equal distribution of the marital estate between the parties (or disproportionately in Ms. Sanborn’s favor).

Request for Oral Argument

Ms. Sanborn requests oral argument. Oral argument will be presented by Jeremy D. Eggleton.

Rule 16(3)(I) Certification

I certify that the appealed decision, the Order on Motion for Reconsideration and/or Clarification, dated December 31, 2019 is in writing and is appended to the brief beginning on page 53.

Rule 16(11) Certification

I certify that the foregoing brief complies with the word limitation of 14,000 words for Cross-Appellant Briefs and that it contains 10,453 words.

Respectfully submitted,

LURA SANBORN

By her Attorneys,

ORR & RENO, P.A.

Date: November 30, 2020 By: /s/ Jeremy D. Eggleton
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Certificate of Service

I hereby certify that a copy of the foregoing Brief of the Appellee and Appendix to the Brief of the Appellee have been forwarded, this day, to counsel for the parties via the Supreme Court's electronic filing File and Serve system.

/s/ Jeremy D. Eggleton

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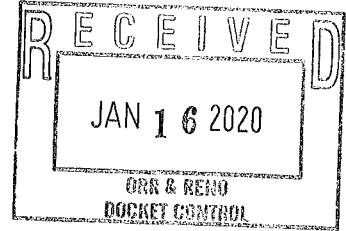
**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

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

**JUDITH ANN FAIRCLOUGH, ESQ
ORR & RENO PA
45 SOUTH MAIN STREET SUITE 400
PO BOX 3550
CONCORD NH 03302-3550**



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: Patrick J. Sheehan, 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

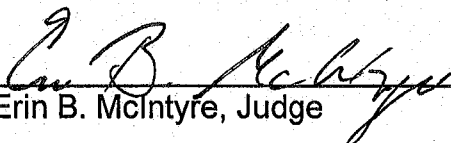
Having reviewed the pleadings and its previous Orders, the Court notes that it failed to complete Section 5 of the Uniform Support Order and failed to account for the fact that the Obligee's health insurance is slightly more than the presumptive medical obligation. Both of these have been corrected.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

12/31/19
Date


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):

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
<u>Walden Sanborn Bart</u>	<u>July 07, 2008</u>

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 dated 11/18/19.
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 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.

15. Health insurance coverage available to the OBLIGEE is not accessible to the child(ren). *judicial amount of child support*

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
ERIN B. McINTYRE

Printed Name of Judge