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APPENDIX A

**IN THE SUPREME COURT OF SOUTH
CAROLINA**

NO. 2021-000088

MS. CHRISTINE CRABTREE

v.

MR. DONALD CRABTREE

DATE OF RULING:	07/06/2021
TRIAL JUDGES:	GEORGE M. MCFADDIN, JR., FAMILY COURT JUDGE MONET S. PINCUS, FAMILY COURT JUDGE
COURT FROM WHICH APPEALED:	SUMTER COUNTY
ATTORNEYS FOR APPELLANT:	MR DONALD CRABTREE PRO SE
ATTORNEYS FOR APPELLEE:	MARIAN DAWN NETTLES MICHAEL W. SELF
NATURE OF THE CASE:	CIVIL
DISPOSITION:	DENIED
MOTION FOR REHEARING FILED:	

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ORDER

Based on the vote of the Court, the petition for a writ
of certiorari is denied.

FOR THE COURT
BY CLERK

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APPENDIX B

**IN THE APPELLATE COURT OF SOUTH
CAROLINA**

NO. 2018-000269

MS. CHRISTINE CRABTREE

v.

MR. DONALD CRABTREE

DATE OF RULING:	11/18/2020
TRIAL JUDGES:	GEORGE M. MCFADDIN, JR., FAMILY COURT JUDGE MONET S. PINCUS, FAMILY COURT JUDGE
COURT FROM WHICH APPEALED:	SUMTER COUNTY
ATTORNEYS FOR APPELLANT:	MR DONALD CRABTREE PRO SE
ATTORNEYS FOR APPELLEE:	MARIAN DAWN NETTLES MICHAEL W. SELF
NATURE OF THE CASE:	CIVIL
DISPOSITION:	AFFIRMED
MOTION FOR REHEARING FILED:	12/08/2020

MANDATE ISSUED: 12/21/2020

PER CURIAM: Donald Crabtree (Husband) appeals two orders from the family court: (1) the order denying his motion to reconsider the original divorce decree and granting Christine Crabtree's (Wife's) motion to reconsider the original divorce decree, and (2) the amended divorce decree. On appeal, Husband argues the family court erred by granting Wife temporary possession of the family home; acting in "contempt of justice" by ignoring law and evidence and lacking integrity in applying the law in this case; acting against the preservation of marriage; showing gender prejudice; incorrectly imputing his income; failing to properly assess marital fault and consider whether the award of alimony should be reversed based on fault grounds; and "subvert[ing] freedom of religion." He further asserts the evidence in this case showed desertion or constructive desertion by Wife; libel and slander by Wife; cruelty by Wife; he is the "most well[-]adjusted mature" and "reasonable parent" for custody purposes; and the guardian ad litem was prejudiced against him and colluded with the family court. Husband further lists several religious questions in his statement of the issues on appeal, including Whether religious authority has a place in family life and if extorting [sic (exhorting)] a person's religion is "inherently abusive"; whether it is better to claim a religion and not adhere to its teachings; and whether it is better to be at fault or tell someone they are at fault. We affirm.

I. FACTS

The parties were married in 2000 in the state of Washington and have four minor children. Due to the Husband's schooling and position in the United States Air Force (USAF), the parties moved several times until the Husband was stationed in South Carolina in 2012. According to the record, Husband left the USAF in 2014, accepting an incentive package of over \$100,000. Husband stated he wished to use this money to start his own business, but Wife, who he claimed initially supported him leaving the USAF and starting his own business, later asked Husband to "take the safer route" and find a new job instead. This disagreement caused problems in the marriage¹; in particular, Husband asserted Wife no longer had sexual relations with him, and he began sleeping in the guest room. Wife asserted Husband yelled at her, cursed at her, called her names in front of the children, belittled her opinions, told her to submit and obey him, and generally used their Christian religion as a weapon against her.

Husband sent Wife several emails regarding her actions and the religious consequences, telling Wife "because you are in rebellion you will not find comfort in the [L]ord, for he is the one you are rejecting"; "You are not justified, you are incapable of judging what is fair. . . . The spirit of cowardice has no place in my household"; "You are afraid because you are in rebellion against the Lord, the only lasting peace you will find is in obedience"; and "You are simply following in the curse of the woman, trying to

¹ Parties also had issues earlier in the marriage, including physical abuse, and at one point, they separated for fifteen months.

unbalance my leadership. Coveting my authority and attacking me. There will be no peace for you in this." Additionally, Husband had an altercation with the Wife's father, sending Wife's father an email asking him to leave the parties' marital home and calling the police to "evict" him from the marital home, which the police refused to do as the Wife's father was the Wife's guest. Afterwards, Husband send Wife's parents and Wife another email regarding the incident, stating he was "under [God's] authority" and wishing[sic warning] "dreadful anxiety" to those who claimed to be Christian but "rejected [God's] direction in this situation."

In 2015, Husband began to ask Wife to move with him back to Washington, but Wife refused. Wife left Husband on November 9, 2015. Wife filed an action for sperate support and maintenance on November 10, 2015, asking for the right to live sperate and apart from Husband. Husband filed an answer and counterclaim, request sperate support and maintenance and the right to live separate and apart from Wife. After a hearing, the family court issued a temporary order that granted Wife sole custody of the Children and temporary possession of the marital home; granted Husband restricted and supervised visitation with the Children; and ordered Husband to pay child support, the mortgage on the marital home, and Children's private school tuition.² Subsequently, Wife filed a rule to show cause against the Husband

² Husband filed a motion to reconsider this temporary order, which the family court denied. Husband then filed a motion for supersedeas, but this court denied the motion and stayed the appeal of the temporary order pending a final order.

in contempt for failing to comply with the temporary order by not paying child support, Children's private school tuition, and other support to the Wife. Husband appealed the civil contempt order, and this court affirmed. *Crabtree v. Crabtree*, Op. No. 2017-UP-461 (S.C. Ct. App. Filed December 13, 2017). Wife later filed a second rule to show cause against the Husband because he had failed to pay the mortgage on the marital home, and after a hearing, the family court found Husband in contempt.

Thereafter, Wife filed an amended complaint asking for a divorce on the ground of one year's continuous separation. Husband amended his answer to also request a divorce but on the ground of abandonment or desertion. After a trial, the family court issued a final divorce decree, granting Wife a divorce based on one year's continuous separation, stating its belief that the leading cause of the divorce was the Husband's use of the Christian faith against the Wife; finding no fault ground applied to the divorce; imputing an annual income of \$80,000 to Husband; granting Wife custody of the Children and stating Wife may relocate to Washington with Children; ordering the parties to each pay half of the guardian ad litem's fees and costs; ordering Husband to pay all of Wife's attorney's fees and costs; ordering Husband to pay Wife \$1,470 in child support and \$1,300 in alimony per month; and dividing the parties' marital property 50/50. Both parties filed a motion for reconsideration. The family court denied Husband's motion for reconsideration but granted Wife's motion and it filed and amended final divorce decree increasing Wife's alimony to \$1,600 per month, which

resulted in a decrease of Husbands monthly child support obligation from \$1,470 to \$1,404 per month pursuant to the child support guidelines. Husband appealed to the South Carolina Supreme Court, arguing his case raised the novel issue of "faith based abuse," and the supreme court transferred the case to this court. *Crabtree v. Crabtree*, S.C. Sup. Ct. Order dated February 22, 2018.

II. STANDARD OF REVIEW

Generally, on appeal from the family court, this court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 41.4, 709 S.E.2d 666, 667 (2011); *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). However, appellate courts review the "family court's evidentiary or procedural rulings using an abuse of discretion standard." *Stoney v. Stoney*, 422 S.C. 593, 594 n.2, 813 S.E.2d 486, 486 n.2 (2018).

III. DISCUSSION

A. Issues Abandoned on Appeal

Husband raises twenty-three issues in his statement of the issues on appeal. For seventeen of these issues, he either fails to argue the issue at all, to provide any supporting legal authority for his conclusory arguments, or to be specific as to what finding, ruling, conduct, or evidence the issue he raises actually pertains to.³ These issues are whether: (1) the family

³ Husband does split the issues into appropriately headed sections and make arguments, mostly conclusory, for each issue

court demonstrated "contempt for justice" by ignoring statute and manifest evidence; (2) the family court erred by showing gender prejudice; (3) the family court abused its discretion against manifest evidence; (4) the family court acted against the preservation of the marriage; (5) Wife committed libel and slander against Husband; (6) the evidence showed cruelty by Wife⁴; (7) there was evidence to support the income

in his reply brief. See Rule 208(b)(1)(E), SCACR ("The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority") However, these arguments are for the most part still unsupported by citation to any legal authority. Additionally, Husband cannot make vague, conclusory arguments on "an issue in his final brief and then reserve substantive argument as to that issue until his reply brief. See *Divine v. Robbins*, 385 S.C. 23, 44 11.4, 683 S.E.2d 286, 297 n.4 (Ct. App. 2009) ("The reply brief is not the appropriate vehicle to raise new issues on appeal; thus, we decline to address this argument"); *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

⁴ Husband's final brief does contain some argument with supporting authority regarding cruelty, but it all pertains to his argument Wife did not prove he committed physical cruelty—rather than just emotional and religious cruelty. The only section that potentially pertains to cruelty by Wife against Husband is when Husband alleges Wife "projected her behavior onto" Husband and acted coercively to get her way. Husband has no law to support this statement and at no time alleged physical cruelty by Wife as a potential ground of divorce in either his final brief or his reply brief. Accordingly, we find this issue abandoned on appeal.

imputed to Husband by the family court⁵; (8) Husband was the "more well[-] adjusted parent" for custody purposes; (9) Husband was the more reasonable parent for custody purposes; (10) the evidence showed the guardian ad litem was biased against him; (11) the evidence showed the family court colluded with the guardian ad litem; (12) the family court acted with integrity in applying the law to the case; (13) the family court acted to subvert freedom of religion; (14) the record shows the family

⁵ Husband failed to argue this issue at all in his final brief but he argued it extensively in his reply brief and included citations to legal authority. We find this issue was abandoned due to his failure to argue it in his final brief. Nonetheless, on the merits, We find the family court properly imputed \$80,000 in income to Husband given (1) he has four' minor children to support; (2) his education—he has a bachelor's degree in mechanical engineering, a master's degree in engineering management, and a master's degree in human relations—his skills in software development, his prior employment history, and the fact that he had a job offer paying \$80,000; and (3) he chose to be self-employed and start his own business selling software to USAF bases, which made no profit in 2016. See, e. g., *Kelley v. Kelley*, 324 S.C. 481, 489, 477 S.E.2d 727, 731 (Ct. App. 1996) (providing in imputed income cases, courts closely "examine the payor's good-faith and reasonable explanation for the decreased income," and "[e]fforts to frustrate support obligations are not tolerated, *nor are prolonged periods of unemployment* generally countenanced" (emphasis added)); id. ("[C]ourts are reluctant to invade a party's freedom to pursue the employment path of their own choosing or impose unreasonable demands upon parties . . . *Nonetheless, even otherwise unreviewable career choices are at times outweighed by countervailing considerations, particularly child support obligations.*" (citations omitted) (emphasis added)).

court acted with despotism⁶; (15) religion has a place in family life and whether using religion against a person of that religion is "inherently abusive"; (16) it is more favorable to claim a religion and not adhere to its teachings; and (17) it is better to be at fault or to tell someone they are at fault. Thus, we find Husband abandoned these issues on appeal. See Rule 208(b)(1)(B), SCACR ("The statement [of the issues on appeal] shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court"); Rule 208(b)(1)(E), SCACR ("The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority." (emphasis added)); First Sav. *Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). Accordingly, we affirm as to these issues.

B. Husband's "eviction" from the Marital Home

Husband argues the family court's temporary order should not have "evicted" him from the parties'

⁶ Husband's issue on appeal questions whether the family court acted as a despot; however, the argument section of his final brief alleges Wife acted as a despot. Husband provides no legal authority regarding this particular argument; thus, we find the issue is abandoned on appeal. See *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (stating an issue is abandoned if the appellant's brief fails to provide legal authority).

marital home by granting Wife temporary possession of the parties' marital home based on Wife's allegations of psychological and emotional abuse because the only type of abuse South Carolina recognizes as a ground for divorce is physical abuse. We disagree.

Initially, we find this issue moot because Husband's eviction from the parties' marital home was part of the temporary order and did not affect his rights at the divorce hearing. See *Terry v. Terry*, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) ("A temporary order of the family court is without prejudice to the rights of the parties. Such orders are, by definition, temporary—they neither decide any issue with finality nor affect a substantial right The family court at the final hearing has the authority to redress any error from the temporary order."). Moreover, in the final divorce decree, the family court granted Wife's request for a 50/50 division of the parties' marital property, which Husband did not dispute. Thus, any ruling by this court regarding Husband's eviction from the marital home pursuant to the temporary ruling will have no practical legal effect in this case.

Nonetheless, on the merits, we find the family court did not err in granting the parties' mutual request to live separately from each other and granting Wife temporary possession of the marital home because it granted her sole custody of Children. See *Jones v. Jones*, 281 S.C. 96, 100, 314 S.E.2d 33, 36 (Ct. App. 1984) (providing a family court does not necessarily have to award exclusive use of the marital home to

the custodial spouse in every case, and it must "weigh the cost, inconvenience and other hardships that may be experienced by requiring the custodial spouse to move out of the marital home to the burden imposed upon the non-custodial parent in being unable to realize his equity from a sale or other disposition of the home"; however, the award of custody to the custodial parent "may constitute sufficient reason for granting the custodial spouse exclusive use of the marital home" in some cases). Accordingly, we affirm as to this issue.

C. Desertion, Constructive Desertion, Marital Fault, and Alimony

Husband argues the family court erred in finding no fault ground for the divorce—while simultaneously noting Husband's use of his Christian faith against Wife caused the "demise" of the marriage—and in granting Wife alimony when Wife deserted or constructively deserted him.⁷ We disagree.

We find the family court did not err in finding no ground for marital fault applied in this case, and thus, the family court was not obligated to consider marital fault when it granted Wife alimony. First, We agree with Wife that the family court did address marital fault in its order because it went through possible reasons for the demise of the marriage—noting Husband's pornography addiction and use of religion

⁷ Husband also argues Wife committed cruelty and libel/slander against him, but as noted above, he abandoned these issues on appeal.

against Wife as well as Husband's belief that Wife should not receive alimony due to her failure to live up to her biblical role—and found no ground for marital fault applied. Accordingly, Husband's argument the court failed to address marital fault is meritless.

Second, We find the family court did not err in failing to find Wife deserted Husband because both parties asked for the right to live separate and apart in their respective pleadings and were granted that right by the family court in its temporary order. See *Machado v. Machado*, 220 S.C. 90, 101-02, 66 S.E.2d 629, 634 (1951) ("There can be no desertion where the separation of the spouses is upon mutual consent and under a separation agreement, and hence the existence of such an agreement may be advanced as a defense to a suit for divorce on the ground of desertion." (quoting Morland, Keezer on the Law of Marriage and Divorce, § 528 (3d ed.))). Because the parties mutually separated, desertion does not apply in this case.

Third, we find the family court did not err in finding Wife did not constructively desert Husband because Wife left Husband. Constructive desertion would only apply if Husband left Wife and argued Wife's conduct forced him to leave and also constituted a fault ground for divorce. See *Mincey v. Mincey*, 224 S.C. 520, 531, 80 S.E.2d 123, 129 (1954) ("In order to constitute constructive desertion, the abandoning party seeking to make a technical deserter out of the one abandoned, must establish misconduct on the part of the other in itself, and independently, amounting to

one or more of the recognized permitted grounds for divorce. The conduct complained of must in itself be a sufficient cause for divorce, one or more of the four grounds permitted by the constitutional amendment"). Because Husband did not leave Wife, Husband cannot claim constructive desertion.

Finally, because desertion and constructive desertion are not applicable in this case, we find Husband's argument that Wife should not have been granted alimony due to her alleged marital fault in deserting or constructively deserting him without merit. Accordingly, We affirm as to this issue.

D. Reversal of the Family Court's Findings and Rulings

Husband argues the family court's findings and rulings should be reversed based on all of the other arguments raised in his appeal. We disagree.

We agree with Wife that Husband did not properly format his brief or provide argument with supporting authority for this particular issue. However, he did provide arguments with supporting law for at least a few of his issues on appeal, and given this issue's reliance on Husband's other issues, we cannot find this issue abandoned. Nonetheless, because we affirm the family court on all of Husband's other issues, we also affirm the family court on this issue.

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AFFIRMED.⁸

THOMAS, HILL, AND HEWITT, JJ., concur.

⁸ We decide this case without oral argument pursuant to Rule 215, SCACR

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APPENDIX C

**IN THE FAMILY COURT OF SOUTH
CAROLINA**

NO. 2015-DR-43-1428

MS. CHRISTINE CRABTREE

v.

MR. DONALD CRABTREE

TRIAL DATE:	October 2, 3, 4, 2017
DATE OF RULING:	12/04/2017
TRIAL JUDGES:	MONET S. PINCUS, FAMILY COURT JUDGE
TRIAL COURT:	SUMTER COUNTY
ATTRONEYS FOR	MR DONALD CRABTREE
DEFENDANT:	PRO- SE
ATTORNEYS FOR PLAINTIFF:	MICHAEL W. SELF
GUARDIAN AD LITEM:	JAMES STODDARD

NATURE OF CASE: CIVIL

MOTION FOR
RECONSIDERATION

FILED: 12/11/2017

MANDATE ISSUED: 01/26/2018

This matter came before the Court for a final hearing on October 2, 3, and 4, 2017. Each day, the Plaintiff, (Mother or Wife) appeared with her attorney, the Defendant, (Father or Husband) appeared Pro Se and the Guardian ad Litem, James Stoddard appeared on behalf of the children¹.

This action was commenced by the Mother filing a Summons and Complaint dated November 10, 2015, seeking a Decree of Separate Support and Maintenance custody, restricted visitation, child support, alimony, Restraining Orders, use of the home and vehicle, equitable division, attorney's fees and other and other [sic] related relief.

The Father filed an Answer and Counterclaim dated November 13, 2015, seeking the right to live separate and apart, custody, or in the alternative joint custody, reserving child support to be

¹ At the conclusion of trial in this matter, the Plaintiff and the Defendant each filed a Motion for Reconsideration of certain terms of the original Final Order and Decree of Divorce. The Court granted the Plaintiff's Motion and denied the Defendant's Motion. This Order amends the Final Order and Decree of Divorce dated December 4, 2017, to make certain amendments per the Mother's Motion for Reconsideration.

addressed in the future, that Mother not be awarded alimony, equitable division of assets, attorney's fees and other related relief.

The Mother and Father are both residents of the State of South Carolina and have been for more than (1) year prior to the commencement of this action. They are husband and wife, having been married on August 12, 2000 in Washington State. From their marriage four (4) children have been born, to wit: Zackary C., whose year of birth is 2007, Trenton C., whose year of birth is 2009, Dylan C., whose year of birth is 2011 and Ashley C., whose year of birth is 2013. No other children have been born and none are expected. They last resided together as husband and wife in Sumter County.

A temporary hearing was held on November 18 [sic date is Nov 13], 2015 in which the Court issued a Temporary Order dated December 29, 2015. The Father filed a Motion for Reconsideration dated January 18, 2016 of the Temporary Order which was denied by the Court. The Father filed a Petition for Supersedeas dated March 23, 2016 of the Temporary Order which was denied by the Court of Appeals on August 23, 2016. An Order and Rule to Show Cause was filed by the Mother against the Father and dated January 28, 2016 and this Court issued a Civil Contempt Order dated April 6, 2016 finding Father in civil contempt. On June 22, 2016, the Husband filed a Notice of Appeal of the Civil Contempt Order dated April 8, 2016. The appeal is pending.

The Father filed a Motion for Modification of Custody, Support Obligations and Other Relief dated November 17, 2016 and the Court issued an Order dated March 6, 2017 modifying certain parts of the Temporary Order as to the Father's schedule with the children. The Mother filed a Rule to Show Cause dated March 10, 2017 and the Court issued an Order dated May 23, 2017 finding the Father in civil contempt. The Father's former counsel, Harry C. Wilson, Jr. was relieved by this court in an Order Relieving Counsel dated March 10, 2017. The Mother filed a Summons and Amended Complaint dated May 16, 2017, seeking a divorce on the ground of one year separation and the balance of relief set forth in the original Complaint. The Father filed an Answer dated June 19, 2017. The Mother filed a Motion to Strike parts of the Father's Answer on June 23, 2017 and the Court issued an order dated July 27, 2017, striking portions of the Father's Answer. The Father filed an Amended Answer and Counterclaim dated September 22, 2017. At the commencement of this action Mother moved to strike the Amended Answer and Counterclaim and the Court granted Mother's Motion.

Mother filed a Motion dated September 18, 2017 seeking reimbursement or payment from Father for expenses either under the Temporary Order or reimbursement for expenses she paid which Father owed under the Temporary Order. This Motion is addressed by the Court in this Order.

The pleadings have been joined. This Court has personal and subject matter jurisdiction. This matter is properly before this Court.

The Court inquired to each party as to whether there was any chance for reconciliation. Based upon the response of each party, the Court certifies that further efforts at reconciliation would be unavailing.

Based upon the appropriate pleadings, evidence, testimony, and information submitted to the Court, I find as follows:

FINDINGS AND RULINGS

1. **OBSERVATIONS DURING TRIAL:** This matter was tried over several days. During the trial, the Court had substantial opportunity to observe both of the parties and their demeanor during their own testimony and during the testimony of other witnesses and to judge the parties' credibility.
2. **DIVORCE:** Wife is granted a divorce on the ground of living separate and apart for more than one year. The parties separated on November 9, 2015 and have lived separate and apart since that date. The testimony was clear and convincing and duly corroborated.
3. **CUSTODY:** Mother shall have custody of the minor children. She has been their primary caretaker their entire lives; the children are thriving in her care and it is in their best interest for her to have custody. Mother may relocate to the State of Washington with the children.

4. CUSTODY FINDINGS:

4.A. The Court considered the statutory factors contained in §63-1 5-40(8), which set out the factors the Court must consider when issuing a custody Order. The factors the Court considered were as follows:

4.A.1. It appears the children are happy and thriving living primarily with the Mother. Mother has been responsible for the education, medical and daily needs for the children.

4.A.2. Mother has voluntarily attended individual counseling since the separation and during the litigation in an effort to address her problems and areas where she needs improvement and growth. Mother has grown and effective positive change from her counseling. Father has not attended counseling, nor shown a genuine interest in doing so. It appears from the manner in which he questioned the Guardian and Dr. Marc Harari, (the psychologist who performed the psychological evaluations on the parties) that Father needs to be convinced that he is a candidate for counseling before he is willing to engage. Father still does not believe or validate Mother's concerns or any of her complaints she alleges led to the breakup of the marriage. Father has not shown the same emotional or psychological growth since the separation as the Mother has.

4.A.3. In this case, the children were too young to consider the preferences of the children.

4.A.4. Many aspects of the Father's conduct described by Mother and demonstrated by evidence admitted at trial, are peculiar and troubling and have a bearing on this issue of custody. While the Court finds that Father is a good Father and loves the children and that they are well-bonded with him, the Court cannot ignore certain conduct by Father toward Mother that has made it impossible for the parties to co-parent or communicate. Father refused to acknowledge, validate or lend credence to Mother's repeated concerns over the years regarding the parties' relationship. Fathers repeated use of the Bible in general and specific scriptures in particular, regarding mother's conduct, behavior and role as a Mother and Wife, quoted to Mother were manipulative, condemning and demeaning. Mother was often told by Father that she had to obey and submit to him. Father has called her a scoundrel, an idiot and stupid. He professed that he was superior to her; that he loathed her and that she disgusted him. He recorded Mother on multiple occasions, too many to count, while the parties were living together, some with and some without her knowledge. He sent her a Letter of Admonishment which was entered into

evidence. The parties profess a strong Christian faith, but Father's use of this Christian faith toward Mother in this regard was the main cause of the demise of the marriage and ultimately led to the Mother shutting down and becoming depressed and anxious. It let to the parties' inability to communicate and it let to Mother seeking counselling. Father refused to take responsibility for the demise of the marriage or refused to acknowledge his conduct may have been inappropriate. Father refused to acknowledge he may be in need of counseling or could benefit from counseling. Father refused to answer Mother's attempts at email communication regarding child-related matters in a direct manner. Examples provided were email exchange between the parties regarding Mother's request that Father do homework on one of his visitation nights, and Mother's request that Father not use Mother's yard as a pathway to the pool during his visitation times. Another concerning example is an email from Mother to Father asking him where he was living and refused to provide her an answer. Mother eventually found out where Father lived at the last hearing. He is renting a room from someone.

4.A.5. The Mother and Father both have a close relationship with their children.

The Mother did testify that the Father went a significant period of time without seeing the children after the Temporary Order was issued. The Mother is more likely to encourage a relationship between the children and the Father's side of the family (grandparents, cousins, aunts and uncles). The Father has a strained relationship with the Mother's parents. The Mother endorses the Father as a parent more so than the Father does the Mother. The Father has little respect for decisions of the Mother and her parenting, and has tried to undermine her input and decisions for the children.

4.A.6. The Court finds that the Mother's willingness to address concerns, including her part in the demise of the marriage, and her willingness to make behavior changes that positively impact her, give the Court confidence that Mother is better suited to have custody of the children.

4.A.7. Father admits talking to the children about the litigation although listening to both parties' testimony on this issue, Father has underplayed the extent to which he has involved the children in the litigation. According to Mother, the children have talked about court, judges, winning, home schooling and lawyers. They have told her she is lying and she thinks Daddy is going to kill them. They were aware the house payment was not

being made. Mother has never talked to them about the litigation. Father admits he has discussed litigation with the children. The Court finds that Mother's testimony is credible.

4.A.8. Mother is more likely to foster a healthy relationship between the children and Father. Father has tried to cause the children to doubt Mother, mistrust her and he has tried to turn them against her.

4.A.9. The Court finds Father has not prepared the children for school; he has not prepared their school or weekday lunches; he has not prepared their backpacks or been responsible for their homework. Mother has been the primary caretaker for the children throughout their lives. She has been a stay-at-home mom.

4.A.10. The Court finds that Mother will most likely bring about better-adjusted, mature individuals if she is awarded custody. The school-age children are well-adjusted in school, all are well-adjusted in the home, have friends and are doing well.

4.A.11. The Court finds that the Father has not made a home for the children and does not currently have a place for the children to live with him if he were awarded custody. He is renting a room from a third party. The Mother is well

settled in the marital home and has a plan in place for their continued care.

- 4.A.12. The mental and physical health of both parties are good and there were no issues with either parties' mental and physical health.
- 4.A.13. The children's cultural and spiritual backgrounds are not an issue in this case. The parties profess a strong Christian faith, but the Father's use of his Christian faith toward the Mother in this regard was the main cause of the demise of the marriage. The Mother has continued to insure[sic] that the children attend church as had been the custom prior to the parties' separation. During Father's visitation, he has continued to encourage the children's spiritual background.
- 4.A.14. The Court does not find that any of the children in this case have been abused or neglected.
- 4.A.15. There was an incident of domestic violence prior to the children being born. The Mother testified that there has been no further acts of physical abuse by the Husband toward the Wife. This Court does not find that domestic violence had an effect on the children in this case.
- 4.A.16. The Mother and the children have both remained in the former marital home and the children's stability has not been an issue in this case.

4.A.17. The Court considered the Guardian's report, both written and his testimony, but did not request a recommendation as to which party should receive custody. The Guardian was subject to cross-examination by each party.

4.A.18. Joint custody is not in the best interest of the children. The parties cannot co-parent and cannot communicate. Mother's attempts to communicate with Father regarding child-related matters during the separation were direct and on point and were met with vague, indirect, unresponsive answer from Father.

5. RELOCATION FINDINGS:

5.A. This matter is unique as it not only deals with custody of the minor children, but also relocation of the minor children. Mother wishes to return with the children to the State of Washington where both she and Father's extended family reside. Both sets of grandparents live in Washington and Mother and Father's siblings live there as well. This is where the parties are from originally. Father did not dispute Mother's request to relocate at trial. This Court believes the evidence clearly favors an award of custody to Mother; however, her desire to relocate requires additional analysis by the Court.

5.B. This Court finds that this is not a traditional "relocation" case in that there has not been a final determination of custody

which would require a changed circumstances analysis. The more typical case faced by the Family Courts are those where custody has been determined by a Final Order and the custodial parent then seeks to relocate. This is an initial custody determination that now has the issues of relocation as a component of the best interest analysis.

5.C. The Court finds that the Mother is seeking to return to Washington so she and the children can be close to the parties' extended family. She will have a place to live and help with child care. The parties do not have any family in Sumter. The children will be able to see all of their grandparents on a much more consistent basis than they can now. Neither party has any familial or employment ties with South Carolina at this time. Father's most recent job offer was in Colorado. It is clear Mother is not seeking to relocate on a whim, but rather to improve her quality of life and the children's quality of life. Her request is not made to alienate the children from Father. The move will bring the children in very close proximity to Father's parents' home which is where Father will spend time as well.

5.D. The Court considered that both parents have a close relationship with the children and the parents are loving parents.

5.E. Mother acknowledged there would be some adjustment upon the move and the Father would not have as much physical contact during the week that he exercise now

if he remains in South Carolina. However, if Father accepts the job offer in Colorado, he would not have the same visitation schedule he enjoys now. If Mother and Father live in different states, Father's visitation can be extended during holidays, summers, and days off from school to compensate for the possible schedule adjustment. Regardless of where the children reside, Mother agrees to keep Father informed of all events and activities of the children, as well as inviting Father to any events or activities the children have, as well as encouraging Father's communication with the children's care providers, coaches, teachers, etc.

- 5.F. Mother testified she and the children would benefit from the move, especially economically and with being able to visit their grandparents regularly. The Mother and the children would have a free residence to live in initially, and the grandparents would provide childcare/afterschool care for the minor children, thus eliminating the cost of daycare/afterschool care for the children. Additionally, the children would have a larger support network where they would be able to see and enjoy family members on both Mother and Father's side. Mother's opportunities for employment in Washington are far greater than in Sumter. She will have help from family for care of the children and help from family to find employment.

6. **VISITATION:** Father is granted reasonable and liberal visitation pursuant to the attached schedules depending upon whether or not Mother relocates to Washington. (Exhibit 1 and 2).
7. **PARENTAL GUIDELINES, RIGHTS AND RESTRICTIONS:** The attached parental guidelines, rights and restrictions are part of the Court's Order. Parental communication is addressed in the attached Guidelines and Restrictions. (Exhibit 3)
8. **IMPUTED INCOME:** This finding is based upon the Father's employment history and experience, his occupational qualifications including his qualifications in software development and business ownership, and the prevailing job opportunities and earning levels as testified to by the Father and as presented in the Father's Exhibits 19, 21 and 25. The Father received his Bachelor of Science in Mechanical Engineering in 2001, a Master of Science in Engineering Management in 2008 and a Master of Art in Human Relations in 2015. The Father achieved the rank of Major in August of 2011 in the United States Air Force and served as the Operations Flight Commander of the 20th Civil Engineering Squadron at Shaw Air Force Base from July, 2012 through December, 2014. The Father is currently in the United States Air Force Reserves in support of Air Force Space Command in Peterson Air Force Base, Colorado. Father testified he had just received a job offer teaching at the Air Force Academy with a Major's pay of \$80,000 per year and that the job offer is still viable. There is no dispute that Father can work

full-time and has above average qualifications. Father wants to base his income on anticipated self-employment qualifications. However, since his separation from the military, he has attempted to be self-employed, without any appreciable income. His efforts at self-employment, while commendable, have not resulted in income to provide support. The Court finds it appropriate, based on the evidence presented to impute employment income to Husband in the amount of \$80,000 per year. The court declines to impute income to Mother at this time. The Court finds Mother is severely limited in finding employment as the custodial parent given her limited earning capacity, the number of children, the current minimum wage and the cost of daycare for 4 children. The parties shall exchange income verification annually on or before April 15th for as long as Father has child support or alimony obligation to Mother. Income verification shall include any and all documents necessary to determine a parties' annual income such as end of the year pay check, W-2, 1099, negotiated checks, and/or written offers of employment contracts. Each party is to immediately notify the other party upon acceptance of a full-time employment position. Notice shall include rate of pay.

9. **CHILD SUPPORT:** Child support shall be set pursuant to the South Carolina Child Support Guidelines (Exhibit 4) based on the financial information contained in the record. Father's income shall be imputed at \$80,000 per year or \$6,666 per month. Father has additional income

from rental income from the Washington house, reserve bonus pay, and reserve pay for a total of an additional \$1,344 per month. Father's total monthly income is \$8,010. Father shall continue to pay child support to Mother through the Family Court for Sumter County with the Court costs paid by the Father. Payments shall be at the rate of \$1,404² per month, beginning the first day of the first month following the date of this Order and on the first day of each month thereafter. The Court denies Father's request for a retroactive adjustment to child support.

10. HEALTH INSURANCE AND
UNINSURED/UNCOVERED HEALTH
RELATED COSTS:

Father shall continue to maintain the status quo on any type of health insurance he has for the minor children. He has the children covered through Tri-care through his military reserve. Any uncovered or unreimbursed health care costs incurred on behalf of the minor children of any nature whatsoever (except basic over the counter medication), including medical, dental, prescription, co-pays, vision, mental health and orthodontics, shall be divided between the parties on a pro-rata basis after Mother pays the first \$250 per year per child and thereafter divided with the Father paying 80% and the Mother paying 20% of the uncovered expenses. A party shall provide the

² The Court changed the Alimony Order on Page 16 in the original Decree which affected the child support and pro-rata split.

other with written notice of the uncovered cost by either statement or receipt from the provider or an EOB and the other shall make payment to the provider if payment is due to provider or shall reimburse the paying party for his/her share within thirty days of the notice being given. Mother shall be solely responsible for her own health insurance and the costs thereof upon the issuance and date of filing of this Order.

11. TAX DEDUCTIONS/EXEMPTIONS: Mother is entitled to claim the minor children as her dependents for any legal purposes including for all tax deduction for exemption purposes.

12. ALIMONY FINDINGS:

12.A. The parties were married approximately 15 years and 3 months prior to separation. This is a long-term marriage. Wife is 38 and Husband is 40. Both parties are in good health. Mother attends individual counseling and takes anti-depressant as prescribed. Father does not attend counseling. While there are some psychological concerns of each parent that were brought to the Court's attention through evidence, the Court finds that neither parent has a psychological or emotional condition that would interfere with his or her employment abilities, earning capacity or parenting abilities.

12.B. Wife has a Bachelor's degree. Husband has a Bachelor's Degree and two Master's Degrees. Neither party presented

evidence of the need for additional training or education to achieve income potential.

12.C. As for employment history, Husband was a student when the parties married and entered the Air Force in 2001. He remained in the military for 14 years. He submitted his employment history from 2014 through present (Defendant's Exhibit 19). He is currently a Software Developer and Major in the Air Force Reserves according to his financial declaration. Wife is not employed. She has been a stay-at-home Mother for the last ten years. She has some experience in administrative duties; she worked at a daycare before marriage; and has been a part-time nanny and part-time substitute teacher before having children.

12.D. During the marriage, Husband was the primary wage earner. The parties lived a middle-class lifestyle off of the Husband's earnings and incurred a consumer debt when needed. They each have a used vehicle. They took family vacations and bought clothes as needed at stores like Kohl's. They have a home with a mortgage that is about 3200 square feet in an upscale neighborhood. They own no expensive jewelry. They moved during the marriage about every two years and have lived in several different states, cities and overseas, as a result of Father's employment in the military. Wife followed the Husband in his career and necessary moves.

- 12.E. Wife believes she can only earn minimum wage at this time as she has no unique marketable skills. In Washington, where she wants to relocate, minimum wage is \$11.00/hour and that is her anticipated earnings. Husband reports \$4844/month on his financial declaration from self-employment income, reserve bonus, reserve pay, and rental income profits. Husband's 2016 contract employment pay was \$60,000 per year if he had worked for an entire year. Husband was recently offered a job as a Major making Major's salary of \$80,000 per year at the Air Force Academy in Colorado. The offer came in about three and a half weeks before trial and he told the Academy he would let them know after the trial was concluded. Husband testified the job is still potential open for him to accept.
- 12.F. As to each parties anticipated financial needs, the Court considered their expenses reported on their financial declarations and that the Wife will have an approximate additional \$500/month expense for health insurance costs once divorced. Her monthly expenses are \$4,330.92 which are reasonable. Husband reported some non-marital property on his financial declaration valued at approximately \$10,000; Wife reported none.
- 12.G. Wife is awarded custody pursuant to this Order and has had primary custody since the separation. She was also the primary caretaker of the children throughout

the marriage. She testified of the difficulty of finding affordable childcare for four children; the difficulty of coordinating all of the pickup and drop offs for school, child care and activities; and that she would be responsible for caring for the children when they get sick. This has significantly impacted her ability to find full-time employment since the separation. The parties' multiple moves during the marriage; Husband's deployments during the marriage; the number of children of the parties; the schedules of the children; the cost of day care (about \$1000/month); and Wife's very limited employment skills severely limited and continue to limit Wife's ability to find employment outside of the home.

12.H. The Court considered both parties' testimony regarding marital misconduct or fault, including the findings made above relevant to custody. Additionally, Father has admitted to addiction to pornography. He admitted he objectifies women; and he told Mother he would get his needs met somewhere else if she would not meet his needs. Husband made it impossible for Wife to remain in the marriage and she needs alimony. Husband does not believe that Wife should be awarded alimony because she betrayed and broke faith in the relationship between the parties and she did not live up to her biblical role. The Court finds there is no statutory fault ground for divorce applicable to this case.

12.I. As for tax consequences for an alimony award, no specific evidence was presented; however permanent alimony would be taxed as income to Wife and deductible by Husband. Neither party has any other support obligation.

13.ALIMONY ORDER:

13.A. Father is ordered to pay Wife permanent periodic alimony in the amount of \$1,600³ per month through the Sumter County Family court along with the administrative fee. Payments shall be made by the first of every month, beginning the first day of the first month after this Order is issued and on the first day of each month thereafter. Additionally, Father shall keep in place and maintain his current life insurance policy (SGLI) with the current benefits and Mother shall be named as irrevocable beneficiary, in order to secure his alimony and child support obligation. This obligation to maintain SGLI insurance terminates at such time as the Father's child support, alimony, and all financial obligations to the Wife, have terminated.

13.B. Husband has been held in civil contempt twice during this action for failure to pay his obligations under the Temporary Order. Wife is reliant on Husband for child support and alimony and she has no other sources of income. Husband has shown that

³ After further review of the record, the Court changed the Alimony Order to \$1,600 per month from \$1,300 per month.

he is inconsistent with his financial obligations. Husband's death will severely financially impact Wife and children. Husband has tried to be self-employed since his full-time employment with the military ended. He has not been successful in his self-employment endeavors and has utilized marital funds (which he was prohibited from using by the Temporary Order) in part to satisfy his obligations during this action. As a result, the Court finds that special circumstances exist for Husband to be required to maintain life insurance on his life to secure his alimony and child support obligation.

- 13.C. Husband shall have this obligation for as long as he has any financial obligation to Wife. Husband has an affirmative duty to provide verification of this policy and the beneficiary, to Wife annually when the parties exchanged financial information by April 15th, and at other times as requested by Wife.

14. EQUITABLE DIVISION FINDINGS:

- 14.A. Wife asked for a 50/50 division of the marital estate. Husband did not dispute the 50/50 division request. As to the additional statutory factors not addressed in the alimony findings, Wife entered an Asset List exhibit which delineated the marital assets, debts and personal property along with the values. The contents of this Asset List were not disputed by the Husband. The

Court adopts this Asset List as its finding on the identity of the marital estate and the value of the marital estate with one exception delineated on the attached Asset List.

(Exhibit 5). The Court finds that Husband's Roth IRA should be valued at \$29,944. This was the value of the account at the end of the month of November 2016 prior to Husband's first withdrawal on December 30, 2016 which was in violation of the Court Order.

14.B. As to each parties' contribution to the marital estate, Husband was the only wage earner during the majority of the marriage. Wife sacrificed her own career for Husband's career. Husband was deployed three times during the marriage. The parties moved multiple times and lived in multiple states during the marriage, including overseas. Wife took care of the child rearing and has done an excellent job as their primary caretaker. Wife maintained the parties' homes while Husband was away. Wife managed the finances. Husband decreased the value of marital assets during the litigation by withdrawing funds from a USAA Roth IRA #114373 in violation of a Court Order.

14.C. Wife does not appear to have the present ability to acquire any additional capital assets. Husband has the ability to acquire capital assets given his age, experience, earning potential, Master's degrees and his above average skills in software development, working with drones,

and marketing skills. As for retirement benefits, each party has a Roth IRA; there is a Thrift Savings Plan; and Husband has earned military retirement benefits during the marriage.

- 14.D.** Wife is asking for the ownership and possession of the marital home as part of her equitable division award. She and the children live there and the children are currently in school. She testified as to the reasons why she does not want to own anything with Husband that she will have to sell, like the marital home; nor would she want him to own anything that has her name attached to it if at all possible. Based on their history, she would have an extremely difficult time working with him in any capacity to further the sale of the home and she would be concerned about Husband owning anything that has her name attached to it. Her testimony was compelling.

15. EQUITABLE DIVISION ORDER:

- 15.A.** The marital estate shall be divided on an equal basis. To accomplish this division, each party shall have the exclusive ownership, use and possession of the property and accounts listed on the attached Proposed Division. (Exhibit 6). Each party shall have the sole ownership, use and possession of this property free from claims from the other party. Each party is solely responsible for all costs of his/her own personal property. Since Wife was awarded custody, she is granted the sole ownership, use and possession of the

children's property and belongings. Each party has been granted real property that has a joint mortgage with the other party.

Husband and Wife shall each have none (9) months from the date this Order is filed to sell or refinance their respective real property to remove the other party's name. If a party is making good faith efforts to sell or refinance their respective property, this may be extended for up to a total of twelve (12) months. If a party has not been able to refinance within 9 months, and has not listed the property for sale by then, the property shall immediately be listed for sale within two weeks from the expiration of 9 months and shall remain on the market until sold or refinanced.

15.B. Immediately upon this Order being filed, the Husband shall sign any and all documents necessary to transfer the deed and property granted to the Wife per the terms of this Decree. Counsel for Wife shall prepare the deed(s) for signature. Counsel for Wife shall also prepare a special power of attorney for the Husband to sign allowing the Wife to take any action necessary with regards to the refinancing or selling of the property without needing the signature of the Husband on any other document. Upon receipt of an affidavit attesting to the same, the Clerk of Court for Sumter County is authorized to sign any documents necessary to effectuate this Order should the Husband refuse to sign or be unavailable to sign.

- 15.C.** The Wife shall not be required to transfer her interest in the home in Washington to the Husband, or execute a deed transferring her interest, until such time as the Husband has made payment to the Wife under the terms of this Decree by way of equitable division and attorney's fees and costs. If the Wife has not previously been paid, she shall be paid the equitable division payment and attorney's fees owed to her by the Husband at the closing of the sale of the Washington home directly from the sales proceeds, from the closing attorney. Upon payment of equitable division and attorney's fees owed by the Husband to the Wife, the Wife shall execute a Quit Claim Deed transferring her interest in the Washington home to the Husband at that time. It is the Court's intention to provide the Wife with security interest in this Washington property until the Husband has satisfied his obligation to the Wife under the terms of this Decree.
- 15.D.** The equalization payment of \$37,957 shall be due from Husband to Wife upon the earlier of the refinance or sale of 1018 N. Olson Hill Court or 120 days from the date this Order is filed, which ever event first occurs.
- 15.E.** The marital portion of Husband's earned military retirement benefit shall be divided on a 50/50 basis. The marital portion began on the date Husband entered service (May 2001) through the date of filing this action (November 2015). Counsel for Wife is

responsible for preparing any Order necessary to effectuate this division and the Order shall be signed by Husband immediately upon presentment, if necessary.

16. NO ADVERSE CONTACT ORDER: The parties are granted a NACO. Each party shall be restrained under the terms of a No Adverse Contact Order (NACO) as follows; No Adverse Contact: The parties shall be mutually subject to a "no adverse contact order" (NACO) that shall restrain the parties from engaging, directly or indirectly, in any adverse, hostile, argumentative, threatening or unpleasant conduct. This NACO shall allow the parties to contact, associate with each other only as it is related to the children or child issues. When such contact occurs, it shall be by text or email or recorded telephone contact. This NACO is not intended to trigger any elements of 18 USCA § 922(g)(9) nor is it intended to rise to the level of or be considered any Order of Protection under the South Carolina Protection from Domestic Abuse Act. Violation of the NACO shall subject the offending party to contempt power of the Court.

17. GUARDIAN AD LITEM FEES:

17.A. Without object from the parties, the Guardian's fee cap was increased at trial to allow any and all billing necessary to bring this matter to conclusion through the execution of the final Order. The Guardian has satisfied his statutory duties and responsibilities and performed an independent, balanced and impartial investigation for the Court and is relieved

upon the issues of this Order. The Court finds the Guardian presented a report that contained the facts relevant to this family's situation.

- 17.B.** The parties shall pay their outstanding balances owed to the Guardian within fifteen (15) days of the date the Order is filed unless other payment arrangements are made with the Guardian in writing. The parties shall be equally responsible for the Guardian's fees and costs.

18. ATTORNEY FEES AND COSTS:

- 18.A.** Both parties requested attorney's fees and costs. Wife specifically requested reimbursement of her attorney's fees and costs for the underlying litigation, the Court of Appeals Costs that were awarded to her, reimbursement for vehicle maintenance and health insurance costs from Husband, reimbursement of psychological evaluation costs, reimbursement of mediator fees and Appellate attorney's fees. Husband was pro-se and is not entitled to fees. Husband did not have the appropriate documentation or Attorney Fee Affidavit to request fees he may have paid to former counsel.

- 18.B.** In making its decision on attorney's fees and costs, the Court reviewed the prior Orders that reserved Wife's request for fees for the final hearing, Wife's Attorney's Fees Affidavits and bills attached thereto; the financial declarations of the parties; the evidence in the record applicable to attorney's

fees and costs; and the appropriate case law factors.

18.C. After this review, the Court finds and concludes that Wife is entitled to an award of attorney's fees and costs from Husband. Counsel for Wife filed and Affidavit of Fees with this Court. He and his staff had incurred 166.40 hours and he charges \$295 per hour and his paralegal charges \$85 per hour. The fees incurred and hourly rates are reasonable and commensurate with the fees charge by counsel in the area of the same level of experience and expertise. Counsel for Wife has well prepared to represent her.

18.D. The Court finds Husband is in a superior financial position as compared to Wife. He has more income and greater earning potential. Husband has the ability to pay his own former attorney's fees and costs in this matter and contribute to Wife's attorney's fees and costs. On the contrary, Wife has no income and has almost no earning potential other than minimum wage. Wife's standard of living would be greatly jeopardized if she were to have to pay fees. Wife does not have the ability to pay her attorney's fees or costs nor contribute to Husband's fees or costs. She has only been able to retain counsel throughout the litigation by charging fees and costs on a credit card.

18.E. The Court finds Wife's counsel obtained beneficial results in this matter.

The primary issue in this matter was the custody of their minor children and alimony.

18.F. The Court finds this case involved the issues of custody and relocation for the minor children, along with alimony and equitable division. The Court further finds this case was prolonged and difficult at times because of the Husband's conduct during litigation. Husband was found in contempt of Court twice; he had credibility findings as detailed in prior Orders; and he was found to be dishonest in financial disclosures in prior Orders. He sent volumes of information to opposing counsel during the litigation when he became pro-se and he filed multiple documents with the Court much of which were either improper or unnecessary, but which caused Wife to incur charges as her counsel had to review the filings and file motions to have certain filings struck from the record. Husband also filed an unsuccessful appeal and an unsuccessful supersedeas during this case.

18.G. The Court finds the time Wife's counsel devoted to the case to be reasonable and necessary under the facts and circumstances of the case. The Court finds counsel for Wife is an accomplished family law and trial lawyer and all of this practice is devoted to family law. He is a Fellow of the American Academy of Matrimonial Lawyers.

18.H. The court finds there is no contingency of compensation in family law cases and that Wives' counsel charged hourly

rates customary for Sumter County, South Carolina. The rates are fair and reasonable.

18.I. Based upon the forgoing, I find and conclude the Wife is entitled to an award of attorney's fees and costs from the Husband as follows: a) Court of Appeals Costs \$638.50; b) appellate attorney's fees to defend supersedeas \$7,5000; c) reimbursement for psychological fees \$2250; and d) attorney's fees and costs \$15,000.00.

18.J. In addition, I find and conclude Wife is entitled to reimbursement under the Motion filed by her counsel for Wife for reimbursement for vehicle maintenance \$2623.12 and reimbursement for health insurance costs \$870.04

18.K. The total fees, costs and reimbursement to Wife from Husband per this Order total \$26,631.66.

18.L. Wife shall be responsible for her own mediation fees and costs.

18.M. Husband shall pay these fees directly to Wife's attorney's Law Offices of Michael W. Self, P.O. Box 2197, Sumter SC 29151. Husband shall pay these fees to Wife's attorney as follows: \$4131.66 within thirty (30) days of the filing of this Order for appellate costs, vehicle maintenance reimbursement and health insurance costs reimbursement; the remaining balance due in full within one hundred and twenty (120) days of the filing of this Order; and a minimum payment toward the remaining

balance of at least \$1,500 per month
beginning December 1, 2017.

CONCLUSIONS OF LAW

Based upon the foregoing Findings and Rulings, the Court makes the following Conclusions of Law:

1. It is axiomatic that the best interest and welfare of the children is the controlling factor. The Court must consider the totality of past and present circumstances and facts peculiar to each case and therefrom predict with which parent custody will bring about the better adjusted mature individual. *Widdicombe v. Tucker-Cales*, 366 SC 75, 620 SE2d 33 (Ct. App. 2005); *Santosky v. Kramer*, 455 US 745, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982). After considering the past and present circumstances in this case, the Court finds that it is in the children's best interest for Plaintiff to have custody.
2. The Court "must consider the character, fitness, attitude, conduct, attributes and inclinations of each parent as they impact the child" as well as who has been the primary care taker of the children. Also, the age, health and sex of the children must be considered. Further, the Court should consider the "psychological, physical, environmental, spiritual, educational, medical, family, emotional and recreational aspects" as related to the children. The "totality of circumstances peculiar to each case constitutes the only scale upon which the ultimate [custody]

decision can be weighed and the court must consider how the custody decision will impact on all areas of the children's life. *Woodall v. Woodall*, 322 SC 7, 471 SE2d 154 (1996); *Parris v. Parris*, 319 SC 308, 460 SE2d 571 (1995); *Paperalla v. Paperalla*, 340 SC 186, 531 SE2d 297 (Ct. App. 2000); *Poutain v. Poutain*, 322 SC 130, 503 SE2d 757 (Ct. App. 1998); *Davenport v. Davenport*, 265 SC 524, 220 SE2d 228 (1975); *Dixon v. Dixon*, 336 SC 260, 519 SE2d 357 (Ct. App 1999); *Patel v. Patel*, 347 SC 281, 555 SE2d 386 (2001) and *Patel v. Patel*, 359 SC 534, 599 SE2d 124 (2004). After weighing the total of the circumstances peculiar to this case, the Court grants custody to Plaintiff.

3. In issuing or modifying a custody order, the Court must consider the best interest of the child, which may include, but is not limited to factors 1-17 of §63-15-240. The court considered these factors in as much as evidence was presented. The Court weighed the evidence in the record on these factors and finds it is in the children's best interest for Plaintiff to have custody.
4. "As in all child custody cases, in relocation cases, the controlling considerations are the children's welfare and best interest." *Latimer v. Farmer*, 360 S.C. 375, 381, 602 S. E. 2d 3, 35 (2004). "The effect of relocation on the [children's] best interest[s] is highly fact specific." *Id.* While South Carolina has not delineated criteria for evaluating whether the best interest of the children are served in relocation cases, our Supreme Court has acknowledged, without endorsing or specifically approving, factors other

states consider when making this determination. For example, our Supreme Court has indicated the New York Court of Appeals considers:

- 4.1) Each parent's reason for seeking or opposing the relocation;
- 4.2) The relationship between the children and each parent;
- 4.3) The impact of the relocation on the quality of the children's future contact with the non-custodial parent;
- 4.4) The economic, emotional, and education enhancements of the move; and
- 4.5) The feasibility of preserving the children's relationship with the non-custodial parent through visitation arrangements.

Additionally, our Supreme Court noted Pennsylvania Courts consider the following factors in relocation cases:

- 4.5.1. The economic and other potential advantages of the move;
- 4.5.2. The likelihood the move would substantially improve the quality of life for the custodial parent and the children and is not the result of whim of the custodial parent;
- 4.5.3. The motives behind the parent's reasons for seeking or opposing the move; and
- 4.5.4. The availability of realistic substitute visitation arrangements that will adequately foster an ongoing relationship between the non-custodial parent and the children. *Walrath v. Pope*, 384 S.C. 101, 681 S.E. 2d 602 (S.C. App.

2009) ((citing *Latimer v. Farmer*, 360 S.C. 375, 602 S.E. 2d 32 (2004)). The Court grant's Plaintiff's request to relocate and finds it is in the best interest of the children.

5. Equitable distribution is based on the recognition that marriage, is among other things, an economic partnership. In making an equitable division of marital property, the Court must: (a) identify the marital property; (b) determine the fair market value of that property; (c) apportion the material estate according to the appropriate statutory factors; and (d) provide for an equitable distribution of the marital state, including the manner in which the division is to take place. See, *Johnson v. Johnson*, 296 S.C. 289, 372 S.E. 2d 107, certiorari denied, 298 S.C. 117, 378 S.E. 2d 445 (1998); *Noll v. Noll*, 297 S.E. 190, 375 S.E. 2d 338 (S.C. App. 1987). Marital Property is defined as "all real and personal property which ahs been acquired by the parties during their marriage and which is owned as of the date of filing or commencement of marital litigation...regardless of how legal title is held..." The marital estate is identified and valued per the attached Exhibit 5 and divided on a 50/50 basis per the attached Exhibit 6.

NOW, THEREFORE, based upon the foregoing it is ORDERED that the findings of this Court, as set forth herein above, be, and hereby are, approved and made and Order of this Court in each and every particular, it is further ORDERED that the Wife is granted a complete and final divorce of and from the

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Husband pursuant to §20-3-10(5) of the
South Carolina Code Ann. (1976 as amended)
and the bonds of matrimony heretofore
existing be, and hereby are dissolved.
AND IT IS SO ORDERED

AT CHAMBERS	MONET S. PINCUS
Columbia, South Carolina	JUDGE, FAMILY
	COURT

01/22/2018

THIRD JUDICIAL
CIRCUIT