

No. _____

In The
Supreme Court of the United States

JANET AUSTEN,

Petitioner,

V.

FRANKLIN HERMAN,

Respondent.

On Petition for Writ of Certiorari
to the Court of Special Appeals
of Maryland

APPENDIX

Janet C. Austen
18619 Brooke Road
Sandy Spring, Maryland 20860
(240) 437-9804
Pro se Petitioner

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IN THE
COURT OF APPEALS
OF MARYLAND
Petition Docket No. 229
Term, 2022

Janet Austen
v.
Franklin Herman

No 419, Sept. Term, 2021,
Court of Special Appeals

No. 119743FL
Circuit Court for Montgomery County

ORDERED

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals filed in the above captioned case, it is this 22nd day of November, 2022

ORDERED by the Court of Appeals of Maryland, that the petition is DISMISSED on the ground of lateness.

/s/Matthew J. Fader
Chief Judge

Janet C. Austen
18619 Brooke Road
Sandy Spring, Md.
November 27, 2022

Court of Special Appeals of Maryland
Robert C. Murphy Courts of Appeal Bldg.
361 Rowe Boulevard, 4th floor
Annapolis, Maryland 21401-1699
Re: Docket No. 229 – September Term, 2022
Janet Austen V. Franklin Herman
To Whom It May Concern:

I sent you my request for a hearing on 9/12/22. In that letter I noted that I was unaware that the Court of Special Appeals and the Court of Appeals in Maryland were two separate courts especially since they have the same address. This must not be an uncommon error as it was on the recent voting ballot to change the name of the Court of Appeals to the Supreme Court of Maryland which most states do. You could have notified me at that time that it was too late yet, you asked for more information (which I sent) and docketed the case. I called regarding the case on 10/31/22 and asked if anything else was needed; I was told no and that “it was still in front of the court and a decision would be made in a couple of weeks”. I called again on 11/16/22 and was told that the case had still had no decision and to call back weekly. I subsequently received your letter stating...

Maryland E-Filing Help desk Info
From: e-filing support
(noreply@esolutions.tylerhost.net)
To: ceciliaausten@yahoo.com
Date: Wednesday, December 7, 2022 at 02:01 PM
EST

MDEC Maryland Electronic Courts
December 7, 2022
Dear Registered Users:

On December 14, 2022, the names of Maryland's two appellate courts will change. The Court of Appeals of Maryland will be renamed the Supreme Court of Maryland. The Court of Special Appeals will be renamed the Appellate Court of Maryland.

For cases initiated on or after December 14, 2022, the case number formats for Appellate cases will change.

IMPORTANT: Case numbers for cases created before December 14, 2022 will not change!

Supreme Court of Maryland cases initiated on or after December 14, 2022, will have a leading abbreviation of SCM

Appellate Court of Maryland cases initiated on or after December 14, 2022, will have a leading abbreviation of ACM

The following charts explain the case number formats for pre-December 14, 2022 and post December 14, 2022.

Court of Appeals	Supreme Court of
Maryland COA-REG-XXXX-Year	SCM-
REG-XXXX-year	
COA-PET-XXXX-Year	SCM-PET-XXXX-
year	
COA-MISC-XXXX-Year	SCM-MISC-XXXX-
Year	
COA-AG-XXXX-Year	SCM-AG-XXXX-
Year	
COA-JD-XXXX-Year	SCM-JD-XXXX-Year
Court of Special Appeals	Appellate Court of
Maryland	
CSA-REG-XXXX-Year	ACM-REG-XXXX-
Year	
CSA-ALA-XXXX-Year	ACM-ALA-XXXX-
Year	
CSA-MIS-XXXX-Year	ACM-MIS-XXXX-
Year	

Remember, case numbers for cases prior to December 14, 2022 will not change because of the change in court name. For those cases, you will continue to use the existing MDEC case number.

For E-services questions or technical issues:

Contact the Odyssey file and serve support vendor
(8am-8pm): Tyler Technologies Support
Call the Maryland Judiciary Service Desk
(8:30 am -4:30 pm) at 410-260-1114
Email the Maryland Judiciary Service Desk at
mdcourts@service-now.com

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UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 419

September Term, 2021

JANET AUSTEN

V.

FRANKLIN HERMAN

Berger
Wells,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),
JJ.

Opinion by Berger, J.

Filed: April 12, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis as persuasive authority.

Md. Rule 1-104

In 2015, the Circuit Court for Montgomery County granted Janet Austen, appellant, a judgement Absolut divorce from Franklin E. Herman. The court ordered Herman to pay \$2,500 a month in indefinite alimony.

In 2020, Herman filed a motion to terminate alimony, which the court granted. Austen filed this timely appeal. For the following reasons, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Austen and Herman were married in 1990. They are the parents of two adult children.

At the time of the divorce, in 2015, Austen was employed as a nurse practitioner, earning approximately \$90,000 per year. Herman was employed as a managing director for Fraunhofer USA and earned approximately \$344,000 per year. In addition to this position, Herman earned approximately \$60,000 providing consulting services through Strategic Services Inc.

As, noted above, the court ordered Herman to pay \$2,500 in indefinite alimony. In addition, the court granted Austen a monetary award of \$405,251.00. Pursuant to the court's order, the monetary award was satisfied by transferring that amount from Herman's retirement account, which then had a total volume of \$552,000, to a retirement account in Austen's name. The court ordered that the marital home be sold, with the net proceeds to be split evenly

between the parties. Austen was granted attorney's fees in the amount of \$20,000.

In 2016, Austen withdrew \$390,000 from the retirement account that held the monetary award so that she could refinance the marital home in her own name. She uses \$300,000 of those funds for the down payment and closing costs, and the remaining \$90,000 to satisfy tax liabilities resulting from the withdrawal.

In October 2020, in anticipation of his upcoming retirement, in February 2021, Herman filed a motion to terminate alimony. As grounds for the motion, Herman asserted that his post-retirement income would be substantially reduced from what it had been at the time of the divorce, and the party's standard of living would no longer be unconscionable disparate. In response to the motion to terminate, Austen requested that alimony be either increased or continued "in some form."

The court held a modification hearing on April 26, 2021, at which both parties testified and introduced evidence regarding their finances. At that time, Herman was 71 years old and Austen was 66 years old.

Herman stated that, as of April 16, 2021, he was fully retired and had no plans to return to work. He had received his last paycheck on April 23, 2021. Herman introduced documentation from the Social Security Administration showing that his monthly benefit was \$3,924.70, less a standard Medicare premium of \$148.50. In addition to that income,

Herman had just started to receive \$2,975 per month in required minimum distributions from his three retirement accounts, which, as of April 7, 2021 had a total value of \$789,664.83.

Herman remarried in 2016 and lived with his wife in Arizona. They faintly owned two homes: their primary residence and a second home in the mountains. The primary residence was purchased in 2019 for \$336,400, using "a good bit" of \$300,000 in funds that his wife received from the sale of a home that she owned before she married Herman. According to Herman, the primary residence was worth approximately \$400,000. Herman estimated that the second home, which was purchased in 2016 for \$212,000, was worth approximately \$286,000. Herman submitted a Quicken report showing a combination total of \$100,113 in checking and savings accounts.

Herman's wife did not work. Joint tax returns from 2016 through 2019 listed her occupation as "homemaker". Herman stated that his wife had been diagnosed with a serious medical condition two years prior to the hearing and had undergone four surgical procedures in that time, including a procedure the month prior to the hearing. Herman testified that, because of his wife's surgeries, they were unable to travel to their home in the mountains for a year and a half. Herman's attorney attempted to elicit information regarding the nature of the surgeries both the court cut off the line of questioning, stating that it was "beyond" what was necessary for the court to decide.

Austen remained employed as a nurse practitioner. She worked full-time at one urgent care clinic and part time at a second clinic. Austen testified that she earned \$94,000.00 at her full-time job, and approximately \$20,000 at her part-time job. On cross-examination, however, Austen conceded that her end-of year paystubs for 2020 showed earnings of \$128,222 from her full-time job, and \$24,795 from her part time job.¹ Austen further conceded that her tax returns showed total income of \$151,000 in 2018 and \$150,000 in 2019, not including alimony.

Each party introduced a financial statement detailing their monthly expenses, automobile and health insurance costs, and personal expenses such as haircuts and manicures.²

Following the evidentiary portion of the hearing, the court announced its findings and rulings from the bench. The court found that Herman's monthly income consisted of \$3,775.50 per month in social security benefits (after a deduction for Medicare), plus \$2,975 in required minimum distributions from his tax-deferred retirement accounts, for a total monthly income of \$6,750.50. The court determined that Herman had reasonable monthly expenses of approximately \$6,800, which included \$2,800 of his

¹ Austen stated that her income was greater in 2020 due to and increase in pay related to the COVID-19 pandemic.

² Austen asserts that Herman's expenses included tuition and health insurance for his stepson. The record is devoid of any support for this contention.

wife's expenses. The court found that it was not unreasonable for Herman to provide financial support for his wife, noting that she was "very ill" and "not wealthy," and "not able to work."

The court found that, according to paystubs, Austen earned \$153,017 in 2020 and therefore found that her gross monthly income was \$12751.42. The court accepted as accurate the income tax deductions of \$600 per month that Austen reported in her financial statement. The court also accepted as reasonable an accurate all expenses that Austen claimed on her financial statement and added health insurance premiums that Austen had testified to but had not listed, for total of \$8,100 per month in expense. Based on those findings the court determined that Austen had a net surplus of \$4,051 per month.

The court found that Austen had total assets of \$628,412 which included her home (which Austen valued at \$550,000; a bank account with a balance of \$38,893.28. The court subtracted Austen's mortgage balance of \$299,000 and the accrued taxes that Austen listed on her financial statement and found that Austen had a net worth of \$321,256.63³

In announcing its decision, the court stated: against this background of the finances of the parties. -the Court has considered whether the facts and circumstances of the case justify this Courts exercising its discretion to grant a modification of

³ The court made no express findings regarding Herman's net worth. According to his financial statement, Herman assessed his net worth at approximately \$1.3 million.

he alimony award...And I recognize fully that there is still—and there will remain—a disparity in the incomes of the parties ...

(Austen) has an income that exceeds \$12,000 a month. Her expenses, every single expense can be covered, ad she still has a savings, money that is left over after every single thing—not just a little bit of money, but in excess of \$4,000. The fact that she chose not to invest that money or she chose not to make different decisions is not currently and issue for the Court to say, well maybe things were unfair in 2015. We don't relitigate that case. That is over.

Herman certainly does have a large retirement, all monies that were earned after the divorce. And that money is the money that he is now going to be drawing down to live off of, because he no longer has any money coming in. And so even if I take Mr. Herman's stated expenses—because I actually do find that the expenses that he had itemized that would include costs associated with his current wife are his expenses. And if I have that at \$6,800, he is still going to be shy of we have him just on the social security and the mandatory distribution—he is still barely going to be able to cover that.

Under these circumstances, I just can't find that it would be reasonable for Herman to have to continue paying Alimony. It was \$2,500, but Austen's financial situation is not at all bleak one. She now made significantly more money per month than Herman is making.

For those reasons, the Court will grant Herman's request to terminate alimony, and the

Court will deny Austen's request to increase alimony in this case.

On May 5, 2021, the court issued a written order consistent with its oral ruling. Austen noted a timely appeal from that order.

DISCUSSION

In a case such as this, which has been tried without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131C. We "give due regard to the opportunity of the trial court to judge the credibility of the witness." *Id.* See also *Keys v. Keys*, 93 Md. App. 677, 688 (1992) ("Especially in the arena of marital disputes where notoriously the parties are not in agreement as to the facts, ...we must be cognizant of the trial court's position to assess the credibility and demeanor of each witness.")

On appeal from a decision regarding alimony "we 'defer to the findings and judgements of the trial court'" (quoting *Simonds v. Simonds*, 165 Md. App. 591, 606n.4 (2005) (additional citation omitted)). "We will not disturb an alimony award determination on appeal 'unless the trial court's judgement is clearly wrong or an arbitrary se of discretion.'" *Id.* At 383-84 (auditing *Blain v. Blain*, 97Md. App. 689, 689 (1993).") A trial court's findings are not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Azizova v. Sulemanow*, 243Md. App. 340, 372(2019)

“Upon a proper petition, the court may modify an order for alimony ‘at any time if there has been shown a material change in circumstances that justify the action.’ Ridgeway, 171 Md. App. At 384 (quoting Lieberman v. Lieberman, 81 Md. 575, 595, (1990). See also Md. Code (1984, 2019 Repl. Vol), Family Law Article (“FL”) 11-107(b)

(modification of the amount of an alimony award is permitted on the petition of either party “as circumstances and justice require.”). The party requesting modification “must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.”

Ridgeway, 171 Md. App. At 384 (quoting Langston v. Langston, 366 Md. 490, 516 (2001)). Termination of alimony is permitted “if the court finds that termination is necessary to avoid a harsh and inequitable result.” fL11-108.

“The presence of a harsh and inequitable result is not an objective, absolute standard; rather, it is a subjective classification, most appropriately determined by a trial court judge in whose judgment the exercise of sound discretion in such matters is reposed.” Blain v. Blain, 97 Md. App. 689, 706, (1993), aff’d 336 Md. 49 (1994). The court must “examine facts and circumstances to determine whether harsh and inequitable results exist.” Bradley v. Bradley, 214 Md. App. 229, 236-37 (2013).

We have carefully reviewed the supplemental to Herman's informal brief and discern the following issues.⁴

First, Austen contends that the amount of the 2015 alimony award was insufficient to address an unconscionable disparity in the parties' incomes. She asserts that she has to work more than one job to cover monthly expenses and make repairs to her home, and that she has no money left over to save for retirement. Austen further claims that the 2015 monetary award was based on incorrect information regarding her assets.

These contentions are not within the scope of our review, which, in the context of this appeal, is limited to the court's decision to terminate alimony. Therefore, we do not address them. See Ridgeway, 171 Md. App at 384 ("the doctrine of res judicata applies in the modifications of alimony...and the (appellate) court may not re-litigate matters that were or should have been considered at the time of the initial award.") (citing Blain, 97 Md. App. At 702).

⁴Herman requests that we strike portions of Austen's brief, pursuant to Maryland Rule 8-504(a)(1), because Austen includes assertions of fact that were not presented to the court in the 2021 modifications hearing. We find it unnecessary to strike any portion of Austen's brief, but note that, in addressing the issue on appeal, we rely solely on the transcript of the April 2021 modification hearing and the documents that the court admitted into evidence. Moreover, we do not consider any material in the record extract that was not admitted into evidence at the modification hearing. See *Cochran v. Griffith Energy svc, Inc.*, 191 Md. App 625, 663 (2010) (stating that "an appellate court must confine its review to the evidence actually before the trial court when it reached its decision."). cert. denied, 415 Md. 115 (2010).

Next, Austen challenges the court's factual findings regarding the parties' respective incomes, expenses, and tax liabilities.⁵ Specifically, she contends that the court's findings regarding Herman's pre- and post-retirement income were erroneous. She further asserts that the court erred in finding that Herman's monthly expenses were accurate and/or reasonable, including the amount he claimed for federal and state taxes, insurance premiums and deductibles, utilities, vacations and gifts. Austen argues that the court erred in determining that it was reasonable for Herman to claim expenses for his wife, because she had not affirmatively been proven that she was not able to work. Finally, Austen maintains that the court's finding regarding her gross monthly income was erroneous and court relied on incorrect tax information to determine her net monthly income.

We discern no clear error in the court's factual finding. The findings regarding Herman's income are consistent with Herman's testimony and the documentation that was admitted into evidence.⁶ Austen did not introduce any evidence to the contrary. The court's finding that Austen's gross monthly income was \$12,751 is entirely consistent

⁵We address only those challenged findings that are material to the court's decision to terminate alimony.

⁶In her reply brief, Austen contends that the required minimum distribution from Herman's retirement accounts is \$10,500.00 per month, and not \$2,975, as found by the court. Austen points to an IRA worksheet that was admitted into evidence as defendant's Exhibit 39. According to that document however the required minimum distribution from one of Herman's three retirement accounts is \$10,590/year, not per month

with her December 2020 paystubs, which according to Austen's own testimony showed total earnings of \$153,017.

Despite Austen's challenges to the accuracy of various monthly expenses that Herman claimed, the court expressly found the evidence presented by

Herman to be credible.⁷ Our review of the record reveals no reason to disturb those findings. Moreover, We discern no clear error in the court's findings regarding the reasonableness of Herman's expenses, including the finding that it was reasonable for Herman to pay his wife's living expenses. Even without detailed testimony regarding the nature of his wife's various surgeries, we cannot say that it was clearly erroneous or an arbitrary expense in determining Herman's financial situation, especially in light of joint tax returns showing that, since their marriage in 2016, Herman's wife was not employed outside the home.

Austen asserts that the court erred in applying the income tax deductions that she claimed on her financial statement which, according to Austen, was a projection of her income expenses, and tax liabilities at some unspecified date in the future, when she would be retired. Austen maintains that the evidence included a pre- monthly income tax deductions of \$4,008. According to the record, however, Austen introduced only one financial statement, which the court noted was filed on February 19,2021, at docket entry number 148, and

⁷ We note that the court discounted Herman's extraordinary medical expenses.

shows \$600 per month in state and federal income tax deductions.

Austen verbally confirmed that there were no changes or amendments to the information in the financial statement in evidence and did not explain to the court that the deductions or any other information on her financial statement was not current. We cannot conclude that the court erred in relying on that evidence to calculate Austen's net monthly income.

Finally, Austen asserts that the court violated the Code of Judicial Conduct by failing to apply the law fairly and impartially. As this Court is not the proper forum to consider such claims, we do not address them.⁸

In sum, based on our review of the evidence presented to the court, we perceive no error in the findings upon which the court based its decision to terminate alimony. There was competent and material evidence in the record to support the court's finding that, following his retirement, Herman's monthly income was barely enough to cover his monthly expenses, while Austen's monthly income exceeded her claimed expenses by thousands of dollars. We further conclude that, under these facts and circumstances, the termination of Alimony was not an arbitrary use of the court's discretion.

⁸ Austen also appears to argue that the court erred in denying her petition for an order holding Herman in contempt for an alleged discovery violation. We do not address this contention, because "a party that files a petition for constructive civil contempt does not have a right to appeal the trial court's denial of that petition." *Pack Shack, Inc v Howard Co.*, 371 Md. 243, 246 (2002).

JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED, COSTS TO BE PAID BY APPELLANT.
IN THE CIRCUIT CURT FOR MONTGOMERY
COUNTY, MARYLAND
JANET AUSTEN-HERMAN

Plaintiff
v. Case No: 119743FL
FRANKLIN HERMAN
Defendant
PLANTIFF'S BENCH MEMORANDUM
REGARDING ALIMONY AND THE MONETARY
AWARD

COMES NOW, the Plaintiff, Janet Austen-Herman (herein after "Plaintiff"), by and through her attorneys, Spencer M. Hecht and the law firm of Hecht & Associates, LLC and files this Bench Memorandum Regarding Alimony and the Monetary Award, and in support thereof states as follows:

Introduction

As Alimony award is a product of statutory law in Maryland. It provides that a Judge of an equity court must consider numerous factors then make a fair and equitable award. The Defendant in this matter cannot escape the burden of paying alimony to the Plaintiff. The parties have grown accustom to a certain lifestyle which the Plaintiff can no longer afford because of the Defendant indiscretions. Given the Plaintiff's age her earning potential is extremely limited while the Plaintiff earns over \$300,000 per year.

Also provided by the statute, the Court must determine what property of the parties' is marital and then subsequently make a monetary award. When calculating a marital award, the court may consider numerous factors in making an equitable award, including any funds that were dissipated. The facts of this case show that the Defendant dissipated \$983,915 from 2012 thru 2014. With such extreme disregard for his family, the Court should make an award of all remaining marital property to the Plaintiff.

Facts

The Parties were married on March 16, 1990 in Rockville, Maryland. Two children were born to the marital union, namely Geoffrey Herman, born December 9, 1990 and Dylan Herman. Following the birth of their children, the Plaintiff stayed at home to care for her boys while the Defendant worked. (This was an error- I (Plaintiff) worked part time throughout the marriage and full time from 2007. I paid for my own NP degree with loans and also worked part time while I attended school). In 2005 the Plaintiff took it upon herself to go back to school and in 2007 Graduated from the University of Maryland with a Master's of Science degree as a Family Nurse Practitioner. Beginning in May 2008, the Plaintiff began working as a Nurse Practitioner and has remained working since that time.

The parties lived a comfortable life in Montgomery County, Maryland. During their marriage the parties routinely discussed life after work and the need to save. The Defendant put money into his retirement plan during the course of the marriage

and the parties kept money in their savings account. The Defendant was solely responsible for the parties finances throughout the marriage. The Plaintiff did not manage the checkbook, pay the monthly bills, or review quarterly retirement statements. The parties had accumulated a balance of \$779,486.16 as of December 2011.

The Defendant was employed at the time of the marriage and has continues working to this day. Beginning in October 2012, the Defendant began having an adulterous affair with a woman in Tempe, Arizona. As part of the relationship the Defendant began withdrawing money from his retirement account. According to the party's tax returns, the Defendant withdrew a total of \$983,915 from October 2012 thru May 2014. The Defendant withdrew \$150,000 in 2012, 555,943 in 2013, and 277,972.10 in 2014 from his Vanguard Retirement Account. The balance of the vanguard retirement account was \$739,324.14 as of December 31, 2012 despite the Defendant withdrawing \$150.00 from the account between April 9, 2012 and December 6, 2012.

The parties discussed and exhibited a pattern of saving throughout the marriage in an effort to prepare themselves for retirement. The Defendant selfishly began withdrawing those saved funds for his own personal enjoyment. Over the course of two years, the Defendant withdrew \$983,915.10. These funds went to no marital purpose and were spent while the marriage was undergoing and irreconcilable breakdown. The cases from this State's appellate Courts are clear that this type of behavior cannot be condoned.

The plaintiff is sixty (60) years of age. She raised two children while sacrificing her career. Now she is faced with a future that sees her retirement funds depleted by almost one million dollars. The Plaintiff is currently employed, but given her age and education, she cannot reasonably expect to advance beyond her current employment. The Defendant earns approximately \$320,000 per year or 356% of the Plaintiff's income. This creates an unconscionable disparity in the standard of living between the parties.

The disparity in income, the age, and the cause of the dissolution of the marriage suggest that the Plaintiff is a candidate for indefinite alimony. While not binding the Court may consider AAML guidelines when making an alimony determination. The AAML guidelines in the case at bar provide for an alimony award to the Plaintiff in the amount of \$6,171 for an indefinite period. The Plaintiff is also requesting that this Court find that the Defendant dissipated \$983,915.10 and grant a monetary award of at least 55% of the marital funds in consideration of the Defendant's adulterous behavior that led to the dissolution of the marriage.

Respectfully Submitted,
HECHT & ASSOCIATES, LLC
Spencer M. Hecht
1100 Wayne Avenue
Suite 600
Silver Spring, Maryland 20910
Phone 301-587-2099
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREB CERTIFY that on this 1st day of July, 2015, a copy of Plaintiff's Bench Memorandum Regarding alimony and Monetary Award was hand-delivered, to the following

David C. Gardner
Gardner Law Firm, P.C.
600 Jefferson Plaza, Suite 308
Rockville, Md 20852

Spencer M. Hecht

Form 8995 Qualified Business income Deduction
2020

Franklin E. Herman, Jr & Jessica T. Herman
DO NOT FILE
Trade, Business or Agr. Name Tax ID
Qualified bus. Income
NASH SOFTWEAR SOLUTIONS, LLC

Total qualified business income	0
Total qualified business loss	0
Qualified income business deduction	0
Taxable income before deduction	232,587
Net capital gain	0
Income limitation	46,517
Qualified income business deduction	0
Total qualified business loss	0
Total qualified REIT	

Maryland Judiciary – Circuit Court for
Rockville/MTG, MARYLAND Located at 50
Maryland Ave., Rockville, Md. Case No. 119743FL
Janet C. Austen Franklin E.
Herman
18619 Brooke Rd. 8649 S. Holbrook
Ln.
Sandy Spring, Md. Tempe, Az.
240-437-984

CERTIFICATE OF SERVICE

I certify that on this 19th day of February 2021, a copy of the document(s) titled Subpoena – Nash Software Solutions Financial Statements Was/were mailed, postage prepaid
X hand delivered to Franklin E. Herman/David Gardner, Atty 600 Jefferson Plaza #308 Rockville, Md. 20852

2/19/21

Janet C. Austen

Maryland Judiciary Circuit Court for
Rockville/Montgomery, Maryland
50 Maryland Ave, Rockville, Md. Case No. 119743-
FL
Janet C. Austen vs. Franklin E.
Herman
18619 Brooke Road 8649 S.
Holbrook Ln.
Sandy Spring, Md. 20860 Tempe, Az.

PETITION FOR CONTEMPT

TELEGRAM FOR CONSIGNMENT
(Md. Rules 2-648, 15-206, and 15-207)

MDEC counties only: if this submission contains Restricted Information (confidential by statute, rule or court order) you must file a notice Regarding Restricted Information Pursuant to Rule 20-201.1 (form MD3-008) with this submission and check the restricted information box on this form

NOTE: If the court issues a show cause order, you must provide the other party with the show cause order, a copy of this petition, and other documents filed with the court. This is called service of process, and there are strict rules about how copies must be served. For information on service of process, see General Instructions for Family and Guardianship Forms (CC-DRIN).

Do Not use this form for a violation of a protective order. Instead, use Petition for Contempt (Violation of Protective order) (CC-DC-DV-007)

I Janet C. Austen state that:

1. On 2/19/21 the Circuit Court for Rockville/Montgomery issued an order in case number 119743-FL granting me copies of financial forms for his business – Nash Software Solutions, LLC from its day of incorporation 8/12/2016 to the present (3/5/21).
2. X A copy of the order is attached
3. Franklin E. Herman has failed to obey the order by doing or failing to do the following – has not sent financial records for his company – as per above and is therefore in contempt of the order
4. I Xdo not want the court to order jail time to enforce its order
FOR THIS REASON, I request the court issue a Show Cause Order, find Franklin E. Herman in contempt, and order any other appropriate relief including
Sending the requested records for his business – I was able to get someone to download the CD for me and did receive Mr. Herman's Retirement Accounts – The business information was not included

3/5/21

Janet C. Austen
18619 Brooke Rd.
Sandy Spring, Md.
240-437-9804

Pre- retirement – Tables
 With 2 jobs and alimony

Janet Austen's **Pre Retirement** Financial Statement
 with 2 jobs and Alimony

Table 5

Primary Residence Mtg and costs	
4,733.68	
Other costs	500.00
Medical Dental	
979.60	
Recreation	459.00
Auto and Trans	
489.00	
Gifts	290.00
Clothing	71.00
Incidentals	233.00
Misc	340.00
Total	8,095.00
Wages (2 jobs)	
12,000.00	
Fed tax	
2,200.00	
State taxes	1,0000.00
Medicare	84.00
FICA	724.00
Total Deductions	4,008.00
Net Monthly	
7,992.00	
Alimony	1250.00
Total Monthly with 2 jobs and alimony	
9,242.00	

A29

Real Estate – house	
274,166.00	
Bank accounts	
30,000.00	
TIAA	33,000.00
Total Assets	304,199.00
Mortgage /Taxes	2,115.37.00
Total Liab	275,834.00
Total Net Worth	61,332.00
Total monthly Income with 2 jobs and	
Alimony	9,242.00
Total expenses	
8,095.28	
Excess	
1146.72	
Without Alimony total monthly income would be	
7,992.00 with 2 jobs leaving a monthly deficit of	
103.28	

Post Retirement Table
With Social Security only

This form contains Restricted Information
Circuit court for Rockville, Md Maryland
50 Maryland Ave., Rockville, Md. Case No
119174-Fl

Janet Austen vs Franklin E.
Herman
18619 Brooke Road 8649 Holbrook Lane
Sandy Spring, Md. Tempe, Az.
240-437-9804

Financial Statement of Janet C. Austen

Primary Residence

Sub Total	4,733.68
Secondary Residence - None	0
Household Necess. Sub Total	500.00
Medical Dental Sub Total	419.60
School Exp - none	0
Recreation Sub Total	459.00
Misc sub total	340.00
Total Monthly expenses	7,535.28

Income Statement

Gross Monthly wages (post-Retirement)	0
Deductions	
Federal	459.00
State	141.00
Total Ded	600.00

A31

Net Income	-600.00
Social Security	2,320.00
Total Mthly Income	1,720.00
Total Assets	304,199.00
Total Liab	9,597.37
Net Worth	294,601.00
Total income	1,720.00
Total Expenses	7,535.28
Deficit	-5,815.28

A32

TIAA – CREFF – Fraunhofer

Good afternoon, Janet

Total Balance	Rate of Return
\$38,893.28	6.8%

1/1/20 to 12/31/20

Maryland Department of Assessments and Taxation
– News Release s 2020 Reassessment

For immediate release

December 31, 2019

Contact

Jason Davidson

Jason.davidson2@maryland.gov

410-767-5754

**Property Values Rise 8.9% According to SDAT's 2020
Reassessment**

Steady Growth for the Second Consecutive Year

Nearly Matches 2018's increase

The overall state wide increase for "Group 2" properties was 8.9% over the past three years according to the Maryland State Department of Assessments and Taxation (SDAT). SDAT announced today its 2020 reassessment of 769,688 Group 2 residential and commercial properties in Maryland, there are more than 2 million property accounts which are split into 3 groups each appraised once every 3 years.

The overall statewide increase nearly matched 2018's 9.1 increase. This represents an average increase in value of 7.3% for all residential properties and 13.5% for all commercial properties since the last Group 2 assessment in 2017.

The 2020 assessments for Group 2 properties were based on an evaluation of 73,108 sales that occurred within the group over the last three years. If the reassessment resulted in a property value being adjusted any increase in value will be phased in

equally over the next three years, while any decrease in value will be fully implemented in the 2020 tax year. For the 2020 reassessment, 86.4% of group 2 residential properties saw an increase in property value.

All 23 counties and Baltimore County experienced an increase in residential and commercial properties for the second consecutive year, which is a good indicator the market remains strong and growth is steady said SDAT Director Michael Higgs "I want to thank all of the departments real property assessors throughout Maryland for the hard work and dedication they had displayed this year to ensure that Maryland's properties continue to be assessed fairly and uniformly. As part of our Tax Credit Awareness campaign, each assessment notice includes information about the Homeowners and Homestead Tax Credit which save Marylanders more than \$260million in taxes each year.

The Homeowners tax credit provides relief to eligible homeowners by setting a limit on the amount of property taxes that are owed based on their income. Residential property owners who complete a one-time application and meet certain eligibility requirements can also receive a Homestead Tax Credit which limits their principal residence's taxable assessment from increasing by more than a certain percentage each year regardless of their income level. Although statewide legislation caps the increase at no more than 10% per year, many local governments have capped property taxes at lower percentages.

Property tax assessment notices were mailed to Group 2 property owners on Friday December 27, 2019. A map of which properties fall into Groups 1,2 and 3 and their respective years for reassessment can be viewed on SDAT's website www.sdat.tn.gov for additional statistics and information please visit the Department of Statistics and Reports webpage.

Expenses of their vacations.

I would actually argue to the contrary, that his facts and circumstances which is what the court is supposed to look at as justice requires, it would be—anyone 71 years old who's married and has been in a long term committed relationship with a wife who has cancer—

The Court: Give me the law that says that his spouse's expenses are to be paid or considered in this context.

Mr. Gardner: Well, I don't think you'll find law that says they are or they'll be I mean the ---

The Court: He already has an outstanding order for indefinite alimony, so to change that I need the legal authority that says that I am also to consider Tom, Dick, and Harry, and a wife, and anyone else that he wants to out of the goodness of his heart pay for. But that can't be something in equity that the court can consider.

Mr. Gardner: Well, as circumstances and justice require. I mean the circumstances of his wife are that he's been married for five years, and he lives with his spouse and she's not working and she's got cancer, and she's had a year and a half of surgery, and she won't work. So, if the court doesn't want to consider those I understand. I think, though, under these circumstances its fair and reasonable for him to be living and supporting his wife.

But even if those are not considered, and we take out

I got married in August 2016

And you presently live together with her

Yes, I do

Anyone else?

No

Does she presently work?

No

Does she have any medical issues

Yes, she's had breast cancer for the last two years
and she's been through four surgeries now. The last
one on March 30th.

And what were the nature of the surgeries

**The Court: Well, that is getting beyond anything
that's necessary for this case. Go Ahead.**

Mr. Gardner

And how old are you

71 ½ today

So. Your date of birth is what

October 26, 1949

And how is your health

I had a minor stroke in February 2016. Other than
that, I have high blood pressure and high cholesterol
that I take medication for and I'm also on blood
thinners

And do you have any lingering after effects from the
stroke

The Court: Well, his wife is not relevant. So, has he?

Mr. Gardner:

Have you made loans to anyone else out of that checking account:

No

Have you made loans to anyone else at all?

No

Now, let me see. Defendant's Exhibit 11, can I ask you to turn to that please?

Okay

These are the list of your account balances?

Correct

Now, Ms. Austen pointed out, I guess, I think it's FA--I think the letters, the numbers --

The Court: Defendant's No. 11

Mr. Gardner I'm sorry. I wrote it down up here

By Mr. Gardner

Okay. FA25 and FA31, do you have those as well

Court: They're part of Plaintiff's Exhibit 6 your honor

The Court - FA20

By Mr. Gardner

Do you have FA25 to Fa ---

The court wait, wait, wait, wait, wait, wait

The Court: 1,000 –

The witness: 20 percent for your—for a regular doctor and 40, I'm sorry \$20 for for a regular doctor and \$40 for a specialist

The Court: Okay. Recognizing that this has nothing to do with your wife's expenses, your health is 148.50 and your deductible is 20 percent of whatever you have incurred. But you have incurred nothing: is that right?

The Witness: I haven't – I'm sorry, I don't understand. I haven't incurred anything?

The Court: What sort of –

The Witness: I have in past years

The Court: Okay. In terms of filing this out, what extraordinary medical have you incurred in the – what is it, you were using a year? You were using a year average?

The Witness: Yes, we –

The Court: Did you incur any extraordinary medical expenses in that year?

The Witness: Yes, we—

The Court: Did you incur any extraordinary medical expenses in that year?

The Witness: I did in 2020.

The Court: Okay.

The Witness: And so, I expecting similar---

The Court: What is it?

The Witness: --in 2020

The Court: Yes, what was it?

The Witness: I'm sorry

**Janet Austen's Pre-Retirement Financial Statement
with 2 jobs and Alimony**

Table 5

Primary Residence Mtg and costs	
4,733.68	
Other costs	500.00
Medical Dental	
979.60	
Recreation	459.00
Auto and Trans	
489.00	
Gifts	290.00
Clothing	71.00
Incidentals	233.00
Misc	340.00
Total	8,095.00
Wages (2 jobs)	
12,000.00	
Fed tax	
2,200.00	
State taxes	1,0000.00
Medicare	84.00
FICA	724.00
Total Deductions	4,008.00
Net Monthly	
7,992.00	
Alimony	1250.00
Total Monthly with 2 jobs and alimony	
9,242.00	
Real Estate – house	
274,166.00	
Bank accounts	
30,000.00	

TIAA	33,000.00
Total Assets	304,199.00
Mortgage /Taxes	2,115.37.00
Total Liab	275,834.00
Total Net Worth	61,332.00
Total monthly Income with 2 jobs and	
Alimony	9,242.00
Total expenses	
8,095.28	
Excess	
1146.72	
Without Alimony total monthly income would be	
7,992.00 with 2 jobs leaving a monthly deficit of	
103.28	

Janet Austen's Post Retirement Financial Statement
Social Security Only

Primary Residence Mtg and costs	
4,733.68	
Other costs	500.00
Medical Dental (If retired)	
0.00	
(except supplemental and rx)	
Recreation	459.00
Auto and Trans	
489.00	
Gifts	290.00
Clothing	71.00
Incidentals	233.00
Misc	340.00
Total	7,535.28
Wages	
0.00	
Social Security	
2,320.00	
Fed Tax	
459.00	
State	
141.00	
Net Monthly	
1,930.00	
Total Assets and liabilities unchanged	
Total income	
1,930.00	
Total Expenses	
7,535.28	
Deficit /month	
5,605.28	

A43

Job #1 Paystub

Med Consultants
Potomac, Md.

Pay to the order of
Austen, Janet Nonnegotiable
Net \$3,472.50
18619 Brooke Road
Sandy Spring, Md. 20860

Period start 11/22/20

Period End 12/05/2

Total hours and earnings 81.70hours
\$4,530.00

Total earnings 5,310.50

Total taxes 1838.00

A44

Access Now Urgent Care
Rockville, Md. 20850
Non-Negotiable
Pay to the order of Austen, Janet
\$422.53

Regular – 9 hrs – 60/hr
\$540.00

Tax Return I signed
1040 U.S. Individual Income Tax Return 2013
Franklin E. Herman, Jr
Janet C. Austen-Herman
18619 Brooke Road
Sandy Spring, Md. 20860
Filing status – married
Exemptions
Geoffrey T Herman
Dylan L Herman
Wages, Salaries, tips
\$271,610.00
Taxable Interest 309.00
Business income \$29,392.00
Capital Gains
\$430.00
IRS distributions \$200,000.00
Other Income
\$556.00
Total Income
\$502,231.00

Tax Return He Forged
Internal Revenue Service
United States Treasury

This product contains sensitive taxpayer data
Request Date

7/18/14

Response Date

7/18/14

Tax Return Transcript
SSN Provided
Tax Period Ending

12/31/13

The following items reflect the amount as shown on
the return and the amount as adjusted if applicable.
They do not show subsequent activity on the account
Name shown on Return F Herman Jr. and J Austen-
Herman

Filing Status	Joint
Received Date	April
15, 2014	
Wages, tips, Salaries	
\$272,620.00	
Taxable interest	309.00
Business Income	\$29.392.00
Capital gains or loss	
\$430.00	
Taxable IRA Distributions	
\$555,943.00	
Other income	
\$556.00	
Total Income per computer	
\$858,174.00	

Franklin Herman – Deposition

Page 220

Market conditions, the growth or depletion of that \$100,000.00 and it sounds like the conclusion that you have arrived at is that that \$100,000.00 was originally funded was substantially decreased by market conditions when or after they were funded; is that correct?

Ans: If there was any depletion, yes

Ques: It wouldn't have been by your taking the money. It would have been by market conditions, is that right?

Ans: Correct

MGB Reporting, Inc.
301-983-9315 – mgbreporting.com

American Funds College America New Account
Application

Type of Account – X Individual Account
Account Owner

-----4529 -----1949
Franklin E. Herman
18619 Brooke Road
40

Beneficiary

Dylan Herman

-----1992

Successor Owner

Janet C. Herman

-----1954

American Funds Inter bd.Ed.C	35%
Am Fds Inc Found C	20
Am Fds Corth Fund C	20
Am funds Board Fund C	15
Am Funds SU World C	10
	100%

X Deduct the \$10 set up fee from the new account
Rights of Accumulation

Account owner, spouse, and minor children (under 21) can aggregate accounts of any share class to reduce sales charges. The Social Security or Account numbers on those accounts are

Signature of College America Account Owner

Franklin E. Herman 02/04/2006

Merrill Lynch Funds Merrill Lynch Account	American 75792714
Franklin E. Herman /Dylan Herman Herman/Dylan Herman Phone # 240-403-0516 Rd. Tax ID -----4529 Md. 20860	Frank E. 18619 Brooke Sandy Spring, Md. 20860

Specify the type of transfer to Merrill Lynch
 X A Brokerage or Trust company account. Transfer
and change of Broker/Dealer and Custodian, if
applicable, on all insurance and or annuity Products
Please select one of the following three options
 X Transfer my entire account to Merrill Lynch in
Kind Trust Company Account Transfer and change of
Broker.

Franklin E. Herman 2/21/07

A50

Capital Gains and Losses from sale of 3rd wife's
home

Schedule D 2019

Franklin E Jr. and Jessica T. Herman

Long Term Capital Gains and Losses

Total for all transactions reported Form 8949 with
Box F checked

Proceeds	Costs	gain or loss
333.00	221.146	-111.854

Baby's Book

On April 2, Janet discovered her pregnancy on a home pregnancy test.

On April 20th Janet had severe nausea.

On May 11th Janet's pregnancy was confirmed with a serum pregnancy test.

Grandpa Herman and Aunt Joyce were giggly.

Grandma Austen was happy as were the other Austen's.

Franklin E. Herman

A52

3 bd 3 ba 1,876 sq ft
710 W. Forest Cir, Payson, Az 85541

Closed
\$525,000 Sold on 3/22/22 Zestimate \$526,600
Es. Refi Payment \$2,675/mo
Refinance your loan

Circuit Court for Rockville, Md. Maryland
50 Maryland Ave., Rockville, Md. Case No. Fl-
119743
Janet C. Austen vs Franklin E.
Herman
18619 Brooke Road 8649 S.
Holbrook Ln.
Sandy Spring, Md. 20860 Tempe, Az
240-437-9804

Certificate of Service

I certify that on this 29th day for January 2021 a
copy of the document titled Financial Statement #3
Was delivered Priority Mail X
Franklin E. Herman c/o 600 Jefferson
Plaza
David Gardner/Attorney Suite 308
Rockville, Md.

1/29/21

Janet C. Austen

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY MARYLAND

Janet C. Austen
Plaintiff
v. Civil Action No. 119743-FL
Franklin E. Herman
Defendant

Documents for evidence for the hearing on 4/26/21 at 9:30 A.M. were delivered to the Montgomery County Court House Drop Box at 50 Maryland Ave., Rockville, Md. One packet of evidence was delivered to the Montgomery County Court House Drop Box on 3/25/21.

Included both financial statements

Sincerely,

Janet C. Austen

November 14, 2014

Geoffrey Herman
1917 Chapel Hill Rd.
Silver Spring, Md.

Dear Geoffrey Herman;

IMPORTANT INFORMATION COBRA:
Continuation Coverage and other health coverage alternatives.

This notice contains important information about your right to continue your health care coverage in the Fraunhofer USA group insurance plans (collectively referred to as "the Plan") as well as other health coverage alternatives that may be available to you, including coverage through the Health Insurance Marketplace at www.HealthCare.gov or call 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that may costs less than COBRA continuation coverage. Please read the information in this notice very carefully before you made your decision. If you choose to elect COBRA continuation coverage, you should use the election form provided later in this notice

Why am I getting this notice?

You're getting this notice because your coverage under the Plan will end on 5/10/14 due to

Loss of dependent child status

Federal law requires that most group health plans (including this Plan) give employees and their

families the opportunity to continue their health care coverage through Cobra continuation coverage when there's a qualifying event" that would result in a loss of coverage under an employer's plan.

What's Cobra continuation coverage: Cobra continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries who aren't getting continuation coverage. Each "qualified beneficiary (described below) who elects Cobra continuation coverage will have the same rights under the plans as other participants or beneficiaries covered under the plan.

Who are Qualified beneficiaries?

Each person ("qualified beneficiary") in the category(s) checked below can elect cobra continuation coverage. Each person has a separate right to elect continuation coverage:

Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan

Are there other options besides cobra continuation coverage?

Yes, instead of enrolling in cobra continuation coverage, there may be other affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a special enrollment period.

You should compare other coverage options with Cobra continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage, you may pay more out of pocket than

you would under Cobra because the new coverage may impose a new deduction.

When you lose job-based health coverage, it's important that you choose carefully between cobra continuation coverage and other coverage options because once you've made our choice, it can be difficult or impossible to switch to another coverage option.

If I elect Cobra continuation coverage, when will the coverage begin and how long will it last.

In the case of a loss of coverage due to end of employment or reduction in hours of employment, coverage generally may be continued for up to a total of 18 months. In the case of losses of coverage due to an employee's death, divorce or legal separation the employee's becoming entitled to Medicare benefits or a dependent child ceasing to be a dependent under the terms of the plan, coverage may be continued for up to at least 36 months

If elected, cobra continuation coverage will begin on 5/11/14 and can last until 5/10/17. You may elect any of the following options for Cobra continuation coverage.