

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. ___ CVD _____

_____,)
Plaintiff,)
v.)
_____,)
Defendant.)

JUDGMENT AND ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned District Court Judge Presiding upon Plaintiff's Motion for Default Judgment. Plaintiff was present and represented by counsel, _____. Defendant was not present and was not represented by counsel. Based upon the evidence presented by Plaintiff's counsel and after hearing arguments of Plaintiff's counsel, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of _____ County, North Carolina.
2. Defendant is a former resident of _____, North Carolina. Defendant owned real property located in _____, North Carolina, until _____. Defendant currently owns a residence in _____.
3. Plaintiff and Defendant were lawfully married to each other on _____, and were divorced on _____.
4. There are no minor children born of the marriage.
5. Defendant was properly served with the Summons and Complaint in this matter on _____, as set forth in the Affidavit of Service filed on _____.
6. This Court has subject matter jurisdiction over the parties' claims in this action and has personal jurisdiction over both Plaintiff and Defendant.
7. Defendant failed to plead or appear in this matter so that default was entered on _____, by the Clerk of the _____ County Superior Court.
8. A Notice of Hearing for this matter was sent to Defendant via first class mail, postage prepaid, on _____. Defendant did not appear for the hearing of this matter and was not represented by counsel at the hearing of this matter.

9. Defendant is not an infant, incompetent or otherwise under disability and is subject to default judgment.
10. On _____, the parties entered into a valid Separation Agreement (the "Agreement"). Under the terms of this Agreement, Defendant is obligated to pay spousal support to Plaintiff in the amount of \$_____ per month until Plaintiff's death or remarriage or, if Plaintiff makes a gross salary of \$_____ or more, Defendant's spousal support obligation shall decrease to \$_____ per month.
11. Plaintiff has not died or remarried. Plaintiff does not make a gross salary of \$_____ or more.
12. Defendant paid spousal support to Plaintiff in the amount of \$_____ per month through _____. Defendant has not paid any spousal support to Plaintiff since _____.
13. Defendant currently is retired and receives Social Security income each month. His social security number is _____. Defendant also receives monthly retirement income from the _____ Retirement System.
14. On _____, Defendant sold the real property located at _____, North Carolina _____ for \$_____. Defendant owned this property in his sole name and this property was secured by a deed of trust in Defendant's name alone in the amount of \$_____.
15. Plaintiff has performed her obligations under the Agreement and she has complied with the terms of the Agreement.
16. Defendant currently owes total arrearages of \$_____ for unpaid monthly spousal support for _____ through _____. In addition, Defendant owes to Plaintiff \$_____ in interest on his total arrearages. Defendant has the present ability to pay to Plaintiff the total arrearages plus interest owed through _____.
17. Defendant has the present ability to pay ongoing spousal support to Plaintiff in the amount of \$_____ per month. Defendant has the present ability to pay the arrearages set forth herein.
18. Defendant has made clear to various family members that he no longer intends to pay support to Plaintiff.
19. Plaintiff is entitled to an order requiring Defendant to specifically perform his spousal support obligations under the Agreement, in that Plaintiff has no adequate remedy at law, in the absence of an order for specific performance, to enforce the Agreement.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has personal and subject matter jurisdiction to enter this order.
2. Plaintiff is entitled to an order of specific performance requiring Defendant to specifically perform his contractual spousal support obligations as set out in the Agreement.
3. Defendant has the present ability to pay ongoing spousal support to Plaintiff in the amount of \$_____ per month.
4. Defendant has the present ability to pay to Plaintiff the total arrearages plus interest owed for _____ through _____.
5. Any Finding of Fact that would be an appropriate Conclusion of Law should be and is incorporated and adopted as if fully set out herein.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Defendant's amount of ongoing monthly alimony shall be paid to Plaintiff by a transfer to Plaintiff of \$_____ of Defendant's monthly Social Security benefit.
2. Defendant's alimony arrearages plus interest owed through _____, in the total amount of \$_____ shall be paid to Plaintiff by a transfer to Plaintiff of a portion of Defendant's monthly Social Security benefit. Said arrears and interest shall be paid in equal monthly installments of \$_____ per month for a period of eighteen (18) months.
3. In the event that the total amounts to be withheld from Defendant's monthly Social Security benefit pursuant to decretal Paragraphs 1 and 2 above exceed the amounts allowed under § 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b), then any excess amount(s) shall be paid to Plaintiff by a transfer to Plaintiff of a portion of Defendant's monthly benefit from the _____ Retirement System.
4. This Court preserves jurisdiction to enter any appropriate additional orders directing that these amounts shall be paid directly to Plaintiff on a monthly basis from Defendant's Social Security benefit and from Defendant's benefit from the _____ Retirement System.

This _____ day of _____, 20_____.

District Court Judge Presiding