



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JOHN LOWE,

Plaintiff,

v.

LAURA LOWE,

Defendant.

CIVIL ACTION

CAFN: 20-1-06072

MEMORANDUM IN SUPPORT OF RULE 22 REQUEST TO RECORD

Nonparty, Matthew D. McMaster (“Recorder”), submits this *Memorandum In Support Of Rule 22 Request To Record*, showing this Court as follows:

I. TIMING

Recorder’s Rule 22 request was timely. Uniform Superior Court Rule 22(F)(2) states that “[t]he person or organization must submit the request sufficiently in advance of the proceeding—at least **24 hours** where practicable under the circumstances—to allow the judge to consider it in a timely manner.” Recorder submitted his request to the Court at about 10:34 PM via email on April 10, 2024 when this case was set for a hearing at 2:00 PM on April 12, 2024. (**Exhibit A**).

II. RULE 22 ANALYSIS

Before a judge may deny a request for recording, he or she must make specific findings: (i) that there is a substantial likelihood of harm arising from one or more of the factors outlined in Rule 22(G)(1)¹; (ii) that the harm outweighs the benefit of recording to the public; and (iii) that

¹ Since 2018, Uniform Superior Court Rule 22(G) has been amended to require that the Court consider factors identical to those listed in O.C.G.A. § 15-1-10.1(b)(1)-(9).

the judge has considered more narrow restrictions on recording than a complete denial of the request.

Matters of Public Significance and of Public Interest

The hearing set for April 12, 2024 in the above-styled action is expected to include a presiding judge with a *quid pro quo* relationship with Plaintiff's counsel. Cobb County Senior Judges furthering their *quid pro quo* relationships among judges and attorneys is at the forefront of issues that Recorder is bringing to light on his Cobb County State Court Judge, campaign page available here: <https://mcmasterforcobb.com/why-matt>. In this particular case, counsel for Plaintiff is the spouse of the Honorable Robert D. Leonard, II; and the Honorable G. Grant Brantley is a Senior Superior Court Judge and may also act in the capacity as a Special Master, Mediator, and/or Case Evaluator in other cases at the request of Judge Leonard. *See e.g.*, O.C.G.A. § 23-3-63; O.C.G.A. § 15-1-9.2(c). In other words, Judge Brantley has a pecuniary interest in catering to Plaintiff's counsel for future court appointments or to return the favor of receiving past appointments from Judge Leonard. This issue is beyond mere conjecture. In one case for example, Judge Leonard ordered the parties to a case evaluation and limited their evaluator choices to Judge Bodiford and Judge Brantley. Judge Brantley subsequently presided over that case evaluation. *See Brown v. Walker et al*, Cobb County Superior Court Case No. 19105824 (**Exhibit B**). And turning to the present case, Judge Brantley has awarded exorbitant fees in favor of Plaintiff's counsel and against Defendant. (**Exhibit C**).

Complete Denial Is Not Warranted Under Any Circumstances.

It is Georgia's policy to favor open judicial proceedings. *See Morris Communications v. Griffin*, 279 Ga. 735 (2005). "[A]lthough the decision whether to allow electronic and photographic coverage of a trial is within the discretion of the trial court, if a trial court denies

such coverage, there must be a factual basis in the record that supports the denial.” *Id.* The section entitled “Preamble” of the Georgia Code of Judicial Conduct (“CJC”), subsection [1] states:

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judicial is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

Considering this state’s policy as expressed by the Supreme Court of Georgia in *Griffin* above in conjunction with the CJC, a timely request to record in this action cannot credibly be denied under any set of circumstances, let alone those outlined above.

Further, Rule 22(G)(2) requires that the Court “impose the least restrictive possible limitations such as an order . . . that only an audio recording may be made of such person.” Therefore, a full denial of this request is not an available remedy.

For all of the above reasons, the Court should grant Recorder’s request.

Respectfully submitted this 11th day of April 2024.

MCMaster FOR COBB LLC
1095 New Haven Dr. SW
Marietta, GA 30064
Phone: (770) 362-6490
info@mcmasterforcobb.com

/s/ Matthew D. McMaster
Matthew D. McMaster
Georgia Bar No. 218044
Nonparty-Recorder

Exhibit A

Rule 22 Request to Record - Lowe v. Lowe, Case Nos. 23-1-05442 and 20-1-06072

Matthew McMaster <info@mcmasterforcobb.com>

Wed 4/10/2024 10:34 PM

To: Ryan.Browne@cobbcounty.org <Ryan.Browne@cobbcounty.org>; Brett.Conway@cobbcounty.org <Brett.Conway@cobbcounty.org>

Cc: dpeleroose@peleroselawfirm.com <dpeleroose@peleroselawfirm.com>; kk@leonardfirm.com <kk@leonardfirm.com>; grant.brantley@cobbcounty.org <grant.brantley@cobbcounty.org>

 2 attachments (138 KB)

Rule 22_cr4200_McMaster_20-1-06072.pdf; Rule 22_cr4200_McMaster_23-1-05442.pdf;

Dear Mr. Browne and Mr. Conway,

As a member of the public regarding a matter that I believe to be one of both personal and public interest, I wish to record the proceedings in Case Nos. 23-1-05442 and 20-1-06072 on April 12, 2024 at 2:00 PM in Courtroom 4200. Attached please find my Rule 22 Requests to Record for consideration by the Presiding Judge.

Please let me know if you need anything more to further this request.

Sincerely,

Matthew D. McMaster, Esq.
Candidate for Cobb County State Court Judge

MCMASTER FOR COBB LLC
1095 New Haven Dr. SW
Marietta, GA 30064
770-362-6490
info@mcmasterforcobb.com

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

JOHN LOWE,

Plaintiff,

v.

LAURA LOWE,

Defendant.

CIVIL ACTION

CAFN: 23-1-05442

**REQUEST TO USE A RECORDING DEVICE PURSUANT TO RULE 22 ON
RECORDING OF JUDICIAL PROCEEDINGS.**

Pursuant to Rule 22 of the Uniform Rules for Superior Court regarding Use of Electronic Devices in Courtrooms and Recording of Judicial Proceedings, the undersigned hereby requests permission to use a recording device in Courtroom 4200, Cobb County Superior Court, or other courtroom designated by the Court, in order to record audio during all of the proceedings in the above captioned case.

Consistent with the provisions of the rule, the undersigned desires to use the following described recording device(s): mobile phone (iPhone SE). The proceedings that the undersigned desires to record commence on April 12, 2024 at 2:00 PM. Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to use this device in the courtroom on April 12, 2024. The personnel who will be responsible for the use of this recording device is:

Matthew D. McMaster
(Print Name)

The undersigned hereby certifies that the device to be used and the locations and operation of such device will be in conformity with Rule 22 and any guidelines issued by the court.

The undersigned understands and acknowledges that a violation of Rule 22 and any guidelines issued by the court may be grounds for removal or exclusion from the courtroom and a willful violation may subject the undersigned to penalties for contempt of court.

Respectfully submitted this 10th day of April, 2024.

Signed: /s/ Matthew D. McMaster
Matthew D. McMaster

MCMASTER FOR COBB LLC
1095 New Haven Dr. SW
Marietta, GA 30064
770-362-6490
info@mcmasterforcobb.com

APPROVED and SO ORDERED this ____ day of _____ 2024.

Judge, Superior Court
Cobb Judicial Circuit

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

JOHN LOWE,

Plaintiff,

v.

LAURA LOWE,

Defendant.

CIVIL ACTION

CAFN: 20-1-06072

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Respectfully submitted this 10th day of April, 2024.

Signed: /s/ Matthew D. McMaster
Matthew D. McMaster

MCMASTER FOR COBB LLC
1095 New Haven Dr. SW
Marietta, GA 30064
770-362-6490
info@mcmasterforcobb.com

APPROVED and SO ORDERED this ____ day of _____ 2024.

Judge, Superior Court
Cobb Judicial Circuit

Exhibit B



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

NICHELLE BROWN,

Plaintiff,

v.

WILLIAM WALKER and SUNTRUST
MORTGAGE, INC.

Defendants.

Civil Action File No.
19105824

ORDER ON MOTION FOR CASE EVALUATION

This matter comes before the Court on Defendant Truist Bank, successor by merger to SunTrust Bank ("Truist"), and Plaintiff Nichelle Brown's ("Ms. Brown") Joint Motion for Case Evaluation. Counsel for Defendant William Walker has not responded to Plaintiff and Defendant Suntrust's Motion. Upon consideration, and for good cause shown, the Joint Motion is hereby **GRANTED** and the parties in this matter are ordered to undergo a case evaluation to be performed by Judge Brantley or Judge Bodiford, at a time mutually convenient for the parties.

SO ORDERED this 16 day of Feb., 2022.



Robert D. Leonard II, Chief Judge
Superior Court of Cobb County

IN THE COBB COUNTY SUPERIOR COURT
STATE OF GEORGIA

Nichelle Brown

vs.

Civil Action File No. 19-1-05824

William Walker d
Suntrust Mortgage, Inc

CASE EVALUATION REPORT

A Case Evaluation session was held on the 28th day of March, 2022,
in the above-referenced case.

Present at this Case Evaluation were:

Name	Affiliation
<u>Grant Brantley</u>	<u>Evaluator</u>
<u>Lestee Hungerford</u>	<u>P's atty</u>
<u>Tunde Ezekiel</u>	<u>D's atty</u>
<u>Erik Badie</u>	<u>Mortgage Co. atty</u>

The session lasted 1 1/2 hours with the following results:

Appraisal and Evaluation of Case.

Parties entered one or more stipulations of fact.

Parties agreed ^{to discuss} upon how discovery could be streamlined, and evaluator left

Evaluation of Case & Mediation of issues resulting in to conserve costs Full Settlement
 Partial Settlement Impasse.

A continuance has been requested for an additional Mediation Case
Evaluation on _____, 20____ at _____ a.m./p.m.

Comments: Parties need to ~~have~~ complete discovery and have court
pull upon outstanding discovery motions. Very little discovery*

Case Evaluator Grant Brantley Date 28 March 2022

* exchange crippling efforts by the evaluator. Without
discovery this is a she said/he said case on comp
units and counterclaim claims.

Exhibit C



Connie Taylor, Clerk of Superior Court
 Cobb County, Georgia

**IN THE SUPERIOR COURT OF COBB COUNTY
 STATE OF GEORGIA**

JOHN LOWE,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	FILE NO. 20-1-06072-49
LAURA LOWE,)	
)	
Defendant.)	

ORDER ON POST-TRIAL MOTIONS

The parties to the above-styled case, *to wit*: Plaintiff, JOHN LOWE (“Husband”) and Defendant, LAURA LOWE (“Wife”), having appeared with counsel before the Court on November 1, 2022 pursuant to *Rule Nisi* for a hearing on all motions pending before the Court,¹ and the Court having heard argument from counsel and testimony of the parties, and upon review of the pleadings, evidence and applicable law, and noting that neither party requested findings of fact and conclusions of law, and in consideration of same, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1.

PLAINTIFF’S MOTION FOR CONTEMPT

A. Following a bench trial, the Court entered a *Final Judgment and Decree of Divorce* on July 2, 2022,² which reserved the issue of attorney’s fees (“Final Decree”). The Final Decree ordered, *inter alia*, the parties’ marital residence to be listed for sale. The Final Decree ordered Defendant/Wife to remain in the marital residence pending the sale and to be responsible for all

¹ The *Rule Nisi* filed by the Court on October 13, 2022 stated “all issues ripe to be heard shall be heard on November 1, 2022.” *See also* Paragraph 3 herein.

² Wife filed a *Notice of Objections to Plaintiff’s Proposed Final Judgment and Decree of Divorce* on June 29, 2022. That Notice of Objections was denied, to the extent it sought relief, by the *Order* filed on July 6, 2022 (“Order Denying Objections.”)

expenses associated with said residence commencing July 1, 2022.

B. Three days later, Wife filed a *Motion to Stay or Alternatively, Grant Supersedeas* on July 5, 2022 (“Motion to Stay”) and an *Emergency Motion to Stay or Alternatively, Grant Supersedeas and Request for Expedited Hearing* on July 7, 2022 (“Emergency Motion to Stay”). As a result of these two (2) Motions, on July 11, 2022, the Court, sua sponte, entered an *Order Specially Setting Hearing and Temporary Stay Regarding Marital Residence* which temporarily halted the sale of the marital residence.

C. Following a hearing on July 19, 2022 on Wife’s Motion to Stay and Emergency Motion to Stay, the Court entered its *Amended Final Judgement and Decree of Divorce* (“Amended Decree”) on July 22, 2022, which awarded sole and exclusive use and possession of the marital residence to Husband and required Wife leave the furniture and furnishings, along with the children’s furniture and belongings, in the marital residence. The Amended Decree permitted Husband to list the home for sale.

D. According to the Amended Decree, Wife was still required to timely pay and be responsible for all expenses related to the marital residence.

E. On July 22, 2022, Wife filed her *Notice of Objections to Plaintiff’s “Amended Final Judgment and Decree of Divorce” and Motion Requesting Court Reconsider Said Decree* (“Second Notice of Objections”). Wife objected, *inter alia*, to the Court requiring her to pay the expenses at the marital residence even though she was ordered to vacate and Husband was awarded possession of the marital residence.

F. On July 26, 2022, Wife filed her third *Notice of Objections to Plaintiff’s Order Denying Emergency Relief and Motion Requesting Court Reconsider Defendant’s Motion to Stay or Alternatively, Grant Supersedeas, as well as Defendant’s Emergency Motion to Stay or*

Alternatively, Grant Supersedeas. et.al. (“Third Notice of Objections”).

G. On July 27, 2022, the Court sent an email reconsidering portions of its Amended Final Decree and staying the sale of the marital residence, thereby granting Wife’s Second Notice of Objections in part. Husband submitted a *Second Amended Final Judgment and Decree of Divorce*³ (“Second Amended Final Decree”) to the Court reflecting this amendment, which has not been entered by the Court; however, both parties have operated as if the Second Amended Final Decree is in effect.

H. The same day, the Court, *sua sponte*, entered a *Temporary Stay Regarding Marital Residence*, once again preventing Husband from placing the home on the market for sale.

I. On August 10, 2022, Plaintiff/Husband filed a *Motion for Citation of Contempt* (“Motion for Contempt”) alleging the following violations of the Final Decree, as amended, by Wife:

- i. Through his first contempt allegation, Husband claims Wife willfully failed to pay certain expenses she was ordered to pay including utilities at the marital residence and expenses for the children. As of the date of the hearing, Wife had remedied this allegation by paying such expenses, with the exception of a repair for the HVAC. The Court declines to hold Wife in willful contempt on this count. However, the Court orders Wife to pay Husband the sum of \$324.00 for the HVAC repair.
- ii. Through his second contempt allegation, Husband alleges Wife willfully violated the Final Decree, as amended, by removing the majority of items of household furniture and personal property from the marital residence when she

³ Wife filed her fourth *Notice of Objections to Plaintiff’s Second Amended Final Judgment and Decree of Divorce and Motion Requesting Court Reconsider Said Decree* on August 10, 2022 (“Wife’s Fourth Notice of Objections”).

vacated same. Husband presented photographs of the home before and after Wife vacated. Wife claimed she misunderstood the Court's instruction on this issue. The Court finds its instructions to Wife were clear, and that Wife did not offer to return these items until Husband filed his Motion for Contempt. On this count, the Court finds Wife in willful contempt.

J. Husband requested an award of attorney's fees pursuant to O.C.G.A. § 19-6-2(a) for the costs incurred in filing his Motion for Contempt. In consideration of the evidence presented on the parties' respective financial circumstances and the Court's finding of Wife's willful contempt, the Court awards Husband the sum of \$2,050.00 in attorney's fees and expenses of litigation pursuant to O.C.G.A. § 19-6-2(a). Such amount shall be paid to Husband within thirty (30) days of the entry of this Order.

2.

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

As the post-judgment history might indicate, this case was lengthy and contentious. The Court's Final Decree outlines much of the conduct the Court considered in issuing its ruling, and incorporates those findings of fact herein by reference. Husband filed a *Motion for Attorney's Fees and Expenses of Litigation* ("Motion for Fees") asking the Court to award him attorney's fees and litigation expenses under two statutes. First, Husband requested an award of attorney's fees pursuant to O.C.G.A. § 9-15-14(b) for certain actions Husband claims Wife took that unnecessarily expanded the scope of the litigation and the costs he incurred as a result. Second, Husband requested an award of attorney's fees pursuant to O.C.G.A. § 19-6-2(a). Husband argued, *inter alia*, that Wife's unwillingness to engage in good faith settlement discussions should be considered in addition to the financial circumstances of the parties. Husband further argues that the fees Husband

paid to the Guardian ad Litem, financial neutral, and mediator should be reapportioned between the parties.

The Court admitted Husband's legal billing statements into evidence as P-4. The Court also admitted invoices from the Guardian ad Litem as P-5 and the financial neutral as P-6, all of which were paid by Husband. It is undisputed Wife did not contribute to these expenses. The billing statements presented by Husband's counsel were color-coded to reflect the fees incurred by Husband for each action taken by Wife for which Husband argues is sanctionable. With specific regard to Husband's request for attorney's fees pursuant to O.C.G.A. §9-15-14(b), the Court reviewed evidence specifically tying the fees incurred to the sanctionable conduct. The Court heard evidence as to the total fees incurred by Husband, the hourly rates billed by Husband's counsel, and the reasonableness of the fees incurred.

A. The Court awards Husband attorney's fees and expenses of litigation pursuant to O.C.G.A. §9-15-14(b).

O.C.G.A. § 9-15-14(b) grants trial courts the full discretion to award of attorney's fees and expenses of litigation in cases where one party has taken actions designed to expand the scope of litigation. Specifically, the Court may assess attorney's fees and expenses of litigation when, upon motion by a party or motion issued *sua sponte*, the Court finds that an action, defense, "or any part thereof" was "substantially frivolous, substantially groundless, or substantially vexatious," or was brought for purpose of "delay or harassment." O.C.G.A. § 9-15-14(b); *See Vakharwala v. Vakharwala*, 799 S.E.2d 797, 799-800 (Ga. 2017) (affirming an award of attorney's fees to the wife pursuant to O.C.G.A. § 9-15-14(b) where the husband "engaged in numerous acts of improper conduct throughout the litigation that were interposed for delay and harassment, including stating he would 'do whatever it takes to win'"); *see also Horton v. Horton*, 299 Ga. 46, 52 (2016)

(affirming an award of attorney's fees against the wife under O.C.G.A. §9-15-14(b) where "the language of the order tracks the statute" and "contains a discussion of the wife's unauthorized attempts to amend the pleadings and consolidated pretrial order, thereby expanding the proceedings.")

With respect to Husband's request for fees pursuant to O.C.G.A. §9-15-14(b), the Court finds Wife took certain actions that were designed to unnecessarily expand the scope and cost of this litigation. The Court incorporates and takes judicial notice of its findings of fact from the *Final Judgment and Decree of Divorce* herein by reference. Of particular importance, the Court notes its findings of fact regarding Wife's lack of credibility, and the false allegations of abuse Wife made that caused Husband to be investigated by the Georgia Army National Guard (his employer) during this case. Wife's actions also caused a DFACS investigation to ensue, which was unnecessary given that a Guardian ad Litem had already been appointed and was actively investigating. The Court agrees with Husband that Wife took actions designed to harm Husband's career while simultaneously claiming she was solely dependent upon him for support. Those actions caused Husband to unnecessarily incur \$6,177.00 in legal expenses as reflected by his itemized billing statements.

Husband further presented evidence of the legal expenses he directly incurred as a result of Wife expanding the temporary issues in this case. In summary, the evidence showed that the parties entered into a temporary custodial and living arrangement to physically separate them following Wife's false abuse allegations and DFACS investigation. The Court takes judicial notice of the correspondence from Wife's counsel admitted at final trial as Exhibit P-114, wherein Wife's counsel threatened to pursue a JAG investigation against Husband through his employer if he did not vacate the marital residence. Husband testified Wife then refused to continue the agreed-upon

arrangement, forcing Husband to incur the full cost of a second home rather than the more cost-effective alternative the parties had been utilizing.

According to Husband's testimony, the parties engaged in mediation wherein Husband agreed to this new temporary arrangement. Husband also agreed to pay the expenses at the marital residence for Wife and \$25,000.00 in temporary attorney's fees. Evidence showed that Wife almost immediately fired her attorneys, hired new counsel, and filed a *Motion for Interim Attorney's Fees* asking for a second interim award of the same amount. Wife pursued a temporary hearing with the Court, which was continued, and Wife never pursued a continuation of that hearing. Husband incurred \$11,649.00 in connection with Wife's unnecessary expansion of the temporary issues based on his itemized billing statements.

Based on the foregoing, the Court awards Husband the sum of \$17,826.00 pursuant to O.C.G.A. § 9-15-14(b). Such amount shall be paid within sixty (60) days of this Order.

B. The Court awards Husband attorney's fees and expenses of litigation pursuant to O.C.G.A. §19-6-2(a).

Husband has requested an award of attorney's fees pursuant to O.C.G.A. §19-6-2(a), which authorizes this Court to award attorney's fees and expenses of litigation in divorce actions. O.C.G.A. §19-6-2(a) states, in pertinent part, that "[t]he grant of attorney's fees as part of the expenses of litigation...shall be within the sound discretion of the court, except that the court shall consider the financial circumstances of both parties as part of its determination of *the amount of attorney's fees...*" (*emphasis added*). Although the statute specifically refers to "attorney's fees," the Court may, in its discretion, properly award interest, costs, and even expenses of a witness, or the costs of a private investigator as other expenses of litigation." *Dunham v. Belinky*, 284 S.E.2d 397, 398 (Ga. 1981); *Berman v. Berman*, 204 S.E.2d 125, 126 (Ga. 1974); *Gable v. Gable*, 189

S.E.2d 409, 410 (Ga. 1972).

In reviewing Husband's Motion for Fees pursuant to O.C.G.A. §19-6-2(a), the Court has considered and weighed the financial circumstances of the parties. While Husband earns more money than Wife through his military pension and military disability, the Court notes Husband utilizes that income to pay the ongoing expenses at the marital residence at the Court's direction. The Court awarded Wife a portion of Husband's military pension, which she will be entitled to upon finality of the case. Wife has no obligation to contribute financially to the maintenance of the marital residence. The Court heard evidence that Wife is not employed full-time even though she does not have primary custody of the children.

The Court heard evidence that Wife incurred *and paid* \$225,000.00 in attorney's fees and litigation expenses, which was paid primarily by Wife's family. Wife testified she has no legal obligation to repay her family. The Court may consider this evidence when weighing the financial circumstances of the parties. *See Jarvis v. Jarvis*, 291 Ga. 818 (2012) (affirming the trial court's award of attorney's fees and finding the trial court did not abuse its discretion when considering financial support from relatives in the form of attorney's fees in the "financial circumstances of the parties" inquiry).

The evidence showed this divorce fully depleted the marriage's cash reserves, which Husband testified exceeded \$165,000.00 when the case initiated. During the case, Husband testified he received an inheritance, which was awarded to him as his separately property but has now been spent on legal expenses. The only remaining "liquid" asset is the marital residence, which through the Final Decree, the Court ordered to be sold to provide each party with his or her share of the equity in cash. At Wife's request, the Court has issued a stay of that sale. Neither party has any cash reserves to pay attorney's fees according to their testimony. The evidence shows that

Husband funded 100% of the Guardian ad Litem expenses for a total of \$61,244.00, which he stated he paid in large part with his inheritance after the trial concluded. Husband also presented evidence he paid 100% of the financial neutral for a total of \$20,433.00 and 100% of the parties' mediation fees for a total of \$5,056.00. The Court also notes Husband paid \$17,350.00 to Wife's former attorneys. As the Court awarded Wife 40% of the marital estate, the Court finds it appropriate to reapportion these costs so that Wife pays 40% of same. The Court will decline to reapportion to Wife any funds paid by the marriage to Husband's attorneys.

The evidence, admitted as P-1, demonstrated Husband made Wife a settlement offer prior to trial to avoid incurring the cost of trial. This offer dated May 19, 2022, especially with regard to child custody and support, would have left Wife in a far superior position than the ultimate outcome at trial.⁴ Wife did not respond to the settlement offer. In fact, there was no evidence of any attempt Wife made to settle this matter throughout the course of the case, other than participating in mediation. While the Court will not penalize Wife for exercising her right to a trial, the Court takes Wife's unwillingness to engage in settlement negotiations in good faith into consideration in determining the *amount* of attorney's fees to be awarded to Husband. *See Fenters v. Fenters*, 238 Ga. 131 (1977). Husband presented billing statements demonstrating that he incurred \$45,104.00 in attorney's fees after his May 19, 2022 settlement offer.

Pursuant to O.C.G.A. §19-6-2(a), in consideration of the financial circumstances of the parties and all other relevant factors as outlined above, the Court awards Husband attorney's fees and litigation expenses in the amount of \$86,736.00. This amount shall be paid within sixty (60) days of this Order.

⁴ P-1 admitted into evidence at the November 1, 2022 hearing showed Husband offered to share 50/50 custody of the children with neither party paying child support to the other. At final trial, the Court awarded Husband primary physical custody of both children with Wife paying child support to Husband.

DEFENDANT'S NOTICES OF OBJECTIONS

A. Wife argued, through counsel, that the Court had not yet ruled on her Notices of Objections.⁵ The record reflects that Wife attempted to raise her outstanding Notices of Objections at the commencement of the hearing. Specifically, Wife's counsel stated "I'd like to make for the record basis of contempt motions. The contempt is based on certain orders that they proposed and the judge signed and we have filed notices of objections to those orders." See Transcript of November 1, 2022 proceedings ("Transcript"), p. 10-11. The Defendant did not identify what she meant by "certain orders" and made no effort to make clear the "orders" she was referencing. The Court noted that he had already entered an order and added "[t]he fact that you object to the order is fine.⁶ I'm not going to change it. You've made your record. I'm ready to proceed." The Defendant, still without explaining what orders she was referencing, simply said "All right. Thank you, Your Honor." At that point, Wife chose not to speak on the topic.

However, following a review of the docket, the Court recognized Wife had filed additional Notices of Objections the Court had not seen. The Court revisited the topic on Wife's behalf. See Transcript, p. 129, beginning at line 15. The Court asked for assistance regarding what rulings he was being asked to make. See Transcript, pp. 129-130. Wife's counsel then advised the Court the

⁵ The Court notes that Wife's first Notice of Objections was denied by Order Denying Objections entered on July 6, 2022.

⁶ The Court had entered a written ruling on Wife's First Notice of Objections via the Order Denying Objections on July 6, 2022. The Wife has followed up on every subsequent proposed order submitted by counsel and/or admitted by the Court with a lengthy set of written objections as if the proposed order stage initiated a second "trial-by-paperwork." The Court entered a blanket Order Denying Objections, ruling as follows: "Wife is now asserting that she is entitled to have the Court rule on the aforesaid notice. Therefore, after reviewing same again, the Court notes that it basically challenges the Court's findings of Fact. The Court observes that where a finding is made where the evidence is in conflict, the Court believed and found more credible that evidence which supports its finding of fact, and the Court declines the Wife's request to alter them. Order Denying Objections, pp. 6-7. The Court appears to have referenced this Order in his hearing dialogue. However, other than referencing "certain orders," Wife chose not to make clear what she was referencing or exactly what relief she sought from the Court. When the Court noted that it had ruled, the Wife chose not to even ask what was meant.

Second, Third and Fourth Notices of Objections were outstanding. See Transcript, p. 136, lines 19-20. The Court states,

[W]e can address it today if its still outstanding because I said so in the Order setting this hearing. And I did not get your binder [of outstanding pleadings] last night, like I did the other, so I was not alerted. I got it today. I had a chance to look at it a few moments ago and apparently you plan to bring those up and I will hear them. See Transcript, p. 243, lines 4-10.

Wife's counsel began discussing her objections to the proposed orders, including that one of her objections related to an Order for which Husband sought a contempt citation. The Court stated, "What happens to the idea that I adopted it and there was evidence?" See Transcript, p. 139. The Court said, "If you want to make a record, go ahead." See Transcript, p. 140, line 18. Wife's counsel made her record that she "tried to argue the notices at the beginning [of the hearing]."⁷ Wife's counsel made no further effort to argue or elicit a ruling on her Notices of Objections.

The Court asked "Where are we?... We've got to figure it out or we will be another day. We'll take over tomorrow—tomorrow afternoon..." See Transcript, p. 146, lines 8-10. Wife's counsel responds that,

And Judge, I have an idea. Since we have the fees to be wrapped up and I believe where we left off is that [Husband's counsel] finished her direct of her client and he was about to be on cross...**since this is all [pending] issues**, there is this personal property division issue to be heard by the Court. So if [Husband's counsel] wants, she could put her client back up, talk to him about what personal property he wants from the house, **and we can just consolidate these last two issues, have a closing, and be done.**" See Transcript, p. 147, lines 2-13 (**emphasis added**)

In *Bailey v. State*, 299 Ga. 807 (2016), the Supreme Court held, "Georgia has long followed the contemporaneous objection rule, which provides that counsel must make a proper objection on the record at the earliest possible time to preserve for review the point of error. In the absence of a contemporaneous objection and ruling thereon at trial, [an issue] is not properly preserved for

⁷ See Transcript, p. 145, line 25. The Court responds, "You did and I did not recall it. You were uncharacteristically timid at the beginning." See Transcript, p. 146, lines 2-3.

appeal.” There is no exception to the contemporaneous objection rule that allows a party a brand-new window to object when a proposed order is submitted. Yet, Wife appears to believe that there are two trials – the one that happens in the courtroom and a second “trial-by-correspondence” that takes place when a proposed order is offered for a trial court. No such exception exists.

Wife chose not to make a record at the hearing on November 1, 2022. She referenced being entitled to ruling on “certain orders” without identifying what they were or on what order she sought a ruling. When later given the opportunity to make a record, she said she had already done that earlier in the day. See Transcript p. 145. When offered that opportunity a third time, Wife decided to move on to other topics. See Transcript, p. 147. As a result, Wife has waived her objections by not stating clearly what her objection was, by not stating the legal basis for the objection, and by not seeking a ruling when offered the opportunity to perfect her record.

In any event, a trial court is under no obligation to consider written objections to a proposed order “[e]ven when a trial court adopts a proposed order verbatim, the findings of fact therein are those of the court and may be reversed only if they are clearly erroneous.” *Grot v. Capitol One Bank*, 317 Ga. App. 786 (2012). The Court had no obligation to rule on objections to a proposed order. Indeed, the Court could have written its own order and filed it had it chosen to do so.

B. Wife’s second Notice of Objections was granted in part and denied in part through the Second Amended Final Decree, awaiting the Court’s signature.

C. Wife’s Third Notice of Objections was granted in part through the Court’s *Temporary Stay Regarding Sale of Marital Residence* entered on July 27, 2022.

D. Wife’s Fourth Notice of Objections was addressed at the hearing on November 1, 2022, whereby Wife presented evidence through direct testimony and cross examination as to her objections to the Second Amended Final Decree. This evidence directly related to Husband’s

Motion for Contempt and his allegation Wife failed to pay certain expenses. In ruling on Husband's Motion for Contempt, the Court declined to hold Wife in willful contempt, in part because she had purged herself of contempt by remedying her default. However, the Court ordered Wife to be responsible for an HVAC repair she incurred and is responsible for pursuant to the Second Amended Final Decree. Accordingly, the Court declines to modify or reconsider the Second Amended Final Decree. To the extent Wife's Fourth Notice of Objections seeks affirmative relief, it is DENIED.

4.

DEFENDANT'S MOTION FOR ATTORNEY'S FEES

Wife's *Motion for Attorney's Fees* is addressed by separate Order at her request. Such Order is incorporated herein by reference.

SO ORDERED this 30th day of Dec., 2022.



HON. G. GRANT BRANTLEY
Superior Court of Cobb County

Prepared by:
THE LEONARD FIRM

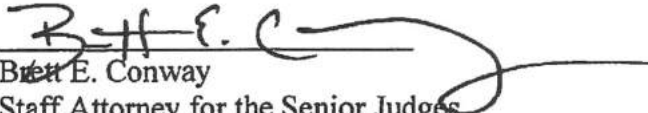
KATIE K. LEONARD
Georgia Bar No. 104057
Attorney for Plaintiff/Husband
351 Washington Ave., Suite 100
Marietta, Georgia 30060
kk@leonardfirmpe.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served the *Order* on Civil Action No.: **20106072**,
upon all parties to this matter by sending a true and correct copy by mail or by electronic means
to the following:

Daswani, Brandy - brandy@dsfamilylaw.net
Heredia, Hannibal - hheredia@hhfamilylaw.com
Jordan, Nancy - nijordan@ksfamilylaw.com
Key, Joseph Scott - skey@millerandkeylaw.com
Leonard, Katie - kk@leonardfirm.com
Leonard, Katie - kk@marplerubin.com
Martin, Jennifer R - jmartin@hhfamilylaw.com
O'Neil, Ashley - Ashley@leonardfirm.com
Rotenberg, Jonathan P.
- ehorowitz@hhfamilylaw.com
Rotenberg, Jonathan P
- jrotenberg@hhfamilylaw.com
Shewmaker, Steven
- sshewmaker@shewmakerlaw.com
Simon, Paul S - psimon@hhfamilylaw.com

This 30 day of December, 2022.


Brett E. Conway
Staff Attorney for the Senior Judges
Superior Court of Cobb County