

The Family Court of the State of Delaware

MICHAEL K. NEWELL
CHIEF JUDGE



NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9445
WILMINGTON, DELAWARE 19801-3703

February 15, 2016

C----- G-----B----
P.O. Box ----
-----, -- -----

Gregory D. Stewart, Esquire

P.O. Box ----
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LETTER DECISION AND ORDER

Re: C----- G-----B---- v. R----- S. B-----
File No.: CN14-02705; Petition Nos.: 14-11236; 15-16231

Dear Ms. G-----B---- and Mr. Stewart:

This is the Court's decision on the ancillary request for alimony (14-11236) and Petition - Rule to Show Cause (15-16231) filed by C----- G-----B---- ("Wife") following the dissolution of her marriage to R----- S. B---- ("Husband"). The Court conducted a series of hearings in this matter over the past nine months, as outlined below.

Procedural History

Husband and Wife were married on April 24, 1982. Although they separated on June 1, 2008, Wife did not file her Petition for Divorce and ancillary request for alimony until almost six years later on April 24, 2014. The parties were divorced by final decree of this Court on September 14, 2014, and their Rule 16(c) Financial Report was submitted on November 21, 2014. Both Husband and Wife first appeared before the Court representing themselves at a pre-trial conference on April 2, 2015. The Court subsequently issued an Order dated April 13, 2015 setting forth the documents that the parties were to exchange in advance of the alimony hearing.

The parties again appeared representing themselves at the alimony hearing on May 4, 2015. Upon the completion of Wife's testimony, she advised the Court that she had not received the documents Husband was required to produce pursuant to this Court's April 13, 2015 Order. As a result, the Court continued the matter until July 10, 2015. Husband was ordered to produce his profit and loss statement from January 2014 through March 2015, along with a handwritten compilation

of check distributions for 2015. Husband's testimony was to be completed at the July 10th hearing.

On June 8, 2015, Wife filed her Petition – Rule to Show Cause and alleged that Husband failed to produce the documents set forth in this Court's written Orders of April 13, 2015 and May 6, 2015.

Both parties appeared for the continuation of the alimony hearing on July 10, 2015. Gregory D. Stewart, Esquire ("Mr. Stewart"), who had formally entered his appearance on behalf of Husband on July 8, 2015, also appeared in Court. At the beginning of the hearing, Wife represented that she had not timely received the discovery from Husband as ordered by the Court; accordingly, she requested that the hearing again be continued. Mr. Stewart acknowledged that Husband provided Wife with the discovery just prior to the July 10th hearing and did not oppose Wife's request. The Court granted the continuance and rescheduled the hearing for October 8, 2015. Wife's Petition – Rule to Show Cause was consolidated for the hearing.

Husband and Mr. Stewart were present in Court on October 8, 2015; however, Wife did not appear for the hearing. The Court consequently issued an Order that same date dismissing both of Wife's petitions. Wife filed a Motion to Reopen on October 10, 2015, claiming that she had mistakenly noted October 9th as the hearing date. The Court granted Wife's Motion over Husband's opposition and reopened the matter pursuant to an Order dated November 5, 2015.

Husband, represented by Mr. Stewart, and Wife, representing herself, appeared for the hearing on January 12, 2016. The Court heard the remaining evidence on Wife's petitions, including Husband's testimony and updated testimony from Wife. Wife maintains that she is unable to meet her reasonable expenses and is dependent upon Husband for support. The Court will set forth the testimony received at the May 4th and January 12th hearings under the § 1512 factors below.

Cohabitation

Mr. Stewart questioned Wife regarding a prior romantic relationship in which she was involved with M--- T----- ("Mr. T-----") after the parties separated. Wife testified that Mr. T----- lived with her "occasionally" between 2012 and 2013 while she was residing at M----- Run and D----- Acres, as discussed below. According to Wife, Mr. T----- stayed with her "on and off" for a total period of ten months. She asserted that he also lived at his mother's home, which was his permanent mailing address; however, she admitted that Mr. T----- has stayed with her for up to two months continuously to keep her company. Wife told the Court that she has not been in a relationship with Mr.

T----- in over two years. She did not have any other paramours following her divorce and is not currently in a romantic relationship.

Pursuant to 13 Del. C. § 1512(g):

“Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony. As used in this section, ‘cohabitation’ means regularly residing with an adult of the same or opposite sex, if the parties hold themselves out as a couple, and regardless of whether the relationship confers a financial benefit on the party receiving alimony. Proof of sexual relations is admissible but not required to prove cohabitation. A party receiving alimony shall promptly notify the other party of his or her remarriage or cohabitation.”

Notwithstanding the testimony regarding Wife’s cohabitation, the Court need not conduct a cohabitation analysis under § 1512(g) with respect to Wife’s relationship with Mr. T-----, as § 1512(g) “is a termination statute, not an eligibility statute for alimony” under Delaware law.¹ Delaware Courts have held that where a party has cohabitated, but the cohabitation ends prior to the time the party becomes an “alimony recipient,” § 1512(g) does not preclude an award of alimony.²

Similar to the wives in *Sylvester v. Monroe*³ and *M.O. v. J.C.C.*,⁴ the evidence in this case clearly demonstrates that Wife was not a “party receiving alimony” under § 1512(g) prior to or during the time of the alleged cohabitation. In fact, Wife did not file her petition for alimony until 2014, which is at least one year after her relationship with Mr. T----- ended. Therefore, Wife’s prior alleged cohabitation with Mr. T----- is not a barrier to her eligibility for alimony.

Legal Standard

Pursuant to 13 Del. C. § 1512, the Court may award alimony to a dependent party.⁵ In order to be awarded alimony, Wife must prove that she is

¹ See *D.F.M. v. S.R.M.*, 2005 WL 1869244, *4 (Del. Fam. Jan.24, 2005) (citing *Sylvester v. Monroe*, 660 A.2d 395 (Del. 1995), and *In re the Marriage of Pizzichili*, 1999 WL 33100141 (Del. Fam. Nov.17, 1999)).

² See *Sylvester v. Monroe*, 660 A.2d 395 (Del. 1995), *In re the Marriage of Pizzichili*, 1999 WL 33100141 (Del. Fam. Nov.17, 1999), and *M.O. v. J.C.C.*, 2010 WL 4278285 (Del. Fam. Aug. 24, 2010).

³ *Sylvester v. Monroe*, 660 A.2d 395 (Del. 1995).

⁴ *M.O. v. J.C.C.*, 2010 WL 4278285 (Del. Fam. Aug. 24, 2010).

⁵ Pursuant to 13 Del. C. § 1512 (1995):

dependent upon Husband for support and that Husband is not contractually or otherwise obligated to provide for Wife's support after the divorce. The Court must also find that Wife lacks sufficient property, including any award of marital property, to provide for her reasonable needs. Finally, although an alimony recipient generally has the duty to obtain employment,⁶ the Court must conclude that Wife is unable to support herself through appropriate employment.

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- (a) The Court may award interim alimony to a dependent party during the pendency of an action for divorce or annulment.
 - (b) A party may be awarded alimony only if he or she is a dependent party after consideration of all relevant factors contained in subsection (c) of this section in that he or she:
 - (1) Is dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide that support after the entry of a decree of divorce or annulment;
 - (2) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs; and
 - (3) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that he or she may not be required to seek employment.
 - (c) The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of all relevant factors, including, but not limited to:
 - (1) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;
 - (2) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
 - (3) The standard of living established during the marriage;
 - (4) The age, physical and emotional condition of both parties;
 - (6) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
 - (7) The ability of the other party to meet his or her needs while paying alimony;
 - (8) Tax consequences;
 - (9) Whether either party has forgone or postponed economic, education or other employment opportunities during the course of the marriage; and
 - (10) Any other factor which the Court expressly finds is just and appropriate to consider.

⁶ Pursuant to 13 Del. C. § 1512(e) (1995):

- (e) Any person awarded alimony has a continuing affirmative obligation to make good faith efforts to seek appropriate vocational training, if necessary, and employment unless the Court specifically finds, after a hearing, that it would be inequitable to require a person awarded alimony to do so (i) at any time, due to (A) a severe and incapacitating mental or physical illness or disability or (B) his or her age, or (ii) immediately, after consideration of the needs of a minor child or children living with him or her.

§ 1512(c) Factors

- (1) *The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;***

(a) Wife's Income

During the parties' marriage, Wife worked as a grocery store clerk at Pathway. She also worked as a bookkeeper for the family-owned robo-automation company and was a 50% owner of three Firehouse Barbeque restaurants along with Husband.

Wife has been employed as a bookkeeper at S----'s Road Service in Elkton, Maryland on a full-time basis since December 2011. She is also trained as an Emergency Medical Technician ("EMT"). At the time of the May 4, 2015 hearing, Wife reported that her gross annual income for 2014 was as follows: \$37,574.88 from her employment with S----'s Road Service, and \$1,170.00 from employment as an EMT for Dover Speedway. Thus, Wife's total gross annual income for 2014 was \$38,744.88.

At the second hearing on January 12, 2016, Wife provided the Court with an update regarding her annual income. According to a paystub from S----'s Road Service dated March 15, 2015, her year-to-date gross wages for 2015 at that time totaled \$9,158. She reported that she is paid \$19 per hour, or roughly \$760 on a weekly basis. Although her paystub reflected four hours of overtime, she asserted that she does not typically work overtime hours. Wife also indicated that she earned \$600 as an EMT in 2015. Despite Wife's representation that she continues to earn roughly \$38,000 in gross annual income from S----'s Road Service, Mr. Stewart calculated that, at the rate reflected in her March 15, 2015 paycheck, Wife's gross income for 2015 would have been over \$40,000.

Wife further testified that her 1993 Jeep Wrangler broke down on January 8, 2016, causing her to miss work on January 11, 2016. Since she has no method of transportation and cannot afford a new vehicle, Wife anticipates that she will continue to miss work. On cross-examination by Mr. Stewart, Wife asserted that there also are no buses that she could take to Elkton, Maryland for work. Wife represented that her boss, who is her ex brother-in-law, has been patient in allowing her to work from home; however, her presence is crucial since she is the only employee that remains in the office all day. Wife believes she will have to use vacation time to cover any days missed.

Based upon the evidence presented and the lack of evidence regarding Wife's total income for 2015, the Court will use her 2014 income of **\$38,745.00**⁷ for purposes of calculating alimony. Wife remains employed in the same capacity to date, and she did not present any evidence that her 2015 gross annual income was less than it was in 2014.

(b) Wife's Expenses

Mr. Stewart asserted that Wife has been living independently ever since the parties separated in 2008. Wife testified that she moved into a two-bedroom apartment in C----- M----- on June 1, 2008, where she resided for two and a half years. Wife lived in this apartment alone for most of the time, although her son, grandson, and her grandson's mother temporarily stayed with her. Wife paid about \$800 per month in rent plus electric expenses, renter's insurance, car insurance, and health insurance. Wife continued to drive an Infinity, which was leased through Rithum Automation, while residing at C----- M-----; however, she eventually turned that car in and purchased an old vehicle on which she made monthly payments. Wife acknowledged that she was earning enough to pay her expenses at that time.

Wife subsequently moved to a two-bedroom rental condominium in M----- Run, where she resided from 2010 through 2012. She paid rent in the amount of \$1,030 per month, plus all utility expenses and insurance. She conceded that she was able to pay "most bills" at this residence as well. Wife resided alone most of the time at M----- Run; however, Mr. T----- occasionally stayed with her "on and off."

From 2012 through 2014, Wife resided in a two-bedroom rental home in D----- Acres. Mr. T----- also stayed with Wife periodically at this residence. Wife's rental expense ranged from \$800 per month to \$1,000 per month, plus utilities. Wife testified that she became delinquent with her rent and electric payments.

After moving out of D----- Acres, Wife spent three weeks at her mother's home before relocating to her current residence at ---- - Drive. Wife rents a room from the homeowner, P---- C----- ("Ms. C-----"), who also resides in the home along with her adult son, A-----. Wife currently pays \$500 per month in rent plus \$126 per month for a storage unit, which she conceded is significantly less than the monthly rental expenses she afforded from 2008 through 2014. However, Wife asserted that she will soon need to find another place to live, as Ms. C----- plans to sell the home. According to her expense sheet, Wife estimates that her rental expense will increase to \$1,200 per month. Mr. Stewart pointed out that Wife testified about her imminent need to relocate at the hearing on May 4, 2015; however, as of the January 12, 2016 hearing,

⁷ The Court will round Wife's total 2014 gross income of \$38,744.88 to \$38,745.00 for purposes of calculating alimony.

the home still had not been sold. Wife admitted that she does not have any future housing plans at this time.

Nonetheless, Wife contends she is unable to meet her expenses and is dependent upon Husband for support. In her rebuttal testimony, Wife explained that she was able to support herself from 2008 until 2011 because she was earning \$41,600 in gross annual income at that time. Wife was employed at a mushroom company owned by D----- M----- (“Mr. M-----”) in L-----, Pennsylvania, where she worked in sales and accounting from 2008 through 2010. Mr. M----- then sold the company to Southmill Mushrooms, where Wife continued to work until 2011 as an hourly employee earning approximately the same annual income. Wife testified that in 2011 she began experiencing difficulties with her Oldsmobile Bravada, which interfered with her ability to travel to work. Wife’s ex brother-in-law offered to give her his 1993 Jeep Wrangler if she would come work for him at S----’s Road Service.

As noted above, Wife remains employed at S----’s Road Service to date and earns a reduced gross income of \$38,744.88 per year. Wife asserts that she is no longer able to afford her monthly expenses on this income.

Wife alleges the following current and estimated monthly expenses:

	Current	Estimated
Rent ⁸	\$626.00	\$1,200.00
Electric		100.00
Cable Television		60.00
Cell phone	120.00	120.00
Groceries	550.00	550.00
Clothing	120.00	120.00
Medical Insurance ⁹	475.15	475.15
Out-of-pocket medical & dental expenses for self	200.00	184.00
Toys and presents	50.00	50.00
Cosmetics and toiletries	50.00	50.00
Barber and hairdresser	60.00	60.00
Vacation		167.00
Entertainment and miscellaneous	100.00	100.00
Transportation (other than auto) [tolls]	160.00	160.00

⁸ Wife testified that she currently pays \$500.00 per month for the rental of her room and \$126.00 for a storage unit. Pursuant to her expense sheet, which was submitted with her Rule 16(c) Financial Report, she estimates a rental expense of \$1,200.00 for when she moves.

⁹ According to Wife’s paystub, she incurs an after-tax weekly deduction of \$109.65 for medical insurance, or a total of \$475.15 per month. The Court includes this as an expense to Wife.

Automobile			
	Monthly Payment		500.00
	Repairs and maintenance	120.00	0
	Insurance	91.00	120.00
	Gasoline	250.00	250.00
Other:			
	Renter's Insurance	23.84	23.84
TOTAL		\$2,995.99	\$4,289.99

The Court notes that Wife's estimated rental expense of \$1,200 is speculative at this time, as she has no current plans for housing upon her supposedly impending relocation. Nonetheless, the Court will accept this expense as reasonable since it is comparable to Husband's current rental expense, as outlined below, and since a \$1,200 monthly allotment for rent would facilitate Wife's ability to relocate by expanding her rental options. The Court also accepts Wife's estimated monthly electric and cable expenses of \$100 and \$60, respectively, as reasonable for those same reasons.

Additionally, the Court notes that Wife's expense sheet reflects a current monthly allotment of \$120 for automobile repairs; however, no such allotment is included in her estimated expenses. In light of Wife's updated testimony regarding recent automobile issues, the Court will adjust Wife's expenses by adding back \$120 for automobile repairs.

The Court accepts all of Wife's other estimated expenses as reasonable and establishes her total monthly expenses at **\$4,410.00**¹⁰ for purposes of calculating alimony. As demonstrated by Exhibit "A," attached, Wife has a monthly **deficit** of **\$1,868.00** after weighing her income against these reasonable expenses. Therefore, Wife lacks sufficient resources to provide for her reasonable needs and is **dependent**.

(2) *The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;*

The Court finds that Wife is appropriately employed given her education and employment history.

(3) *The standard of living established during the marriage;*

¹⁰ This figure was calculated by adding \$120 for automobile repairs to the sum of Wife's estimated expenses of \$4,289.99. The Court rounded the total balance of \$4,409.00 to \$4,410.00 per month.

According to Wife, the parties had a “wonderful” standard of living while married. The couple shared a 6,000 square foot home with a pool, a beach house, and a 52 foot yacht. She further testified that while the parties were married, she was accustomed to driving new cars, having an “ample amount clothing of her choice,” and attending regularly scheduled hair appointments.

Wife asserted that she is now living “paycheck-to-paycheck” and does not have enough money to meet her expenses. Whereas she used to drive new cars, including an Infinity, Audi, and Ford Excursion, she now owns a 1993 Jeep, which recently broke down. Wife has also had to purchase clothing from Goodwill and forfeit her professional hair appointments. As noted above, Wife is currently renting a bedroom in a home that she alleges will soon be sold by the owner.

Although the yacht purchased during the marriage was registered in both parties’ names with the U.S. Coast Guard, Wife testified that she does not know what happened to it since the parties’ divorce. Upon cross-examination by Husband, Wife claimed that she did not recall the bank repossessing the yacht in 2008 and denied being contacted by Key Bank. Wife also did not recall seeing a brokerage agreement on the sale of the boat.

According to Husband, the parties obtained a mortgage from Key Bank in the amount of \$400,000 in order to purchase the yacht in 2008.¹¹ They subsequently obtained a second mortgage on the boat for roughly \$200,000 through Husband’s business partner, A----- H----- (“Mr. H-----”), when they were in need of money. Husband testified that the yacht was foreclosed upon by Key Bank six or seven years ago, and after recouping his share, Mr. H----- put the money towards debt owed to him by the parties.

Wife asserted that Husband is currently living a more comfortable lifestyle. She testified that Husband and his paramour, K-- H--- (“Ms. H---”), often go on vacations and drive nice cars. However, on cross-examination by Wife, Husband indicated that he drives a 2010 SRX Cadillac that is owned by Mr. H-----. According to Husband, the vehicle has 112,000 miles on it and he is required to pay for any non-work related mileage. Husband testified that he has not personally owned a vehicle since 2009.

Further, Husband testified that he rarely takes any vacation but for an occasional weekend away. He takes advantage of opportunities to travel for business when possible, which he is not required to pay for. Husband also informed the Court

¹¹ Wife denied signing off on this mortgage and claimed that her signature on the last page of the agreement, submitted as Petitioner’s Exhibit 6, was forged. Husband pointed out that the signature was notarized and stressed that a notary would not jeopardize her livelihood by perpetrating fraud if Wife had not been present to sign.

that he would accompany Ms. H--- on business trips free of charge while she was working for a travel agency that required her to travel one to two weeks at a time, several times a year. However, Ms. H--- stopped working in that capacity in 2014.

On cross-examination by Wife, Husband admitted that Ms. H--- has a private account on a “swing” lifestyle website for which she paid a one-time lifetime membership. He denied being a member himself but conceded that he accompanies Ms. H--- to some weekend events and that she occasionally entertains friends at their home. However, Husband alleged that he does not pay to attend events and that there is no money exchanged for entertaining friends at their home.

(4) *The duration of the marriage;*

The parties were married on April 24, 1982, separated on June 1, 2008 and were divorced by final decree of this Court on September 14, 2014, ending a marriage of over thirty one years.

(5) *The age, physical and emotional condition of both parties;*

Wife is 56 years old. She testified that she has battled with depression since 2008 and is prescribed anti-depressant medication. She also takes prescription medication for migraine headaches. Wife further represented that she will need carpal tunnel surgery on both hands as well as rotator cuff surgery on her right shoulder and possibly her left shoulder. Since Wife does not receive paid sick time at work, she will either have to use vacation days or forego hourly wages. However, she admitted on cross-examination that she has not yet scheduled any of those surgeries, and she had no documentation to verify the need for the surgeries. Although she experiences some pain and occasionally misses work to attend doctors’ appointments, Wife’s health concerns do not prohibit her from maintaining full-time employment.

Husband is fifty-seven years old. He represented that he is in fairly good physical and mental health but is prescribed medication for blood pressure issues.

(6) *Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;*

No evidence was presented with respect to this factor.

(7) *The ability of the other party to meet his or her needs while paying alimony;*

(a) Husband's Income

Husband receives a 20% partial ownership share of Rithum Automation but is not an employee of the company. Rithum Automation, which refurbishes old technical equipment, was established in 2009 and is owned by Husband, Mr. H-----, and the parties' son, Brandon B----. Husband represented that he did not have to buy his interest and that it was "sweat equity" from his employment in 2009. Husband receives his ownership share as a straight percentage of before-tax profits, and his minimum monthly draw is \$2,500. In the event his minimum monthly draw exceeds 20% of the monthly profits, Husband is required to pay back the difference.

According to his income tax return, Husband earned only \$16,214 in gross income in 2013.¹² He told the Court that \$10,137 of this total came from his monthly draws from Rithum Automation, \$77 came from taxable interest, and the remaining \$6,000 came from a one-time "gambling windfall." Husband testified that he had to borrow money from Ms. H--- to cover his monthly expenses in 2013, which he is repaying.

Husband submitted a list of disbursements from Rithum Automation for the months of January 2014 through December 2014, which totaled \$38,999.95.¹³ Husband represented that he had no other source of income in 2014.

Husband has not yet submitted an income tax return for 2015. He testified that he received only the monthly minimum of \$2,500 in disbursements from Rithum Automation each month, which amounts to \$30,000 for the year. Husband further represented that he will be obligated to repay some amount to the company, as his minimum share exceeded the company's proceeds for certain months. Husband also currently owes \$2,500 to the company for a loan obtained to pay Mr. Stewart.

On cross-examination by Wife, Husband acknowledged that he previously charged \$175 per hour for his services with Rithum Automation during the marriage. However, he is no longer an hourly employee and receives income only from his 20% share of ownership. Husband denied that Ms. H--- receives income from Rithum Automation on his behalf; he told the Court that she has a minor ownership share in the amount of 2.5% for IT consulting work performed. Husband represented that he does not have a bank account in his name because "the IRS would take it." Instead, he deposits his monthly checks into an account in Ms. H---'s name only for his share of the bills.

¹² Husband submitted his income tax return for 2013 as Respondent's Exhibit 3.

¹³ Husband also submitted copies of his monthly checks in conjunction with this list of disbursements, which were admitted collectively as Respondent's Exhibit 4.

Based upon the evidence presented and the lack of evidence regarding Husband's income for 2015, the Court will use Husband's 2014 annual income of **\$39,000.00**¹⁴ for purposes of calculating alimony.

(b) Husband's Expenses

With respect to his expenses, Husband told the Court that he resides with Ms. H--- and shares all monthly expenses with her equally in accordance with their agreement. Husband alleges that his share of current and estimated monthly expenses is as follows:

	Current	Estimated
Rent	1025.00	\$1075.00 ¹⁵
Water	19.00	20.00
Electric	175.00	180.00
Gas	125.00	125.00
Cable Television / Internet / Phone	129.00	129.00
Household Items	80.00	80.00
Groceries	450.00	450.00
Clothing	90.00	90.00
Out-of-pocket medical & dental expenses for self	250.00	325.00 ¹⁶
Laundry and Dry Cleaning	25.00	25.00
Barber and hairdresser	20.00	20.00
Newspaper and Magazine Subscriptions	22.00	22.00
Vacation	60.00	100.00
Entertainment and miscellaneous	100.00	100.00
Automobile		
	Gasoline	100.00
Other: ¹⁷		
	IRS Lien (\$2033)	100.00
	IRS Lien (\$7200)	440.00
	Debt Payment to Mr. H-----	500.00
	Citi Bank and Chase Judgments	0.00
		750.00 ¹⁸
		400.00

¹⁴ The Court rounded his total 2014 income of \$38,999.95 to \$39,000.00.

¹⁵ Husband submitted his rental agreement as Respondent's Exhibit 2 to demonstrate that the total rental expense for his residence is now \$2,150 per month. Thus, his 50% share amounts to \$1,075.

¹⁶ Husband testified that his out-of-pocket medical expenses have increased on account of new prescription blood pressure medication, for which he does not have insurance.

¹⁷ The Court accepts Husband's estimated monthly expenses for debt repayments and will discuss the parties' debts in factor (10).

¹⁸ Husband told the Court that, pursuant to a security agreement with Mr. H-----, he was originally repaying debt owed at a rate of \$2,500 per month for a period of one year, which was then reduced to \$500 per month for five years. However, the monthly payment recently increased to \$750 per month pursuant to that same agreement.

TOTAL **\$3710.00** **\$4351.00**

The Court makes the following adjustments to Husband's reasonable monthly expenses.

In light of Husband's testimony that he does not pay for vacation in the rare event that he does travel, the Court omits his estimated monthly vacation expense of \$100. The Court otherwise accepts Husband's estimated expenses as reasonable, including his monthly payments on debt which the Court will discuss further in factor (10). Thus, Husband's reasonable expenses amount to **\$4,251.00** per month for alimony purposes.

Pursuant to the alimony calculation attached as Exhibit "A," after consideration of Husband's income and monthly expenses, Husband has monthly **deficit** of **\$1,694.00** before payment of alimony. Thus, Husband does not have the financial means to pay alimony to Wife.

(8) Tax consequences;

The Court takes judicial notice that alimony is taxable income to the recipient and is tax-deductible by the obligor.

(9) Whether either party has foregone or postponed economic, education or other employment opportunities during the course of the marriage; and

Wife is a high school graduate. Approximately twenty years ago, she took a few accounting courses at Delaware Technical and Community College ("DTCC"). According to Wife, she attempted to go to college, but it "interfered with her family responsibilities." Wife has no immediate plans to further her education but believes she may need to. Husband presented no testimony related to this factor.

(10) Any other factor which the Court expressly finds is just and appropriate to consider.

Husband contends that the parties reached an agreement at the time of separation pursuant to which he would be responsible for all of the joint marital debt and divorce fees if Wife agreed to a "simple" divorce with no actions for property division or alimony. Husband feels that he has honored his terms of the agreement, as he has been solely responsible for the marital debts; however, Wife has pursued this alimony claim nonetheless. This agreement was never memorialized in writing, but Husband

testified that he “may have some emails” regarding the agreement. Husband presented no documentary evidence to verify the existence of an agreement at the hearing.

Wife recalled that Husband agreed to pay the joint marital debts upon their separation; however, she denied that she agreed to waive alimony. On cross-examination by Mr. Stewart, Wife acknowledged that she allowed Husband to bear the responsibility for all of their joint debts but asserted her belief that she took no part in incurring them.

The parties’ marital debts were related to their joint ownership and operation of three Firehouse Barbeque restaurants in Delaware and Maryland beginning in 2005. They obtained several loans to support their joint venture, including a \$100,000 loan from Mr. H----- in December 2007. Wife asserted that she knew nothing about the debts incurred on behalf of Firehouse Barbeques, but she acknowledged signing several documents without reading them at the time of the company’s initiation since she trusted Husband.

The company ultimately became financially unsustainable, and all three locations were shut down between 2008 and 2009. Husband informed the Court that Mr. H----- had liens on “just about everything they owned;” he attempted to pay down the debt by selling marital property and performing IT work for Mr. H-----’s company. However, there is still a large outstanding balance on the debt, which Husband has been unilaterally paying off. Husband represented that he originally made payments to Mr. H----- in the amount of \$2,500 per month for about a year, which was then reduced to \$500 per month for about five years. Pursuant to their agreement, Husband is currently repaying Mr. H----- at a rate of \$750 per month.

But for her interest in the proceeds of any marital property sold to pay down the debt, Wife has made no contributions towards the debts. Husband is not requesting that Wife contribute in light of their alleged agreement; rather, he would like the debt repayments to be considered as a part of his monthly expenses.

§ 1512 Alimony Conclusion

As demonstrated by Exhibit “A,” Husband does not presently have the financial ability to pay alimony to Wife as required by § 1512(c)(7) for any alimony award. Although the Court determined under factor (1) that Wife is dependent and unable to afford her monthly expenses at this time, Husband similarly has a monthly deficit of \$1,694.00 after comparing his income and expenses under factor (7). Both parties are living beyond their means. For that reason, the Court **DENIES** Wife’s request for alimony.

The Court also notes under factor (3) that the parties apparently enjoyed an affluent standard of living during the marriage. However, it appears from Husband's testimony that their style of living was maintained by an extensive amount of borrowed money rather than by marital property or income earned. Thus, Wife's complaint that she is no longer able to enjoy such a lifestyle cannot be remedied through payment of alimony.

Further, with respect to the parties' alleged agreement under factor (10), Husband presented no material evidence to demonstrate that he agreed to assume all marital debt in exchange for Wife's waiver of alimony. The Court therefore did not place weight on this agreement in its analysis and finds that Wife is not precluded from an award of alimony under § 1512(f).¹⁹

However, Wife conceded that Husband has unilaterally assumed responsibility for all of the marital debts and that she has not made any payments. Based upon that uncontested fact, the Court included Husband's monthly debt payments in his reasonable expenses. Notwithstanding Wife's contention that she had no part in incurring the debts and was unaware of the extent thereof, Wife undoubtedly shared in the financial benefits of the loans obtained over the course of the marriage, including any profits from her joint ownership of Firehouse Barbeque. Therefore, the fact that Husband's unilateral repayment of those debts renders him unable to pay alimony under factor (7) is a just and inevitable outcome, regardless of the existence of any agreement between the parties.

* * * * *

Petition - Rule to Show Cause

Wife's petition for alimony was originally scheduled for a hearing on May 4, 2015. However, Wife represented at that time that she had not yet received the discovery that Husband was required to produce pursuant to this Court's pre-trial Order dated April 13, 2015. Accordingly, the Court continued the matter until July 10, 2015.

Wife subsequently filed her Petition – Rule to Show Cause on June 8, 2015, alleging that Husband had still not produced the requested documents, including a profit and loss statement from January 2014 through March 2015 and a handwritten compilation of his check distributions for 2015. When the parties appeared before the Court on July 10, 2015, Wife informed the Court that she had only received the requested documents from Husband just prior to the hearing. Without opposition from

¹⁹ Pursuant to § 1512(f), “[a] party who has in writing before, during or after the marriage waived or released his or her right to alimony shall have no remedy under this section.”

Mr. Stewart, the Court continued the matter again at Wife's request until October 8, 2015.

Wife failed to appear for the October 8th hearing, and her petition for alimony and Petition – Rule to Show Cause were dismissed. The Court subsequently granted Wife's Motion to Reopen with respect to both petitions in an Order dated November 5, 2015, and the hearing was scheduled for January 12, 2016. Aside from repeating her allegations above, Wife presented no further evidence in support of her Petition – Rule to Show Cause at that hearing.

Although Husband initially failed to comply with the deadline set for discovery in the April 13th pre-trial order, Wife acknowledged her receipt of the requested documents at the July 10th hearing. Since Husband had only provided her with those documents "just prior" to the July 10th hearing, the Court granted Wife's request for a continuance at that time. In light of that continuance, as well as the additional postponement of this matter due to Wife's failure to appear for the October 8th hearing, Wife should have had ample time to review the documents provided by Husband on July 10th in preparation for this hearing. Other than her request for a continuance, which was granted by the Court, Wife requested no further remedy for Husband's initial failure to comply with the April 13th Order. Accordingly, the Court **DENIES** her request for any further relief related to the Petition – Rule to Show Cause.

ORDER

THEREFORE, IT IS HEREBY ORDERED this 15th day of September, 2016 that:

1. Wife's request for alimony is **DENIED**.
2. Wife's Petition – Rule to Show Cause is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/ Michael K. Newell /

MICHAEL K. NEWELL, Chief Judge

G-----B---- v. B---- – Exhibit “A”

AFTER-TAX CASH & SUPPORT (Monthly Amounts)

	2015		
Last Name: B---- / G-----B----	R-----	C-----	Total
1 Salary	3,250	3,229	
2 Self-Employment Income	0	0	
3 Social Security Income	0	0	
4 Interest and Dividends	0	0	
5 Other Taxable Income	0	0	
6 Misc Taxed CS Income	0	0	
7 Tax Exempt Interest	0	0	
8 Other Nontaxable Cash	0	0	
9 Cash Perks	0	0	
10 Other Deductions from Gross	0	0	
11 Support Previous Marriage	0	0	
12 Alimony-Current Divorce	0	0	
13 Non-Tax Maintenance (cur div)	0	0	
14 Gross Cash for Support	3,250	3,229	6,479
15 Payor's % 50.16%			
LESS: CASH FLOW DEDUCTIONS			
16 Federal Income Tax	320	317	
17 State Income Tax	124	123	
18 Soc Sec/Self-Employment Tax	249	247	
19 Local Income Tax	0	0	
20 Cash Deduction	0	0	
21 Mandatory Pension	0	0	
22 Other Net Deductions	0	0	
23 Total Deductions	693	687	
24 Cash Before Support	2,557	2,542	5,099 <u>Spt as % of</u>
25 Payor's % 50.15%			Net Cash Both
26 Child Support	0	0	0%
27 Cash After Support	2,557	2,542	
28 Other Cash Item (Addition)	0	0	
29 Voluntary Pension	0	0	
30 Cash to Meet Living Expenses	2,557	2,542	5,099
31 Required Cash - Budget	4,251	4,410	8,661
32 Cash Over/Under Budget	(1,694)	(1,868)	(3,562)
33 % Share Cash	50.1%	49.9%	100%
34 Filing Status	Single	Single	
35 Children Age 17 && Over	0	0	
36 Children Under Age 17	0	0	
37 Value Child Dep Exemption	0	0	0
38 Value Under 17 Child Credit	0	0	0
39 Value of Both	0	0	0
40 Children Residing With	0	0	
41 Marginal Federal + State Tax %	20.6%	20.6%	
42 Tax Impact-Alimony	0	0	0