THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

R------ D-----, : File No. CN22-02379
: Petition No. 22-11199
Petitioner, :
:
v. :
:
D-------- M------, :
:
Respondent. :
:

Background

This case involves a long and contentious unwinding of marital assets between R------ D----- ("Husband") and D-------- M------ ("Wife"). The parties were married on May 26, 2012, separated on November 30, 2021, and Husband filed for divorce on March 7, 2022. Initially, Wife's address was unknown, so the Court published notice of the divorce on June 6, 2022. With no response from Wife, the Court signed the divorce decree on August 30, 2022. On October 19, 2022, Wife filed a Petition for Alimony citing financial hardship and difficulty maintaining employment.[1] At first, the Court dismissed the Petition for Alimony since the divorce was complete and alimony could only be obtained during the pendency of an action for divorce or annulment.[2] On March 20, 2023, Wife then filed a Motion to Reopen the Divorce pursuant to Rule 60(b) averring that Wife was never served with the divorce petition, which Husband opposed.[3] On May 24, 2023, the Court erroneously granted the Motion reflecting there was no opposition.[4] The case then transferred from one Judge to another due to recusal.

Soon after, Husband filed a Motion for Reargument on June 7, 2023,[5] and the Court

---

[1] Tab 21, CN22-02379, Petition 22-23500.
[2] Tab 28, January 25, 2023.
[3] Tab 38, Tab 39.
[4] Tab 56. File CN22-02379, Petition 22-11199.
[5] Tab 59.

subsequently vacated the Order reopening the divorce. The Court then scheduled an Evidentiary Hearing regarding the Motion to Reopen on September 20, 2023.[6] Following an evidentiary hearing, the Court granted Wife's Motion to Reopen based on extraordinary circumstances under Family Court Civ. Rule 60(b)(6). Wife then filed a Notice for Ancillary Jurisdiction over property division, alimony, attorney's fees, and court costs.[7] Husband filed a Motion for Reargument on October 5, 2023. That same day, the Court ordered a new divorce decree, a name change for Wife to D-------- A------ M------, and gave Husband the opportunity to argue the enforceability of an existing Separation Agreement between the parties.[8] Soon after, Wife filed a Motion to Set Aside the Separation Agreement as unconscionable, which Husband opposed.[9]

On January 24, 2024, the Court ruled on three pending issues. First, that the divorce decree should have been backdated to the original date of August 30, 2022.[10] Second, the Court set aside the Separation Agreement and found it unconscionable because Husband was the dominant party, there was evidence of ongoing physical and mental abuse during the marriage, and because of Wife's unfavorable financial position during the marriage. Third, the Court denied Wife's request for Interim Relief without prejudice regarding funds held in escrow because the marital property had not yet been sold.

Soon after, Husband filed an Interlocutory Appeal in the Delaware Supreme Court regarding the enforceability of the parties' reconciliation agreement and whether the Family Court had jurisdiction to retain ancillary matters. The Family Court denied certifying the interlocutory appeals,[11] which the Delaware Supreme Court summarily dismissed and refused.[12]

Concurrently, Wife filed a Motion for Interim Alimony on February 15, 2024, because she maintained she was dependent on Husband.[13] Husband opposed and filed a Motion to Dismiss,[14] along with his Ancillary Financial Disclosure Report.[15] Following a Case Management Conference, the Court denied Husband's Motion to Dismiss and Husband's Motion for Interim Relief on April

---

[6] Tab 60/61.
[7] Tab 69, September 27, 2023.
[8] Tab 73 and 85.
[9] Tab 82. October 18, 2023.
[10] Tab 98, 107-111 *Nunc Pro Tunc* Divorce Decree.
[11] Tab 92-93, February 2, 2024. Tab 99.
[12] *Dorsey v. Dorsey*, No 70, 71 (Del. Sup. Ct., Feb. 29, 2024).
[13] Tab 94.
[14] Tab 101.
[15] Tab 104.

18, 2024.[16] In addition, the Court preserved Wife's request for attorney's fees from litigating the Interlocutory Appeal.[17]

On May 14, 2024, Husband filed a Motion To Dismiss For Lack Of Subject Matter Jurisdiction, which Wife opposed.[18] Soon after, the Court granted Wife's Request for Interim Alimony in the amount of $1096 per month and reserved Wife's request for attorney's fees for the full ancillary hearing. The Court denied Husband's request for fees and costs inclusive of his private investigator fees, which sought to prove Wife's cohabitation with a boyfriend. On June 4, 2024, the Court issued an order denying Husband's Motion to Dismiss because the Court properly assumed jurisdiction over the ancillary matters and permitted Wife to seek attorney's fees.[19] On June 13, 2024, Husband filed a Motion for Reargument.[20] At the same time, Husband filed a Motion for Leave to Sell Real Estate.[21]

Upon realizing the marital property would be sold, Wife filed an Emergency Motion to Halt the Sale of the Home based on concerns that the home was undervalued and the proposed buyer was Husband's new wife's relatives.[22] Wife simultaneously filed a Motion to Dismiss, Motion for Contempt, and Motion for Sanctions.[23] The Court permitted the sale of the home, but instructed the proceeds to be retained in escrow with Delaware counsel.[24] Based on repeated litigation of substantially similar issues regarding the Court's jurisdiction of ancillary matters, the Court denied Husband's Motion for Reargument to Dismiss on June 24, 2024.[25]

The parties submitted their ancillary pretrial stipulation on July 11, 2024, in advance of the trial scheduled for September 4, 2024.[26] Shortly before the trial date, Wife filed an emergency Motion to Continue after discovering other bank statements and documents that had not previously been provided by Husband to Wife. The Court granted Wife's continuance in the interest of justice,[27] and

[16] Tab 114-115.
[17] *Id.*
[18] Tab 115, 117.
[19] Tab 121.
[20] Tab 125.
[21] Tab 125.
[22] Tab 126.
[23] Tab 127, June 17, 2024.
[24] Tab 130, June 24, 2024.
[25] Tab 131, 132.
[26] Tab 135.
[27] Tab 137, 138.

set a new trial date for November 15, 2024. On the eve of trial, Wife's attorney filed a Motion to Withdraw, which the Court denied because Wife's position was not reflected within the Motion. As a preliminary matter during the trial, the Court asked Wife if she wished to proceed with her current counsel even though he wished to withdraw. Wife's Counsel was prepared to proceed with the litigation, so Wife consented to retain her existing counsel. At trial, the following witnesses testified: Private Investigator Richard Frascella, S------ D------- ("Boyfriend"), Wife, J----- D----- (Wife's 17-year-old son), K---- M------ (Wife's Maternal Aunt and the couple's nanny), and Husband.

<u>Trial Testimony</u>

Richard Frascella

Richard Frascella is a licensed private investigator in New Jersey and owns RJ Frascella Investigations. He has been involved in surveillance operations for the past nine years. Prior to his surveillance operation, Mr. Frascella was a police officer for twenty-five years. Mr. Frascella charges $125 per hour for a surveillance case. He explained that surveillance operations to determine cohabitation cases may be accomplished by observing the parties on random and consecutive days. In October 2023, Husband retained Mr. Frascella to conduct a surveillance investigation regarding Wife's cohabitation with Boyfriend, S------ D-------. The surveillance was limited to observing the location where Wife and Boyfriend were believed to be living.

Mr. Frascella commenced the investigation on October 25, 2023, by conducting surveillance at -- L----- T--- D----, West Hampton, New Jersey. Based on the information he received from Husband, Wife drove a blue Hyundai Venue with a Delaware license plate; Boyfriend had a white Maserati. Mr. Frascella went to Boyfriend's address, which was a single-family home, and saw Wife's vehicle. The next morning at 7:16 am, Mr. Frascella took a picture of Wife's car in the same location. On October 26, 2023 at 6:00 pm, there were no vehicles at the residence. On October 29, 2023 at 8:16 pm, Mr. Frascella observed a U-Haul truck in the driveway, and it was not clear whether Wife's vehicle was still there. He observed items taken from the house and loaded in the truck. On October 30, 2023 at 7:14 am, the U-Haul truck was still in the driveway, and Wife's vehicle was also present. October 30, 2023 at 8:31 pm, Wife's car remained in the driveway. On October 31, 2023 at 7:19 am the U-Haul and Wife's car were still in Boyfriend's driveway. Later that evening, there were no cars in Boyfriend's driveway.

On November 12, 2023, Mr. Frascella received an allegation that Wife and Boyfriend moved to 1--- R------ P----, Sewell NJ. The next day, Mr. Frascella observed that Boyfriend's car was parked in a lot near Wife's apartment and Wife's car was parked in the driveway. On the morning of November 14, 2023, the vehicles were parked in the same location. On November 14, 2023 at 7:30 pm, Mr. Frascella observed the cars parked in the same general location, but the Maserati was parked in a different spot. On November 15, 2023 at 6:39 am, the cars were in the same lot but different parking spaces. On November 16, 20, 21, 29, and 30, 2023, Wife's car was in the driveway and Boyfriend's car was in an overflow lot. Mr. Frascella observed the cars in the same spots on December 7, 8, 10, 11, 22, 28, and 29, 2023. Mr. Frascella then conducted subsequent observations on February 18 and 19, 2024, and the cars were in the same respective parking spots. Mr. Frascella surmised that when vehicles are in the same spots late in the evening and the following morning, it is a good indication that the individuals being investigated live there.

However, Mr. Frascella did not attempt to see if Boyfriend owned any other cars. He never saw Wife and Boyfriend together, they never entered or exited the home during his surveillance periods, and it was not clear where the U-Haul truck went.

S------ D------- ("Boyfriend")

Boyfriend owns an e-commerce business. He testified that he has inconsistently dated Wife since April 2022, and they are currently dating again. In May 2022, Boyfriend lived at – L----- T--- D---- in Westhampton, NJ. He lived there for more than a year and moved out in November 2023 because he was evicted. He then moved in with his aunt at 1—A----- D----, Morristown, New Jersey. At the time he moved out in November 2023, he rented a U-Haul and arranged for some of his employees to help him move his belongings to storage units.

Boyfriend testified that he has never lived with Wife but would sometimes spend the night. He does not pay Wife's bills, does not have a key to her apartment, does not share anything financially, and does not have a joint credit card or bank account with Wife. Moreover, Boyfriend does not do household chores and limited his help to moving furniture. After he moved, he gave Wife his dog.

Boyfriend has two cars both registered in Pennsylvania: a 2008 Cadillac Escalade and a Maserati Grand Turismo. Because the Maserati is a sports car without snow tires, it is undrivable in the winter. He parks his Cadillac, which is his primary car, at his aunt's home where he has lived since moving from West Hampton, New Jersey. Last winter, the Maserati remained stored in Wife's parking lot because Boyfriend did not have room to keep the unwinterized car at his aunt's home.

D-------- M------

Wife is 35 years old and is certified as a medical assistant. Wife began dating Husband in 2010 and the couple married on May 26, 2012. This was her first marriage. Wife has a 17-year-old son, J-----, from a prior relationship, over whom Husband has guardianship. Wife also has two children with husband: A----- was born prior to the marriage on ------- --, 2012, and G------ was born on ---- --, 2015. During the marriage, Wife was primarily a homemaker between 2012 and 2018 and worked intermittently. For a period of time, the family had a nanny to help. The nanny, K---- M------ (who is Wife's Aunt), did not live with the family full time while Wife lived in the home.

At first, the couple lived in an apartment in Vining, New Jersey, and then moved to a home at --- -. ------- ---- Blackwood, NJ in September 2011. In 2021, the couple purchased a 4-bedroom home at --- ----- ------ in Bear, Delaware with the proceeds from the sale of their other home.

In terms of her employment history, Wife worked at ---- ----- in 2018. In 2019, she worked as a medical assistant. In 2020, Wife worked at ---------- -- ------------ as a medical assistant earning $15/hour. During most of the marriage, Wife did not work and instead stayed home with the children. Wife acknowledged that she was either fired or quit 6-7 jobs during the marriage.

Through the course of the marriage, Husband handled the finances. Husband paid the bills and worked full time and Wife had a credit card authorized under Husband's name. Since Husband controlled their finances, Wife would turn over her expense receipts. When she worked, Wife handed over her paycheck and, in turn, would receive an allowance from Husband. Her highest wages during the marriage were in 2020, when she earned $19,869.[28] In 2021, Wife's total wages were $11,268. In 2022, her total wages were $18,944. In 2023, Wife's total wages were $7,005 and she received unemployment for six months. Wife is not eligible for Social Security wages because she does not have a sufficient work history. As a result, Wife concedes she has no retirement assets saved.

Wife described her married life as comfortably middle class. She and Husband took vacations to Disney every year, went out to eat, and occasionally Wife and Husband vacationed without the children. In November 2021, they separated after a verbal and physical altercation. Wife

---

[28] Wife's Exhibit 1.

returned to the home in January 2022, whereupon another altercation ensued. Wife sustained a black eye, lacerations, and a concussion, for which she continues to have memory, balance, and PTSD issues. Wife was charged with Assault 3rd Degree and two counts of Endangering the Welfare of a Child because J----- was present during the altercation. Husband pulled Wife's hair, punched her in the face, and she lost consciousness. Wife was charged after Husband and J----- reported the incident to the police and she subsequently pled to the charges.

Following the violent altercation, Wife moved in with her mother from January 2022 until May 2024. Because she had no savings and no access to marital funds, she placed a lot of charges on her credit card after the parties separated. After she left Husband, Wife sought employment, but her criminal record made finding or sustaining jobs difficult. She applied for numerous online applications,[29] was hired for two jobs, and was fired at both after about a month because of her criminal record and her mental health conditions. Wife testified that her current diagnoses are PTSD, ADHD, and bipolar disorder. She has uncontrollable crying spells at work, severe anxiety, and described herself as jumpy. Wife testified that she is also prediabetic, has hypertension, and a physiological tremor. Because she has not had success finding work, Wife applied for Supplemental Security Income. However, she was denied, appealed, and denied again due to lack of documentation. Recently, Wife was accepted for admission at Salem County College for an associate's degree.

Currently, Wife lives in a 1-bedroom subsidized apartment in Pennsville, New Jersey. She pays $200/month with a Section 8 housing voucher because she has no income. However, she anticipates that rate will increase once she receives assets from the property division. Previously, Wife received $20,000 to cover her legal fees from the New Jersey Coalition to End Domestic Violence. Yet, Wife exhausted those funds because the process has been so drawn out.

Wife acknowledges she is in a relationship with Boyfriend, Mr. D-------, but he does not have a key to her apartment, they do not share expenses, and do not live together. She would spend a few nights a week with him, but did not keep clothes at his home.

Regarding marital assets, Wife asserts that Husband dissipated assets when he sold the Sand Piper 5th Wheel Camper for $10,000 on July 25, 2023. Although Wife was not able to provide documentation of the purchase price, she submitted evidence that the NADA value would be

---

[29] Wife's Exhibit 3.

somewhere between $22,000-$26750. Husband also sold a fishing boat purchased in 2019 for $600 but Wife believes it should be worth between $4000-$5000. Because the boat was sold, Wife has no appraisal for the actual value. Three months before the couple separated, they purchased the home at --- ----- ------, Bear, Delaware. However, Wife is concerned that Husband fraudulently sold the home to his new wife's family because the home was purchased in 2021 for $550,000 and sold for $520,000 in 2024. In addition, Wife seeks alimony because she has no pre- and post-marital assets. She is behind on her car payment, electric bill, car insurance, internet bill, and has $8000 in credit card debt.

J----- D-----

J----- is Wife's 17-year-old child. Husband is J-----'s guardian and current caregiver. J----- testified that he has lived with Husband since he was three years old. He testified that he was "pretty sure" he saw Boyfriend's clothes in a crate in the downstairs of his grandmother's home where Wife was living after Husband and Wife separated. J----- said the clothes were in containers, but he did not take a good look. He also testified that he was upset at the way his mother, Wife, acted and because of her history of substance abuse. He further explained that he does not like that his child support goes to Wife instead of himself. He thought that his father should send him the monthly check directly because it is his child support, and he has to pay car insurance.

K---- M------

K---- M------ is Wife's aunt. She is 66 years old and collects Social Security. Many years ago, she quit her job to care for her mother. She testified that she knew Wife and Husband as a couple since their relationship began. K---- said problems arose in their relationship early on. Ms. M------ began living with them when the kids were younger so she could help care for the children and the home. She testified that the children were not well cared for before she began her role as the nanny. She explained that Wife worked "here and there" but was never able to sustain a job. Wife had issues with alcohol and would drink all day and night or "whenever." She also explained that Wife would sleep most of the time and go out to drink on the patio at night. Later in her testimony, Ms. M------ said Wife only drank and sat on the couch all day, but Wife would occasionally help with chores. Ms. M------o described her relationship with Wife as good until Wife's drinking started and she became a different person. Wife's drinking affected her ability to care for the children and the household.

Husband worked during the day but helped out at night and is there for the kids "100%." In contrast, Ms. M------ did not think Wife was a sufficient homemaker.

Ms. M------ currently lives with Husband, his new wife, and the children. The new wife moved in with them in September 2023. Since the divorce, Ms. M------ has been caring for the children before school, helps get them on the bus, and takes care of the children after school until Husband returns home from work. She testified that her allegiance is with Husband, but she could move with her sister in Philadelphia if she had to leave Husband's home.

R------ D-----

Husband is 49 years old. He has been involved with physical labor as a union carpenter for 19 years. He has had a hip replacement and will likely need another. This year, he anticipates earning $155,000 and does not receive a bonus. Husband testified that he owns seven rental units composed of two properties and earns about $2650/month in rent. Husband is willing to sell the properties because he spends more time and expense maintaining them than they gross. He currently lives in a rental property at --- -------- ------, Middletown, Delaware. Before he started paying alimony, he paid the nanny, K---- M------, $500 per month. Now he does not pay the nanny except for when she needs money. His monthly expenses are $8995**.** Husband is remarried, and his new wife owns a spa in Maryland, which grosses $38,000 annually.

Husband testified that for the first couple of years of the marriage, Wife tried to be a homemaker. K---- M------ began to care for the children while Wife "spiraled out." K---- started cooking, doing the laundry, and getting the kids ready for school. Wife worked for periods of time and then would either quit, get fired, or decline to find a new job. When she was not working, Wife was out drinking or "gallivanting." Husband controlled the couple's finances because Wife refused.

The marriage ended in January 2022. During an argument at that time, Wife became mad about money from the rental property. The initial argument escalated, Wife pushed Husband, Husband pushed her back, Wife threw a beer bottle, and while Husband cleaned the mess, Wife smashed a plate on Husband's head in front of J-----. Husband shoved Wife away and then she hit her head. Husband called the police, and they arrested Wife. The next morning, Husband bailed Wife out for $9,000.

Husband is in limbo now until the property is divided but would like to buy a house instead of remaining in his current rental unit.

Regarding the disputed assets, Husband testified that he sold the Sand Piper Camper for $10,000 in July 2022 and deposited the proceeds in the bank.[30] The camper was not winterized and fell into disrepair. Husband explained that the air conditioner was leaking, the roof was rotting, the fridge/freezer were faulty, and the waterlines underneath broke. Originally, Husband posted the camper for $16,000 but agreed to $10,000 because he wanted to dispose of the property. He conceded if it were winterized, it would likely have been worth $16,000-18,000.

Regarding the boat from their marriage, Husband sold it for $600 and used the proceeds to take his children to the shore for the weekend. The boat was from 1970, the motor from 1974, and the carburetor was faulty.

Initially, when the couple purchased the home at --- ----- ------ in 2021, they waived the septic inspection. Following the divorce, Husband placed --- ----- ------ on the market. An interested buyer backed out after a failed home inspection because of problems with the septic system. When the ----- ------ Property lingered on the real estate market, new buyers approached Husband with a direct offer of $520,000, which circumvented realtor fees. However, the septic system needed remediation, and Husband was required to pay $3,000 for a septic inspection. Because Wife has not contributed to the mortgage, Husband seeks credit for post separation mortgage payments.

<u>Matters In Agreement</u>

The parties were married for 10 years, 3 months. The date of the marriage is May 26, 2012. The date of separation is November 30, 2021, and the date of divorce is August 30, 2022.

<u>Bank Accounts</u>

Based on the Date of Separation, these are the amounts in the Bank Accounts: [31]

A.	**Capital One 360 (----) (Husband)**	**$16,663**
B.	**Capital One Savings (----)(Husband)**	**$ 4,595**
C.	Capital One Savings (----) (Custodial)	$ 1,166
D.	Capital One Savings (----) (Custodial)	$ 894
E.	Capital One Savings (----) (Custodial)	$ 340
F.	**Capital One Checking (----)**	**$18,789**
G.	**UBTFCU (----)**	**$ 407**
H.	**TD Bank (----)**	**$ 183**
I.	TD Bank Tenant Escrow (property of tenants held by Husband)	

[30] Husband's Exhibit 7.
[31] Amounts in bold are retained by Husband. C, D, and E are custodial accounts for the children and are not marital assets subject to division.

Vehicles

A. Husband shall retain the 2011 Ford F250, which is excluded from marital property.
B. Husband shall retain the Ford Focus, which is excluded from marital property.
C. Wife shall retain the Hyundai Venue, since she purchased the car post separation.

Other Property

A. Wife may have the dining room set.
B. Wife may retrieve her father's baseball memorabilia.

Income and Pension

A. Husband's income in 2022 was $150,162, in 2023 was $165,433, and 2024 is estimated at $160,052.
B. Husband's Eastern Atlantic States Fund Pension shall be divided pursuant to the Cooper Formula as of the date of separation with a 50% multiplier.
C. Husband's Eastern Atlantic States Profit Sharing with a balance of $37,400 shall be divided equally between the parties +/- from the date of separation to the date of distribution.
D. Husband's Vanguard account with a balance of $6,101 shall be divided equally between the parties +/- gains or losses from the date of separation to the date of distribution.
E. Husband's Eastern Atlantic States Annuity with a balance of $141,593 as of December 2023 is a premarital asset and not considered as part of the marital estate.

Matters in Dispute

Although the parties agree on the value of marital property, the crux of this dispute is that the parties diverge on the equitable division of such property. Wife asserts the real property should be divided pursuant to 10 *Del.* C. §1513 factors the same way as other marital property. Husband asserts he is entitled to credit for his premarital contributions to the real property, which is addressed in detail below.

Real Estate

A. In 2021, the parties purchased --- ----- ------, Bear, Delaware for $550,000 with a mortgage and the proceeds from the parties' prior residence at --- -. ------- ----, Blackwood, New Jersey along with two separate mortgages. The --- ----- ------. Bear, Delaware home was then sold on June 28, 2024, for $520,000, with a net equity of $85,919.[32]

   The parties disagree regarding how the proceeds from the sale of --- ----- ------ shall be divided. Husband contends that --- -. ------- ---- was purchased on August 31, 2011, with an initial gift from Husband's parents for $9,450 including a mortgage at 4.625% per annum for

[32] A septic inspection cost $3,835, and the net proceeds are conditioned depending on septic system remediation.

the balance. At the time of conveyance to the marriage, the fair market value of the property was $210,000 with a mortgage principal reduction of $3,532 leading to premarital gift equity of $35,781 (or 17%) of the value of the home.

The couple purchased --- ----- ------ on August 6, 2021, only three months before they separated on November 30, 2021. Following the couple's separation, Husband continued to make payments to the first and second mortgage on --- ----- ------. He also paid for a septic inspection as a condition on the sale of the home. Consequently, Husband requests a credit of $38,006 for payments of the two mortgages and the septic inspection from the escrow balance of the $520,000 home sale. As a supplemental condition of the home sale, Husband is required to cover the cost of septic remediation which may be drawn from the escrow balance. It is estimated that septic remediation will cost approximately $5,000, but it has not been completed or invoiced yet. Therefore, if the final net proceeds of the home sale exceed $34,979, Husband asserts that any additional funds left in escrow should be distributed with a 17% credit to Husband for his non-marital contribution, and the remaining 83% shall be equitably divided. In contrast, Wife contends that the proceeds should be equitably divided in the same way as the entire marital estate because the home was purchased during the marriage.

B. The rental properties at --- ------- ------, Oaklyn, New Jersey and --- ------------ ----, Paulsboro, New Jersey were purchased during the marriage. While the parties agree on the value of the rental property and how that should be disposed of, the parties disagree regarding how the equity of the rental property shall be divided.

   i. The fair market value of --- ------- ------ is $250,000. The mortgage payoff is $159,285, and the net equity is $90,715.
   ii. The fair market value of --- ------------ ---- is $260,000. The mortgage payoff is $157,050 and the net equity is $102,950.
   iii. The properties were purchased during the marriage with funds withdrawn from Husband's Eastern Atlantic States Profit Sharing Plan in the amount of $78,954 with $30,235 of that amount was Husband's premarital contributions. The premarital portion is 38.3% and the marital portion is 61.7%. Husband asserts he should retain $74,173 for his premarital contribution, leaving

$119,491 as marital property subject to equitable distribution. In contrast, Wife asserts the entire property should be divided equitably.

Other Property

A. The fair market value of the Sandpiper 5th wheel, which was sold for $10,000 on July 25, 2023. Wife asserts that the fair market value is between $22,000 and $26,000.
B. The fair market value of the 20' fishing boat that Husband sold for $600.

Other Assets and Debts

A. Wife's Discover Card debt of $768 at the date of divorce.
B. The legal owner of the children's bank accounts or whether the custodial accounts shall be divided equitably.
C. Wife's entitlement to alimony.
D. Wife's entitlement to attorney's fees.
E. Indemnification of Wife for future potential tax debts.

ASSETS TO BE DIVIDED

In making an equitable property division of the marital estate, the Court must consider "all relevant factors" including those set forth in 13 *Del.* C. §1513 (a).

(1) The length of the marriage

The parties were married on May 26, 2012, and divorced on August 30, 2022, ending a marriage of ten (10) years and three (3) months.

(2) Any prior marriage of the party

This was Husband's second marriage and Wife's first marriage.

(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties

Husband is 49 years old and has been a union carpenter for many years. He has been employed at -------- -------- for fourteen (14) years. His job is physically demanding, and he underwent a hip replacement for one hip and requires a hip replacement for his other hip. Husband earns about

$160,000 per year in his carpenter position.[33] Husband also owns -.-.-. Property Management LLC, which owns two (2) pieces of real estate. Although Husband's testimony was not clear on the amount earned after paying the mortgage and maintenance costs, he testified that he receives $2650/month in rent.

Wife is 35 years old. She is a certified medical assistant and is currently unemployed. She testified to current diagnoses of PTSD, ADHD, bipolar disorder, anxiety, prediabetes, hypertension, and a physiological tremor.[34] In 2023, Wife received unemployment for six months with total earnings of $7,005. Her greatest earnings during the marriage were $19,896 in 2020.[35] Her current employment income is $0, she receives $700 in child support for J-----, and she also receives a Section 8 government subsidy to cover the majority of her rent.

(4) **Whether the property award is in lieu of or in addition to alimony**

Wife seeks alimony as well as equitable division of the marital property.

(5) The opportunity of each for future acquisitions of capital assets and income

Husband has consistently earned $160,000 per year as a union carpenter. Although the work is physically demanding, he appears to be in a solid position to continue to acquire capital assets and income for the foreseeable future.

Wife has had an inconsistent employment history and no assets. She continues to apply for numerous job applications, including upward of 25 on-line applications over an eight (8) month period, but her criminal record and anxiety have made finding gainful employment difficult.[36] During her most productive year of employment Wife earned $18,896 in 2020. She testified that she plans to enroll in Salem County College for an associate's degree. Consequently, Husband remains in a superior position to acquire assets and income for quite some time.

---

[33] The AFDR lists income in 2020 at $150,000, 2023 $165,482, and 2024 $150,000. *See* Tab 104. Husband testified he anticipates earning $155,000 in 2024. Husband's Exhibit 1 showed gross income of $140,364.26 as of November 5, 2024. Annualized, that would be about $150,000 in gross pay with paychecks every two weeks without overtime.

[34] In the custody proceeding, Respondent's Exhibit #1 from CN 22-02379, File No. 22-07711, included a November 23, 2022 Letter from Reservoir Health indicating that D-------- M------ was evaluated and diagnosed with Moderate Mixed Bipolar I, Borderline Personality Disorder, and Attention Deficit Disorder.

[35] Respondent Exhibit #1 and #2.

[36] Wife's Exhibit 4 showed upwards of 25 on-line job applications between 2023 and 2024.

(6) **The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband, or wife**

Husband was indisputably the breadwinner during the marriage. He controlled all the finances and contributed significantly to the marital property. Husband withdrew $78,954 from his profit-sharing plan to purchase two rental properties during the marriage, with resulting tax consequences by drawing down from tax deferred assets. The parties agree that of the full withdrawal from his profit-sharing plan, $30,235 or 38% was from premarital funds.

Wife argues that Husband dissipated some of the marital estate when he sold the Sandpiper and the 20' fishing boat under market value. Although Wife submitted documentation that a fair market value for the Sandpiper was between $22,000 and $26,750, Husband sold the Sandpiper for $10,000. Husband testified that the Sandpiper was not properly weatherized and endured significant damage without proper upkeep after the parties separated. Wife also asserted that the 20' fishing boat was underpriced, but she provided no evidence of comparative valuation. Consequently, the Court is not persuaded that Husband deliberately undervalued either the Sandpiper or the boat, since that would be against his economic interests.

Likewise, Wife contends that the sale of --- ----- ----- was fraudulent because the home was sold for $30,000 less than the original purchase price and the posted sale price and may have been sold to Husband's new wife's family members. No evidence of fraud or intrafamilial sale was provided to the Court to contest the legitimacy of the sale. Additionally, the off-market transaction circumvented realtor fee's, which would have otherwise left the parties in the same financial position whether Husband sold the home independently or at a higher price with corresponding realtor fees.

Regarding Wife's contribution, Wife testified she stayed home and cared for the three children. In contrast, Husband and K---- M------ both testified that Wife was an insufficient homemaker. K---- M------ testified that Wife slept all day in her bedroom and drank at night and never helped. Later in her testimony, Ms. M------ testified that Wife stayed on the couch drinking all day and all-night and did some chores. Similarly, Husband testified that Wife was out drinking or "gallivanting" when she was not working. Nonetheless, the Court finds Ms. M------ and Husband's credibility lacking regarding Wife's full contribution to the household. Ms. M------'s provided conflicting testimony, asserted her allegiance to Husband, and testified regarding her reliance upon living in Husband's home. Likewise, because of the contentious dissolution of the marriage, the

Court is not overly swayed by Husband's testimony about Wife's complete lack of contribution to the marriage and inability to care for the children. On the other hand, based on Wife's testimony regarding her mental health and lack of success in maintaining employment, the Court finds that Husband contributed more to the marriage through his income, caregiving of the children, and other efforts.

(7) The value of the property set apart to each party

Aside from the equitable division of property and credits to Husband addressed below, Husband has substantially more assets set apart than Wife. Husband has a pension and $140,000 in a tax deferred account. In addition, Husband will retain his 2011 Ford F250 and a Ford Focus. Wife has no assets. Instead, Wife only has debts and the use of a Hyundai Venue that has a significant car loan. The full breakdown is addressed in the *Wright v. Wright* Chart attached as Exhibit "A".

(8) **The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live**

While neither party continues to live in the marital home, Husband has a considerable advantage in his current standard of living, earning capacity as a union carpenter, and retirement/pension savings. In stark contrast, Wife currently has $700 in monthly income and lives in subsidized housing with rental assistance of 83% of the total rent.[37] Even if Wife were imputed with an income of $19,900 (which is the highest annual income Wife earned during the marriage in 2020) or minimum wage, a huge disparity still exists between Husband and Wife's economic circumstances. Once Wife receives her equitable distribution of property, she may no longer be eligible for Section 8 housing because her assets will exceed eligibility guidelines.[38]

(9) Whether the property was acquired by gift, except those gifts excluded by paragraph (b)(1) of this section

Husband contends that --- -. ------- ----, Blackwood, NJ property was purchased as a gift from Husband's parents less than one year before the marriage on August 31, 2011. The initial gift was for $9,450 with a mortgage at 4.625% per annum for the balance. At the time of conveyance, the equity

---

[37] Wife's Exhibit 5 and 6. The Section 8 subsidy covers $994/month of $1195 per month in her rent.
[38] Wife's Exhibit 17. Section 8 FAQs.

of $35,781, or 17% of the value was a non-marital gift. However, Husband and Wife jointly used the proceeds of the sale of --- -. ------- ---- of $310,000 to purchase --- ----- ------, Bear, Delaware for $550,000.[39] There is a rebuttable presumption that property purchased during the marriage is marital property.[40] The parties purchased the --- ----- ------ house while married with the intent to reside there together. Husband's parents' initial gift to Husband for the first house converted to a gift to the marriage once the home was jointly conveyed.[41] At the time of the next transaction, Husband did not delineate the portion of the previous premarital gift that would remain separate and distinct from the joint marital property. Accordingly, when the couple used the proceeds from the sale of the first home to purchase the next home during the marriage, the original gifted funds were comingled with the marital estate.

(10) The debts of the parties

Other than the mortgages to the two rental properties, the current debt includes Wife's Discover Card expenses in the amount of $768, which Wife incurred while the parties were separated. The amount on the credit card is the balance from Wife's legal expenses related to her misdemeanor Endangering the Welfare and Assault 3rd convictions.

(11) Tax consequences

Wife requests indemnification for any potential tax consequences Husband may encounter for the years they were married. The testimony was uncontroverted that Wife was not involved in marital finances or the joint tax returns during the marriage. Although neither party presented any testimony or evidence of current or future tax consequences, the Court finds Husband will not be disadvantaged by indemnifying Wife of any tax consequences since he timely filed the taxes and exclusively controlled the financial decision-making of the parties.

ANALYSIS

Because the Court previously ruled that the Separation Agreement was unconscionable, the Court divides the disputed marital assets based on equitable principles. The parties differ substantially in their positions on percentage distribution of the marital estate. Wife requests an equitable division of 75%/25% in her favor. Husband requests an equitable division of 60%/40% in

---

[39] Wife's Exhibit 18: Deed to --- -. ------- --.
[40] 13 *Del. C*. §1513(c).
[41] *Id.*

his favor. Based on the evidence, Husband contributed significantly more to the marriage than Wife in terms of income, assets, and family caregiving. During the marriage, Wife struggled with mental health and was financially controlled by Husband. In any given year of the marriage, Husband earned about 91% or more of the total household income. Moreover, Husband has specialized skills as a carpenter, belongs to a union, and has retirement savings. Equally, Husband continues to have extensive opportunities to amass additional assets through his income, investments, and retirement account.

In contrast, Wife has minimal education, a sparse work history, and difficulty maintaining employment. However, it is striking that Wife now relies on government assistance, which is an austere departure from her comfortable middle-class lifestyle while married. However, Wife's requested division of 75% to 25% creates a yawning disparity that does not recognize Husband's contribution. Accordingly, after consideration of all eleven statutory factors under 13 *Del.* C. § 1513, the Court finds that a split of 55% Wife/45% Husband is equitable based on the considerable difference in contribution, income, assets, and earning potential for certain property; 40% Wife/60% Husband for the rental property; and a 50%/50% division for taxable and tax deferred accounts as outlined in the *Wright* Chart.[42] The Court affords great weight to § 1513(a) factors (1), (3), (5), (6), and (8). Consequently, the Court finds this equitable distribution of marital assets strikes an appropriate balance between Wife's current inferior financial prospects against Husband's significant contributions during the marriage.

HUSBAND'S REQUESTS FOR CREDITS

--- ------ ------ Division

Husband requests credits for post separation payments for the first and second mortgages as well as the septic inspection in the amount of $43,979.[43] He also requests an additional 17% for his parents' gifted contribution to the prior home. However, the --- ----- ------ property was purchased jointly during the marriage and the deed reflected such a joint conveyance. Historically, the Court has determined that conveying a real estate title to a husband and wife during the marriage becomes

[42] *See* Exhibit A.
[43] November 8, 2024 Matters in Agreement Matters in Dispute, Petitioner's Exhibit A: Mortgage #1 Reduction of the Principal is $23,706, Mortgage #2 Reduction of the principal is $21,562 and the septic inspection cost $3,835 totaling $43,979. The net escrow from the sale of --- ----- ------ is $38,006. $5000 held in escrow may be refunded. If the net escrow ends up being $43,006. Husband requests any excess should be distributed 17% to Husband, and the remaining 83% to be equitably divided.

a gift to the marriage.[44] Because Husband used the funds gifted from his parents from the --- -. ---- --- --. home to purchase the --- ----- --. home, any proceeds effectively became a gift to the marriage. Therefore, Husband is not entitled to any credit for the gifted pre-marital contribution.

Additionally, Husband requests a 100% credit for the reduction of the mortgage. However, following separation, Husband had exclusive use of the marital home. Since Husband paid the mortgage principal with post-separation income while caring for the parties' children, he is equitably entitled to a 50% credit for his contribution to the mortgage principal reduction in the amount of $21,989.[45] Accordingly, any proceeds left in escrow after funds for the septic system remediation and Husband's credit are deducted must be equitably divided 55/45 in favor of Wife.

Rental Property Division

In contrast to post-separation mortgage credits for the marital home, although Husband requests an offset for 38% of his premarital contribution for the rental properties, the rental property is presumed marital property under 13 *Del. C.* § 1513(c). The rental properties were purchased during the marriage and were intended to generate income to benefit the couple jointly. Husband provided no evidence that his premarital portion was maintained solely in his name, validly excluded from the marriage, or subject to any other exception under 13 *Del. C.* § 1513(b)(1).

While the Court declines to credit Husband with the appreciated amount of his premarital contribution to the rental properties because the funds were comingled, the Court has historically held that a party's considerable contribution of premarital assets deserves some consideration.[46] Therefore, in accordance with 13 *Del. C.* § 1513(a)(6), the Court recognizes Husband's considerable contribution to the rental properties' value. Consequently, the rental properties shall be equitably divided in favor of Husband 60%/Wife 40% to recognize Husband's contribution and maintenance work. If Husband wishes to retain the properties, he must pay Wife $77,466 within 90 days (or 40% of the collective net value). If Husband wishes to sell the properties, Wife shall receive 40% of the net proceeds.

---

[44] *See, e.g. In re Marriage of Hailstone*, CN90-6250, 226-90, 1992 WL 15155, at *17 (Del. Fam. Ct. June 3, 1992).
[45] Husband requested $43,979 for his payment towards reducing the mortgage. The Court finds it equitable to attribute a 50% credit for his contribution. *See also, P.R.H v. W.M.E.,* 2005 WL 3593426 (Del. Fam. Ct. April 22, 2005).
[46] *Harmon v. Harmon,* 967 A.2d 145, 152 (Del. 2008).

ALIMONY

In addition to equitable division of property, Wife requests Alimony due to dependency. Therefore, Wife has the burden of demonstrating by a preponderance of the evidence that she is dependent on Husband and has an inability to gain support through appropriate employment.[47] Wife submitted current monthly expenses of $2,212, and she projects her estimated monthly expenses to be $6,136. In determining whether alimony shall be awarded, the Court must consider whether the party receiving alimony: (1) is dependent upon the other spouse for support and the other spouse is not contractually obligated to provide such support after divorce; (2) lacks sufficient property 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 conditions or circumstances make it appropriate not to seek employment. In reaching its conclusion, the Court must consider ten statutory factors. Yet, an award of alimony must not be based on speculation or conjecture.[48] The Court previously awarded Wife $1,096 in monthly interim alimony based on her dependence on Husband due to her lack of income.[49] A party may be awarded alimony only if, pursuant to 13 *Del. C.* § 1512(b), the Court finds that the party is dependent, after consideration of all relevant factors:

(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.

Throughout the 10-year marriage, Wife was economically dependent on Husband. Since her divorce, she has struggled significantly with meeting her financial obligations.

(2) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs.

Wife currently resides in Section 8 Housing with a considerable rent subsidy because she has minimal income and no assets. Following division of the marital assets, Wife will retain 55% of the certain marital assets, 40% of the rental property value, and 50% of the financial accounts. Yet, that would likely not be sufficient to meet her reasonable needs because she currently has no other assets

---

[47] *Martin v. Martin*, 857 A.2d 1037, 1049 (Del. Fam. Ct. 2004) and *Gregg v. Gregg*, 510 A.2d 474, 483 (Del. 1986).
[48] *Olsen v. Olsen*, 970 A.2d 170, 176 (Del. 2009).
[49] Tab 118, June 3, 2024.

and savings. In addition, Wife previously lived a middle-class lifestyle and now depends upon public housing assistance with a sparse lifestyle.

<u>(3) Is unable to support himself or herself through appropriate employment.</u>

Wife's only source of monthly income is $700 in child support for her oldest child and $1096 in interim alimony from the past five (5) months. During the marriage, Wife earned minimal income and was inconsistently employed. Wife testified regarding her struggle to maintain employment because of her criminal record and mental health challenges. Wife testified that she applied for SSI but was denied. Based on a preponderance of the evidence, the Court declines to find Wife disabled and unable to work full-time. The Court acknowledges that Wife applied on-line for numerous positions between August 2023 and July 2024[50]; however, Wife's earning capacity is limited because of her criminal record.[51] Therefore, the Court attributes Wife with minimum wage income. Since Wife lives in New Jersey, minimum wage is $15.13/hour. Combining minimum wage and the $700 in child support, Wife is reasonably attributed with monthly income of $3322. Similarly, Wife's reasonable monthly expenses are currently $5003.[52] Therefore, using the attributed monthly income and reasonable monthly expenses, Wife has a shortfall of $2094 per month.[53]

In assessing the fair amount and time period for an award of alimony, the Court looks to the relevant factors outlined in 13 *Del. C.* § 1512(c):

(1) <u>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;</u>

Wife earned minimal income during the marriage and was inconsistently employed. She currently receives a Section 8 housing subsidy based on her income and asset eligibility, and

---

[50] Wife's Exhibit 4.
[51] Wife is unlikely to be able to work as a certified medical assistant or in a medical setting because of her criminal record.
[52] See Exhibit B, Family Law Software Income and Expenses. Although Wife had received $700/monthly child support for J----- D-----. Husband is entitled to seek those funds since he has guardianship and residential placement of J-----. The Court did not hear evidence at the trial whether Wife continued to receive such funds, and therefore consider such funds as part of her income. In addition, the Court added a reasonable allowance for laundry, clothing, and hairdresser funds.
[53] See Exhibit B.

therefore cannot meet her reasonable needs independently without government assistance. Even with the marital property equitably apportioned to her, Wife will not be able to maintain a lifestyle similar to the comfortable one she previously enjoyed.

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

Wife currently holds a medical assistant certification. She plans to enroll in Salem County Community College to earn an associate's degree. Wife did not supply the Court with the cost of the program and her identified course of study. Typically, an associate's degree is attained with two years of higher education. However, Wife's criminal record may continue to impede her ability to find full-time lucrative employment even with additional education.

(3) <u>The standard of living established during the marriage;</u>

During the marriage, the couple enjoyed a comfortable middle-class standard of living. They ate at restaurants, took annual family and couple's vacations, and lived in a nicely appointed home worth more than half a million dollars.

(4) <u>The duration of the marriage;</u>

The marriage lasted 10 years and three months.

(5) <u>The age, physical and emotional condition of both parties;</u>

Husband is 49 years old and has been a union carpenter for many years. He has been employed at -------- -------- for fourteen (14) years. His job is physically demanding; he underwent a hip replacement for one hip and will require another hip replacement in the future. Since the divorce, Husband has remarried and is the primary caretaker of the three children.

Wife is 35 years old. She testified to her fragile emotional condition, including current diagnoses of PTSD, ADHD, bipolar disorder, anxiety, prediabetes, hypertension, and a physiological tremor. However, the Court only has documentation of the bipolar disorder diagnosis and no other evidence that these conditions prevent her from working.

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

There was no evidence of financial or other contributions by either party to assist the career or earning capacity of the other party.

(7) <u>The ability of the other party to meet his or her needs while paying alimony;</u>

Since selling the marital home and remarrying, Husband's expenses have decreased. Annualized, Husband's pretax income averages $155,000 and his new wife earns $38,00 per year. His total monthly income after deductions is $9049. Adjusting for some of his shared expenses derived from his new marriage, Husband's total monthly surplus is $1776 per month. Therefore, Husband has sufficient income to pay Wife some alimony.

(8) <u>Tax consequences;</u>

There are no tax consequences to alimony.

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

The parties did not testify regarding this factor.

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

In addition to disputing Wife's dependency, Husband contends that Wife is cohabitating and is not eligible for alimony. Consequently, Husband bears the burden to prove cohabitation.[54] Under 13 *Del. C.* § 1512(g), co-habitation is defined as "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."[55]

In *Richardson v. Reed*, a recent action to terminate alimony, the Delaware Supreme Court determined co-habitation must be more than two people spending consecutive nights together each month over the course of a limited timeframe.[56] The Court held that a husband failed to meet his burden of proving cohabitation because the wife and her partner did not comingle finances, the partner did not have a key to the wife's residence, the partner left no personal belongings in the wife's home, and the partner did not contribute to household repairs or chores.[57]

Here, Wife's current relationship with Boyfriend mirror the facts in *Richardson*. Although Husband's private investigator, Richard Frascella, provided pictures of some nights where Wife's car was parked at Boyfriend's home in October 2023, the evidence overall was insufficient to show cohabitation. First, the private investigator conducted his investigation between the end of October

---

[54] *Glass v. Glass*, 537, A2d 552, 553 (Del. Fam. Ct. 1987).
[55] 13 *Del. C.* § 1512(g).
[56] 2024 WL 3718052 (Table), (Del. August 8, 2024).
[57] *Id.*

2023 and the middle of February 2024. The pictures showed Wife's car in the driveway at Boyfriend's home on October 26, October 29, October 30, and October 31. During that time, the investigator also saw a U-Haul packing up Boyfriend's home. The next batch of pictures showed random and consecutive days Boyfriend's Maserati was parked in the same parking lot near Wife's apartment between November 2023 and February 2024. However, the Investigator never saw Wife and Boyfriend together during his surveillance investigation, and he failed to assess whether Boyfriend owned any other cars.

Wife's son, J----- D-----, was similarly unavailing in describing any cohabitation between Wife and Boyfriend. J----- testified that he was "pretty sure" he saw Boyfriend's clothes in a crate in his grandmother's home during the time Wife resided there, but he did not take a good look at the clothing.

Although the Court finds the testimony of the private investigator and J----- unpersuasive to demonstrate cohabitation, Boyfriend's testimony and explanations regarding his relationship and parking arrangements with Wife were more credible. Boyfriend owned two cars—a primary car (his Cadillac Escalade) and an unwinterized car (the Maserati). Boyfriend explained that he left the Maserati stationary in the Wife's apartment building parking lot as a storage site because he did not have snow tires. Although he spent the night with Wife sometimes, he did not comingle finances, did not help with any household chores—other than to move furniture, and did not have a key to Wife's apartment. Accordingly, the Court does not find cohabitation exists based on the evidence presented and, therefore, Wife is not disqualified from receiving some alimony.

ALIMONY ANALYSIS

Husband is currently the main caregiver for the children and contributed significantly to the marriage, and his life and finances have not changed materially since the divorce. Unlike Wife, Husband continues to enjoy a middle-class lifestyle. In contrast, Wife is dependent because she has no income, no assets, and drastically changed her standard of living after the marriage dissolved. She left the marriage under difficult conditions, currently relies on government assistance, and has since struggled to improve her economic circumstances. In addition, Wife is not required to exhaust marital assets before being deemed dependent and eligible for alimony based on the couple's standard of living during the marriage.[58] "It would in many cases be unfair for the less pecunious

---

[58] *See Glanden v. Quirk*, 128 A.3d 994, 1002-1003 (Del. 2015).

spouse to have to liquidate marital assets while the supporting spouse keeps his or her allocated marital assets and maintains the marital standard of living. If the supporting spouse has the ability to pay alimony, the dependent spouse should be able to maintain the same standard of living enjoyed during the marriage without liquidating marital assets."[59]

Consequently, upon weighing the testimony, evidence and credibility of both parties, and their respective financial and personal circumstances, the Court finds by a preponderance of the evidence that Wife is equitably entitled to alimony. Based on Wife's reasonable monthly expenses presented to the Court and the reasonable income attributed to Wife, she has a shortfall of $2094 per month.[60] On the other hand, Husband has a surplus of $1776 after factoring his total monthly income and reasonable expenses. However, since Husband has been paying interim alimony for five months and Wife's deficit exceeds Husband's surplus, to true up alimony for the duration of eligibility, Wife is entitled to $1776/month for the remaining fifty-six (56) months.[61] This amount reflects an equitable accounting based on the following factors: Husband's income, Husband and Wife's respective expenses, Husband's earning capacity, Wife's current earning capacity based on her efforts to apply for a variety of jobs without success, and the standard of living enjoyed during the marriage. However, this order is subject to modification in the event of a substantial change in circumstances or termination in certain instances.

ORDER

1. To the extent there are funds left in the escrow account for the sale of --- ----- ------ after Husband's mortgage credits are accounted for, the proceeds shall be divided 55% (Wife)/45% (Husband). Regarding the two rental properties, the equitable division of the property shall be 40% (Wife)/60% (Husband). The taxable and tax deferred accounts shall be equitably divided 50%/50%.

---

[59] *Id.,* at 1003.
[60] *See* Exhibit B, Family Law Software Income and Expenses. The court omitted expenses for $833 in household items and included reasonable rent of $2300 and other expenses based on the documentation provided to the Court.
[61] Wife received alimony for five months at $1096/month from June 2024 through November 2024 totaling $5480. Husband is credited with the difference for the five months of interim alimony. Wife is eligible for alimony for a total of 61 months in duration at $1,836 based on her dependency. However, after accounting for the interim alimony payments of $5480 and adjusting for Husband's monthly expenses and surplus, Wife is entitled to $1776/month for the remaining 56 months unless there is a change of circumstances and subject to modification. *See* Exhibit B, C, and D.

2. Wife's request for an equitable division of the Discover Card statement from July 2022 for a balance of $768 based on her legal fees for the criminal charges after the separation is **DENIED**.[62] The Court finds Wife is responsible for the Discover Credit Card debt, since that was incurred post separation.

3. Because Husband has custody of the children A----- and G------, and guardianship of J-----, Husband will act as the sole custodian of the children's respective bank accounts.

4. Wife shall be indemnified for any potential tax consequences in the event the parties are audited since Husband is not placed at a disadvantage and exclusively handled the marital finances and taxes.

5. Wife is entitled to alimony in the amount of $1776/month for fifty-six (56) months, which reflects an accounting of Husband's five months of interim alimony payments, Husband's monthly surplus, and the duration of Wife's eligibility for 61 months of total alimony eligibility. This award is subject to modification based on a substantial change in circumstances or termination.

6. Attorney's fees: Wife has requested an award of counsel fees and costs associated with this proceeding. Within **fifteen (15) days** of the date of this Order, Wife shall file her Motion and Affidavit of Counsel Fees and Costs for consideration of an award by the Court. **Ten (10) days** thereafter, Husband shall file his written responses. The Court will issue a separate Order regarding attorney fees.

IT IS SO ORDERED.

/s/ Eliza M. Hirst

ELIZA M. HIRST, JUDGE

Date Mailed/Emailed: 01/07/2025

[62] Wife's Exhibit 16 shows a credit card charge of $1,500 to cover her criminal legal fees with a balance of $768.91 as of August 21, 2022.