

DOCKET NO. FBT-FA-23-6122715-S : SUPERIOR COURT
 JAMIE BANKS : JUDICIAL DISTRICT
 v. 2024 APR 15 P 4: 31 : OF BRIDGEPORT
 CALVIN BANKS : APRIL 15, 2024
 OFFICE OF THE CLERK
 SUPERIOR COURT

MEMORANDUM OF DECISION

The present action for dissolution of marriage was filed on March 27, 2023, with a return date of April 4, 2023. The defendant filed a cross complaint on August 15, 2023. Trial took place on January 3, 2024, and, following the reopening of the evidence, was concluded on March 7, 2024. The plaintiff is represented by counsel and the defendant is self-represented. Both parties testified at trial, as did Robert Petrucci, the plaintiff's expert witness. Both parties submitted proposed orders, and documents were admitted into evidence. The court also heard argument from counsel for the plaintiff and from the defendant. A central issue presented in this action is whether the marital residence, which had been owned by the defendant's aunt prior to her death in 2016, is subject to distribution by this court. Because there is insufficient evidence in the record to find that the defendant's interest in the marital residence is anything more than a mere expectancy, the marital residence is not subject to distribution, and the court will render a judgment of dissolution of marriage on the terms as set forth herein.

I. FINDINGS OF FACT AND DISCUSSION

The court has reviewed the file in this action, all documents admitted into evidence, and finds the following facts based upon the credible evidence presented, the opportunity to observe the demeanor of the parties and the witness, and the opportunity to assess their credibility at trial. All findings of fact are based upon a preponderance of the evidence, and the court finds the testimony referenced herein to be credible unless otherwise stated.

Mailed to: Judicial Reporter
 Abram J. Heisler, Esq.
 Kelvin Banks
 4/15/2024
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Both parties have resided continuously in Connecticut for more than one year prior to the filing of the cross complaint, and all statutory stays have expired.¹ Therefore, the court has jurisdiction. The parties married on October 14, 2014 in Shelton, Connecticut. There are no children issue of the marriage. Neither party has received any financial assistance from the State of Connecticut or any municipality thereof. The parties began living together in 2013, when they moved into an apartment located at 269 Wilmot Avenue in Bridgeport (Wilmot Property), which is a three-family home that, at the time, was owned by the defendant's aunt. The parties separated in July 2023, when the plaintiff moved out of the Wilmot Property. The defendant continues to reside there.

The allegations of the cross complaint are proven and found to be true. The parties' marriage has broken down irretrievably, with no possibility of reconciliation, and judgment shall be rendered on said ground. Each party testified that he or she bears some fault for the breakdown of the marriage, and the court declines to assign primary fault to either party.

The plaintiff is forty-five years old and appears to be in good health, although she does suffer from fibromyalgia, post-traumatic stress disorder and asthma. The plaintiff earned a master's degree in business administration and has worked for the past ten years as a housing specialist with the Norwalk Housing Authority. The plaintiff's financial affidavit reflects gross weekly earnings of \$1,454.68, net weekly income of \$988.66, total weekly expenses and liabilities of \$1,244.03, total assets of \$11,200 and total liabilities of \$43,063.40.

The defendant is fifty-nine years old and in good health. He attained his associate's degree in human services from Housatonic Community College and is currently employed as an intervention specialist with Norwalk AIC, having worked in that field for several years.

¹ The plaintiff filed a withdrawal of action (#107.00) on August 15, 2023. The court will proceed on the defendant's cross complaint.

Based on the defendant's testimony and his most recent financial affidavit (#103.00), the court finds that the defendant's gross weekly income from employment is approximately \$911 and that he is presently collecting and retaining for himself an additional \$400 per week in rental income generated by the Wilmot Property. The defendant's total net weekly income, exclusive of the rental income, is approximately \$700, his total weekly expenses and liabilities are approximately \$1,195, his total cash value of assets exclusive of the Wilmot Property is \$31,857.60, and his liabilities total \$925.81.²

Neither party requests an award of alimony. The plaintiff seeks a dissolution of marriage, a 50 percent interest in the Wilmot Property, to retain an automobile that she owns, reimbursement from the defendant of one-half of \$25,000, which is the amount the plaintiff testified that she spent on a bathroom renovation at the Wilmot Property and for furniture and furnishings which she left behind and the defendant retained when she vacated the marital residence. In addition, the plaintiff seeks reimbursement for out of state tolls in the amount of \$161.75, which the defendant incurred when driving the plaintiff's vehicle and which the plaintiff testified that, prior to trial, the defendant told her that he would pay. The defendant also seeks a dissolution of marriage, and requests, inter alia, that he be awarded the two motor vehicles listed on his financial affidavit, and that the parties be solely responsible for the debts listed on their respective financial affidavits. The court finds the plaintiff to be a credible witness, and as part of the property distribution orders in this action the defendant shall be required to pay \$12,661.75 to the plaintiff.³

² The defendant's assets consist of two motor vehicles, with a reported \$31,148 in equity, and bank accounts with a total combined balance of \$709.60.

³ Although the defendant will be awarded the two motor vehicles listed on his financial affidavit, given the defendant's lack of liquid assets, the court recognizes that, unless the defendant can secure funds with which to pay the plaintiff from another source, he may have to sell one or both of those vehicles to pay the sum due to the plaintiff pursuant to this judgment.

The defendant lists the Wilmot Property on his financial affidavit as an asset, but contests that it is subject to distribution by this court because it is not yet in his name. The credible evidence concerning the Wilmot Property establishes that the defendant's aunt died in 2016, and since shortly thereafter, the defendant has been the fiduciary of his aunt's estate, which remains in probate. Neither party presented any evidence regarding when the probate proceedings may be concluded. The defendant testified that his aunt did not dispose of the Wilmot Property by will, and that although he has an expectation that he may end up with some record interest in the Wilmot Property after the conclusion of the probate proceedings, his aunt was survived by other relatives who also claim an interest in the Wilmot Property.

It is well-established that property acquired by inheritance prior to the date of dissolution may be assigned under § 46b-81; *North v. North*, 183 Conn. 35, 39, 438 A.2d 807 (1981); because "the moment of the decedent's death determines the right of inheritance or testamentary succession." *Krause v. Krause*, 174 Conn. 361, 365, 387 A.2d 548 (1978). However, there is insufficient evidence in the record which could support a finding, by a preponderance of the evidence, that the defendant has an interest in the Wilmot Property by either inheritance or testamentary succession. Accordingly, any interest which the defendant may have in the Wilmot Property is a mere expectancy, and is not subject to distribution by this court. See *Simmons v. Simmons*, 244 Conn. 158, 166, 708 A.2d 949 (1998).⁴

II. ORDERS ON DISSOLUTION OF MARRIAGE

In rendering this decision and making the orders which are to follow, the court has carefully considered the statutory criteria set forth in General Statutes §§ 46b-81 and 46b-82 regarding the assignment of the marital estate and alimony, respectively. The court has also

considered binding precedent interpreting these statutory provisions and the parties' proposed orders.

The following orders may enter:

A. Dissolution of Marriage

The marriage of the parties is dissolved on the ground of irretrievable breakdown and the parties are declared to be single and unmarried.

B. Alimony

Neither party seeks an award of alimony from the other, and no alimony is awarded to either party.

C. Property Settlement

1. Lump Sum Payment: The defendant shall make a non-taxable lump sum payment to the plaintiff in the amount of \$12,661.75 as a property distribution. The payment shall be made on or before May 15, 2024, by direct deposit or wire transfer to an account designated by the plaintiff. The payment obligation shall not be modifiable as to the amount or the terms of payment and shall survive the death of either or both parties.

2. Motor Vehicles:

a. The plaintiff shall retain the 2017 Nissan Altima free and clear from any claim by the defendant. The plaintiff shall be solely responsible for and shall pay all costs and liabilities associated with said automobile, whether previously incurred or incurred in the future, and he shall forever indemnify and hold the defendant harmless with respect to the same.

⁴At trial, Robert Petrucci, a state certified real estate appraiser testified, and his appraisal was admitted in evidence. Based on the credible evidence in the record, the court finds that the Wilmot Property has a fair market value of \$325,000.

b. The defendant shall retain the 2012 Kia Optima and the 2018 Nissan Rogue automobiles free and clear of any claim by the plaintiff. The defendant shall be solely responsible for and shall pay all costs and liabilities associated with said automobiles, whether previously incurred or incurred in the future, and she shall forever indemnify and hold the plaintiff harmless with respect to the same.

3. Bank and Financial Accounts: Each party shall retain the bank accounts listed on his or her financial affidavit, free and clear of any claim by the other party.

4. Retirement Account: The plaintiff shall retain the CMERS retirement account listed on her financial affidavit, free and clear of any claim by the defendant.

6. Personal Property: Each party shall retain all personal property listed on his or her most recently filed financial affidavit and shall be solely responsible for any and all taxes and expenses of any kind associated with said personal property.

D. Liabilities

Each party shall be responsible for his or her own debts as listed on his or her most recently filed financial affidavit as well as any other debts, if any, which such party shall have failed to disclose, and shall hold harmless and indemnify the other party with respect thereto.

E. Life Insurance

Neither party is required to maintain life insurance for the benefit of the other.

F. Health Insurance

Each party shall be responsible for the procurement and cost of his or her own health insurance.

G. Legal Fees

Each party shall be responsible for the payment of his or her own legal fees, if any.

H. Execution of Necessary Documents

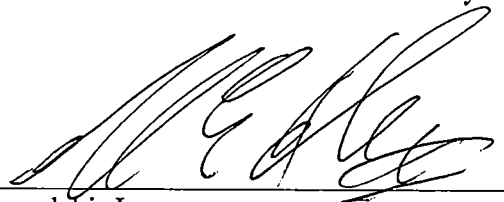
Each party is ordered to sign whatever documents are necessary and presented to them by the other party to effectuate these orders within seven (7) days of presentment, unless otherwise ordered herein.

I. Order Unsealing Financial Affidavits:

Because financial issues were in dispute in the trial of this action, the automatic sealing of the parties' sworn statements of income, expenses, assets, and liabilities filed with the court pursuant to Practice Book § 25-30 is terminated in accordance with Practice Book § 25-59A(h) with respect to all such sworn statements now on file with the court.

J. Effective Date of Orders

Unless otherwise specifically set forth herein, these orders are effective immediately. Judgment may enter accordingly.


Kowalski, J.