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CASE NO: DV98-01077

DEPT. NO.: 11

'99 JUL -2 P1:09

AMY HARVEY, CLERK
BY S. CRAWFORD
DEPUTY

IN THE FAMILY DIVISION OF
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Elaine Hager,
Plaintiff,

-vs-

Robert Hager,
Defendant.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE OF DIVORCE

Robert Hager,
Counterclaimant,

-vs-

Elaine Hager,
Counterdefendant

This matter came before this Court through a contested trial on May 3 and May 4, 1999. At trial, the Plaintiff/Counterdefendant (hereafter "Plaintiff"), Elaine Hager was represented by Todd L. Torvinen, Esq., and the Defendant/Counterclaimant (hereafter "Defendant") represented himself in pro per.

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1 Now therefore, after trial, the Court being fully informed
2 upon the taking of evidence and testimony, now makes the
3 following:

4 FINDINGS OF FACT

5 1. That Plaintiff, Elaine Hager, for more than six (6)
6 weeks preceding the commencement of this action has been
7 actually, physically and corporeally present in the State of
8 Nevada, and that during all of said time was and now is a bona
9 fide resident of the State of Nevada.

11 2. The Social Security Numbers and Nevada Driver's
12 License Numbers of the parties and children are as follows:

13 Plaintiff, Elaine Hager: SSN [REDACTED] 0398, NDL
14 370902079764;

15 Defendant, Robert Hager: SSN [REDACTED] 4318,
16 NDL _____;

17 Minor Child, Ryne Hager: [REDACTED] 3943;

18 Minor Child, Chantal Hager: [REDACTED] 9814.

19 3. That the Court has jurisdiction over the cause of
20 action, and to hear and determine the same.

21 4. That the parties are incompatible in marriage.

22 5. The evidence in this case indicates that the parties
23 executed a Marital Settlement Agreement on May 8th 1998.

24 Neither party has asked that that Marital Settlement Agreement
25 be set aside or be declared void in total. The Agreement
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1 contains a merger clause which provides that if the parties are
2 granted a decree of divorce or separate maintenance, that the
3 Agreement will be incorporated and merged into such a decree.
4 With certain exceptions, said Marital Settlement Agreement is
5 incorporated and merged herein. A true and correct copy of the
6 executed Marital Settlement Agreement is attached hereto as
7 Exhibit "A."
8

9 6. Mrs. Hager did not violate the provisions of the
10 Agreement which prohibited her from seeking a decree of divorce
11 in this matter prior to the resolution of pending criminal
12 charges against Mr. Hager. That provision is contained at the
13 top portion of page 3 of the Agreement (Exhibit "A").
14

15 7. A provision of the Agreement (Exhibit "A") prohibits
16 Mrs. Hager from testifying against Mr. Hager in pending
17 criminal matters or providing statements against Mr. Hager in
18 any pending criminal matters. Another provision prohibits Mr.
19 Hager's cousin, Alisa Newlon, from residing in Mrs. Hager's
20 residence, or having contact with the parties' two minor
21 children. There were no allegations made by either party that
22 Mrs. Hager has not complied with those provisions to date.
23 Under the terms of the Agreement, Mrs. Hager for all intents
24 and purposes, forfeits her residence if she testifies against
25 Mr. Hager in a criminal matter. The Court makes a distinction
26 between the enforceability of the forfeiture clause and the
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1 enforceability of the underlying provisions. The Court makes
2 no ruling or finding at this time with respect to the
3 enforceability of the underlying provisions.

4 8. The parties have not disputed that Mrs. Hager will be
5 designated as the primary physical custodian of the children.
6

7 9. Mr. Hager has a substance abuse problem. A hair
8 analysis test has been introduced into evidence which shows the
9 presence of cocaine and cocaine metabolites in Mr. Hager's
10 system. The expert testimony that was presented indicated that
11 one could not tell with certainty when cocaine use had taken
12 place, but given the levels in Mr. Hager's system, those levels
13 are consistent with chronic and regular use of cocaine. The
14 Court accepts that testimony.
15

16 A person who has a problem with substance abuse has
17 problems that go beyond simply the use of drugs and, generally,
18 those kinds of problems include acts of irresponsibility, acts
19 of dishonesty and deceit, and the basic destruction or
20 diminishment of those portions of a person's life that
21 generally bring satisfaction and happiness. The Court finds to
22 all of those things present in Mr. Hager's situation. The
23 evidence indicates that Mr. Hager has acted in an irresponsible
24 manner in his visitation with the children, both in not getting
25 the children back to Mrs. Hager at the time specified, and in
26 not getting the children to school on time. That on at least
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1 two occasions, Mr. Hager was responsible for the children when
2 they left school and he failed to fulfill that responsibility.

3 One of the qualities that is also clear and present in
4 most cases of substance abuse is the issue of minimization and
5 denial; minimization of the extent of the problem and/or denial
6 of the fact that there is a problem. Mr. Hager has, in every
7 possible way, asserted throughout the Trial he did not have a
8 drug problem, that he's not a user and an abuser or addicted
9 person in relation to controlled substances. The Court finds
10 that the evidence clearly shows the contrary.

11
12 Based on the record, all of the evidence and all of the
13 testimony that's been presented, there is an issue with regard
14 to substance abuse and it needs to be addressed. Mr. Hager's
15 behavior is erratic and unpredictable, potentially violent and
16 potentially dangerous to the children.

17
18 9. Mrs. Hager obtained a protection order in this case
19 and she seeks to have it extended. Mr. Hager denies being a
20 violent person. The evidence that has been presented is that
21 Mrs. Hager has been subjected to acts of physical violence by
22 Mr. Hager, and some of those were admitted by Mr. Hager in the
23 hearing of March 3, 1999. Mr. Hager admitted that he had dumped
24 an ashtray of ashes over Mrs. Hager's head. There were
25 allegations that a drink was thrown at her, and there were
26 other acts of physical violence.

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1 The testimony has clearly established that Mr. Hager has
2 engaged in actions intended to assert his controlling power
3 over Mrs. Hager, both by the use of physical violence and by
4 the other coercive techniques. Those are not permitted under
5 the law. They fall within the definition of domestic violence
6 which is set forth in NRS Chapter 33. They justify the
7 issuance of an order of protection in the first instance in
8 favor of Mrs. Hager, and they warrant an extension of that
9 order at this time.
10

11 The evidence persuades the Court that Mr. Hager is the
12 primary aggressor in this abusive relationship, and will be
13 deemed as such for purposes of NRS 125.450. The Court makes
14 that finding by clear and convincing evidence based on the
15 testimony that was presented at the hearing Monday and Tuesday
16 of this week, as well as the testimony that was presented at
17 the hearing which began on March 3rd 1999, and was suspended
18 after a portion of that hearing had been conducted.
19

20 10. It is the Court's further finding of fact that when
21 Mr. Hager is not subject to the influence of controlled
22 substances, he's a very good, loving, supportive and capable
23 parent. That Mr. Hager has a strong bond of love and affection
24 with his children, and likewise the children share that bond of
25 love and affection with him, and the best interests of these
26 children would be served by having as rich and full and
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1 complete a relationship with their father as possible in a drug
2 free state. It's further the finding of this Court that if Mr.
3 Hager is not drug free, that the best interests of his children
4 would not be served by him having unsupervised visitation with
5 them.
6

7
8 CONCLUSIONS OF LAW

9 1. That Plaintiff is entitled to the relief hereinafter
10 granted.

11 2. That Mrs. Hager did not violate the provisions of the
12 Agreement as a matter of law, a fact which prohibited her from
13 seeking a decree of divorce in this matter prior to the
14 resolution of pending criminal charges against Mr. Hager. That
15 provision is contained at the top portion of page 3 of the
16 Agreement (Exhibit "A").
17

18 3. A provision of the Agreement (Exhibit "A") prohibits
19 Mrs. Hager from testifying against Mr. Hager in pending
20 criminal matters or providing statements against Mr. Hager in
21 any pending criminal matters, and a provision prohibits Mr.
22 Hager's cousin, Alisa Newlon from residing in Mrs. Hager's
23 residence, or having contact with the parties' two minor
24 children. There were no allegations made by either party that
25 Mrs. Hager has not complied with those provisions to date.
26

27 Further, this Court finds that Mrs. Hager, as a matter of law,
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1 could freely testify in this proceeding and present evidence
2 without fear of triggering those provisions.

3 4. The Agreement contains a forfeiture clause (see
4 Exhibit "A", pp. 11-13). The most logical and rational
5 analysis for examining the enforceability of a forfeiture
6 clause is provided by *Mulhauser v. Mulhauser*, 754 S.W.2d 2, (MO
7 App. 1988). Under that case: (1) a remedial provision setting
8 forth liquidated damages is valid and enforceable while a
9 clause providing for a penalty is not; (2) liquidated damages
10 measure compensation for a contract breach while a penalty
11 provision specifies a punishment for default; (3) a
12 contractual clause is valid and enforceable if the amount fixed
13 as damage is a reasonable forecast for the harm caused by the
14 breach, and the harm is of a kind which is very difficult to
15 accurately estimate; and (4) in determining whether an
16 Agreement sets forth a penalty or a liquidated damages, a court
17 looks to the intention of the parties as gleaned from an
18 examination of the contract as a whole.
19
20

21 This Court adopts the reasoning of the Missouri Court that
22 the determination of the validity and enforceability of the
23 forfeiture clause depends on whether it is appropriately deemed
24 as a clause setting liquidated damages or whether it's a clause
25 setting a penalty for violation of the provisions in question.
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1 This Court finds that clearly it's a penalty provision.
2 The penalty, the sanction is not related in any way to the
3 nature of the violation and is set at a monetary figure which
4 has no relationship to the harm that might be done if the
5 clauses are violated. This Court's conclusion is that the
6 forfeiture clause of the Agreement is properly deemed as a
7 penalty clause rather than a clause of liquidated damages and
8 is, therefore, unenforceable.
9

10 5. Mrs. Hager was justified in the issuance of an order
11 of protection against domestic violence (TPO) in the first
12 instance. Mrs. Hager is also entitled to an extension of that
13 order (TPO) at this time.
14

15 **DECREE OF DIVORCE**

16 By reason of the premises, **IT IS HEREBY ORDERED, ADJUDGED**
17 **AND DECREED:**
18

19 1. That the Parties' marriage is dissolved, and each is
20 returned to the status of a single person.

21 2. The following specific terms of the Marital
22 Settlement Agreement are ratified, adopted and approved and
23 become the order of this Court: The provisions relating to
24 the amount and duration of spousal support owed by Mr. Hager to
25 Mrs. Hager (see Exhibit "A", Section 1, page 3); the provisions
26 regarding the amount of child support owed by Mr. Hager to Mrs.
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1 Hager (see Exhibit "A", Section 4, page 8) and are consistent
2 with NRS 125(b).070 and 080 and are in compliance with
3 statutory requirements; provisions regarding the provision of
4 health insurance and coverage of medical care for the children;
5 the division of the community property of the parties; the
6 characterization and award of Mr. Hager's separate property to
7 him; the provisions regarding the award -- or the determination
8 of attorney's fees; and the Agreement and award of joint legal
9 custody of the parties' minor children to both parties.
10

11 3. The parties are hereby put on notice that the terms
12 of the Hague Convention of October 25, 1980, adopted by the
13 14th Session of the Hague Conference on Private International
14 Law, apply if a parent abducts or wrongfully detains a child in
15 a foreign country.
16

17 4. Plaintiff will continue to use the last name Hager.

18 5. Mrs. Hager will be designated as the primary physical
19 custodian. Mr. Hager's visitation rights contained in Exhibit
20 "A" at pp. 5-8, will be conditioned on the following: Mr. Hager
21 will submit himself twice a week on Mondays and Thursdays for
22 blood and urine testing at his expense with the results of
23 those tests to be provided to the Court. Mrs. Hager or her
24 counsel shall be notified of drug test results by Mr. Hager or
25 the Court. It is a condition of the visitation that Mr. Hager
26 submit to those tests with an order that the test results be
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1 provided directly to the Court, and no further authentication
2 or proof of the tests shall be necessary.

3 Mr. Hager admitted in court in March 1999 that in the
4 recent past he was chemically dependent on pain medications,
5 principally opiates and opioids. It is Mr. Hager's
6 responsibility to inform his treating physicians that he has a
7 drug testing protocol, and when they choose which pain
8 medication they give, they provide a medication which is not
9 going to create further addiction problems. However, if test
10 results are returned which report the presence of controlled
11 substances, and such presence of controlled substances can be
12 explained by what a doctor has prescribed, that will not be
13 deemed a dirty (positive) test.
14

15
16 6. Once Mr. Hager has presented one full week of clean
17 tests, his visitation as set forth on page 6 of the Agreement
18 (Exhibit "A") will be granted to him with certain limited
19 modifications. As a result, after one full week of negative
20 drug tests, Mr. Hager will begin to have his visitation, which
21 is contained in paragraph (i), or every Friday after school
22 ending on Saturday at 8:00 p.m. In addition, he will have the
23 one weekend each month of extended visitation from Friday after
24 school until Monday morning. The paragraph states the visit
25 will be ended by Mr. Hager returning the children to their
26 schools. It will be the order of this Court that the children
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1 be returned to their schools on time. The remaining visitation
2 contained in the remaining subparagraphs of Paragraph 3 will
3 also be granted to Mr. Hager on the condition that he continue
4 to test negative for drugs twice a week. Mrs. Hager shall also
5 enjoy the same visitation schedule that Mr. Hager enjoys as the
6 non-custodial parent during the time period that Mr. Hager has
7 the children for the summer. However, each party shall waive
8 certain Summer visits so the other one can travel.
9

10 Should one of Mr. Hager's tests show the presence of any
11 controlled substance, his visitation will be suspended and the
12 Court will reconvene an emergency hearing and determine
13 additional action.

14 7. It will also be the order of this Court as a condition
15 of visitation that there will be no consumption of alcoholic
16 beverages at any time by Mr. Hager. If there is a basis to
17 believe that he is consuming alcoholic beverages, visitation
18 will be suspended and the Court will revisit the issue.
19

20 8. An extended order for protection against domestic
21 violence will be issued under the following terms: Robert Hager
22 is prohibited, either himself or through any agent, including
23 his children, from committing any act of violence, threat of
24 violence or harassment directed against Elaine Hager. Mr.
25 Hager is ordered to have no contact with Mrs. Hager except
26 through legal representatives. Mr. Hager is ordered to stay a
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1 hundred yards away from Mrs. Hager's place of residence, a
2 hundred yards away from Mrs. Hager's place of employment, and a
3 hundred yards away from the school of Ryne and Chantal except
4 as needed to pick the children up at the school.

5 9. Mr. Hager is ordered to attend and successfully
6 complete a 26-week anger management program through American
7 Corrective Counseling Services. He shall contact American
8 Corrective Counseling Services within ten days of May 5, 1999
9 to sign up and make arrangements to participate in that
10 program, and Mr. Hager shall provide proof of satisfactorily
11 completion of that program. Mr. Hager's continued
12 participation in that program through its completion will also
13 be a condition of his visitation, as previously ordered.

14 10. In addition to the visitation which is set forth in
15 the Agreement (Exhibit "A"), Ryne and Chantal shall have
16 telephone contact with their father as well. The children will
17 call their father Tuesdays and Thursdays between 7:00 and 8:00
18 p.m.

19 20 21 11. Ryne and Chantal, the minor children shall have the
22 right to call their older brothers when they wish. While Ryne
23 and Chantal are in Mr. Hager's custody, it will be Mr. Hager's
24 responsibility to assure that Ian and Bobby's conduct, both
25 their behavior and their verbal conduct, is consistent with the
26 best interests of Ryne and Chantal, and that means an absolute
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1 prohibition against any comments, statements or any other act
2 or word that would be demeaning, insulting or negative and
3 directed against Mrs. Hager. If this Court discovers that Ian
4 is making disparaging remarks about Mrs. Hager, the contact
5 between Ryne and Chantal and Bobby and Ian shall be modified.
6

7 12. It is further the order that both parties or anyone
8 associated with either, meaning girlfriends, boyfriends,
9 relatives, parents or anybody else, are prohibited from making
10 any demeaning or derogatory comments directed against the other
11 party in the presence of the children (Ryne and Chantal), and
12 the Court intends to hold each parent responsible for the
13 actions of anyone within each party's sphere of influence.
14

15 13. The Marital Settlement Agreement (Exhibit "A")
16 provides that the child support and the spousal support are due
17 on the first day of each month. The request for an assignment
18 of the distribution royalty payments from the Bald Mountain
19 gold mine is granted. However, the assignment will be
20 authorized but suspended on the condition that the payments are
21 received by Mrs. Hager on the 1st of the month. If Mrs. Hager
22 has not received the payments by the 3rd of any month, then the
23 assignment may be reinstated.
24

25 14. Associated Pathologists Laboratories (APL) is
26 currently in possession of a hair sample from Mr. Hager. This
27 hair sample may be released to the University of Nevada, Reno
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1 Medical School Lab for further testing and verification of
2 previously reported results. The Court directs that the hair
3 sample be transferred directly from the APL lab to the
4 University of Nevada, Reno Medical School Lab. The standard,
5 generally accepted controls to insure chain of custody shall be
6 employed by both laboratories.
7

8 15. Consistent with Section 8. ATTORNEY FEES, p. 20 of
9 the Agreement, Mrs. Hager shall be awarded attorney fees and
10 costs in connection with obtaining a divorce. However, by
11 previous agreement, which was adopted and ordered by this Court
12 pursuant to the PENDENTE LITE ORDER REGARDING PLAINTIFF'S
13 EMERGENCY MOTION FOR TEMPORARY CUSTODY AND LOSS OF HOUSE ONLY
14 UPON PROOF OF BREACH AND DUE PROCESS dated June 26, 1998, the
15 matters addressed in said Order of June 26, 1998 are not
16 subject to award of attorney fees because no prevailing party
17 is designated. Therefore, each party bears their own costs
18 with regard to the matters addressed in said PENDENTE LITE
19 ORDER. Mrs. Hager's total accumulated attorney fees and costs
20 amount to the sum of \$26,303.51. Of this amount, \$1,973.00 is
21 related to the issues dealt with in the PENDENTE LITE ORDER.
22 Accordingly, fees and costs awarded to Mrs. Hager total the sum
23 of \$24,330.51 (\$26,303.51 minus \$1,973.00). Mr. Hager shall
24 pay such fees to Mrs. Hager within 30 days of the date of
25 notice of entry of this Findings of Fact, Conclusions of Law
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1 and Decree of Divorce. This provision is a judgment awarding
2 attorney's fees and costs to Mrs. Hager.

3 16. Consistent with Section 4. CHILD SUPPORT, p. 8 of the
4 Agreement, Mr. Hager is ordered to provide health insurance for
5 the minor children. Said insurance shall be in place within 30
6 days of notice of entry of this Findings of Fact, Conclusions
7 of Law and Decree of Divorce.
8

9 17. Each person who is subject to this order for child
10 support may request a review of this order for child support
11 pursuant to NRS 125B.145 every three (3) years, or at any time
12 on the basis of changed circumstances.

13 18. PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
14 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER
15 IS PUNISHABLE AS A FELONY BY UP TO SIX (6) YEARS IN PRISON.
16 NRS 200.359 provides that every person having no right of
17 custody to the child who willfully detains, conceals or removes
18 the child from a parent, guardian or other person having lawful
19 custody or a right of visitation of the child in violation of
20 an order of this Court, or removes the child from the
21 jurisdiction of the Court without consent of either the Court
22 or all persons who have the right to custody or visitation is
23 subject to being punished by imprisonment in the state prison
24 for not less than one (1) year nor more than six (6) years, or
25 by a fine of not less than One Thousand Dollars (\$1,000.00) nor
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1 more than Five Thousand Dollars (\$5,000.00), or by both fine
2 and imprisonment.
3

4 THIS IS A FINAL DECREE.

5 DATED this 30 day of June, 1999.
6
7

8
9 Scott Jorden
DISTRICT JUDGE

10
11
12
13 Submitted by:
14 Todd L. Torvinen, Esq.
15 560 East Plumb Lane
16 Reno, Nevada 89502
17 (775) 825-6066
18 Nevada State Bar No.: 3175

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 8/10/99
AMY HARVEY, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By [Signature] Deputy

SEAL

REQUESTED BY

Todd L. Torvinen
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

1999 SEP -7 AM 9: 51

LINDA SLATER
RECORDER

\$23.00 PAID. [Signature] DEPUTY

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