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1 CASE NO. 01-DI-0269

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 MICHAEL PECK,

9 Petitioner,

10 vs.

11 ELIZABETH SHERYL PECORARO,

12 Respondent

ORDER GRANTING ADVICE AND
INSTRUCTIONS, APPROVING
PAYMENT OF EXPENSES AND ORDER
OF PARTITION

Rowe & Hales
Attorneys At Law

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15 THIS MATTER came on before the Court on October 15, 2002, on the
16 Petitioner's Revised Request for Entry of Order of Partition, Payment
17 of Expenses and Request for Advice and Instructions filed on September
18 19, 2002. Petitioner was present in Court, together with his counsel,
19 MICHAEL SMILEY ROWE, ESQ. of ROWE & HALES, LLP. The Defendant,
20 although properly served with a copy of the Request and Notice of
21 Hearing, failed to respond to the Request, and did not appear in
22 Court.

23 Accordingly, and based upon all pleadings on file herein, and
24 good cause appearing, the Court finds as a matter of fact, concludes
25 as a matter of law and orders as follows:

26 1. A review of this matter indicates that a default judgment
27 was entered on August 16, 2001, divorcing the Petitioner MICHAEL PECK
28 ("MICHAEL") and the Respondent ELIZABETH SHERYL PECORARO

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1 ("ELIZABETH").

2 In an unfortunate choice of words, MICHAEL's previous
3 counsel provided in the Decree that the former community property, and
4 domicile of the parties, located at 1518 Sanchez Road, Gardnerville,
5 Nevada ("the property") would be set aside to MICHAEL as his sole and
6 separate property, but also provided that MICHAEL would pay to
7 ELIZABETH the "total sum of the net received from the sale of the five
8 acre parcel adjacent to the Sanchez Road property". The Court finds
9 that there is no separate five acre parcel as may be inferred from the
10 wording of the Decree.

11 2. The former community property, and domicile of the parties,
12 is one ten acre parcel. It is an undivided ten acre parcel. The deed
13 to the property now recorded indicates that the title to the property
14 is held by MICHAEL and ELIZABETH as husband and wife as joint tenants.

15 3. In June, 2002, MICHAEL filed a verified request for order
16 of partition, payment of expenses and request for this Court's advice
17 and instructions. A supplement to this request was filed with the
18 Court on July 8, 2002. On July 9, 2002, MICHAEL, together with his
19 counsel, appeared in Court and a hearing was conducted on the original
20 request. After the hearing, and because of questions and concerns of
21 the Court, the Court did not grant the request, but required that
22 MICHAEL take certain actions prior to the Court's consideration of the
23 request. It appears to the satisfaction of the Court that MICHAEL has
24 followed the directions of the Court, and that the Court's questions
25 or concerns are satisfied.

26 4. The Court finds that an Order of Partition according to the
27 Turner and Associates survey previously supplied to the Court is
28 appropriate in these circumstances. The Court finds as a matter of

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1 fact, and concludes as a matter of law, that it possess the authority
2 to partition the parties' community real property interests in order
3 to effect an equal division of the community real property. The Court
4 concludes that pursuant to NRS 39.010 et. seq. "Partition of Real
5 Property" the Court may partition real property according to the
6 respective rights of the parties and their interests in the real
7 property. The Court also concludes that a partition may be made
8 without great prejudice to MICHAEL and ELIZABETH.

9 The Court further concludes that it may partition the
10 property pursuant to the provisions of NRS 278.461(4)(e) and exempt
11 the requirement of a parcel map when the division of the property is
12 for the express purpose of carrying out an order of this Court.

13 5. The Court finds that MICHAEL and his counsel have complied
14 with this Court's request to advise the Douglas County, Nevada
15 Community Development Department of the request.

16 The Court finds as a matter of fact, and concludes as a
17 matter of law, that, in these unique circumstances, and in order to
18 divide the community property equity between MICHAEL and ELIZABETH, an
19 order partitioning the property and allowing for the sale of one of
20 the five acre parcels is the only method available to the Court to
21 equally distribute the community property asset accumulated during the
22 course of the marriage.

23 6. The Court finds as a matter of fact, and concludes as a
24 matter of law, that ELIZABETH owes an obligation of child support to
25 MICHAEL. The Decree requires such support to be paid to MICHAEL. The
26 Court finds that ELIZABETH has made no payments of Court ordered child
27 support to MICHAEL.

28 Accordingly, the Court finds and concludes that it is

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1 appropriate in the circumstances to allow \$3,100.00 to be deducted
2 from the proceeds resulting from the sale of the to be created five
3 acre parcel and paid to MICHAEL in order to satisfy ELIZABETH's
4 obligation to pay child support for the parties minor child BREANN
5 until her 18th birthday. The \$3,100.00 payment shall be paid directly
6 to MICHAEL on close of escrow of the sale of the partitioned five acre
7 lot.

8 7. The Court finds that ELIZABETH has received \$791.00 per
9 month as a result of her failure to advise the Social Security
10 Administration that MICHAEL, and not ELIZABETH, was the custodial
11 parent of BREANN. It also appears to the satisfaction of the Court
12 that ELIZABETH has and will be paid such sums notwithstanding that
13 MICHAEL has advised the Social Security Administration that the Decree
14 of Divorce was entered and that MICHAEL is the custodial parent of
15 BREANN.

16 The Court further finds that the monies paid to ELIZABETH
17 were paid by the Social Security Administration for the benefit of
18 BREANN.

19 MICHAEL has requested this Court's advice and its order to
20 set aside a sum of \$21,421.00, derived by a deduction of \$3,100.00
21 from the total amount that has been or will be paid by the Social
22 Security Administration to ELIZABETH, into a separate or blocked type
23 of trust account for the benefit of BREANN to be paid to BREANN upon
24 her attaining the age of 30 years. The Court deems this an
25 appropriate and proper request, but disagrees that these funds should
26 not be available to MICHAEL. Accordingly, the Court orders that
27 MICHAEL shall have access to the entire amount of benefit paid by the
28 Social Security Administration for the ostensible purpose of

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1 supporting BREANN, or \$24,521.00.

2 It is clear to the Court that MICHAEL has provided for the
3 support and maintenance of BREANN. Accordingly, the Court deems it
4 proper to allow MICHAEL to access the sum of \$24,521.00 for the
5 purpose of providing for BREANN's education, support, maintenance or
6 such other purpose as a parent would apply funds for the benefit of a
7 child.

8 8. MICHAEL has requested this Court's advice and instruction,
9 and order deducting from the net proceeds of the sale of the five acre
10 parcel the amount of \$600.00 which is one-half of the costs of the
11 Turner and Associates survey approved by the Court as the survey of
12 the partitioned lot. The Court deems it appropriate to reimburse
13 MICHAEL the sum of \$600.00 for the survey expense.

14 9. MICHAEL has requested this Court's authorization for
15 reimbursement from the sale's proceeds for one-half of the community
16 obligations paid by MICHAEL. The total amount of obligations paid by
17 MICHAEL for the benefit of the community and for the benefit of
18 ELIZABETH is \$15,475.91. The Court deems it appropriate to reimburse
19 MICHAEL one-half of this amount, or \$7,737.96, from the sale's
20 proceeds. ELIZABETH clearly benefitted from MICHAEL's payment of
21 these community obligations.

22 10. In his revised request, MICHAEL has distinguished certain
23 community obligations for utilities and other expenses incurred in
24 provision of a home for BREANN from the community obligations
25 referenced above. He has requested reimbursement of one-half of the
26 amount paid for utilities provided to the home in which MICHAEL and
27 BREANN live. MICHAEL's requested reimbursement is one-half of the
28 total cost of \$1,880.00, or \$940.00, for the utilities. The Court

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1 disagrees with this request. With the Court's earlier stated
2 intention to allow MICHAEL to utilize the sum of \$24,521.00 for the
3 benefit of BREANN, the Court has reasoned that these sums were to be
4 paid for the support of BREANN. In the Court's opinion, and therefore
5 the Court's order, this sum would include the costs for reimbursement
6 of utilities. The Court denies MICHAEL's requested reimbursement for
7 one-half of the utility costs.

8 11. MICHAEL has requested this the Court approve of his request
9 for instructions to place the sale's proceeds resulting from the sale
10 of the to be created five acre parcel into a blocked or trust type
11 account wherein the children of MICHAEL and ELIZABETH, BREANN and
12 TRAVIS, are named as beneficiaries. The Court deems it appropriate to
13 approve of this request. The Court will maintain dominion and control
14 of the account pending further order of the Court.

15 The Court hereby orders that the balance of the sale's
16 proceeds will be deposited with the Clerk of this Court into an
17 interest bearing account for the benefit of the two children of
18 MICHAEL and ELIZABETH. Should ELIZABETH die prior to the Court
19 considering a request for release of these funds, the principal and
20 interest will be released upon a request made to the Court by BREANN
21 and/or TRAVIS. At such time as the request is made to the Court, the
22 Court will consider the request and enter such further order as it
23 deems appropriate in the circumstances.

24 It is the order of the Court that the share of ELIZABETH,
25 which will equate one-half of the net sale's proceeds after the
26 allowed deductions set forth within this order, shall be established
27 as an account with, in essence, two subshares. BREANN and TRAVIS
28 shall each be entitled to one-half of the account, together with one-

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1 half of any accrued interest, should the Court release the account to
2 the children.

3 12. MICHAEL has also requested that this Court authorize
4 reimbursement of one-half of MICHAEL's incurred attorney's fees and
5 court costs in procuring the divorce and this order. The Petition
6 advises that MICHAEL has incurred \$6,378.00 in attorney's fees and
7 court costs; one-half of which is \$3,189.00. The Court approves of
8 reimbursement of \$3,189.00 in attorney's fees and court costs from the
9 net proceeds of the sale.

10 13. Based upon the above and foregoing findings of fact and
11 conclusions of law, the Court finds as a matter of fact that, should
12 any conclusion of law be construed to be a finding of fact, the Court
13 so intends. Conversely, should any conclusion of law be construed to
14 be a finding of fact, the Court also intends this construction.

15 In consideration of the above and foregoing, the Court hereby
16 enters it order as follows:

17 1. The Court ratifies, confirms and approves of the Turner and
18 Associates survey, attached as Exhibit "A" to the initial request
19 filed June 7, 2002, and orders that the proposed record of survey
20 dividing the community real property into five acre lots may be
21 recorded. Pursuant to NRS 278.461(4)(e), the Court hereby enters its
22 order that the record of survey may be recorded and the property
23 partitioned.

24 2. This Court will execute the appropriate jurat on the record
25 of survey map in order that the parcels may be divided as set forth on
26 the record of survey. Thereafter, MICHAEL shall cause the record of
27 survey to be recorded.

28 3. The Court orders that once the record of survey map has

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1 been recorded, MICHAEL shall use all reasonable efforts to sell the
2 parcel known on the record of survey map as Parcel 4-B-1. MICHAEL
3 shall be fully authorized to sign any instruments necessary to list
4 the property for sale and sell Parcel 4-B-1. No further judicial
5 confirmation of the sale shall be required. ELIZABETH's share of the
6 proceeds of the sale are subject to the provisions of this order.

7 4. The deductions allowed from the gross proceeds resulting
8 from the sale of Parcel 4-B-1 are as follows:

9 · \$24,521.00 to MICHAEL to apply for BREANN's care,
10 · \$600.00 reimbursement of one-half cost of survey fees
 to MICHAEL
11 · One-half of community obligations paid by MICHAEL;
12 · \$7,737.96 reimbursed to MICHAEL
 · \$3,189.06 reimbursement of one-half of attorney's fees
 paid by MICHAEL.

13 **Total: \$36,048.02**

14 5. Upon the deductions being made as set forth above, the net
15 proceeds will be subject to distribution pursuant to the Court's later
16 order. Pending such order, the Court will maintain dominion and
17 control over these proceeds which will be maintained for the benefit
18 of ELIZABETH. Should ELIZABETH demonstrate satisfactory sobriety to
19 this Court, the Court will consider a request to distribute this
20 account.
21

22 The account that shall be established with the Clerk of
23 this Court shall be an interest bearing account for the benefit of
24 ELIZABETH or BREANN and TRAVIS. MICHAEL shall have no access to these
25 funds.

26 6. Should ELIZABETH fail to request release of these funds,
27 after demonstrating to the Court her sobriety, or should ELIZABETH die
28 before she makes an application for release of these funds, these
funds shall be retained by the Clerk until further Court order. Such

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1 an order may be issued upon application by either TRAVIS or BREANN for
2 release of the funds. At such time as an application is made by
3 either BREANN, TRAVIS or ELIZABETH, the Court shall evaluate such
4 request and enter such further orders relating to the fund as deemed
5 appropriate in the circumstances.

6 The intention of the Court is that the fund established
7 with the Clerk shall be the net sale's proceeds; interest shall be
8 compounded and paid to the principal and retained by the Clerk of the
9 Court until such time as this Court enters an order distributing the
10 fund.

11 7. Within 30 days of the date of the close of escrow resulting
12 from the sale of Parcel 4-B-1, MICHAEL shall submit satisfactory proof
13 to this Court that the trust account required by this order has been
14 established.

15 DATED: this 21 day of October, 2002.

16 *David R. Gamble*

17 DAVID R. GAMBLE
18 DISTRICT COURT JUDGE

19 ROWE & HALES, LLP.,

20 *Michael Smiley Rowe*
21 MICHAEL SMILEY ROWE, ESQ.
22 Nevada State Bar No. 1374
23 1638 Esmeralda Avenue
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Attorney for Petitioner

25 **CERTIFIED COPY**

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

SEAL

DATE: 10/22/02
Breed Clerk of the 9th Judicial District Court
of the State of Nevada, In and for the County of Douglas,

By *J. Thaler* Deputy

REQUESTED BY
Rowe & Hales
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

2002 OCT 30 AM 10:06

LINDA SLATER
RECORDER

\$22 PAID *kg* DEPUTY

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