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MACELLARISOLIS, KATHY

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Douglas County - NV
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TITLE OF DOCUMENT: FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECREE OF DIVORCE

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1 CASE NO. 02-DI-0009

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BARBARA BEED

4 DOUGLAS COUNTY
5 DISTRICT COURT CLERK

BY *[Signature]* DEPUTY

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

9 KATHY MACELLARI,

10 Plaintiff,
11 vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECREE OF DIVORCE

12 JOE MACELLARI,

13 Defendant.

14 This matter came on for trial first on August 16, 2002 and again on November 14, 2002. Plaintiff
15 Kathy Macellari was present with her counsel Nancy Rey Jackson, Esq; defendant Joe Macellari was
16 present with his counsel Robert A. Grayson, Esq. The Court received testimony from the parties and their
17 witnesses at both hearings. Following the August 16, 2002, the Court entered a divorce between the
18 parties, confirming primary physical custody of the children in Mr. Macellari. On that day the Court had
19 heard testimony regarding Mrs. Macellari's residence and determined that she was a resident of the State
20 of Nevada for at least six weeks prior to the inception of the divorce proceedings. The Court then reserved
21 jurisdiction over the remaining issue until all testimony was received. At the November 14, 2002 hearing,
22 Mrs. Macellari and Mr. Macellari testified as well as the parties's daughter, Sarah Macellari. Being thus
23 fully advised regarding the issues before it that date and based upon the prior hearings and orders entered
24 in these proceedings, the Court enters the following

25 FINDINGS OF FACTS

- 26 1. The parties were married on August 10, 1985, in Douglas County, Nevada.
27 2. Mrs. Macellari filed a complaint for divorce on January 14, 2002. Mr. Macellari was
28 personally served on that date with the affidavit of service filed on January 16, 2002. Mr. Macellari filed

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1 his answer and counterclaim for divorce on February 1, 2002.

2 3. There are two minor children of the marriage: Sarah Macellari, born May 28, 1986 and Shane
3 Macellari, born August 29, 1994.

4 4. The court held some hearings prior to trial which resulted in various orders of temporary
5 physical custody of the children, child and spousal support and payment of obligations. It is proper to
6 maintain the children's legal custody vested in both parents with their primary physical custody remaining
7 in Mr. Macellari with reasonable visitation to Mrs. Macellari.

8 Visitation between Mrs. Macellari and the minor children at Mrs. Macellari's request in view of
9 her work schedule shall be every Saturday from 10 a.m. until 8 p.m. That schedule shall continue for the
10 remainder of the year 2002. Beginning with the year 2003, the visitation schedule will go to every other
11 weekend as previously established and continue in that fashion for approximately two months. Thereafter,
12 the Court will consider expanding the visitation time with each party submitting a proposal to the Court or
13 making a request for mediation.

14 The parties are to share the holidays. For 2002, Mr. Macellari will have the minor children for
15 Thanksgiving and Christmas eve. Mrs. Macellari will have them for Christmas day with the exchange of
16 the children to be 9 p.m. Christmas eve and return to Mr. Macellari at 5 p.m. Christmas day. The parties
17 will continue to alternate the holidays in that fashion. The party receiving the children shall be responsible
18 for the pick up. Other holidays are not addressed at this time as the Court anticipates some changes in the
19 relationship and will make further determinations on other issues regarding the children.

20 As Mr. Macellari has primary custody of Shane, Mrs. Macellari shall return 90% of his toys to
21 him.

22 The Court heard testimony regarding the use of controlled substances in the defendant's home.
23 The evidence presented was insufficient to convince the Court that random drug testing is warranted.
24 However, Mrs. Macellari's son Robert Williams is currently serving a term in the Douglas Jail as the
25 result of a conviction of drug use and sale. Mr. Williams lived with Mr. Macellari prior to incarceration.
26 Should he return to that home once his jail term is completed, it is appropriate that everyone in
27 defendant's home be subject to random drug testing for the presence of controlled substances and search
28 and seizure without a warrant. Similarly, should he live with his mother, Mrs. Macellari will be subject to



1 random drug testing as well.

2 5. Mrs. Macellari owes an obligation of child support to the minor children. To that end she shall
3 pay child support in an amount representing 25% of her gross income, calculated at the time of trial to be
4 \$460.00 per month. The child support may be deducted by Mr. Macellari from his spousal support as
5 further provided below.

6 6. Mrs. Macellari is entitled to claim the IRS exemption for the minor children for the year 2001
7 when she had them in her custody the whole year. Mr. Macellari claimed the exemption on his income
8 tax return thus denying Mrs. Macellari its availability. Mr. Macellari shall file an amended return for the
9 tax year 2001. Mrs. Macellari should do so as well, allowing her the exemption. As Mr. Macellari
10 wrongly claim the exemption, he shall be responsible for the cost incurred in filing the amended returns.
11 Mr. Macellari will be entitled to claim the exemption for both children for the years 2002 and 2003.
12 Thereafter there will remain only one child for whom the exemption may be claimed. The Court reserves
13 jurisdiction regarding further allocation of the exemption upon review of the custodial agreement at that
14 time. The Court may also review the grant of the exemption to either party based on defendant's claim of
15 lack on income. If he has no income, the exemption will not benefit him and may then go Mrs. Macellari.

16 7. Neither party has medical insurance available through his/her employment for the minor
17 children. Thus the parties are jointly responsible for the cost of medical insurance coverage when
18 obtained as well as equally responsible for the cost of uncovered medical, dental eye care and other such
19 costs incurred on behalf of the children.

20 8. Mrs. Macellari has requested that spousal be granted to her for a period of five years following
21 the marriage. Mr. Macellari has claimed insufficient income on his part over the recent years to warrant a
22 grant of alimony. The Court makes these specific finding regarding the issue of alimony:

23 One of the factors under the Sprenger v. Sprenger, 110 Nev. 855, 878 P.2d 574 (1995), upon
24 which defendant relies, is what a party receives following the marriage. Mr. Macellari is receiving the
25 business; Mrs. Macellari is not. Her award from the equity on the home is not large. Mr. Macellari wants
26 the business. That fact weighs in favor of alimony when taking into account the length of the marriage; the
27 fact that Mrs. Macellari helped support the business during the marriage; the fact that his business
28 improved; the fact that her skills are minimal and that although she can get a job, she is not likely to

1 substantially advance and that Mr. Macellari's business at his age is still likely to improve quite a bit.
2 Moreover, although Mrs. Macellari was not home with the children during their early years, she had to
3 stay home for some time with them after they were born.

4 The Court takes also into consideration the lifestyle of the parties prior to separation, the
5 continuation of a similar lifestyle by Mr. Macellari post-separation, and a substantial decrease in Mrs.
6 Macellari's standard of living post separation. Furthermore, Mr. Macellari's lack of documentation
7 regarding his revenues and expenses for his business resulted in the court drawing an adverse inference
8 regarding his claim of poverty.

9 Mr. Macellari admitted that his business is somewhat a cash operation. The Court does not
10 believe his tax returns represent his true earnings. The Court finds that Mrs. Macellari's statements are
11 more believable on this issue. Additionally, Sarah's testimony that she is paying \$700 per month for a car
12 payment while working part time is plainly untenable. What about insurance, registration, gasoline and
13 maintenance expenses? Mr. Macellari must be subsidizing her. Additionally, he has the use of a vehicle,
14 for free.

15 The above findings indicate that alimony is appropriate in these circumstances. Out of a 17 year
16 marriage, Mrs. Macellari only asks for alimony for a period of 5 years. The Court does not believe that
17 five years is too long a period. Therefore, alimony will be set at \$1500 per month for the period of five
18 years. The alimony will end upon Mrs. Macellari's death, remarriage or cohabitation in a romantic
19 relationship for a period in excess of six months. As provided above, Mr. Macellari may deduct the child
20 support from the alimony payment.

21 9. The parties have accumulated items of personal property and vehicles during the marriage.
22 Some of the items currently in the possession of a party carry an outstanding obligation. Mrs. Macellari
23 will be responsible for the remaining obligation on the television. Mr. Macellari will be responsible for the
24 obligation on the stove which is in the home. That obligation shall be paid in full by the end of the year
25 2002.

26 10. The parties own vehicles which are set aside to them, respectively, as each party's sole and
27 separate property.

28 11. The personal obligations incurred by either party pending the proceedings are set aside to the

1 party who incurred the obligations.

2 12. The parties owned a home in Douglas County, Nevada which is now occupied by defendant.
3 It is appropriate that the home be set aside to him as his sole and separate property. The Court finds that
4 the home has a value of \$165,000, with the parties' equity being \$27,000. Mrs. Macellari is entitled to
5 receive her share of the equity therein.

6 Pending the proceedings, Mr. Macellari was ordered to maintain the mortgage current in lieu of
7 direct payment of spousal support to Mrs. Macellari. He failed to make the payments and the home went
8 into foreclosure. Mr. Macellari renegotiated the mortgage and testified that he got the home out of the
9 foreclosure proceedings. The Court finds that there were costs and fees incurred as the result of the
10 foreclosure and thus that it is appropriate that the sum of \$2,000 be subtracted from defendant's share of
11 the proceeds and set aside to Mrs. Macellari. The Court also finds that the sum of \$1,000 should be
12 deducted from Mrs. Macellari's share of equity for damaging the house or otherwise not safeguarding the
13 property once she vacated it.

14 Additionally, the Court finds that there was a hot tub on the property which was worth something.
15 Mr. Macellari unilaterally gifted it to his brother. He should repay Mrs. Macellari the sum of \$1,000 as
16 her share of the equity in the hot tub.

17 Based on the various offsets made above, Mr. Macellari shall pay to Mrs. Macellari the sum of
18 \$15,500 as her share of the equity. That amount shall be paid to her in full within eight months from the
19 date of trial or not later than July 14, 2003. In the event payment is not made by that time, Mr. Macellari
20 shall return and advise the Court why the payment has not been made.

21 13. The parties owned a business during the marriage, Macellari Construction. That business,
22 including any tools and equipment, is set aside to Mr. Macellari as his sole and separate property. He
23 shall be solely responsible for all existing obligations of the business as well as all ongoing ones. He shall
24 hold Mrs. Macellari harmless from all such obligations, including the obligations to the IRS.

25 14. Mrs. Macellari has incurred attorney fees and costs in bringing and maintaining this action in
26 the current amount of \$9,000. The Court had ordered Mr. Macellari to pay initially the sum of \$4,000 plus
27 another \$1,000 as a result of the findings of contempt of court. Mr. Macellari shall pay to Mrs. Macellari
28 an additional \$2,000 in attorney's fees. The balance of the fees shall be paid by Mrs. Macellari.



1 15. Along with the remaining testimony regarding the parties's divorce, the Court heard testimony
2 regarding Mrs. Macellari's application for order to show cause re contempt on various alleged violations
3 of the Court's orders. Following testimony, the Court finds that although Mr. Macellari caused the
4 application to be filed as the result of his actions, he cannot be found in contempt on all the alleged
5 violations. Specifically, the Court finds as follows:

6 Foreclosure: Regarding the foreclosure, the Court finds that Mr. Macellari did not provide the
7 documentation to Mrs. Macellari to show that he had followed the Court's order. However, he had signed
8 the appropriate document and testified that he is making the payments. Had he presented the documents to
9 Mrs. Macellari, the Court would not have had the hearing on that issue. Nonetheless, this is not a violation
10 sufficient to find him in contempt on that issue.

11 Attorney fees: It is obvious that Mr. Macellari is trying to find every way possible to slip out of
12 that obligation. The Court very clearly told him to pay \$4,000 and that only \$1,500 was to avoid an
13 immediate jail sentence being imposed. Moreover, he did not make the additional \$475 until the order to
14 show cause was filed. He is clearly responsible for that matter being in front of the Court. He is in
15 violation of the court order because he did not make any good faith payments after the \$1,500. The Court
16 finds that he is in contempt for not paying the attorney fees.

17 Alimony: Mr. Macellari did not to pay his court ordered alimony in a timely manner but he is
18 current through the month of October. However, since Mrs. Macellari authorized payments to be made
19 late, the Court cannot find Mr. Macellari in contempt.

20 Payment to Apartment Manager: The Court finds that Mrs. Macellari did authorize the payment to
21 the apartment manager but that she would not have had to do so had Mr. Macellari been timely in his
22 alimony payment. The fact of his late payment cause us to be hearing the matter. The Court admonishes
23 Mr. Macellari that he has no business deciding how the alimony is to be paid. He must follow the court
24 order. Moreover, payment of alimony is not to be traded off for visitation time.

25 Visitation: The Court finds that there is insufficient evidence to believe that Mr. Macellari
26 willfully interfered with visitation and that the problem is largely due to Mrs. Macellari's own actions.
27 She has alienated her daughter Sarah and has made insufficient efforts to enforce the visitation with
28 Shane. On the other hand, the Court seriously doubts that Mr. Macellari is fully cooperating and is trying

1 to facilitate visitation. The Court does not find him in contempt regarding the visitation issue however
2 advised Mr. Macellari that he must do exactly what he said he thinks should be done, that is encourage the
3 visitation and relationship between Mrs. Macellari and the children, particularly Sarah. The Court further
4 finds that the relationship between Mrs. Macellari and Sarah must be reestablished and to that end finds
5 that the parties shall cooperate in obtaining and participating in such counseling.

6 Contempt: The Court finds that Mr. Macellari is in contempt of court and an immediate sanction
7 in the amount of \$500 is hereby imposed to be paid as attorney fees. The total preliminary fees and
8 contempt fines ordered to be paid is \$5,000. Mr. Macellari has paid a total of \$1,975 toward that amount.
9 He shall deliver the balance to \$3,025 to Mrs. Macellari's attorney by November 18, 2002, 1:15 p.m.
10 Should he fail to make the payment by that time, he shall appear in court at 1:40 p.m. that date and explain
11 why the payment was not made and why the jail sentence previously ordered should not be imposed.

12 16. Kathy Macellari's maiden name is Kathy Solis.

13 17. The parties are incompatible in marriage.

14 CONCLUSIONS OF LAW

- 15 1. Plaintiff has met the jurisdictional requirements of NRS 125.020.
16 2. The Court has jurisdiction over the parties, the minor children and the subject matter of this
17 action.
18 3. Plaintiff is entitled to be restored to her maiden name.
19 4. Plaintiff is entitled to entry of a decree of divorce against the defendant on the grounds of
20 incompatibility.

21 Based upon the foregoing findings of fact and conclusions of law, and being fully advised, the
22 Court does hereby make and enter the following:

23 JUDGMENT AND DECREE OF DIVORCE

24 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the bonds of matrimony now
25 and heretofore existing between the parties, be, and they are hereby, dissolved and plaintiff Kathy Macellari
26 is granted a decree of divorce against the defendant Joe Macellari on the grounds of incompatibility. The
27 parties are restored to the status of single and unmarried persons.

28 IT IS FURTHER ORDERED that the parties shall share the legal custody of the minor children Sarah

1 born May 28, 1986 and Shane, born August 29, 1994.

2 Their physical custody shall be vested in Mr. Macellari with reasonable visitation to Kathy Macellari
3 as provided in the above Findings of Fact.

4 Should either party desire a change in the current visitation schedule, that party shall first contact the
5 other party and request that party's agreement to the change. Mr. Macellari shall not request any visitation
6 change directly from the minor children.

7 IT IS FURTHER ORDERED that as and for the support of the minor children, Mrs. Macellari shall
8 pay to Mr. Macellari a sum representing 25% of her gross income. The Court calculates that amount at
9 \$460.00 per month. The child support payment shall be made by having Mr. Macellari deduct that amount
10 from his monthly alimony obligation to Mrs. Macellari. Unless the custodial arrangement changes, the amount
11 of child support shall be adjusted once the minor child Sarah reaches the age of 18 as she will have graduated
12 from highschool. The child support shall then be calculated at 18% of Mrs. Macellari's gross income and only
13 that amount shall be deducted from the spousal support. The child support payment obligation shall continue
14 for Shane until he reaches the age of 18 or 19 if still enrolled in highschool, whichever is later, or until further
15 of the court.

16 IT IS FURTHER ORDERED that each party shall be liable for their respective income taxes for the
17 year 2001, forward. Mrs. Macellari is granted the exemption for the two children for the year 2001. As Mr.
18 Macellari claimed the exemption for the children in contravention of the provisions made herein, he shall file
19 an amended tax return without the exemption. Mrs. Macellari will file an amended return as well claiming
20 the exemption for both children. Mr. Macellari shall pay the costs incurred for such amended filings.
21 Thereafter, Mr. Macellari shall claim the exemption for both children for the years 2002 and 2003. The Court
22 reserves jurisdiction to review that issue once Sarah graduates from highschool and only Shane remains.

23 IT IS FURTHER ORDERED that the parties shall equally share the cost of medical insurance on
24 behalf of the minor children when that insurance is available to either of them. The parties shall share equally
25 the cost of all unreimbursed medical, dental, eye care services and the like which are not covered by insurance.

26 IT IS FURTHER ORDERED that Mr. Macellari shall pay alimony to Mrs. Macellari in the amount
27 of \$1,500 per month for a period of five (5) years. Alimony shall terminate upon Mrs. Macellari's death,
28 remarriage or cohabitation in a romantic relationship for a period of more than six months. As provided in



1 consent of either the court all persons who have the right of custody or visitation is subject to being punished
2 for a category D felony as provided in NRS 193.130.

3 NOTICE: Pursuant to NRS 125.510 (7), the terms of the Hague Convention of October 25, 1980,
4 adopted by the 14th Session of the Hague Conference on Private International Law apply, if a parent abducts
5 or wrongfully retains a child in a foreign country. The parties agree that the United States of America is the
6 habitual country of residence of the minor children.

7 IT IS FURTHER ORDERED that Kathy Macellari's maiden name, KATHY SOLIS, is restored to her.

8 IT IS SO ORDERED.

9 Dated this 13 day of December 2002.

10
11 
12 DISTRICT JUDGE

13
14
15 Submitted by:
16 Nancy Rey Jackson, Esq. #03648
17 1591 Mono Avenue
18 Minden, Nevada 89423
19 Attorney for Kathy Macellari

20
21
22
23 **CERTIFIED COPY**

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

27 DATE: 4/18/03
28 B. Reed Clerk of the 8th Judicial District Court
of the State of Nevada, In and for the County of Douglas,

By B. Reed Deputy

SEAL

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REQUESTED BY
Kathy Macellari
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

2003 APR 18 AM 9:23

WERNER CHRISTEN
RECORDER

24⁰⁰ PAID KJ DEPUTY

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