NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS/ ST. JOHN

RUDOLPH SLACK, Petitioner, vs. DONNA SLACK, Respondent.	FAM. NO. ST-14-DI-3 ACTION FOR DIVORCE

Counsel:

RUDOLPH SLACK[1]
Pro Se

KEVIN F. D'AMOUR, ESQ.
Attorney for Respondent

MEMORANDUM OPINION

THIS MATTER came before this Court for a final hearing to resolve remaining issues flowing from the parties' divorce following this Court's granting of a Divorce Absolute.[2]

FINDINGS OF FACT

This Court having considered the evidence presented at trial and having considered the credibility of the witnesses presented finds as follows:

The parties married on St. Thomas on July 17, 2004. Mr. Slack filed for divorce on January 17, 2014. On July 10, 2014, Mrs. Slack filed a motion for pendente lite support, seeking interim support citing financial difficulties.

Mrs. Slack is 59 years old. Mr. Slack is 74 years old.

The parties noted various strains in the marriage, with Mr. Slack expressing concern over Mrs. Slack's spending habits and use of his credit card without his authorization or knowledge, and Mrs. Slack relating instances where Mr. Slack changed the locks to the 5M Estate St. Thomas property occupied by the parties.

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[1] On November 17, 2016, this Court granted Andrew L. Capdeville, Esq.'s request to withdraw as counsel.

[2] The final hearing took place over three days - October 29, 2015, October 30, 2015, and January 20, 2016.

In May 2011, Mrs. Slack penned a handwritten note indicating that going forward the parties are separated and shall remain with their respective possessions.[3] However, the parties did not separate until 2013. This Court finds that this note is not dispositive of any of the issues for determination before this Court.

The parties were granted a Divorce Absolute on April 29, 2015.[4]

Throughout the marriage, the parties maintained separate primary residences — Mr. Slack in St. Thomas and Mrs. Slack in Florida (with her children due to the terms of a prior divorce that prohibited the relocation of the children).[5] The parties enjoyed what can best be described as a commuter marriage, with the parties spending little time together in either residence but coming together to engage for occasional visits and intermittent cruise travel.[6]

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[3] The note states as follows:

> I Donna Lee Slack in sound mind and body accept that from this day forward May 30, 2011 it is inevitable that my husband Rudolph A. Slack and I will no longer live together or seperate as husband and wife.
>
> We entered this marriage with real property and other worldly possession which we agreed that if and when we divorced would remain in tack with respect to what was brought to the marriage. I agree with any and all decision made by Rudolph A. Slack in termination of this Marriage.
>
> I will never ask or request alimony ask residence 5M Estate Thomas, St. Thomas, VI 00802.

Mrs. Slack signed both pages of the letter. Mr. Slack's signature does not appear on the note.

This note is not dispositive of the issues in this case as it does not rise to the level of a binding agreement. "[A]n agreement is a 'promise that is either stated in oral or written words (express contract), or a promise that can be inferred wholly or partially by conduct (implied contract).'" Whyte v. Bockino Super. Ct. Crim. No. 83/2015 (STX), ___ V.I. ___, slip op. at 5 (V.I. Super. Ct. Jan. 26, 2017) (citing Mosley v. Penn, 2016 V.I. LEXIS 138, at *7, n.19 (V.I. Super. Ct. 2016); See also, Peppertree Terrace v. Williams, 52 V.I. 225, 241 (V.I. 2009). In agreement with the Virgin Islands Supreme Court that a "decision of a single Superior Court judge," does not "constitute controlling authority in any subsequent proceeding," this Court regards the aforementioned cases as persuasive authority. Edney v. Edney, 64 V.I. 661, 663, n. 1 (V.I. 2016).

There is no indication of an agreement nor can one be inferred from the nature of the sentiment expressed or the behavior of the parties. The note—which is unsigned by the non-averring party—is informal, ambiguous, and lacking in specificity. Furthermore, the note was apparently composed during an argument, and the parties reconciled after the argument as the filing for divorce took place over two (2) years later in 2013. Also, no implied agreement is evidenced. See October 30, 2015 Transcript (Oct. 30 T), pp. 99-103 (showing that the letter was written following a heated argument between the parties per Mr. Slack's testimony).

As such, this Court finds that there is insufficient evidence in the record to that establish that the parties had an agreement.

[4] On April 10, 2015 this Court also declared the parties' ante nuptial agreement to be invalid.

[5] The children are now adults.

[6] The uncontroverted testimony shows two instances where the Mr. and Mrs. Slack were actually together in either state/island for an extended period of time – when Mrs. Slack "stayed" in St. Thomas for "part" of 2014 (6 months) and when Mr. Slack

Mrs. Slack's Employment and Income: Mrs. Slack is the sole proprietor of Slack's Travel Agency. She started the Florida-based travel agency around 2004, shortly after their marriage, with a loan from Mr. Slack.

Mrs. Slack's employment history shows that she previously worked as an Emergency Room Nurse for the U.S. Army, as a licensed practice nurse (LPN)[7], and as a letter carrier/clerk for the U.S. Postal Service. Mrs. Slack currently receives disability payments as a result of a kidney transplant she received in 1999.

Mrs. Slack's income is as follows: Slacks Travel ($1, 800) and disability ($1, 020.36) for a rounded total of $2,800.[8]

Her essential expenses are: Mortgage ($1,120); food ($800); clothing ($400); medical and dental ($25); transportation ($250); insurance ($565); taxes (120); telephone ($300); and utilities ($170) – for a rounded total of $3,800.[9]

This Court finds Mrs. Slack's monthly shortfall to be $1,000.

Mrs. Slack owns her Florida home, which she acquired prior to the marriage.

Mr. Slack's Employment/Income: Mr. Slack is presently employed as a Maintenance Field Supervisor with the V.I. Department of Education and has been so employed throughout the course of the marriage. He has been a licensed electrician since 1965.[10] However, there was insufficient evidence presented from which this Court could find that Mr. Slack received any compensation in connection therewith during the course of the marriage.[11]

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spent extended time in Florida in an undetermined year after Florida experienced a hurricane. The evidence shows that all other times in either location were generally sporadic.

[7] Her LPN license is currently inactive.

[8] The figures concerning Mrs. Slack's business income and monthly disability payments were based off of her testimony. See Oct. 30 T., pp. 8, 91. This Court also recognizes that she submitted a financial statement into evidence wherein she claims her income from Slack's Travel as of October 2015 is on or around $654.00 a month and that she receives $1, 040 a month in disability payments. The Court accepts her testimony as its finding of fact instead. See Respondent's Exhibit 4 (Wife's Financial Statement).

[9] Not included in this Court's debt findings are two personal loans allegedly acquired in 2014 testified to by Mrs. Slack – a purported loan of $10,000 from her brother-in-law and one of $2,000 from a co-worker. This Court did not deem Mrs. Slack testimony regarding the loans to be credible as she presented no evidence direct or circumstantial - aside from her averment - in support thereof (eg. promisorry note, bank deposits, etc.).

[10] See Oct. 30 T, p. 165, 170.

[11] Per Mrs. Slack, Mr. Slack signed off on many contract jobs for other individuals from which he possibly did not earn income, but she asserts that Mr. Slack had about 126 jobs, most of which were performed by him and from which she believes he did receive compensation. See January 20 Transcript (Jan. 20 T.), p. 91. According to Mr. Slack, he signed off on numerous permit applications as favors to his friends and associates, but he collected no income. See Oct. 30 T., p. 166, 168. Therefore, although

Mr. Slack owns his own home which he acquired prior to the couple's marriage, 5M Estate Thomas. He also owns a building at 5C Estate Thomas, which he also acquired prior to the marriage.[12] The 5C Estate Thomas property generates rental income. Currently, Mr. Slack derives his income from his government employment, rental income, and social security benefits.

Mr. Slack's income is as follows: V.I. Department of Education Employment ($46, 575); Social Security ($21,406); and, Rental Income ($33,000) – with a rounded total of $100,000.[13]

There is no specific evidence of record as to Mr. Slack's personal expenses.

Mr. Slack received a lawsuit settlement check in the amount of $230,000 in 2005 for insurance proceeds for hurricane damage incurred prior to the parties' marriage.[14] Ultimately the funds were placed

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concerning to the Court, there is no evidence aside from Mrs. Slack's allegation to find that Mr. Slack received income as an electrician during the marriage.

[12] The 5C Estate St. Thomas property was purchased by Mr. Slack in 1972. The property was later awarded to him outright in a 1977 divorce action. See Oct. 30 T., p. 142-3.

[13] With respect to his social security benefits, Mr. Slack testified to possibly receiving $20, 960 in social security benefits in 2013, and $21, 852 in 2014, the average of which is $21, 406. See Oct. 30 T, pp. 179, 207.

Mr. Slack testified to making approximately $33,000 a year from his rental property since 1977. See Oct. 30 T, p. 176-7.

During the hearing, Mr. Slack confirmed that in 2012 he earned $44, 730, $46, 375 in 2013, and in 2014 he earned $48, 619 as a Maintenance Field Supervisor. See Oct. 30 T., pp. 170, 177, 200. The Court arrived at an average income of $46,575 (cited in the Findings of Facts) based on his testimony.

Admitted into evidence are tax filings filed during the marriage period that reflect an average adjusted gross income of approximately $83, 765. The court is placing more weight on Mr. Slack's testimony because the Court questions the accuracy of the tax returns given his testimony that indicated discrepancies in the tax returns. Below are some instances that led this Court to question the credibility of the tax returns:

> Mr. Slack was unsure about certain figures on his tax returns. See Oct. 30 T., p. 150 (Mr. Slack states that he does not know whether the $3,520 listed in his deductions are real estate taxes); See Oct. 30 T., p. 153 (Mr. Slack testified to not knowing how the depreciation figures were calculated and indicated that he relied on his accountant, briefly reviewed the tax return and signed it). With respect to the numbers on his tax returns, Mr. Slack testified: "I looked at it and the numbers seem correct to me." See Oct. 30 T., p. 153. When questioned about his tax returns, Mr. Slack also stated: "I look over the things. I didn't know what the numbers mean. I just sign them." See Oct. 30 T., p. 171.
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> Mr. Slack admits to claiming private residence as a deduction on Schedule E (Form 1040) although he admits he does not receive a rental income from that property. See Oct. 30 T., p. 151.

[14] The testimony at trial revealed that Mr. Slack filed a lawsuit against Lloyd Norford & Lass Investment Enterprises, Inc. following an incident transpiring in 1997 at which time Mr. Slack had to rebuild his home following damages from a hurricane. See Jan. 20 T., pp. 95-6.

in a Certificate of Deposit (CD), which Mr. Slack cashed and loaned to his daughter to purchase investment property.[15]

There is insufficient evidence of record for this Court to find that Mr. Slack possesses a Virgin Islands Government Employment Retirement System (GERS) pension.[16]

For disposition before this Court are the following issues:

1. Mrs. Slack's request for alimony;
2. Mrs. Slack's request for a distribution of certain intangible marital assets;
3. Mrs. Slack's request for an equitable share of the Marital Homestead;
4. Mrs. Slack's ancillary requests concerning a wedding ring or its value of $1,350; and,[17]
5. Mrs. Slack's request for pendente lite (interim) support.

DISCUSSION

The burden of proof standard that governs in civil actions is a preponderance of the evidence. V.I. Code Ann. tit. 5, § 740(5).

Additionally, the Superior Court, sitting as the finder of fact on a hearing on the merits, has a duty to resolve factual disputes. In re D.A.B., 63 V.I. 623, 628 (V.I. 2015) (citing Moore v. Walters, 61 V.I. 502, 508 (V.I. 2014) ("It is well established that, on appeal, [this] Court must defer to the credibility decision made by the factfinder, whether it be the judge or the jury.")). "Credibility determinations are the unique province of a fact finder, be it a jury, or a judge sitting without a jury." DeFraites-Bergin v. Bd. of Dirs. of Burnett Towers Condo. Ass'n, S. Ct. Civ. No. 2007/81, 2008 V.I. Supreme LEXIS 22, at *7 (V.I. Aug. 14, 2008) (unpublished) (quoting United States v. Kole, 164 F.3d 164, 177 (3d Cir. 1998)).

1. Alimony

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[15] See Jan. 20 T. pp. 38, 39.

[16] Mr. Slack denies having a government pension. See Jan. 20 T., pp. 39, 40. The testimony indicates that Mr. Slack is employed by the Virgin Islands government position; however, there is no evidence of record, aside from Mrs. Slack's averment, to support Mrs. Slack's claim of a pension.

[17] In Mrs. Slack's "Answer and Counter-Petition," she makes a request for "alimony and a division of property and assets from Rudolph Slack." There was no specificity regarding the precise assets requested. Super. Ct. R. 8 allows the Court to amend any pleading to make it consistent with the evidence presented at trial.

Therefore, insofar as the following issues were advanced to some degree at trial—Mrs. Slack's request for rental income, Mr. Slack's certificate of deposit assets, and the return of her wedding ring---the Court will make a disposition thereof herein.

The Court derives its power to award alimony from section 109 and 345 of title 16 of the Virgin Islands Code. See Martin v. Martin, 58 V.I. 620, 627 (V.I. 2013).

Section 109(a) provides in relevant part:

> (a) Whenever a marriage is declared void or dissolved the court may, without regard to any determination that the breakdown was the fault of one party or the other, further decree:
>
> ....
>
> (3) for the recovery for a party determined to be in need thereof an amount of money in gross or in installments, as may be necessary for the support and maintenance of such party... .

16 V.I.C. § 109 (a)(3).[18]

With respect to the apportionment of alimony, section 345(a) states:

> (a) The amount provided for support ... shall be proportioned to the resources of the person giving such support and to the necessities of the party receiving, and shall be reduced or increased in proportion to the resources or the necessities of the latter.

16 V.I.C. § 345(a).

Further, section 341(g) of title 16 of the Virgin Islands Code, which defines "support" and refers to alimony, provides that support involves "all that is indispensable for maintenance, housing, clothing and medical attention according to the social and economic position of the family." Although this Court must base an alimony award in accordance with "the social and economic position of the family.... it must be mindful that the same income that once supported one household, may not be conditioned to uphold two households to the same standard of living." Berrios-Rodriguez v. Berrios, 58 V.I. 477, 485 (V.I. 2013).

When determining whether to award alimony to a party, this Court should first "consider all the factors that determine if the parties will be similarly situated after their divorce... [I]f a general comparability of resources and capacity is shown, then that should be the end of the matter." Berrios, 58 V.I. at 485. However, if the divorce results in "an economic disparity between the former spouses, the Superior Court should fix a gross or installment alimony award that strikes the appropriate balance between the party in need of support, as defined by section 341(g), and the other party's ability to pay." Id. The Superior Court should not rely solely on a party's current finances, but instead, potential for future earnings that may be calculated based on their educational background, employment history, and other related factors, should be considered by this Court's determination of spousal support. Id. This Court is "afforded a great deal of discretion with respect to its ultimate determination." Id. (citing Harvey v. Christopher, 55 V.I. at 565, 577 (V.I. 2011)).

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[18] Prior to the 2014 amendment to 16 V.I.C. 109, the divorce court solely had jurisdiction to equitably distribute personal property and the marital homestead. The addition of 109(7) grants the court the power to distribute all real and personal property. The Virgin Islands Supreme Court found that this principle may be applied retroactively so long as there is no adverse effect. See Drayton v. Drayton, Civ. No. 2015-0068, LEXIS 32, at *7-8 (V.I. Aug. 30, 2016).

Mrs. Slack requests alimony and contends that Mr. Slack supported her and her children throughout the marriage by paying her bills. Per Mrs. Slack, without Mr. Slack's support she will default on her monthly expenses since her income (Slack's Travel and disability payments) are insufficient to meet her monthly financial obligations. Per Mrs. Slack, she has a shortfall of around $2,000 a month.

In particular, she asserts that when their marriage started to dissolve, she had around $3,000 in credit card debt; however, her debt has increased to $30,000 as of the date of the trial.

Mrs. Slack seeks, $2,300.00 a month for eleven (11) years of marriage and $42,000 in retroactive alimony to repay her credit card debt ($30,000), her brother-in-law (who allegedly loaned her $10,000), and her friend (who allegedly loaned her $2,000.00).

Mr. Slack indicated his imminent retirement but did not specify when. [19]

The Court recognizes that there is an economic disparity between the parties. Contrary to Mrs. Slack's claim to a shortfall of $2,000 per month, the Court finds that Mrs. Slack has a shortfall of $1,000 per month. The Court determined this figure by reviewing her income and *essential* monthly expenses. See 16 V.I.C. § 345(a) (stating that the amount provided for support ... shall be proportioned to the resources of the person giving such support and to the *necessities* of the party receiving). (Emphasis Added)

Specifically, Mrs. Slack's income from Slack's Travel of $1,800 and disability payments of $1, 020.36 bring her monthly income to a rounded total of $2,800. Her essential expenses are: Mortgage ($1,120); food ($800); clothing ($400); medical and dental ($25); transportation ($250); insurance ($565); taxes (120); telephone ($300); and utilities ($170) – for a rounded total of $3,800.

As a result, this Court has determined that she is in need of $1,000 per month, but such amount is tempered with various factors, such as Mr. Slack's ability to pay, his age, plans of retirement, and Mrs. Slack's age, skills, training, and work history.

It is clear that Mr. Slack is in a financially better position than Mrs. Slack. Specifically, Mr. Slack's income is as follows: V.I. Department of Education Employment ($46, 575); Social Security ($21,406); and, Rental Income ($33,000).

It is apparent to this Court that Mr. Slack supported Mrs. Slack up to their separation. Although the extent of said support remains in contention, this Court, based on the record, finds that Mr. Slack's support was instrumental in aiding with some of Mrs. Slack's expenses. When weighing the financial circumstances of the parties, this Court finds that throughout the marriage she was the main wage earner for her household (herself and two dependent children) in Florida.[20] Further, Mrs. Slack's is the owner of

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[19] See Oct. 30, p. 107.

[20] Per Mrs. Slack, the "head of household" designation meant that she is the wage earner in her household and that she provides financial support for her dependent children. The following testimony supports this premise:

> Counsel: Now, when you put down head of household, was that your manifestation that either even though the agreement was declared void, you basically was running your household, and Mr. Slack was running his household?

Slack's Travel Agency, a business with the possibility for growth and that allows her to be self-sufficient. The nature of her business allows her to work from home, a benefit that complements her age (approximately 59 years of age) well and accommodates her disability. This Court has also taken into account Mrs. Slack's extensive employment history and the skills she developed over the years, all of which would permit her to find other employment opportunities.

Mr. Slack's future earning potential is limited by his age (approximately 74 years of age) and by his imminent retirement, which will inevitably reduce his income and, by extension, his ability to support Mrs. Slack.

This Court also concludes that the parties' unique marriage, wherein they primarily relied on separate streams of income and lived apart for the entire marriage, shows that the parties will, for the most part, remain similarly situated following their divorce. It is for these reasons that the Court will not grant the full extent of Mrs. Slack request for alimony.

This Court finds that it would be inequitable to find Mr. Slack responsible for the entire portion of Mrs. Slack's $1,000 monthly shortfall. Based upon the aforementioned factors, this Court finds that Mr. Slack shall only be responsible for fifty-percent (50%) of Mrs. Slack's monthly shortfall, ($500), for a period of five (5) years—a term of time calculated for Mrs. Slack to reach full self-sufficiency.

The five-year period is based off of approximately half of their marriage, the uniqueness of their marriage, and the parties' future earning potential when taking into account Mrs. Slack's need and Mr. Slack's ability to pay. As a result, over a five-year period, Mrs. Slack shall be entitled to a total of $30,000. Mr. Slack shall have the option of paying it off in a lump sum within 6 months of this Order, or $500 per month for a period of five (5) years.

2. Marital Property

In an action for divorce, the Court has the authority to equitably divide joint personal property and real property. Drayton v. Drayton, Civ. No. 2015-0068, LEXIS 32, at *9 (V.I. Aug. 30, 2016); See also Francis v. Wright-Francis, 61 V.I. 13, 18 (V.I. Super. Ct. 2014); Garcia v. Garcia, 59 V.I. 758, 778 (V.I. 2013).

Section 109 of title 16 of the Virgin Island Code governs marital property and personal property. Pursuant to section 109(a)(7), marital property means "all real and personal property acquired by either spouse subsequent to the marriage, except:

A. property acquired by gift, bequest, devise, or descent;

Mrs. Slack: Yes.

See Oct. 29 T., p. 111.

B. property acquired in exchange for property acquired prior to the marriage, or in exchange for property acquired by gift, bequest, devise, or descent;

C. property acquired by a spouse after a decree of legal separation;

D. any judgment or property obtained by judgment awarded to a spouse from the other spouse;

E. property excluded by valid, written agreement of the parties; and

F. Income from property acquired by method list in subparagraphs (A) through (E), if the income is not attributable to the personal effort of the spouse."

As such, marital property has been construed to encompass any property which the couple acquired during the marriage and which is subject to equitable distribution upon divorce. See Drayton, Civ. No. 2015-0068, LEXIS 32, at *7-8.

The Supreme Court of the Virgin Islands in Inniss v. Inniss elucidated the manner in which property should be classified when it stated, "property is either personal property of one of the spouses or marital property; and the determination of which property is personal and which is marital is based on provable ownership. Where a party fails to prove ownership of the property in question, the property is considered marital property owned in equal shares by the spouses and subject to distribution by the trial court." No. 2013-0148, 2016 V.I. Supreme Lexis 29, at *9 (V.I. Aug. 18, 2016) (citing Morris v. Morris, 20 V.I. 249, 254 (V.I. Terr. Ct. 1984)).

Regarding personal property, the Court may distribute personal property in accordance with 16 V.I.C. §109(a)(4). The Virgin Islands Supreme Court explains that "the Superior Court will be required to issue rulings on post-divorce ownership of personal property ... such as cars, boats, electronics, jewelry, shares of stock, bonds and monies deposited with financial institutions...." Garcia, 59 V.I. at 758, 779.

There is no further statutory specification within that provision as to what "personal property" may include. However, 1 V.I.C. 41, General Provisions, Rules of Construction defines "personal property" as including "money, goods, chattels, and evidence of debt."

a. *GERS Pension Fund.*

This Court has previously held in Smith v. Henley, Super. Ct. Fam. No. 88/2014 (STT), ___V.I. ___ 2016 V.I. LEXIS 202, at *20 (V.I. Super. Ct. Dec. 15, 2016) that GERS pension funds are marital property subject to distribution. While Mrs. Slack asserts that Mr. Slack has a government pension, she has provided no evidence of it and Mr. Slack denies having one.[21]

Further, it would be error for this Court to take judicial notice of the "fact" that Mr. Slack possesses a government pension simply because he is a government employee. In this jurisdiction, this Court may take judicial notice of a fact if it represents general knowledge in the territory or it is capable of being readily determined accurately by relying on sources whose accuracy cannot be questioned reasonably. Rodriquez v. Rodriquez, 64 V.I. 447, 457 (V.I. 2016).

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[21] See Jan. 20 T., pp. 39, 40.

Mrs. Slack having failed in her proof, her request for pension funds is denied.

b. *Lawsuit Settlement Proceeds/Certificate(s) of Deposit.*

Mr. Slack is in possession of a CD that he acquired in the 1960s worth around \$339,000.[22] There were previously several CDs, titled in his name and in his daughter's (Charmaine Slack) name, but per this Court's findings, Mr. Slack eventually liquidated all of his Nova Scotia accounts and transferred the assets over to First Bank and created two (2) CDs.[23]

1. Settlement Proceeds

One CD contained the settlement proceeds of \$213, 000 and the other contained his life savings (\$339,000).[24] Presently, Mr. Slack has one CD remaining – the one derived from his life savings

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[22] According to Mr. Slack, one CD is worth \$318, 519. See Oct. 30 T., p. 173. That amount is reflected in Defendant's Exhibit 1 (First Bank Certificate Deposit). Per Mr. Slack, the amount in the one CD is now \$339, 000 because it has accrued interest. See Jan. 20 T., p. 29. While unclear, Mr. Slack explained as follows:

> I took the interest from the three hundred and eighteen and I put it on and right now that is all it is. I turn the interest over from 318....I rolled it over until it became 339.
>
> See Jan. 20 T., p. 29.

Defendant's Exhibit 1 (Certificate of Deposit Renewal Disclosure) reflects the \$339,063.84 amount referenced in the testimony. The \$318,000 amount according to the evidence matured on April 30, 2015. The \$339,000 amount had a renewal date of May 4, 2015. The account numbers are hidden, but it appears to this Court, based on Mr. Slack's testimony, that the CDs are the same, the difference in the amount being attributed to the accrual of interest.

[23] See Oct. 30, T., pp. 135-6, 173. Mr. Slack testified to there being seven (7) CDs. See Jan. 20 T., p. 8. Mr. Slack explained the process:

> The CD that I had in the Bank of Nova Scotia, what I did is if it's for like....small amounts....I put into one and put it in one big CD. Those CDs, they all were small CDs. What I did in my life, when I get my Government check, I would save my Government check to accumulate to a point. When I get to a point like 10,000 or 9,000, [I] take out a CD because I wasn't getting much interest and when my other big CDs mature, I dump everything into.
>
> See Jan 20. T., pp. 15-16.

[24] Mr. Slack testified to one CD having \$318, 519 and the other having \$213,000. See Oct. 30 T., pp. 173, 175; see also Defendant's Exhibit 1 (First Bank Certificate of Deposit). There is only testimony regarding the \$213,000 amount. However at the January 20, 2016 hearing, Mr. Slack explained that the \$230,000 settlement proceeds were placed in Scotia Bank. The testimony is unclear, but is as follows:

> Counsel: So in 2004-2005, you received \$230,000 and waited until 2015 to loan that same money to your daughter; is that your testimony?
>
> Mr. Slack: No. That is not my testimony.

($339,000).[25] The CD containing the settlement proceeds was cashed and $200,000 was loaned to his daughter Charmaine Slack to purchase investment property.

Mrs. Slack seeks half of the $200,000 loan ($100,000) provided by Mr. Slack to his daughter, Charmaine Slack. The sum was conveyed to Charmaine Slack in January 2015 to purchase investment, property.[26] The loan amount is a portion of the settlement proceeds Mr. Slack received during the marriage but the dispute giving rise to the settlement occurred prior to the marriage.[27]

In the Virgin Islands, this Court relies on provable ownership when classifying an asset. Innis, No. 2013-0148, 2016 V.I. Supreme Lexis 29, at *9 (citing Morris 20 V.I. at 254). Mrs. Slack is claiming a portion of Mr. Slack's settlement award that, per Mrs. Slack, arose out of an incident occurring about 20 years ago and before the marriage. Mrs. Slack has failed to prove her entitlement to an equitable share of Mr. Slack's settlement award. The premises considered, the Court shall treat the award as Mr. Slack's separate property and not subject to marital distribution.

The property being separate property acquired prior to the marriage and thus not subject to marital distribution, Mrs. Slack's request is denied.

2. Life's Savings

As to the remaining CD, Mrs. Slack asserts that she is entitled to fifty-percent (50%) of the CD, because she claims that their combined salaries constituted the CD.[28]

The CD is an accumulation of Mr. Slack's salary from the Department of Education. Mrs. Slack provided no evidence of how she contributed to the CD. The finds given the evidence presented that the CD is Mr. Slack's life savings.

Counsel: What happened to that $230,000?

Mr. Slack: Again, that $230,000, you see that same 230 and all of that you are doing down there, all of that in Scotia Bank, all that in Scotia Bank that you are accusing me of, one million dollars, all of that loop in in Scotia Bank, everything was loop in. That's why I was getting all of that interest because I had it in the bank in a CD.

See Jan. 20 T. pp. 38-39.

[25] See Oct. 30 T., p. 174.

[26] According to Mr. Slack, he loaned his daughter "two hundred and something thousand dollar" to invest in property "more likely [in] 2015." See Jan. 20 T., pp. 31-32; see also Jan. 20 T., pp. 67-68.

[27] Mr. Slack filed a lawsuit against Lloyd Norford & Lass Investment Enterprises, Inc. following an incident transpiring in 1997 at which time Mr. Slack had to rebuild his home following damages from a hurricane. The amount of the settlement award was approximately $230,000. See Jan. 20 T., pp. 38-39, 95. This Court is unable to confirm the actual amount received. Per Mr. Slack, the $230,000 was placed in the Scotia Bank Account.

[28] Mrs. Slack specifically requested $169,513.90 in her closing brief.

As of May 4, 2014, Mrs. Slack claims the CD is valued at $339, 963.84. She believes that Mr. Slack at some point possessed over a million dollars and attributes the reduction to Mr. Slack hiding assets and wasting his savings during the final years of their marriage; she determined this amount by applying the interest rates to the principal over the years. Without a forensic accounting, this Court is unpersuaded by Mrs. Slack's extrapolation.

For the following reasons, the Court finds that the CD is non-marital property.

First, this Court concludes that Mr. Slack acquired the property decades prior to the marriage.[29]

Second, this Court finds no evidence to support that Mrs. Slack increased the value of the asset. Per Mr. Slack, he only assumed that the interest income in his tax returns came from his CD. Although Mrs. Slack contends that the amount in the CDs is an accumulation of her and Mr. Slack's salaries, in calculating the $339,963.83 she used solely Mr. Slack's salary, which further leads this Court to conclude that she did not contribute to the savings in the CD.

The property being separate property not subject to marital distribution, Mrs. Slack's request is denied.

c. Rental Income.

Mrs. Slack seeks half of the rental income derived from the 5C Estate Thomas property over the last eleven (11) years. This Court finds that 5C Estate Thomas is a non-marital asset acquired by Mr. Slack approximately thirty-two (32) years before his marriage to Mrs. Slack. Although said income supported Mrs. Slack, pursuant to section 109 (c) and (f) of title 16 the Virgin Islands Code, the rental income is not subject to distribution, because (1) Mr. Slack acquired the property following a decree of legal separation, which this Court interprets to mean his prior divorce action, and (2) because the rental income stems from property issued separately to Mr. Slack. Subsection (f) of section 109 provides an exception, indicating that income from property obtained by methods (A) through (E) may be distributed if the income is attributable to the personal effort of the spouse.

Mrs. Slack's testimony has not shown any personal effort to bring about the rental income to support her request for an equitable portion of the rental income.

Mrs. Slack's request for equitable distribution of the rental income is denied.

3. Marital Homestead

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[29] Mr. Slack testified as follows:

> My house, the house that Donna is referring to was built in 1970 of my own sweat. Judge Eileen Petersen [since] award[ed] me those two houses in 1977.

See Oct. 30 T., pp. 138, 139.

"The existence of a marital homestead is a jurisdictional requirement." Garcia, 59 V.I. at 770. Pursuant to section 2305(a) of title 33 of the Virgin Islands Code, a homestead is defined as the "abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges." Although the Virgin Islands Code does not expressly define a marital homestead, the Supreme Court of the Virgin Islands found that a "marital homestead" is any homestead in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses. See Drayton, Civ. No. 2015-0068, LEXIS 32, at *13-14.

Mrs. Slack seeks equitable distribution of 5M Estate St. Thomas.

Mr. Slack owned the 5M Estate Thomas property prior to marrying Mrs. Slack, which means that the property would ordinarily be classified as separate property not subject to distribution as part of a divorce proceeding.[30] 16 V.I.C 109.

However, critical for jurisdictional purposes is whether Mrs. Slack's intermittent occupancy of the 5M Estate Thomas property constitutes "actual[..] occup[ation]" for jurisdictional purposes.

This Court finds that it does not.

Throughout the eleven (11) year marriage, the parties maintained separate primary residences— Mr. Slack in St. Thomas and Mrs. Slack in Florida (with her children due to the terms of a prior divorce that prohibited the relocation of the children). Visits in either location were intermittent and short.

In fact, there was only one specific instance where they were actually together on St. Thomas at the 5M Estate Thomas home for an extended period of time – when Mrs. Slack, despite their separation, "stayed" in St. Thomas for approximately six (6) months in 2014.[31] The evidence shows that Mr. and Mrs.

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[30] Per Mr. Slack he purchased the property around 1963-64 and built his home on the property in 1970, long before his marriage to Mrs. Slack in 2004. Further, the property, which is titled in his name, was awarded to him in a prior divorce action in 1977. See Oct. 30. T, pp. 141, 143.

[31] During direct examination of Mrs. Slack, counsel inquired as to her filing as married but living separately designation in her 2014 Tax Return, which counsel pointed out was the first time during the marriage that Mrs. Slack indicated she was married, At that time, Mrs. Slack explained her six-month stay with Mr. Slack. Her testimony is as follows:

> Now, the year we're referring too is 2014. So, in 2014, you said then that would have been about June to the end of the year 2014. During [t]hat year I lived in the house with Mr. Slack.
>
> See October 29, 2015 Transcript (Oct. 29 T.), p 104.

Mrs. Slack also agreed that she was head of household at the time, which meant that she and her children lived together in the U.S. for the last twelve (12) months. See Oct. 29 T., p. 105. Yet, she also agreed that she lived apart from Mr. Slack during the last six (6) months of 2014. See Oct. 29 T., p. 106.

Mr. Slack does not dispute the six-month stay. The testimony is as follows:

Slack's times together at either location were generally sporadic. Furthermore, for the tax years during the marriage—2008 through 2014 being the only years submitted into evidence for review—Mrs. Slack indicated that her primary residence was Florida.

As such, 5M Estate Thomas is not the marital homestead subject to marital distribution.

This Court having found that the 5M Estate Thomas home is not a martial homestead subject to marital distribution, the next question becomes whether Mrs. Slack is entitled to any increase in value of the home pursuant to 16 V.I.C. 109(a)(7)(F). A sifting review of the Mrs. Slack's testimony at trial reveals that her contribution to the upkeep and enhancement of the home involved her holding a light and passing tools (screwdriver or wrench) while he (Mr. Slack) worked on the home.

This Court finds that Mrs. Slack has not appreciably contributed to the 5M Estate Thomas residence; and, her claim that she increased the value of the home is unsupported by the record.

Accordingly, her request to be compensated for increased value is denied.

4. Ancillary Requests

Mrs. Slack made two ancillary requests for the return of her wedding ring and a sum of $1,350. Both requests were superficially mentioned in her testimony and in her closing brief under "Alimony."

> Counsel: Okay, when we went through her tax returns, do you remember there was a box that she checked off that suggested that she was divorced or separated or that she hadn't lived with her husband for six months before the end of the year. You remember that testimony yesterday?
>
> Mr. Slack: Yes.
>
> Counsel: Is that your opinion? Is that a correct statement?
>
> Mr. Slack: Well, that is I would say basically correct. That's when I filed for my divorce and everything started coming together. She start coming in the house and giving me all kind of trouble. Filing all kinds of bills and all kinds of charges that I take off water heater. I did this an did the other. That's around the time she came and torment me for that six months.

See Oct. 30 T., p. 130.

Mr. Slack once again confirms the stay as reflected below:

> Half of 2014 she came down after I get ready to file my divorce and she came down and she stayed in the house for part of the year.

See Oct. 30 T., pp. 132-133.

Mrs. Slack claims that Mr. Slack took her wedding ring from where she last left it, presumably either by the sink or bed, and that he refused to give it back upon request.[32]

Regarding the $1,350, Mrs. Slack stated that she used Mr. Slack's credit card many times to cover Slack Travel's expenses. On one occasion, she charged $1,350 to his credit card to cover a client's trip. She testified to paying Mr. Slack back the $1, 350. However, soon after her repayment to Mr. Slack, the client cancelled, which meant that the refund went back to the credit card that was used to pay for the trip; as a result, the refund went back to Mr. Slack's account. She claims that Mr. Slack never paid her the $1, 350.

There is little evidence concerning the $1, 350 sum and the ring. The Court is unable to confirm the facts presented and cannot draw a conclusion based on the limited testimony presented.

Therefore, Mrs. Slack has not met her burden of proof. Accordingly, her requests are denied.

5. Motion Pendente Lite

Section 108 of title 16 of the Virgin Islands Code permits the Court to issue an interim order of support at its discretion.

Section 108(1) provides:

> After the commencement of an action, and before a judgment therein, the court may, in its discretion, provide by order—
>
> (1) that a party in need obtain from the other party such funds as may be necessary to enable the party in need to prosecute or defend the action, as the case may be;

16 V.I.C. § 108(1).

Mrs. Slack seeks interim support to compensate for the financial burden brought upon by this case. This case commenced in January 17, 2014 when Mr. Slack filed for divorce. As noted in the "Alimony" section, this Court determined that Mrs. Slack's monthly shortfall is $1,000. However, this Court, based on a number of factors, found that Mr. Slack should only be responsible for fifty-percent (50%) of the monthly shortfall.

Accordingly, this Court finds Mr. Slack responsible for retroactive interim support in the amount of $500 from the commencement of the action (January 17, 2014) to the date of the final hearing (January 20, 2016). As such, Mrs. Slack shall be entitled to total of twelve-thousand dollars ($12,000) in retroactive interim support. Mr. Slack may make a lump sum payment or may pay $500 dollars on a monthly basis for two years.

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[32] See Jan. 20 T., p. 82-83. Also, at the February 20, 2015 hearing, Mr. Slack testified that Mrs. Slack left the wedding ring on the bible in his bedroom when they separated in May or June of 2013.

THEREFORE, it is hereby:

ORDERED that this Order shall be incorporated and made a part of the Decree of Divorce entered in this Matter on April 29, 2015.

ORDERED that Donna Lee Slack's request for alimony is **GRANTED IN PART.** Donna Lee Slack is entitled to THIRTY-THOUSAND DOLLARS ($30,000) in alimony payments. Rudolph Slack may make a lump sum payment of the amount if it is **paid within 6 months** of the date of the Order, or he may pay $500 a month to Donna Lee Slack for the next five (5) years.

ORDERED that Donna Lee Slack's request for equitable distribution of Rudolph Slack's Government Employee Retirement System Pension is **DENIED.**

ORDERED that Donna Lee Slack's request for equitable distribution of Rudolph Slack's Settlement Proceeds Award is **DENIED.**

ORDERED that Donna Lee Slack's request for equitable distribution of Rudolph Slack's Life's Saving Certificate of Deposit is **DENIED.**

ORDERED that Donna Lee Slack's request for equitable distribution of the rental income is **DENIED.**

ORDERED that Donna Lee Slack's request for an equitable portion of 5M Estate Thomas is **DENIED**.

ORDERED that Donna Lee Slack's request for the return of her wedding ring is **DENIED**.

ORDERED that Donna Lee Slack's request for interim support is **GRANTED**. Rudolph Slack shall pay TWELVE-THOUSAND DOLLARS ($12,000) to Donna Lee Slack within 90 days of the instant Order.

ORDERED that Donna Lee Slack's request for the refund of $1, 350 is **DENIED**.

ORDERED that the parties shall be responsible for their respective attorney's fees and costs.

ORDERED that a copy of this Order be served upon the Rudolph Slack, *pro se*, and Attorney Kevin D. D'Amour.

DONE AND SO ORDERED this 10th day of February, 2017.

DENISE A. HINDS ROACH, JUDGE

A T T E S T:
Estrella George
Acting Clerk of the Court

BY: ______________________
Court Clerk Supervisor

2/10/17