

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-3750	DATE FILED: November 7, 2023 4:46 PM CASE NUMBER: 2022DR30458
<i>In re the Marriage of:</i>  <b>CHARLES ROBERT BELL, <i>Petitioner</i></b>  and  <b>ALYSON BELL, <i>Co-Petitioner</i></b>	<b>▲ COURT USE ONLY ▲</b>
<i>Attorney for Petitioner:</i> Kathryn J. Goff, Esq. <i>Attorney for Co-Petitioner:</i> Nelissa Milfeld, Esq., and Carol Ellen Glassman, Esq.	Case Number: <b>2022DR30458</b> Div.: <b>12</b> Ctrm.: <b>S</b>
<b>PERMANENT ORDERS: DISSOLUTION OF MARRIAGE</b>	

**THIS MATTER** came before the Court for a hearing on Dissolution of Marriage and Permanent Orders on August 23, 2023. The Court has considered the testimony and evidence presented, the Sworn Financial Statements of the parties, the Court file, and being otherwise fully advised in the premises, FINDS AND ORDERS as follows:

**APPEARANCES:**

1. Kathryn Goff, Esq., appears on behalf of Petitioner, Charles Bell (“Father”), who also appears.
2. Carol Glassman, Esq., and Nelissa Milfeld, Esq., appear on behalf of Co-Petitioner, Alyson Bell (“Mother”), who also appears.

**SWORN WITNESSES:**

1. Jeremy Harkness, stipulated as an expert witness pursuant to CRE 702 in the field of business valuations.
2. Jay Freedberg, stipulated as an expert witness pursuant to CRE 702 in the field of business valuations.
3. Charles Bell, *Petitioner* and *Father*
4. Alyson Bell, *Co-Petitioner* and *Mother*

**EXHIBITS<sup>1</sup>:**

Petitioner's: 13, 14, 15, 16, 17, 18, 19<sup>2</sup>, 20, 22, 23<sup>2</sup>, 24, 26

Co-Petitioner's: A, B, C, D, G, H, K, L, M, N, P, Q, S, T, U, V, X, Y, BB, CC, FF, GG, HH, II, JJ, KK, NN, OO, RR<sup>2</sup>, SS<sup>2</sup>, TT<sup>2</sup>, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, III, JJJ, LLL<sup>2</sup>, MMM, NNN, OOO, PPP

**I. INTRODUCTION**

1. The parties were married on October 15, 2002. The parties separated on November 22, 2022.
2. The minor children born during the term of the marriage are: (1) Hudson Camryn Bell (d.o.b. 10/8/2009).
3. The Court has jurisdiction over both parties because Petitioner filed their Co-Petition jointly on December 7, 2022.
4. At least one party was domiciled in Colorado for more than 91 days before the Petition was filed.
5. At least 91 days have passed since the Court acquired jurisdiction over the parties.
6. The marriage between the parties is irretrievably broken.
7. Petitioner shall hereinafter be referred to as Father and Co-Petitioner shall hereinafter be referred to as Mother for purposes of clarity.
8. Mother is not pregnant.
9. Colorado is the home state of the minor children and this Court has the authority to enter initial custody orders pursuant to the requirements of § 14-13-201, C.R.S.
10. The Court has determined that based on credible sworn testimony that any stipulations have been entered into freely, voluntarily, and knowingly by both parties.
11. The Court approved the parties' stipulated Parenting Plan on June 22, 2023.

---

<sup>1</sup> The Court does not maintain or file any physical exhibits in domestic relations cases. It is counsel's responsibility to file all exhibits used in this Permanent Orders hearing within seven (7) days after the hearing. Counsel is directed to e-file any exhibits offered or admitted at the hearing in accordance with Chief Justice Directive 11-01 and Local Administrative Order 11-102. Pro-se parties' admitted exhibits will be scanned and uploaded into the electronic file by court staff.

<sup>2</sup> Admitted as demonstrative exhibits only.

## **II. PRELIMINARY MATTERS**

At the outset of the hearing, the parties noted that they stipulated to Mr. Harkness' expert report being used as his direct testimony with the parties then both being able to cross-examine him, but Father retained the ability to recall him if necessary. The parties also disclosed their exhibits admitted by stipulation.

## **III. MARITAL PROPERTY**

### **A. LEGAL STANDARD**

The Court has applied the following legal standards in its determination of the issues herein:

The trial court is required to divide the marital property, without regard to marital misconduct, in a just fashion, taking into account, among other things, the contribution of each party to the acquisition of the marital property, including the contribution of a spouse as homemaker. § 14-10-113(1), C.R.S.; *see In re Marriage of Miller*, 915 P.2d 1314, 1316 (Colo. 1996). However, the trial court has great latitude to effect an equitable distribution of property based on the facts of each case. *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001). The distribution of marital property must be just and equitable, but need not be equal. *In re Marriage of Burford*, 26 P.3d 550, 556 (Colo. App. 2001). The court must first determine whether an interest is "property," and then whether the property is separate or marital. *Balanson*, 25 P.3d at 35-36. Property shall be valued as of the date of the decree or the date of the hearing on disposition of property if such hearing precedes the date of dissolution. § 14-10-113(5), C.R.S.; *Balanson*, 25 P.3d at 38.

If the property is separate, then the increase or decrease in the value of separate property during the marriage is marital. § 14-10-113(1)(d), C.R.S. Once property is deemed to be marital, the court must value it in order to make an equitable division. *Balanson*, 25 P.3d at 36. All property acquired during the marriage is presumed to be marital, although the presumption can be rebutted in specific ways. §§ 14-10-113(2) and 14-10-113(3), C.R.S.; *see, e.g., In re Marriage of Martinez*, 77 P.3d 827, 828-29 (Colo. App. 2003); *In re Marriage of Stumpf*, 932 P.2d 845, 847 (Colo. App. 1997). The Court is limited by the evidence presented, however. It is the parties' duty to provide the Court with the data it needs to make its determinations. *See In re Marriage of Krejci*, 297 P.3d 1035, 1039-40 (Colo. App. 2013); *In re Marriage of Rodrick*, 176 P.3d 806, 815 (Colo. App. 2007).

The allocation of the debts of the parties is likewise part of the property division. *In re Marriage of Booker*, 811 P.2d 405 (Colo. App. 1990), *rev'd on other grounds*, 833 P.2d 734

(Colo. 1992). Generally, marital liabilities include all debts which are acquired and incurred by a husband and wife during their marriage. *In re Marriage of Femmer*, 568 P.2d 81 (Colo. App. 1977). In dividing the marital estate, the Court should ensure that marital liabilities are assigned equitably and not disproportionately to one spouse. *In re Marriage of Kiefer*, 738 P.2d 54 (Colo. App. 1987); *In re Marriage of Speirs*, 956 P.2d 622, 623 (Colo. App. 1997).

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Joint Trial Management Certificate (“JTMC”) filed on August 14, 2023, contains a number of stipulations regarding the disposition of marital property. The Court has considered the testimony of the parties and the record in this regard and finds that these proposed stipulations are fair, just, equitable, and not unconscionable pursuant to § 14-10-113, C.R.S. The Court therefore orders that the stipulations found at pages 3 and 4 of the JTMC are made an Order of the Court.

The remaining disputed items of property are addressed below:

### **Business Value: Tool Studios:**

Tool Studios is a brand and web development company that creates websites, emails, and logos for clients since 2001. Father is the only officer and also the 100% shareholder in the company. He solely makes business decisions for the company such as deciding which clients to take on and what work will be done on projects. The Court received three different proposed business valuations for Tool Studios during the permanent orders testimony:

The first valuation came directly from Father, who asserted that the company is worth about \$150,000. Father asserted at the hearing that Tool Studios’ business is going very poorly. No one has approached Father to attempt to purchase the company and he asserts that the value of the company on the balance sheet has decreased even further than the two expert valuations offered to the Court. The Court does not find Father’s valuation to be credible. Father is highly incentivized to reduce the value of the business as a litigation tactic, given that he will retain it after the dissolution. Further, Father’s testimony about the poor outlook of the business was contravened by both his prior deposition testimony, and moreover by the far more objective exhibits and testimony of both expert witnesses.

The second valuation came from Jeremy Harkness, the parties’ joint expert witness in the field of business valuations. Mr. Harkness testified that based on his review, Tool Studios had a fair market value as of February 2023 of \$262,000. When Mr. Harkness did his re-valuation in April, he found the company’s value to have depreciated to \$207,000 as of April 30, 2023, primarily due to a decrease in cash and an increase in retainers.

The third valuation came from Jay Freedberg, Mother's expert, who is a CPA and a business consultant with a focus on forensic accounting for Colorado divorce cases. Mr. Freedberg found the investment value of the business in February 2023 to be \$325,000. However, during his April re-evaluation, Mr. Freedberg adjusted the value to \$305,000 as of April 30, 2023.

Mr. Harkness and Mr. Freeberg agreed as to many factors effecting Tool Studios' valuation. The primary difference between the two experts' conclusions lies in the treatment of the business year 2020, in which Tool Studios doubled its revenue and tripled its typical income due to a contract with a large client in the cannabis space, TruLieve. Both Mr. Harkness and Mr. Freedberg believed that the TruLieve contract was an outlier from the well-documented general performance history of Tool Studios. However, they differed in how to treat the outlier. Mr. Harkness completely excluded the 2020 income in his valuation analysis. Mr. Harkness testified that this is not something he would normally do, but this client was so large and the situation so unique that he did not believe it was representative of their likely earnings moving forward. Mr. Freedberg, by contrast, considered the 2020 income and revenue but reduced its significance to the valuation by assigning it a weighted adjustment reducing its significance by 50% in the overall calculation. The Court is persuaded that Mr. Freedberg's approach is the more appropriate one. First, by excluding the year 2020 completely, Mr. Harkness treated the outlier result as if it did not exist at all, which the Court does not find to be appropriate. Mr. Freedberg's approach is fittingly more nuanced, taking into consideration Tool Studios' demonstrated capacity to scale operations to accommodate larger clients like this, and accounting for the existence of a referral source that brought both TruLieve and a more recent client, TelyRX, to Tool Studios. For these reasons, the Court accepts and adopts Mr. Freedberg's conclusion that the 2020 income, though an outlier, still has some predictive value.

The remaining distinction between the expert valuations lies in their disagreement as to whether to include any discount to the value of the business due to a lack of marketability – or for any other reason. Mr. Harkness applied a 5% discount to Tool Studios' valuation for lack of marketability. Mr. Freedberg opined that, since Father is the 100% owner and controls the cash flows and assets of the business, there is no reason to discount the value of the company at all. The Court finds Mr. Freedberg's conclusion and rationale to be the more compelling of the two. Finally, the Court declines to find a discount is necessary to account for Mother's departure from the business. Father himself testified that he solely makes business and creative decisions. Mother's role was primarily that of a bookkeeper, which is not a unique or irreplaceable business role.

Accordingly, the Court accepts and adopts Mr. Freedberg's findings regarding the valuation of the business, Tool Studios: \$305,000 as of April 30, 2023.

### **Disposition of the marital home:**

The parties dispute the appropriate disposition of the marital home located at 7210 Timothy Place, Niwot, Colorado, although they do not dispute the property value. Mother requests that the Court award the property to her. Father requests that the Court order the marital home be sold, with all of the marital debt paid from the proceeds and then the remaining proceeds divided.

The Court finds that a consideration of the factors set forth in C.R.S. §14-10-113 supports Mother's request. Most significantly to the Court, the statute indicates a desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse with whom any children reside the majority of the time. C.R.S. §14-10-113(1)(c). Mother is currently the full-time caregiver for Camryn, who has struggled emotionally during the pendency of the divorce, and whose mental health would significantly benefit from the ability to return to a familiar home and to remain in a school and district to which he is bonded. The additional statutory considerations regarding the economic circumstances of each spouse at the time the division of property is to become effective, and the value of the property set aside to each spouse, also support this outcome. C.R.S. §14-10-113(1)(b) and (c). Mother's income from employment and maintenance (addressed below) support her hypothesis that she will likely be able to refinance the marital home and pay Father an equalization payment within a reasonable amount of time. Finally, the statutory consideration regarding the contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker, supports the award of the marital home to Mother. C.R.S. §14-10-113(1)(a). During the marriage, Mother handled the household logistics and also cared for the parties' shared child, Camryn, as well as Father's older child from a prior relationship. In the parties' separation, Wife is entirely responsible for Camryn's daily needs pending a reconciliation between Camryn and Father. By handling the vast majority of household tasks, Wife enabled Husband to focus on building a successful business.

The Court addresses the details of the property division in the section below.

### **C. ORDERS**

#### **1. Real Property**

- a. As set forth above, the parties jointly own property located at 7210 Timothy Place, Niwot, Colorado. Ownership of the property shall be transferred solely to Mother within sixty (60) days of the date of this Order.
  - i. There is a mortgage as to this property. The current amount of the mortgage is

approximately \$519,893.<sup>3</sup>

- ii. The current value of the property is stipulated to be \$990,000.
  - iii. The equity value of this property is approximately \$470,103.<sup>4</sup>
  - iv. Mother is entitled to 100% of the equity value of this property.
  - v. Father is entitled to 0% of the equity value of this property.
  - vi. Mother has six months to assume the loan on the property and the HELOC and 30 days after that to make the equalization payment to Father. Father is NOT permitted to access or use funds from the HELOC during the interim as Mother assumes the loans.
  - vii. Father must leave the residence within two weeks of Permanent Orders.
- b. Should Mother be unable to assume the loan on the property within the timeframe allotted, the parties shall cooperate to list the home for sale and shall confer regarding all issues related to the listing of the property.

## 2. **Motor Vehicles**

- a. The 2019 Nissan Maxima, valued at \$30,000, shall become the sole and separate property of Father. The party who has been awarded this vehicle shall be solely responsible for all encumbrances thereon and shall hold the non-receiving party harmless therefrom.
- b. The 2023 Kia Soul, valued at \$17,600, shall become the sole and separate property of Mother. The party who has been awarded this vehicle shall be solely responsible for all encumbrances thereon and shall hold the non-receiving party harmless therefrom.
- c. By agreement of the parties, the 2019 Subaru Impreza shall remain in the possession of Julian Bell.
- d. Within 30 days of this Order, each party shall execute and cause to be delivered to the receiving party all necessary documents to transfer title solely to the party awarded the vehicle. Each party shall be responsible for all maintenance, insurance, taxes, repairs and all other associated costs related to the vehicle awarded to the party.

## 3. **Cash on Hand, Bank, Checking and Savings Accounts**

- a. The Chase savings account ending in 9619, held jointly in the names of both parties, had a balance of \$957 as of July 31, 2023. Said savings account shall be split equally between the parties.

---

<sup>3</sup> The Court acknowledges that after the Permanent Orders hearing and before the issuance of these Orders, Father withdrew \$36,854.61 from the parties' HELOC, in violation of the parties' agreement and the statutory automatic temporary injunction, using this sum to pay off a credit card balance. The Court will address this issue in a contemporaneously issued Order.

<sup>4</sup> The equity value is reduced by the amount of the HELOC discussed in fn.3.

- b. The Chase Checking account ending in 5513, held jointly in the names of both parties, had a balance of \$169 as of July 31, 2023. Said checking account shall be split equally between the parties.
- c. The Chase savings account ending in 0300, held in Mother's name, had a balance of \$91.82 as of August 14, 2023. Said savings account is awarded to Mother.
- d. The Chase checking account ending in 6560, held in Mother's name, had a balance of \$83.36 as of July 31, 2023. Said checking account is awarded to Mother.
- e. The Bank of America checking account ending in 1909, held in Father's name, had a balance of \$200 as of August 14, 2023. Said checking account is awarded to Husband.
- f. The Bank of America savings account ending in 1912, held in Father's name, had a balance of \$100 as of August 14, 2023. Said savings account is awarded to Husband.
- g. In determining the division of property, the Court notes that the accounts have varying balances based on the date within a particular month that the primary expenses are paid from the account, such as mortgages, utilities, credit card payments and other recurring expenses. The Court has taken this into account in its division of property.

4. **Furniture, Household Goods and Other Personal Property**

- a. The Court awards the following personal property:
  - i. All artwork shall be divided equally no later than 30 days after the issuance of Permanent Orders.

5. **Stocks, Bonds, Mutual Funds, Securities and Investment Accounts**

- a. By agreement of the parties, the 100,000 optioned shares in Nobo, Inc. shall be held by Father, including Mother's 50% of the shares.
- b. The Acorns Securities, LLC investment account ending in 3437, held in Mother's name, had a balance of \$28.63 as of July 31, 2023. This account shall be awarded to Mother as her sole and separate property.

6. **Pension, Profit Sharing or Retirement Funds**

- a. The Merrill Lynch IRA account ending in 8840, held in Mother's name, had a balance of \$13,753.45 as of July 31, 2023. This account shall be awarded to Mother as her sole and separate property.
- b. The Merrill Lynch IRA account ending in 8839, held in Father's name, had a balance of \$13,640.38 as of July 31, 2023. This account shall be awarded to Father as his sole and separate property.

7. **Business Interests**

- a. The business interest in Tool Studios, valued at \$305,000, is awarded to Father as his sole and separate property.



## 8. Economic Circumstances

- a. That one spouse is likely to receive Social Security benefits is a relevant economic circumstance—similar to the fact that a spouse has an inheritance or a greater earning capacity—which may justify an unequal distribution of marital property in the interests of justice. See *In re Marriage of Brane*, 908 P.2d 625, 628 (1995). While a trial court may not distribute marital property to offset the computed value of Social Security benefits, it may premise an unequal distribution of property . . . on the fact that one party is more likely to enjoy a secure retirement. We will not presume that an unequal distribution reflects an impermissible offset of Social Security benefits, especially when the distribution is justified by a combination of factors. *In re Marriage of Morehouse*, 121 P.3d 264, 267 (Colo. App. 2005). The Court has considered the parties' slight variance in social security retirement benefits in its distribution of marital property.

## 9. Marital Debts

- a. The parties have the following marital debts which are valued and allocated herein:
  - i. The Sleep Number/Synchrony Bank account ending in 6754, held in Mother's name, had balance of \$4,838.40 as of July 17, 2023. This debt is allocated to Mother.
  - ii. The Citi Diamond Preferred credit card ending in 3445, held in Mother's name, had a balance of \$5,830 as of July 11, 2023. This debt is allocated to Mother.
  - iii. The jetBlue Mastercard ending in 9593, held in Father's name, had a balance of \$463 as of July 19, 2023. This debt is allocated to Father.
  - iv. The Barclay's View credit card ending in 4512 is purported to be held in Father's name, but the Court has heard no testimony and seen no exhibits regarding the balance of the debt. Mother has asserted a balance of \$0 on her proposed marital balance sheet, while Father has asserted a balance of \$6,543 on his proposed marital balance sheet. Mother's proposed Exhibit ZZ that would correspond to this account is not filed with the Court. Given the lack of evidence regarding this debt, the Court must conclude that it has a value of \$0. However, this debt, to the extent that it exists, is allocated to Father.
  - v. The United Airlines Mileage Plus credit account ending in 3249, held in Mother's name, had a balance of \$1,375.92 as of August 6, 2023. This debt is allocated to Mother.
  - vi. The Chase Sapphire credit card ending in 2303, held in Father's name, had a balance of \$444.73 as of July 14, 2023. This debt is allocated to Father.
  - vii. The Chase Ink credit card ending in 6589, held in Father's name, had a balance of

\$112.08 as of July 14, 2023. This debt is allocated to Father.

- viii. The Home Depot credit card ending in 7017, held jointly in both parties' names, had a balance of \$798.67 as of August 9, 2023. This debt is allocated to Father.
- ix. The Apple credit card ending in 461 had a balance of \$252.40 as of August 14, 2023. This debt is allocated to Father.
- x. The Sams Club Mastercard ending in 0037, held in Father's name, had a balance of \$0 as of April 7, 2023, according to Mother's Exhibit FFF. This debt, such that it exists or has grown since that time, is allocated to Father.
- xi. The debt owed to Joyce Bell of \$22,777, held in Father's name, is allocated to Father.

#### 10. **Taxes and Allocation of Tax Deductions**

- a. The parties did not indicate tax debt owed as to Federal taxes.
- b. The parties did not indicate tax debt owed as to State taxes.
- c. The parties shall file separate tax returns for tax year 2023 and each year thereafter, as their marriage will dissolve during the calendar year of 2023.

#### 11. **Release and Indemnification**

- a. Neither party shall incur any debts, bills or obligations for himself or herself in the name of the other party. Each party will be responsible for his or her own debts, bills, and obligations incurred on or after the date of the decree.
- b. Except as specified above, the parties shall release and absolve each other from any and all future obligation and duties as the spouse of the other. Each party shall release, waive, and forever discharge the other and the other's estate of each and every right, claim, and demand of whatever kind he or she now has or may have in the future against the other or the other's estate, whether those rights, claims, or demands be as surviving spouse, as heir-at-law, or otherwise.

#### 12. **Equalization Payment**

- a. Due to the unequal distribution of property, Mother shall owe Father \$82,592 as an equalization payment.<sup>5</sup> Mother shall have 30 days after her assuming ownership of the

---

<sup>5</sup> This Order is subject to offset by the amount withdrawn from the HELOC as contemporaneously addressed in the Court's Order re: Mother's October 27, 2023, Motion to Enforce Injunction And Request For An Order For Husband To Immediately Reimburse HELOC.

mortgage and the HELOC on the marital home to make this payment to Father. If she is unable to do so, then the property will need to be sold in order to make the payment.

#### IV. MAINTENANCE

##### A. LEGAL STANDARD

The Court has applied the following legal standards in its determination of the issues herein:

###### *i. Eligibility for Award of Maintenance*

In determining an award of maintenance, the Court is guided by § 14-10-114, C.R.S. Consideration of the statutory formula and guidelines for the term of maintenance are neither mandatory nor presumptive. *See, In re Marriage of Vittetoe*, 2016 COA 71 (Colo. App. 2016). The statute contemplates a two-step process for a maintenance award. First, the Court must make findings concerning the following: (1) the amount of each party's gross income; (2) the marital property apportioned to each party; (3) the financial resources of each party, including income from separate or marital property; (4) reasonable financial need as established during the marriage; and, (5) whether the maintenance award would be deductible for federal income tax purposes by the payor and taxable income to the recipient.

Next, the Court must determine the amount and term of the maintenance, considering the statutory guidelines for the term and amount of maintenance and all other relevant factors. The relevant factors include the following: (1) the financial resources of the recipient spouse; (2) the financial resources of the payor spouse; (3) the lifestyle during the marriage; (4) the distribution of marital property; (5) both parties' incomes, employment and employability; (6) the historical income of a party; (7) the duration of the marriage; (8) the amount and term of temporary maintenance; (9) the age and health of the parties; (10) significant contribution to the marriage or to the advancement of a party; (11) whether the parties' circumstances warrant a nominal amount of maintenance; (12) any other factor that the Court deems relevant; and, (13) whether the party seeking maintenance lacks sufficient property to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment, or is the custodian of a child whose condition or circumstances make it inappropriate for the spouse to be required to seek employment outside the home. In determining the amount and duration of maintenance, the court must balance all relevant statutory factors.

After considering these provisions, the court shall award maintenance only if it finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to him or her, to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or

circumstances make it inappropriate for the spouse to be required to seek employment outside the home. § 14-10-114(d), C.R.S.

When considering whether a spouse meets the statutory threshold for maintenance, the standard of living enjoyed during the parties' intact marriage must be considered by the court. "Reasonable needs" and "appropriate employment" must be determined based on the particular circumstances of the parties in each individual case. *In re Marriage of Thornhill*, 232 P.3d 782 (Colo. 2010).

"Appropriate employment" does not mean any possible job. *See In re Marriage of Angerman*, 612 P.2d 1166 (Colo. App. 1980). In determining the appropriateness, amount, and duration of maintenance, the court should consider the circumstances of the marriage of the parties and their expectations respecting education and career. *See also In re Marriage of Olar*, 747 P.2d 676 (Colo. 1987); *In re Marriage of Marshall*, 781 P.2d 177 (Colo. App. 1989). Further, "appropriateness" must be judged within the context of the requesting spouse's specific circumstances. For example, in *In re Marriage of Page*, 70 P.3d 579 (Colo. App. 2003), the spouse seeking maintenance had the advanced education of, and prior work experience as, a psychologist. However, there was evidence that at the time of the dissolution, she was suffering from psychological problems that limited her earning ability and further evidence that even the average salary of a psychologist was not sufficient for her to support herself. As such, she was found to have satisfied the threshold criteria that she was unable to support herself through appropriate employment.

ii. *Determination of Income*

"Income" means actual gross income if a parent is employed to his or her full capacity. C.R.S. §14-10-114(8). If a party is voluntarily unemployed or underemployed, maintenance shall be calculated based on a determination of potential income unless the party is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parties owe a joint legal responsibility or for an incarcerated parent sentenced to one year or more. C.R.S. §14-10-114(8)(IV).

iii. *Amount and Duration of Maintenance*

The Court has broad discretion in setting both the amount and duration of maintenance. *In re Marriage of Huff*, 834 P.2d 244 (Colo. 1992); *In re Lodholm's Marriage*, 536 P.2d 842 (Colo. App. 1975); *See also In re Marriage of Staggs*, 940 P.2d 1109 (Colo. App. 1997) (holding that order for support may not impoverish obligor, but where both parties impoverished, court can award support to apportion impoverishment equitably). Although the trial court must consider the maintenance recipient's reasonable needs, the Court is not required to ensure that the spouses have an equal lifestyle forever. *In re Marriage of Antuna*, 8 P.3d 589

(Colo. App. 2000). Nor is a spouse seeking maintenance required to deplete their share of the marital property in order to qualify for maintenance; therefore, their receipt of a balancing payment as part of the division of property scheme may not be viewed as a substitute for maintenance. *In re Marriage of Bartolo*, 971 P.2d 699 (Colo. App. 1998).

If the duration of the marriage is at least 3 years and the parties' combined annual adjusted gross income does not exceed \$240,000 annually, the court must consider the guideline amount and term of maintenance pursuant to the formula and chart set forth in § 14-10-114(3)(b), C.R.S.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mother seeks an Order of maintenance from Father. The Court has considered the specific statutory factors pursuant to § 14-10-114(3), C.R.S., and now makes the following findings of fact and conclusions of law:

### *Father's income:*

Father's income was a disputed issue at the permanent orders hearing. Father argued that his income for maintenance purposes should be found to be \$8,208 per month. As set forth in Section III(B) above, the Court again finds that Father's credibility is hampered by his strategic incentive to underestimate, his prior statements at his deposition and January 2021 loan application, and the significantly more credible opinions of the expert witnesses.

As further set forth in Section III(B) above, the Court finds Mr. Freedberg to be the most credible source for conclusions as to Tool Studios, including Father's business income. Using a five-year average income calculation that includes income for the outlier year 2020 with a weighted adjustment for that year, Mr. Freedberg opined that Father's average gross monthly income would be \$16,433. The Court finds that Mr. Freedberg's testimony and expert report is highly credible and compelling, and adopts this conclusion as to Father's income.

**Applying all these findings, the Court concludes that Father's income is \$16,433 per month.**

### *Mother's income:*

Mother testified that she previously worked as a store manager for Banana Republic on Pearl Street. On July 18, 2023, Mother signed an employment contract to be a store manager for Lumenarea, earning \$50,000 per year. This results in a gross monthly income of \$4,166 per month.

The Court acknowledges that Mother also testified that she does side work for and individual named Rebecca Folsom, and for a company called Left Hand Valley Couriers, Pursuant to C.R.S. § 14-10-114(8)(c)(II)(C), however, income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment is not included in the gross income calculation for purposes of spousal maintenance. Therefore, the Court excludes these secondary jobs and calculates Mother's income using only her income from her full-time employment with Lumenarea.

**The Court thus concludes that Mother's income is \$4,166 per month.**

Marital property award:

The Court next considers that the parties accrued only a small amount of marital property during their marriage. The vast majority of the parties' assets are tied up in their marital home and Father's business, Tool Studios.

Parties' financial resources:

The Court further considers the financial resources of each party. Neither party has significant realized resources at this time. The Court considers that post-dissolution, Father continues to own a business whose gross income, as well as gross personal income to Father, continues to be relatively steady and positive despite Father's assertions that the business is struggling. Conversely, Mother's income is currently limited to her recent employment with Lumenarea and the side-jobs she performs for Left Hand Valley Couriers and Rebecca Folsom.

Reasonable need and lifestyle:

The Court considers the parties' reasonable financial need and lifestyle as established during the marriage. The parties enjoyed a comfortable if relatively modest standard of living during their marital relationship, one that Mother described as "moderately successful."

Taxability of maintenance award:

Maintenance awards entered after January 1, 2019, are no longer tax deductible for the payor or taxable to the payee.

**C. ORDERS**

After considering all of the relevant circumstances, the Court finds that Mother does lack

sufficient property, including marital property apportioned to her, to provide for her reasonable needs and is unable to completely meet her reasonable needs through appropriate employment. While the parties' combined gross monthly income exceeds \$20,000 per month, the Court still looks to the guideline recommendations as useful suggestions and does not find reason to deviate significantly from the recommendations for maintenance.

Accordingly, for a marriage that lasted just over twenty years, the Court awards Mother maintenance of **\$3,000.00** per month, for a period of **120 months**, beginning on **December 1, 2023**.

## **V. CHILD SUPPORT**

### **A. LEGAL STANDARD**

The Court has applied the following legal standards in its determination of the issues herein:

#### *i. Purpose*

The purpose of the child support guidelines is to assess responsibility for costs actually incurred on behalf of the children in order to adequately address the children's needs and to allocate the cost of raising the children equitably between the parties based on their respective income and other factors. *In re Marriage of Connerton & Nevin*, 260 P.3d 62, 67 (Colo. App. 2010). There is a presumption that child support will be ordered and paid for by a party. § 14-10-115, C.R.S.

#### *ii. Initiation of Order*

Pursuant to § 14-10-115(2)(a), C.R.S., child support may be ordered for the time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the Respondent, whichever date is latest, and prior to the entry of the Support Order.

#### *iii. Enumerated Factors*

Child support is premised on the amount of parenting time allocated to each parent and the parents' adjusted gross income accounting for any maintenance awarded and credit for all identified adjustments and exceptions pursuant to statute and case law. § 14-10-115, C.R.S. The Court has the discretion to deviate from the child support guidelines in cases where it is equitable, just, and appropriate. The Court must make specific findings to deviate from the statutory guidelines. § 14-10-115(8)(e), C.R.S.

iv. *Determination of Income*

A trial court must determine the parents' income when calculating child support. See §§ 14-10-115(1)(b)(I), (5)(a), (7)(a)(I), C.R.S. "Income" means actual gross income if a parent is employed to his or her full capacity. § 14-10-115(3)(c), C.R.S.; see *In Interest of A.M.D.*, 78 P.3d 741, 743 (Colo. 2003) (the child support statute defines income "very broadly" to include sources beyond those specifically listed).

Pursuant to § 14-10-115(5)(b)(I), C.R.S., if a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a child under the age of twenty-four months for whom the parents owe a joint legal responsibility or for an incarcerated parent sentenced to one hundred eighty days or more.

If a parent is voluntarily underemployed, child support must be calculated based on that parent's potential income. § 14-10-115(5)(b)(I), C.R.S.; see *In re Marriage of Krejci*, 297 P.3d 1035, 1040 (Colo. App. 2013).

v. *Duration of Child Support Payments*

Child support payments shall be paid until emancipation. Emancipation occurs when the last or only child reaches the age of 19; unless the child is still in high school, in which case support continues until the end of the month following graduation; or until the child otherwise emancipates as may be determined by the Court. Child support may be changed or amended upon motion of a party when the child reaches the age of 19.

vi. *Extraordinary Medical Expenses*

Any extraordinary medical expenses incurred on behalf of the children shall be divided between the parents in proportion to their adjusted gross incomes in accordance with §§ 14-10-115(10)(h)(I), (II), C.R.S. unless a different pro rata share has been specifically identified in the parenting plan.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Father testified that Camryn has been going through a gender transition and has had some disagreements about Father remaining in the marital home. After the filing of the divorce, Father agreed that Mother and Camryn would stay in the marital home and that Father would move out, but Father came back to live in the house not long after. Mother testified that in response to Father's insistence that he remain in the home, she chose to leave and go to an AirBnB instead,



with Camryn joining her and continuing to live with Mother full-time. Camryn has spent only one overnight with Father during this time.

The Court specifically reiterates its determinations and findings regarding income as earlier articulated in this Order. The Court finds that Worksheet A is applicable to the parties' situation, as Father exercises 92 or fewer overnights per year.

After the permanent orders hearing, Mother filed an exhibit demonstrating that she is paying for the minor child's health insurance premium in the amount of \$269.46 per month. The Court and Father understood that this amount would be provided after the hearing due to the fact that it was not earlier available. Accordingly, the Court has listed \$269.46 as an adjustment expense on the Child Support Worksheet in Mother's column for the monthly health insurance premium she pays on behalf of the child.

### **C. ORDERS**

1. **Father** shall pay **Mother \$1,283.00** per month through the child support registry, on the **first of every month**, beginning on **December 1, 2023**.
2. Child support payments shall be paid until emancipation. Emancipation occurs when the last or only child reaches the age of 19; unless the child is still in high school, in which case support continues until the end of the month following graduation; or until the child otherwise emancipates as may be determined by the Court. Child support may be changed or amended upon motion of a party when the child reaches 19.
3. Any extraordinary medical expenses incurred on behalf of the children shall be divided between the parents in proportion to their adjusted gross incomes in accordance with §§ 14-10-115(10)(h)(I), (II), C.R.S.
4. Mother shall continue to provide health insurance for the child.
5. The parties shall exchange year end paystubs, all W-2s, and tax returns including all schedules by May 15th of every year, for the purpose of updating and modifying the child support order without a court hearing. The parties are ordered to engage in mediation in a good faith attempt to resolve the matter before filing a motion to modify child support.
6. **Mother** shall be entitled to claim the minor child for tax year 2023, and each odd numbered year thereafter. **Father** shall be entitled to claim the minor child for tax year 2024, and each

even year thereafter. However, a parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax year or if claiming the child as a dependent would not result in any tax benefit.

## **VI. ATTORNEY FEES**

Mother requests attorney's fees from Father, asserting that the parties' incomes are widely disparate and an award of attorney fees is appropriate to equalize the economic status of the parties. Mother further argues that Father's actions directly resulted in Mother incurring higher attorney fees because he delayed the proceedings at every opportunity by using three different attorneys over the course of seven months, causing the process to start over with each new attorney. The Court finds that the latter argument is supported by the following facts: Father made agreements regarding the marital home which he subsequently recanted, requested a second valuation after Mr. Harkness' original business valuation, delayed the resolution of parenting time and decision-making by agreeing to reunification therapy before then asserting that he wanted a PRE, further delayed by not signing the appropriate intake paperwork once Ms. Reiter was retained for reunification therapy, then threatened to not appear at mediation before preventing any actual progress at mediation because he claimed he needed to get new numbers for the business. Father argues that his hiring of three separate attorneys did not delay the case because they did not need to start over but instead simply picked up where the previous attorney left off. Father also asserts that there have been issues due to Mother previously being in charge of the books and refusing to "collaborate with external professionals despite the detection of serious accounting inconsistencies." The Court does not find credible factual support for the latter allegation.

The Court finds that both due to the parties' disparate financial resources and Father's history of prolonging this litigation through hiring and firing of multiple attorneys and his penchant for making agreements with Mother before recanting them and restarting the negotiations, the Court finds it appropriate to award some attorney fees to Mother. Pursuant to § 14-10-119, C.R.S., the Court orders that Father shall pay for \$15,000 of Mother's remaining attorney fees. The attorney fee award may be deducted by Mother from the equalization payment set forth in paragraph 12 of Section III(C) of this Order.

## **VII. FURTHER ORDERS**

The marriage was dissolved and a Decree of Dissolution of Marriage granted by the Court on August 24, 2023.

Mother requests that her name be restored to Alyson Gayle Varvel. The Court finds that the request is not made for the purpose of defrauding creditors and is not detrimental to any person. The Court hereby GRANTS the change of name request.

Prior to scheduling a hearing with this court, other than a *Verified Motion for Civil Protection Order* under § 13-14-101, C.R.S. *et seq.*, the parties shall attend mediation.

The Court shall retain such jurisdiction in this action as provided by law.

SO ORDERED: November 7, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'N. Salomone', with a long horizontal stroke extending to the right.

Nancy W. Salomone  
District Court Judge