

IN THE DISTRICT COURT OF JOHNSON COUNTY KANSAS

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)	
Kimbra Phillips)	Case No: 07CV-3318
)	Chapter 60
v.)	Div 9
)	Hearing Date Aug 14, 2009
Daniel Phillips)	10:30 Room 336
)	

RESPONDENT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND REAL PARTY IN INTEREST REQUEST FOR JUDICIAL NOTICE

Respondent answers the District Court Trustee's Motion and moves the Court for an Order dismissing the Trustee's Motion or in the alternative denying the motion, on the grounds that the District Court Trustee's Motion fails to comply with K.S.A. 20-1204a, fails to state any grounds for relief, this tribunal has no subject matter jurisdiction over the above matter and that the District Court Trustee is not the Real Party in Interest and has no authority to bring any action to collect sums which are not "child support."

Respondent request the Court take Judicial Notice of the files and pleadings in case number 89CV06890 *Phillips v. Phillips* and case number 05CV00015 *Martin v. Phillips*, filed in this court. 89CV6890 is the underlying dissolution case between the parties. 05CV00015 is Martin's previous attempt to register a Washington enforcement order. Both cases represent the law of the case between the parties.

RESPONDENT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND REAL PARTY IN INTEREST

1. This proceeding arose under the Uniform Interstate Family Support Act (UIFSA) by referral from Washington state agencies to the Kansas Department of Social & Rehabilitation Services (SRS) for registration of a Washington Court order

CLERK OF DISTRICT COURT JOHNSON COUNTY, KS

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interpreting an original 1989 Kansas divorce decree issued by the Johnson County District Court (89CV6890). The subject child turned 18 in August 2001.

Throughout the existence of continuing child support obligations, Kansas held Continuing Exclusive Jurisdiction over the Support Order. Enforcement proceedings arose in Washington, when Kimbra Martin moved to Washington in 1993. Respondent has remained in the Kansas City area at all times since the 1989 divorce and has resided in Johnson County since 1997. Respondent never lived, worked or owned property in the state of Washington.

2. Respondent has been determined to have paid all sums owing as “child support” by rulings of the Johnson County District Court, the Washington Superior Court and the Federal District Court for the Western District of Washington. The sums allegedly owing by Respondent to Martin were ordered by a Washington state court for her private attorney fees, accrued interest, and penalties for Respondent’s alleged failure to provide medical insurance under the original 1989 Kansas divorce decree. The Washington enforcement order was entered in August 2006 and registration under UIFSA was confirmed by the District Court in January 2009¹ The subject child is almost 26 years old and there are no ongoing obligations.
3. The District Court Trustee is a contractor to the SRS.
4. SRS (and in turn its contractors) are by regulation not authorized to provide enforcement services for non “child support” items including interest, attorneys fees, and penalties. See K.A.R. 30-44-5, Section 6500 SRS Child Support Enforcement Manual.

¹ Judge Slater’s ruling registering the Washington enforcement orders is currently on appeal to the Kansas Court of Appeals. The Opening Brief is due September 2, 2009.

5. By statute the Court Trustee is authorized to collect “child support” K.S.A. 23-493. Child Support, by both case law and the child support guidelines does not include any of the types of items the Court Trustee is attempting to enforce.
6. Further, Local Court Rule 26 empowers the Court Trustee to only those powers enumerated in K.S.A. 23-492, et seq. The Local Rule further provides that the Court Trustee may employ Hearings Officers in furtherance of the powers of K.S.A. 23-493. No statutory authorization exists to empower the Court Trustee to use a public office for collection of the amounts in question or for the Hearings Officer to enter rulings on the same.

MOTION TO DISMISS FOR FAILURE TO STATE
GROUNDS FOR RELIEF OR IN THE ALTERNATIVE TO VACATE
THE COURT’S ORDER TO APPEAR FOR EXPEDITED HEARING

7. Respondent reincorporates the allegations contained in paragraphs 1 through 6.
8. Though the Trustee’s Motion does not request that Respondent be held in contempt of Court, the attached order states that the hearing will be for resolution of contempt allegations.
9. A motion for contempt under K.S.A. 20-1204a is construed strictly against the movant. The procedures established by the statute must be strictly construed. *Electronic Realty Associates, Inc. v. Gomez*, 848 P.2d 458, 18 Kan.App.2d 122 (Kan. App., 1993) citing *In re Seelke*, 235 Kan. 468, 470, 680 P.2d 288 (1984).
10. K.S.A 20-1204a requires that the Movant file “a motion requesting an order to appear and show cause ...” The Trustee Motion does not meet the statutory requirements of 20-1204a.
11. Further the Trustee Motion fails to state what requested relief is sought other than for “an Order To Appear directed to Daniel D. Phillips.” In order for the terms of

KSA 20-1204a to be met, the moving party should specify the requested relief, *Electronic Realty Associates, Inc. v. Gomez*, *ibid.*

12. K.S.A. 20-1204a restricts the power of contempt for failure to obey an order to the “Court that rendered the same ...” The orders in question were not rendered by this Court but were rendered by Washington state courts and registered with this court under UIFSA. Under UIFSA the orders remain the orders of the issuing court. See Official Comments to Uniform Interstate Family Support Act § 603.

RESPONSE TO TRUSTEE MOTION

13. Respondent incorporates the allegations contained in paragraphs 1 through 13.
14. In answer to Paragraph One of the Trustee’s Motion Respondent admits that on June 30, 1989 the Johnson County District Court entered a decree of Dissolution in Case 89CV6890 Daniel Phillips vs. Kimbra Phillips. The Decree incorporated a Property Settlement Agreement that provided for Respondent to pay \$750 per month to Kimbra Phillips for support of the parties’ child beginning July 15, 1989 (Exhibit A Paragraph 7). The decree further provided that Respondent would provide medical and dental insurance for the subject child “with coverage at least equal to the coverage Husband has on the date of this instrument.” Exhibit A Paragraph 8).
15. Denies the allegations of Paragraph 2 of the Trustee’s Motion. In December 1993, monthly child support was reduced to \$403 per month, nunc pro tunc to September 15, 1993.
16. Respondent denies that he is delinquent in the child support payments ordered by this Court. The District Court has previously found that all child support ordered by the Court have been paid in full. The sums asserted by the Trustee are those found by a Washington State court as owing under the Kansas Support orders for interest, Martin’s private attorneys’ fees and medical expenses she alleged she incurred for the subject child from 1989 to 2001. The Washington Order acknowledged that all “child support” had been paid in full. The Washington

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order was entered in August 2006 and registered in the Johnson County Court in August 2008. The registration is currently on appeal to the Kansas Court of Appeals.

17. Until registration of the Washington Order in Kansas, there was no order of any court for Respondent to pay the asserted \$66,000. See Memorandum Decision Case 05CV00115. In the 12 years prior to her Washington court filings, Martin had made no claim for medical expense reimbursement from the Respondent. Respondent does not have the assets or income to pay the \$66,000. "Whether act is contempt depends upon the intent, good faith and surrounding circumstances." *Johnson v Johnson*, 721 P.2d 290, 11 Kan. App.2d 317 (Kan App. 1986).
18. As shown in Exhibit A, the Kansas Support Order did not provide for reimbursement for Martin's medical expenditures. Such holding by the Washington Court represents a retroactive modification of the Kansas Support Order and is not a remedy authorized under KSA 23-4.123 and further represents a penalty placed by the Washington Court's on Respondent for his alleged failure to provide medical coverage for the subject child. As the order was not entered until five years after Respondent's obligations under the Kansas orders ceased. Any change in the terms of the 1989 Kansas Support Order represents a retroactive modification. Retroactive modifications of Kansas support order are not allowed for either child support or medical obligations. *In Re Marriage of Blagg*, 775 P.2d 190, 13 Kan. App. 2d. 530 (1989). Invalid modifications by a sister state of a Kansas issued support order are void and unenforceable where Kansas maintained continuing exclusive jurisdiction. *Summitt v. Summitt*, 31 Kan.App.2d 812, 74 P.3d 584, rev. denied 277 Kan. 928 (2003).
19. The Court Trustee is aware that no "child support" is owing under the Kansas Decree and its assertion that any child support is owing is false.
20. Such sums are further barred by the applicable Kansas dormancy statutes regarding child support obligations. K.S.A. 60-2403 specifically provides that "*if a renewal affidavit is not filed or if execution, including any garnishment proceeding, support enforcement proceeding or proceeding in aid of execution, is not issued, within five years from the date of the entry of any judgment in any*

court of record in this state ..." Where the revival of the child support judgment is based upon a "support enforcement proceeding" the statute list enumerated civil proceedings all founded on Kansas statutory enactments. During the period between 1993 and 2005, Martin filed no proceedings in the Kansas Courts to renew any support obligations.

21. Ultimate responsibility for enforcement and final resolution of the obligor's compliance with all aspects of the original support order belongs to the issuing state. Thus, calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is the duty of the issuing state. Official Comments Section 604 Uniform Interstate Family Support Act, adopted as KSA 23-9,604. See also, Summitt v. Summitt, 31 Kan. App. 2d 812 (Kan. Ct. App. 2003), Kansas as issuing state not required to recognize North Carolina ruling that there were no arrearages on Kansas support order. Enforcing states rulings are not res judicata on the issuing state. Bartlett v. State ex rel. Bartlett, 2005 Alas. LEXIS 171 (Alaska Dec 16, 2005) citing Summitt. Respondent has complied with all terms of the 1989 Kansas Support Order and no further sums are owing to Martin under the same.
22. In January 2004 Defendant plead guilty in the United States District Court for The Western District of Washington (Washington District Court) to a single misdemeanor count of violation of 18 U.S.C. § 228 Failure To Pay Legal Child Support Obligations. 228(d) requires :

(d) Mandatory Restitution. - Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

The term "support obligation" is defined in the statute § 228 (f)(3) as any amount determined under a court order or an order of an administrative process pursuant to the law of a State or of an Indian tribe to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living.

it is significant that the Act's definition of a "past due support obligation" does not limit itself to "child support" as that term is commonly understood. The CSRA defines a "past due support obligation" as any amount "due from a person for the support and maintenance of a child *or of a child and the parent*

with whom the child is living [.]" 18 U.S.C.A. § 228(d)(1)(A) (emphasis added). The definition therefore makes obvious that Congress intended for a "past due support obligation" to mean something broader than merely "child support." *U.S. v Brand, 163 F.3d 1998 (11th Cir 1998)*

By use of the mandatory verb "shall" in subsection (d) Congress required the District Court to impose restitution for the full amount of unpaid support. The District Court's obligation is mandatory not discretionary.

U.S. Department of Health and Human Services interpretation in regard to the elements of an 18 U.S.C. § 228 restitution award:²

"The Deadbeat Parents Punishment Act requires all sentencing courts to order mandatory restitution pursuant to 18 U.S.C. § 3663A, in an amount equal to the total unpaid child support obligation existing at the time of sentencing (citing 18 U.S.C. § 228(d)) The total unpaid child support obligation includes the total amount of arrears, even if the arrearage began to accumulate long before the charging period. This may include costs for medical insurance, other medical expenses, college expenses, and life insurance and may also include spousal support. (U.S. V. Brand supra) Interest on a child support obligation depends on the law of the State entering the order" Chapter 10, Pages 246-247 U.S. Department of Health & Human Services, Office of Child Support Enforcement Essentials for Attorneys, 3rd edition.³

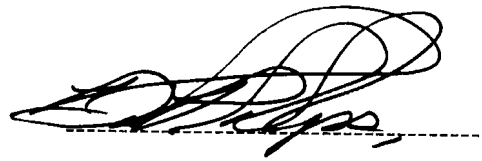
23. By her direct participation, Martin is bound by the findings of the Washington Federal District Court as to the amounts owing under the Kansas Support Orders.
24. The Federal Court has abstained from determining the effect of Federal law on these proceedings due to pending state court proceedings. *Phillips v. Martin*, 06-2442-KHV United States District Court District of Kansas

Wherefore, Respondent prays that the Court Trustee's motion be dismissed and that this Tribunal deny any further matter be filed with it.

² HHS agents' affidavits formed the basis for issuance of the criminal complaint in U.S. V. Phillips.

³ The document is available at the HHS web site.

<http://www.acf.hhs.gov/programs/esc/pubs/2002/reports/essentials/index.html>. The Court is requested to take judicial notice of the same.

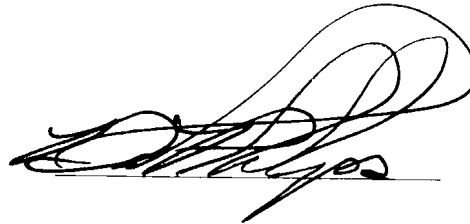


Daniel D. Phillips
11912 W 66 Terr
Shawnee, KS 66216
(913) 909-8816
(913) 962-1167 (Fax)

CERTIFICATE OF SERVICE

The undersigned certifies that on August 12, 2009 a true and correct copy of the above Response and Motion to Dismiss was hand-delivered to:

Mary Winter, Esq.
District Court Trustee Office
Johnson County Courthouse
Olathe KS



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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

In the Matter of the Marriage of
DANIEL DENNIS PHILLIPS,

Petitioner

and

KIMBRA LEE PHILLIPS,

Respondent.

Case No. *P9C 6890*
Court No. *13*
Chapter 60

DECREE OF DIVORCE

Now on this 30 day of June, 1989, the above-entitled matter comes on regularly for hearing. The Petitioner appears in person and by his attorney, Chris Bacon. The Respondent appears in person. There are no other appearances.

The parties announce that they are ready for trial. The Petitioner presents evidence and rests. The Respondent presents no evidence. The Court thereupon having examined the file and pleadings and listened to the evidence and statements of counsel makes the following findings:

1. The Petition for Divorce was filed herein on June 23, 1989.
2. The Petitioner was a resident of Johnson County, Kansas, for sixty (60) days next preceeding the filing of the Petition.
3. The Court has entered an Order declaring an emergency and ordering trial forthwith.
4. Respondent has entered her appearance herein, consented that the proceedings may go forward in her absence, waived her right to be present at the final divorce hearing, and consented to the entry of a divorce on an emergency basis.

CERTIFICATE OF CLERK OF THE DISTRICT COURT, THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL INSTRUMENT FILED ON THE 30 DAY OF June, 1989 AND RECORDED IN THIS COURT, 10th JUDICIAL DISTRICT, JOHNSON COUNTY, KANSAS DATED THIS 18 DAY OF June, 1995
CLERK OF THE DISTRICT COURT
BY J. Perry DEPUTY



COPY TO COURT TRUSTEE

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5. The Court has subject matter and personal jurisdiction over the parties; venue is proper.

6. The parties hereto were married on July 2, 1983, in Oregon.

7. The parties are incompatible, and a divorce should be granted to Petitioner on the grounds of incompatibility.

8. One (1) child has been born of the marriage, to-wit: Daniel Bracken Phillips, born August 23, 1983.

9. The parties have entered into a Stipulation And Property Settlement Agreement, dated JUL 18 88, 1989, which document was introduced into evidence as Petitioner's Exhibit 1. The said Agreement makes provision for the care of the child, which provisions are approved; the matters of visitation, custody, and child support are subject to the continuing jurisdiction of the Court. The Agreement further makes a full division of property and debts of the parties. The Agreement waives alimony by each party against the other. The Court finds that the said Agreement is fair, just, equitable, and valid, and should be made a part of the Decree of Divorce by reference.

IT IS THEREFORE BY THE COURT ORDERED that the Petitioner is hereby granted a divorce from the Respondent on the grounds of incompatibility; that the bonds of matrimony heretofore existing between the parties are set aside and held for naught.

IT IS FURTHER ORDERED that the Petitioner and the Respondent shall have the joint care, custody, and control of the parties' minor children, with Respondent as primary residential custodian, with Petitioner having rights of reasonable visitation, all subject to the continuing jurisdiction of the Court.

IT IS FURTHER ORDERED that the child support payments as set forth in the attached Stipulation And Property Settlement Agreement shall be made by Petitioner to Respondent in the amounts and at the times set forth, which support payments shall be paid by making them to the office of the District Court Trustee of Johnson County, Kansas; all such support payments are subject to the con-

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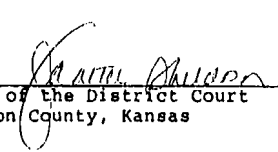
tinuing jurisdiction of the Court.

IT IS FURTHER ORDERED that the findings hereinbefore made are incorporated herein by reference and made a part of the Orders of this Court; that the Stipulation And Property Settlement Agreement entered into between the parties on July 22, 1989, be in the same is hereby approved and incorporated in this Decree by reference; that the provisions of said Agreement shall be the judgments of this Court as fully as though the entire Stipulation And Property Settlement Agreement had been set out herein.

IT IS FURTHER ORDERED that the parties are prohibited from contracting marriage with any other person within or outside the State of Kansas before this Decree of Divorce becomes final, and such remarriage prior to that time shall be voidable until the Decree becomes final.

IT IS FURTHER ORDERED that the cost of this action shall be taxed against the Petitioner, with costs to be taken out of the Petitioner's cost deposit.

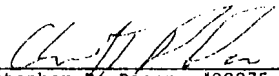
IT IS FURTHER ORDERED that this Decree shall be effective as of the date the same is filed with the Clerk of the District Court of Johnson County, Kansas.



Judge of the District Court
Johnson County, Kansas

SUBMITTED BY:

LOWE, FARMER, BACON & ROE

By: 

Christopher B. Bacon, #08875
110 West Loula
P.O. Box 580
Olathe, Kansas 66061
(913) 782-0422
Attorney for Petitioner

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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

In the Matter of the Marriage of
DANIEL DENNIS PHILLIPS,

Petitioner

and

KIMBRA LEE PHILLIPS,

Respondent.

Case No. *89C6890*
Court No. *13*
Chapter 60

STIPULATION AND
PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 22 day of June, 1989, by and between KIMBRA LEE PHILLIPS, hereinafter referred to as "Wife", and DANIEL DENNIS PHILLIPS, hereinafter referred to as "Husband";

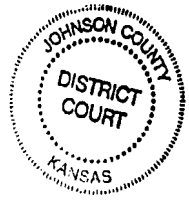
WITNESSETH:

WHEREAS, the parties hereto were married on the 2nd day of July, 1983, in Oregon, and have been since that time and are now by law husband and wife; and

WHEREAS, the parties are the parents of Daniel Bracken Phillips, born August 23, 1983, representing the unemancipated issue of said marriage, and the parties desire hereby to determine all matters pertaining to the care, custody and control thereof and to provide for the support therefor; and

WHEREAS, it is the desire of the parties by this agreement fully and for all time to settle and determine all property rights of every kind and nature whatsoever, to determine any obligation upon the part of either party to support and maintain the other and to determine all other rights and claims arising out of the marriage relationship, independent and regardless of the disposi-

CERTIFICATE OF CLERK OF THE DISTRICT COURT, THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL INSTRUMENT FILED ON THE 30 DAY OF June, 1989 AND RECORDED IN THIS COURT, 19th JUDICIAL DISTRICT, JOHNSON COUNTY, KANSAS DATED THIS 18 DAY OF April, 1995
CLERK OF THE DISTRICT COURT
BY Sherry DEPUTY



Phillips et al
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tion thereof, judicially or otherwise.

NOW, THEREFORE, each of the parties, for and in consideration of the mutual promises, covenants and agreements herein made and contained, consents and agrees as follows:

A. MINOR ISSUE OF THE PARTIES:

(1) Joint Custody - The parties agree that they shall have the joint care, custody and control of their minor child and adopt the following Joint Custody Agreement:

The primary residence of the minor child shall be with wife, subject to reasonable periods of visitation with husband as may be mutually agreed by the parties.

(2) Dispute Resolution - The parties agree that in the event a dispute arises regarding custody or visitation they will submit to mediation prior to petitioning the Court for relief. In the event they cannot agree upon a mediator the parties hereby agree to use the Family and Youth Services Department of the Johnson County District Court for such purpose.

(3) Moving From the State of Kansas - The residence of a child subject to this agreement shall not be changed from the State of Kansas without thirty days prior written notice to the other party, the written consent of both parties or by court order.

(4) Address and Telephone Numbers - Each of the parties shall deliver to the other the address and telephone number where he or she can be located in the event of an emergency relating to a child subject to this agreement, and shall keep the other party advised as to the whereabouts of any such child.

(5) Surname - Wife agrees that the child subject to this agreement shall use the surname of husband, irrespective of the marital status of wife.

(6) Health, Education and Welfare - Each of the parties shall keep the other informed on all matters relating to the health, education and welfare of the child subject to this agreement and the parties agree to consult with each other regarding decisions concerning such matters.

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(7) Monetary Support - Husband shall pay Wife, as and for child support, the following:

\$750.00 per month, payable \$375.00 on the 1st and \$375.00 on the 15th, beginning July 15, 1989, and continuing through the earliest of the date the minor child marries, moves out of the residence of his parent, turns 18 (or if the child turns 18 before graduating from high school, then on the date the child graduates from high school).

(8) Health and Dental Insurance - Husband shall, so long as he is obligated to provide child support or other provisions for the benefit of a child of the parties, maintain health and dental insurance for that child with coverage at least equal to the coverage Husband has the date this instrument is signed. Husband and Wife to split the deductibles, 50/50.

(9) Deduction. - Husband shall receive the tax deduction for the minor child.

B. MAINTENANCE: Each party waives any right to maintenance.

C. DIVISION OF PROPERTY:

(1) Wife's Separate Personal Property - Wife shall have set aside as her separate property, free of any claim or interest of Husband, the following items of personal property, to-wit:

Her Captain's chair, full bed and frame, Noritake china, Ramaru china, Oneida silverware, oak dresser in kitchen, oak bookshelf, Technics receiver, Radio Shack speakers, cassette player, clock radio, milk base lamps, Lemans, DBP-toys, sideboard, all of Joey Marks pottery, Hitachi VCR, LaCruesel pots and pans, 1/2 kitchen knives, exercise bike, coffee table, round and leather table, serving machines, prints-green and pink, Sony TV, child's bed, child's dresser, Cuisinart, all other clothing, jewelry, personal effects, and personal property in her possession.

(2) Husband's Separate Personal Property - Husband shall have set aside to him as his separate property, free of any claim or interest of wife, the following items of personal property, to-wit:

Washer and dryer, refrigerator, Revere pots and pans, queen bed (2 dressers, mirror, nightstand), bedroom set, computer/computer table, folding bed, dresser-girls room, dressing table-girls room, eagle lamps, brass lamps, wicker chair, dining room set, silver tea service, Denon receiver, Bose 601, Technics turntable, couch, microwave, all KC prints, all Washington, Jefferson, Lincoln prints, library table, stereo cabinet, hotel chairs (green covered), Pontiac 6000, Siebold painting, Panasonic VCR, 1/2 kitchen knives, all records, slide projector-slides, camera, stacking tables, chest, CD's, his clothing, jewelry, personal effects, and all other personal property in his possession and not otherwise set aside to wife.

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(3) Washer, Dryer, Director's Chairs - The husband will purchase and deliver to Wife, by September 15, 1989, a washer and dryer of equivalent value to the washer and dryer that Husband is receiving. Further, Husband shall purchase and deliver to Wife by that same date two director's chairs.

(4) Residence of the Parties - The parties residence at Lot 15, Block 10, 6th Plat, Quail Valley, a subdivision in Overland Park, Johnson County, Kansas, shall be set aside to Husband, free and clear of any interest of Wife. Husband shall pay the mortgage debt on the home and shall hold Wife harmless from any nonpayment thereof. Wife shall be given access to the residence in order to collect the personal property set aside to her under this Agreement.

D. MISCELLANEOUS PROVISIONS:

(1) Debts - Husband agrees in a timely fashion to satisfy all debts of the marriage, including taxes, and hold Wife harmless from non-payment, except for the following debts to be paid by Wife:

Neiman Marcus	\$	182.14
Penneys	\$	124.31
1988 Pontiac LeMans	\$	200.00 per month

Other than the debts listed above, each of the parties agrees that he or she will individually pay, satisfy and discharge debts, loans or obligations incurred by him or her in his or her individual capacity. Each of the parties agrees to hold the other harmless from, and to indemnify the other against, any liability or loss by virtue of his or her failure to pay all obligations assumed hereunder.

(2) Taxes - The parties agree that each shall be individually responsible for the intangible, personal and real property taxes due subsequent to the execution of this agreement with reference to the items of property set aside to each of them under the provisions of this agreement.

(3) Submission to Court - In the event a Petition for Divorce, Separate Maintenance or Annulment comes before a court of appropriate jurisdiction for trial or other disposition, this

agreement may be submitted to the court during hearing, for such action as the court may determine proper.

(4) Court Trustee - In the event that this agreement is submitted to a Court as aforesaid and is by such Court accepted and incorporated into a Decree of Divorce, all sums to be paid as support or maintenance hereunder shall be made in cash or by check or money order payable to the Johnson County, Kansas, District Court Trustee and delivered or mailed to said trustee at his office in the Courthouse, Olathe, Kansas.

(5) Execution of Instruments - Each of the parties agrees that at any time reasonably required, he or she shall make, execute and deliver to the other any and all deeds of conveyance, bills of sale, titles, tax exemption declarations or any other instruments which may be necessary to carry out the terms of this agreement. Wife, in particular, shall promptly execute a Quit Claim deed to the residence, in favor of Husband. If either party shall fail to comply with the provisions of this sub-paragraph this agreement shall constitute an actual grant, assignment and conveyance of property or other rights in such manner, and with such force and effect, as shall be necessary to effectuate the terms hereof.

(6) Agreement Absolute - This agreement is absolute and irrevocable and, therefore, is not conditioned upon the parties hereto being divorced or upon court approval. It is by the parties agreed that this agreement shall be considered to be contractual between them and binding as such upon the parties, their executors, administrators, heirs, devisees, beneficiaries, assigns and other legal representatives.

(7) Free Will Exercised - Each of the parties acknowledges that this agreement, as to each of its provisions, has been made of his or her free will and volition and further acknowledges that no coercion, force, pressure or undue influence has been used or exerted by or against the other party.

(8) Independent Counsel and Full Disclosure - The parties declare that each has had the independent advice of his or her own

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counsel, or has rejected such counsel, and that each disclosed to such counsel and/or to the other party the full extent and nature of his or her assets, liabilities, income and expenses.

(9) Applicable Law - The parties agree that this agreement, together with all the provisions hereof, shall be interpreted under the laws of the State of Kansas.

(10) Court Costs - Husband has paid, or shall pay, all docket fees and court costs in any matter now pending or to be filed between the parties wherein this agreement is presented to the court for approval.

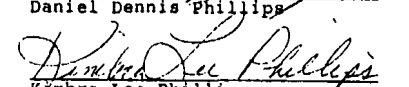
(11) Legal Expenses - Each of the parties shall pay his or her own legal expenses for the negotiation and preparation of this agreement and in regard to any matter now pending or to be filed between the parties wherein this agreement is presented to the court for approval.

(12) Waiver of Appeal - Each of the parties waive the right of appeal of a judgment of divorce which may be granted in any action in which this agreement is submitted to the court and approved in its entirety.

(13) Enforcement Expenses - In the event that a party hereto fails to perform as required by the terms of this agreement, and it becomes necessary for the other party to institute legal proceedings to enforce his or her rights hereunder, it is agreed that the party in default shall pay all expenses, including reasonable legal expenses, of such enforcement proceedings.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year indicated herein.


Daniel Dennis Phillips


Kimbra Lee Phillips

STATE OF ^{Missouri} KANSAS)
COUNTY OF JOHNSON) ss.
Jackson

The foregoing instrument was acknowledged before me this
22 day of June, 1989, by Daniel Dennis
Phillips.

Liane Overman
NOTARY PUBLIC

STATE OF ^{Missouri} KANSAS)
COUNTY OF JOHNSON) ss.
Jackson

The foregoing instrument was acknowledged before me this
22 day of June, 1989, by Kimbra Lee Phillips.

Liane Overman
NOTARY PUBLIC

LIANE OVERMAN
Notary Public - State of Missouri
Commissioned in Jackson County
My Commission Expires January 10, 1993

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