

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

In re the Marriage of: )  
)  
MMH, )  
n/k/a MMG, )  
)  
Petitioner )  
)  
and ) Division No. 15  
)  
MJH, )  
)  
Respondent )

JUDGMENT ON PETITIONER'S MOTION  
TO ENFORCE JUDGMENT, MOTION FOR CONTEMPT AND  
MOTION FOR SANCTIONS AND OTHER RELIEF

AND

JUDGMENT ON RESPONDENT'S MOTION TO DISMISS

On the 2<sup>nd</sup> day of November, 2017, the Petitioner, MMH, n/k/a MMG, (hereinafter referred to as "Wife") appeared in person and by her Attorney, Patricia Susi, and the Respondent, MJH, (hereinafter referred to as "Husband") appeared in person and by his Attorney, James Carmody, for hearing on Petitioner's Motion to Enforce Judgment, Motion for Contempt and Motion for Sanctions and Other Relief and on Respondent's Motion to Dismiss. This cause coming on regularly to be heard and being called, the parties announced ready for trial. Thereupon, the parties submitted the cause to the Court upon the pleadings and proof, and the Court, after hearing the evidence, took the

matter under advisement. The Court having considered the pleadings, the testimony and the evidence adduced by the parties, the Court now being fully advised in the premises enters the orders and judgment as follows:

1. On March 22, 2016, the Circuit Court of the City of St. Louis, 22<sup>nd</sup> Judicial Circuit, entered a Judgment of Dissolution of Marriage (hereinafter referred to as "Judgment") which dissolved the marriage of the parties and resolved, in part, all matters of Child Custody, Child Support, Division of Property and Division of Debt.

2. The Judgment incorporated the Marital Settlement and Separation Agreement (hereinafter referred to as "Agreement") which was executed by both parties and drafted by their attorneys.

3. As part of the division of property, Husband was awarded 100% ownership of H.C., Inc. and H.P., LLC. See section 2.3(h) and (i) of the Agreement.

4. As part of the division of property, Wife was awarded 100% of the net proceeds from the sale of the real property located at XXXX Avenue, St. Louis, MO 63139. Said property was owned by H.P., LLC. at the time of its sale. See Section 2.3(i) of the Agreement.

5. The Judgment included the following order relative to Income and Income Tax Returns:

...Effective as of January 1, 2016, each party shall report as income and pay tax on any assets awarded to him or her hereunder and on any income earned by he or she.

See section 4.5 of the Agreement.

6. The Judgment included the following order relative to Debts and Obligations:

Unless otherwise expressly set forth herein, each party shall pay, defend, indemnify and hold harmless the other from all debts, obligations, expenses and claims arising from, related to, or connected with any item of property, real or personal, respectively received by each party under the provisions of this Agreement. The foregoing shall include but not be limited to reasonable attorney's fees, litigation expenses and costs incurred by either party in the event of default by the indemnifying party.

See section 4.3 of the Agreement.

7. As part of the parties' separate personal income tax returns for Tax Year 2016, the following income was attributed to Wife through K-1s issued by H.P., LLC and H.C., Inc.:

- a. \$4,548.00 in gains on the sale of real property known and numbered as XXXX Avenue, said property being owned by H.P., LLC prior to its sale.
- b. \$76,454.00 in gains on the sale of equipment by H.C., Inc., said equipment having been sold after the date of Judgment.
- c. \$19,869.00 in S Corporation income from H.P., LLC, and
- d. \$28,129.00 in S Corporation income from H.C., Inc.

8. The accountant for the parties testified that the result of the addition of the above 4 items to Wife's 2016 personal income tax return caused Wife to incur an additional tax obligation for Tax Year 2016 of \$40,440.00. Wife paid this additional amount to the IRS when she submitted her 2016 personal income tax return.

9. Wife testified that she incurred additional costs and expenses as a direct result of the attribution of these items to Wife for tax purposes, including but not limited to attorney fees.

10. Husband asserted that the manner of distribution of the gains and income from the two entities in question were effectuated in accordance with requirements of Federal Tax Law and IRS Regulations. Husband further asserted that the gain on the sale of XXXX real property owned by H.P., LLC related to funds that were awarded to Wife under the terms of the Judgment.

11. Husband seeks dismissal of Wife's Motion and an award of his attorney fees incurred in defense of the motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

A. With regard to the gain on the XXXX property, the Judgment awards to Wife the "net proceeds" from the sale of said property. The term "net proceeds" is not defined in the Agreement or Judgment. The Court finds that the proceeds to be

awarded to Wife would be that amount remaining after costs and that said costs would include whatever taxes are associated with the sale of the property. The Court therefore finds that Wife is responsible for the taxes associated with the \$4,548.00 gain realized on the sale of the XXXX property.

B. With regard to the gain from the sale of equipment by H.C., Inc., the Court finds that said gain was attributable to an asset awarded to Husband and he should be responsible for the tax liability associated with the \$76,454.00 gain.

C. With regard to the income from H.C., Inc. and H.P., LLC, the Court finds that said income was attributable to assets awarded to Husband and he should be responsible for the tax liability associated with the incomes of \$19,869.00 and \$28,129.00.

D. Respondent's Motion to Dismiss is hereby denied.

E. The evidence at trial submitted by Wife indicated that as a result of the gain from the XXXX property, the gain from the sale of equipment and the income from both corporations being included on Wife's personal income tax return she incurred an additional tax obligation of \$40,440.00.

F. No evidence was submitted as to the individual financial effect each item of income had on Wife's tax obligation. A review of Wife's tax return does not reflect a

different tax obligation for the gain on the XXXX property as opposed to the other income items.

G. Based upon the foregoing, the Court has calculated the amount of additional taxes paid by Wife on the sale of equipment and the income from the 2 corporations by pro-rating the tax information presented at trial by the CPA for all 4 items.

H. The court finds that the amount of tax Wife paid as a result of the inclusion of only the gain from the sale of equipment and the income from the 2 corporations on her personal income tax return was \$39,012.47.<sup>i</sup>

I. Judgment is entered in favor of Wife and against Husband in the amount of \$39,012.47.

J. The Court finds that it is appropriate and equitable for Husband to pay a portion of Wife's attorney fees. The Court therefore enters Judgment in favor of Wife and against Husband in the sum of \$7,500.00 as and for a portion of Wife's attorney fees.

K. Costs of this action are assessed against Wife. The foregoing notwithstanding, each party shall be responsible for their own deposition and subpoena costs.

DATED this 4th day of December, 2017.

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Theresa Counts Burke  
Circuit Judge

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<sup>i</sup> The 4 items of income questioned by Wife for inclusion on her personal tax returns were:

Gain on XXXX Property	\$4,548.00
Gain from sale of equipment	\$76,454.00
Income from H.P.	\$19,869.00
Income from H C.	\$28,129.00

for total inclusion on Wife's tax return of \$129,000.00. Of that total amount, the gain on XXXX property represents 3.53% and the remaining 3 items represent 96.47%.

The testimony presented was that the 4 items of income questioned by Wife for inclusion on her personal tax returns caused her to incur additional taxes of \$40,440.00. 96.47% of that additional tax is \$39,012.47.