

**STATE OF NEW YORK: SUPREME COURT
COUNTY OF ERIE**

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MARY SMOE
111-11-1111

Plaintiff,

-against-

JOE BLOW
222-22-2222

Defendant.

Index No.: SF-2002-999999

REFEREE'S REPORT

**FINDINGS OF FACT
CONCLUSIONS OF LAW**

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The above entitled action having been brought on by the Plaintiff for a Judgement of Divorce against the Defendant dissolving the marriage heretofore existing between the parties upon the grounds of DRL §170(1) Cruel and Inhuman Treatment and the Defendant having been duly and personally served with the Summons With Notice bearing a notation "Action for Divorce", thereon within the State of New York, after the enactment of the New York State Equitable Distribution Law, and the Defendant having appeared and waived the right to answer, and consented to a Default Judgment, and upon reading and filing the papers submitted, and due deliberation having been had, I find and decide as follows:

FINDINGS OF FACT

- 1) The parties have been residents of the State of New York for a continuous period of more than two years immediately preceding the commencement of this action and continue to be residents of the state at the present time.
- 2) The parties were both over the age of eighteen (18) years at the time of the commencement of this action.
- 3) The parties were married on September 20, 1990, by clergy, in the City of Lockport, County of Niagara, State of New York.
- 4) Plaintiff's maiden name or former surname is: Smith.

5) There are three (3) children born of this marriage, to wit: Joe Smoe, DOB 12-16-1993, SS# 333-33-3333, age eight (8); Bob Smoe, DOB 05-18-1992, SS# 444-44-4444, age nine (9); and Jane Doe, DOB 06-20-1990, SS# 555-55-5555, age eleven (11).

6) The Plaintiff requests that the parties share joint legal custody of the child, and the Plaintiff be designated the primary residential parent of the children, namely: Joe Smoe, DOB 12-16-1993, SS# 333-33-3333, age eight (8); Bob Smoe, DOB 05-18-1992, SS# 444-44-4444, age nine (9); and Jane Doe, DOB 06-20-1990, SS# 555-55-5555, age eleven (11).

7) The Plaintiff requests that the Defendant receive reasonable and liberal visitation with the three (3) children, more specifically set forth as follows: Alternate weekends.

8) The grounds for divorce alleged in the Verified Complaint were proved as follows:

a) That within the past five (5) years, the Defendant has engaged in a course of cruel and inhuman treatment of Plaintiff, consisting of: treating the Plaintiff with hostility and contempt; humiliating, demeaning and vilifying Plaintiff; verbally abusing and arguing with Plaintiff; constantly criticizing and denigrating Plaintiff; treating Plaintiff as a scapegoat for all Defendant's frustrations and unhappiness, behaving in a cold withdrawn manner to Plaintiff and constantly ignoring the needs of Plaintiff.

b) Within the past five (5) years and continuing on a regular basis until the commencement of this action, the parties had frequent arguments, without just cause or provocation. As a result, Plaintiff suffered from severe pain, stress, and anxiety.

c) As a result of the foregoing conduct on behalf of the Defendant, the Plaintiff became nervous and upset, was unable to sleep, became anxious, suffered mental and emotional stress, such as rendered it unsafe and improper for the Plaintiff to continue to cohabit with the Defendant.

9) There is no action presently pending or heretofore determined that would affect the marital status of the parties.

10) Plaintiff affirmatively alleges that in the event a divorce is granted, Plaintiff will take all steps within

Plaintiff's power to remove any barriers to the ability of the Defendant to remarry, pursuant to DRL §253.

11) At the time of service of the Summons With Notice, Action for Divorce, the Defendant was not engaged in military service of the United States.

12) That Pursuant to Domestic Relations Law. Section 236, I find:

a) That the marriage is of fourteen (14) years, two (2) months, duration.

b) Plaintiff currently earns thirty-one thousand two hundred dollars (\$31,200.00) per year from employment at Jones Bakery, and earns total annual income from all sources of thirty-one thousand two hundred dollars and no cents (\$31,200.00).

c) Defendant currently earns forty thousand five hundred dollars (\$40,500.00) per year from employment at Adams Bakery, and earns total annual income from all sources of forty thousand five hundred dollars and no cents (\$40,500.00).

d) The parties own assets worth \$767.00.

e) The parties have liabilities totaling \$0.00.

f) The net worth of the parties is \$767.00.

g)The Plaintiff is NOT seeking equitable distribution of the marital property. All of the marital property has been divided to Plaintiff's satisfaction prior to the commencement of this action.

h) The Plaintiff requests that each party retain as his or her sole and separate property those items of property now in his or her possession, including but not limited to his or her respective automobiles, any bank accounts either party may have in his or her name, and any pension rights that each party may possess; except that the Plaintiff shall return to the Defendant the following items: The Black Dress.

i) Plaintiff requests that each party be responsible for those debts and obligations in his or her respective name.

j) That Plaintiff affirms that the parties are self-supporting and capable of remaining so, and that

neither party should therefore be required to pay maintenance.

k) That Plaintiff requests that each party be responsible for his or her own attorney's fees and disbursements.

l) The Plaintiff requests that Defendant pay Child Support to Plaintiff for the three (3) children pursuant to the Child Support Standards Act of the State of New York, in the amount of two hundred dollars and no cents (\$200.00), weekly. Payments to be made pursuant to an Income Deduction Order.

m) Plaintiff requests that Defendant be required to provide medical and hospital insurance for the three (3) children and be responsible for a pro-rata share of all uninsured medical, dental, drug, optical, orthodontic, counseling and health related expenses incurred by the Plaintiff on behalf of the children. Specifically, the Defendant's pro-rata share is, 56%. The Plaintiff's pro-rata share payable is, 44%.

n) The Plaintiff requests that Plaintiff receive the dependent income tax deduction for the children so long as the terms of custody do not change.

o) Plaintiff requests that Defendant maintain a seventy-five thousand dollar (\$75,000.00) life insurance policy, on Defendant's life, naming the three (3) children, as irrevocable primary beneficiaries, taking equal shares, until all of the children are emancipated.

p) Plaintiff requests that the Defendant be responsible for a pro-rata share of child care expenses regarding the three (3) children. Specifically, the Defendant's pro-rata share is, 56%. The Plaintiff's pro-rata share payable is, 44%.

q) Plaintiff requests that each party be responsible for their pro-rata share of present and future educational expenses of the three (3) children, same to include: books, tuition and fees. The Defendant's pro-rata share payable is, 56%. The Plaintiff's pro-rata share payable is, 44%.

CONCLUSIONS OF LAW

- 1) That jurisdiction as required by Section 230 of the Domestic Relations Law has been satisfied.
- 2) That the Plaintiff is entitled to a Judgement of Divorce dissolving the marriage between the parties by reason of DRL §170(1) Cruel and Inhuman Treatment.
- 3) That the conditions set forth in Section 253 of the Domestic Relations Law have been complied with.
- 4) That the parties are self-supporting and capable of remaining so, and therefore neither party shall be required to pay maintenance.
- 5) That each party shall retain as his or her sole and separate property those items of property now in his or her possession, including but not limited to his or her respective automobiles, any bank accounts either party may have in his or her name, and any pension rights that each party may possess; except that the Plaintiff shall return to the Defendant the following items: The Black Dress.
- 6) That each party shall be responsible for those debts and obligations in his or her respective name.
- 7) That each party shall be responsible for his or her own attorney's fees and disbursements.
- 8) That the Plaintiff shall receive the dependent income tax deduction for the children so long as the terms of custody do not change.
- 9) That the Plaintiff shall have the right to resume use of her maiden name or former surname, Smith, should she so desire.
- 10) That the parties shall share joint legal custody of the child, and the Plaintiff shall be designated the primary residential parent of the children, namely: Joe Smoe, DOB 12-16-1993, SS# 333-33-3333, age eight (8); Bob Smoe, DOB 05-18-1992, SS# 444-44-4444, age nine (9); and Jane Doe, DOB 06-20-1990, SS# 555-55-5555, age eleven (11).
- 11) The Defendant shall pay Child Support to Plaintiff for the three (3) children pursuant to the Child Support Standards Act of the State of New York, in the amount of two hundred dollars and no cents (\$200.00), weekly. Payments shall be made pursuant to an Income Deduction Order.
- 12) The Defendant shall receive reasonable and liberal visitation with the three (3) children, more

specifically set forth as follows: Alternate weekends.

13) Defendant shall provide medical and hospital insurance for the three (3) children and be responsible for a pro-rata share of all uninsured medical, dental, drug, optical, orthodontic, counseling and health related expenses incurred by the Plaintiff on behalf of the children. The Defendant's pro-rata share payable shall be, 56%. The Plaintiff's pro-rata share payable shall be, 44%.

14) Defendant shall maintain a seventy-five thousand dollar (\$75,000.00) life insurance policy, on Defendant's life, naming the three (3) children, as irrevocable primary beneficiaries, taking equal shares, until all of the children are emancipated.

15) Defendant shall be responsible for a pro-rata share of child care expenses regarding the three (3) children. The Defendant's pro-rata share payable shall be, 56%. The Plaintiff's pro-rata share payable shall be, 44%.

16) Both parties shall be responsible for their pro-rata share of present and future educational expenses of the three (3) children, same to include: books, tuition and fees. The Defendant's pro-rata share payable shall be, 56%. The Plaintiff's pro-rata share payable shall be, 44%.

DATED: _____

REFEREE