

STATE OF INDIANA

)

IN THE

)SS:

COUNTY OF

)

CAUSE NO.

[REDACTED]

)

[REDACTED]

)

Petitioner,

)

Special Judge,

and

)

[REDACTED],

)

Respondent.

)

**PROPOSED SPECIAL FINDINGS ON INTERVENTION**

**Special Findings**

The Court finds the parties to this divorce proceedings are Petitioner, [REDACTED] (“[REDACTED]”), by counsels, Bryan L. Ciyou and Julie C. Dixon; Respondent, [REDACTED] (“[REDACTED]”), by counsel, [REDACTED]; and proposed intervenor, [REDACTED]<sup>1</sup> (“Mr. [REDACTED]”), by counsel, [REDACTED].

The Court finds it can, and does, take judicial notice of the complex procedural, factual and legal history of this protracted proceeding, including the interlocutory appeal, affirming this Court’s invalidation of the post-nuptial agreement. (Indiana Rule of Evidence 201(a)(2)(C).)

The Court finds while there are many complex legal issues pending in this case for ultimate determination, the issue before it at this time, which was heard over several days, is quite narrow: *Whether [REDACTED]’ should be allowed to intervene in [REDACTED] and [REDACTED]’s dissolution of marriage case because [REDACTED]’s interest in what is claimed as marital*

<sup>1</sup> [REDACTED] is [REDACTED]’s father.

*property in the divorce estate for division by this Court cannot be protected by the parties and, therefore, necessitates intervention.* (See Chronological Case Summary (motion underpinning this matter on intervention).)

The Court finds there is a presumption for an equal division of whatever it determines constitutes the “marital pot,” which would include monies of [REDACTED] if determined as such at a final divorce hearing on property. (Ind.Code 31-15-7-5.)

The Court finds there is no dispute between the parties that [REDACTED] transferred more than [REDACTED] ([REDACTED]) (“funds transfers”) into accounts that were controlled or used by [REDACTED] and/or [REDACTED] but only one parcel of property purchased with these funds transfers was titled with [REDACTED] (Testimony of [REDACTED] and [REDACTED].)

The Court finds this cash is now primarily contained in, or defined by, three parcels of improved real estate: the [REDACTED], the [REDACTED] condo, and the [REDACTED] home, plus a working line of capital for [REDACTED] as a [REDACTED]. (Testimony of [REDACTED] and [REDACTED]; Intevenor’s Exhibits I, IX, X, XII.)

The Court finds these funds transfers account for the majority of the value of the marital estate, with the parties having no more than [REDACTED] in net worth before the funds transfers. (Testimony of [REDACTED])

The Court finds it would not expect a substantial change in the “claimed” marital estate upon hearing final trial evidence as to what appears to be in the marital pot, except as by exclusion or deviation from the marital pot regarding [REDACTED] investments or loans. (Testimony of [REDACTED] and [REDACTED].)

The Court finds there are three letters memorializing [REDACTED] desire to use [REDACTED] as a conduit to transfer his monies from the [REDACTED], which at the time it was contemplated and began in [REDACTED], was in a state of civil war and [REDACTED] faced as a [REDACTED] (an ethnic minority) loss of his property through appropriation without payment, imprisonment, beating or summary execution. (Testimony of [REDACTED], Intevenor's Exhibits IX, X, XII.)

The Court finds while there is dispute by [REDACTED] about the authenticity of these letters, they are obviously on paper of a different size and type of that used in the United States and not found in the common stream of commerce here, both supporting the merits of intervention and being created by [REDACTED] at some time and signed by him. (Indiana Rule of Evidence 201(1)(A).)

The Court finds there is a different set of signed documents reflecting [REDACTED] desire to help Nina with her business by aiding in purchase of a building and provision of an operating line of credit. (Intervenor's Exhibit I.)

The Court taking judicial notice of contract law in Indiana generally, finds the letters and the business documents fall short of traditional lending documents, but that is not particularly relevant in a dissolution of marriage proceeding. (Indiana Rule of Evidence 201(b) and Testimony of [REDACTED])

The Court finds the evidence is undisputed that [REDACTED] intended the [REDACTED] property have his name on the title to ensure his financial interests were protected. (Testimony of [REDACTED] and [REDACTED])

The Court finds credible that [REDACTED] was visibly upset when he saw the “gift letter” to [REDACTED] and [REDACTED] related to obtaining financing for the Geist home, even with the substantial sum he contributed to purchase this home. (Testimony of [REDACTED].)

The Court finds [REDACTED] had no knowledge of this gift letter, lending great credibility to [REDACTED] testimony that his letters admitted into evidence written by him on investing in the United States and documents for loaning [REDACTED] money for business purposes are authentic and made with his awareness and signature. (Testimony of [REDACTED].)

The Court finds since the [REDACTED] Home was purchased, the financial lenders have changed the lax policies they have used before the housing crisis and would now verify such “gift letters” with the maker, like [REDACTED]. (Respondent’s Exhibit A and Testimony of Mortgage Broker [REDACTED].)

The Court finds the obvious purpose of such gift letters is to secure the lender’s interests, but in this case, this gift letter was used to facilitate the loan alone, not diminish collateral of the bank. (Testimony of [REDACTED] and Respondent’s Exhibit A.)

The Court finds the “gift letter” was merely an instrument, albeit misguided in use, to obtain a loan to facilitate [REDACTED] buying a family home in the United States to continue to move his monies and invest and to provide a place for him and his former wife, children and extended family to live, his legal and cultural duty, when he relocated to the United States; but [REDACTED] specifically requested he be placed on the title of the [REDACTED] home which did not occur. (Testimony of [REDACTED] and [REDACTED].)

The Court finds with the distance and political unrest in [REDACTED] [REDACTED] acted consistently to effectuate [REDACTED] desire to transfer his money to the United States and move

here following the purchase of the [REDACTED] home as she did, although not with the precision necessary to fully satisfy [REDACTED] or avoid the contingency these funds transfers could be considered as gifts in a dissolution of marriage. (Testimony of [REDACTED] and [REDACTED]

The Court finds [REDACTED]'s shortfall that leads to this litigation is the lack of means or efforts on her part to effectively and timely communicate with [REDACTED] to ensure he understood exactly how his funds transfers were or would be used, mostly due to the state in [REDACTED] and being a busy mother with small children and a business owner, as well as perhaps better advising [REDACTED] of her assistance to [REDACTED] in this endeavor. (Testimony of [REDACTED]

The Court finds the informality and detail in [REDACTED] loans or investments that occurred over time with [REDACTED]'s informal use of the funds transfers, this led [REDACTED] to try and protect [REDACTED] interests by entering into a post-nuptial agreement when the marriage encountered trouble, but this ultimately failed. (Indiana Rule of Evidence 201(a).)

The Court finds while this post-nuptial was previously invalidated, as affirmed by the Court of Appeals, and thus not controlling in apportionment of the marital estate, it is evidence of [REDACTED] understanding of the funds transfers that even [REDACTED] admitted were from [REDACTED] (Indiana Rule of Evidence 201(a).)

The Court finds the amount of money [REDACTED] may still have in his financial estate, after the funds transfers, is not relevant to determination of this matter (at least at the intervention stage), as his total net worth, by any realistic estimation under the evidence, would be significantly diminished through gifting more than one million dollars versus making a loan or investment as [REDACTED] contends is the case. (Testimony of [REDACTED]

The Court finds [REDACTED] contention that [REDACTED] [REDACTED] may be worth [REDACTED] [REDACTED] [REDACTED] is unsupported by the testimony, exhibits, and actual acts of [REDACTED] [REDACTED] who is an elderly man who has had to fly from [REDACTED] to the United States for these Court proceedings at least two or three times to protect what he believes are his assets and necessary to support of himself, family and five children. (Testimony of [REDACTED] [REDACTED])

The Court finds quite credible [REDACTED] [REDACTED] testimony the he effectively had to do so because (1) he would be subject to tax if these funds transfers were gifts, and no tax (and now interest and penalty) has been paid; (2) other [REDACTED] and/or [REDACTED] [REDACTED] laws dictate [REDACTED] [REDACTED] "gift" equal sums of money to his other children, which he has not done; and (3) such is wholly inconsistent with [REDACTED] [REDACTED] obtaining a "green card" if he were found to have evaded United States taxes. (Testimony of [REDACTED] [REDACTED] and [REDACTED] [REDACTED])

The Court finds that [REDACTED] [REDACTED] intended to use his funds transfers into the United States through his daughter, [REDACTED] [REDACTED] to protect his liquidated assets from complete loss, establish a base for his family, and secure a pathway to legally immigrate to the United States, escaping [REDACTED] [REDACTED] with some of his assets and life. (Testimony of [REDACTED] [REDACTED] and [REDACTED] [REDACTED] Intevenor's Exhibits IX, X, XII.)

The Court finds that the nature of the funds transfers being labeled as "family support" on the wire transfer slips is not credible evidence of [REDACTED] [REDACTED] making a gift of some or all of the funds transfers to [REDACTED] and [REDACTED] but a banking form to allow transfers and monetary control procedure to avoid money from flowing out of this politically unstable country at the time. (Intevenor's Exhibit I.)

The Court finds the since [REDACTED] [REDACTED] began his transition of his finances and plan to immigrate to the United States (or [REDACTED] in [REDACTED] the [REDACTED] [REDACTED] has stabilized with the arrest and war crimes prosecution at the Hague of former president [REDACTED] [REDACTED] (Testimony of [REDACTED] [REDACTED].)

The Court finds [REDACTED] [REDACTED] had unrealistic views of working in the United States in any high-level earning capacity given his advanced and language barrier. (Testimony of [REDACTED] [REDACTED].)

The Court finds with the lack of employment opportunities and subsequent stabilization of [REDACTED] [REDACTED] [REDACTED] returned to the [REDACTED] [REDACTED] and desires or needs repayment and/or liquidation of his United States investments or loans, in whole or part, to properly operate his dredging business in [REDACTED] [REDACTED] to support himself, his family and children. (Testimony of [REDACTED] [REDACTED].)

The Court finds [REDACTED] business, as her sole source of income, has lost money and/or not generated much income for [REDACTED] to date, and [REDACTED] makes less than \$[REDACTED] per year, now that he has obtained employment. (Testimony of [REDACTED] [REDACTED] and [REDACTED] [REDACTED].)

The Court finds with this low level of joint income between [REDACTED] and [REDACTED] from marriage to present, if the Court were to divide the marital estate equally, and either [REDACTED] or [REDACTED] lost, spent, dissipated or secreted the money, [REDACTED] [REDACTED] would be left without a remedy to collect the funds transfers commingled within the marital estate relative to income of the parties and how much money from [REDACTED] [REDACTED] is contained within the marital estate, at least as it is presently characterized by [REDACTED] (Testimony of [REDACTED] [REDACTED].)

The Court finds that with division of the marital estate if all of [REDACTED] monies are treated as a gift, it would still leave a claim by [REDACTED] of gift tax he would or should have paid and attributable to [REDACTED] and/or [REDACTED] as [REDACTED] advisor, and in this way appears impacts the net marital estate. (Testimony of [REDACTED])

The Court finds that without [REDACTED] intervention, he would be left to sue for breach of contract and try to legally intervene in this divorce case through other litigation and use this to attempt to enjoin any divided proceeds from the marital estate when ordered by this Court creating overlapping litigation and a waste of judicial resources. (Testimony of [REDACTED])

The Court finds regardless of [REDACTED] beliefs as to all of [REDACTED] transfers to and through [REDACTED] to acquire certain parcels of real estate, as well as make [REDACTED] a loan, no lender, investor, or third party who has memorialized his/her/its investment in writing is generally divested of his rights because one spouse did not fully understand the other spouses viewpoint.

The Court finds as an ultimate finding [REDACTED] and [REDACTED] cannot for differing reasons protect [REDACTED] claims against the marital estate; and if the marital estate is divided without [REDACTED] being heard in this case, he will have little or no remedy or, a minimum, protection of these assets once divided and outside this Court's purview.

### Conclusions of Law

The Court incorporates any findings of facts or ultimate findings that are conclusions herein as well as the Special Findings set forth *supra*.

The Court concludes that under Indiana Trial Rule of Procedure 24, intervention as a matter of right is satisfied with a three (3) part evidentiary showing. (*Developmental Disabilities*



*Residential Facilities Council v. Metropolitan Development Commission of Marion County*, 455 N.E.2d 960, 964 (Ind.Ct.App.1983.)

The Court concludes the interveenor must show (1) an interest in the subject of the action, (2) disposition in the action may as a practical matter impede protection of that interest, and (3) representation of the interest by existing parties is inadequate. (*Id.*)

The Court concludes intervention as a matter of right under the Indiana Rule of Trial Procedure 24 applies to domestic proceedings. (*In re Paternity of E.M.*, 654 N.E.2d 890 (Ind.Ct.App.1995.)

The Court concludes whatever the final determination of the marital pot is ascertained to be as well as division thereof, [REDACTED] [REDACTED] has overwhelmingly met the first prong and shown an interest in this divorce proceeding, as more than a million dollars of what would otherwise be an modest marital estate, came from the funds transfers by [REDACTED] [REDACTED] to [REDACTED] and/or [REDACTED] (*Id. Developmental Disabilities.*)

The Court concludes [REDACTED] [REDACTED] has met the second prong of the test for intervention as a matter of right: inclusion of [REDACTED] [REDACTED] funds transfers into the marital pot, presupposing an equal division of the marital estate, would impede, if not eliminate, [REDACTED] [REDACTED]s ability to sue to collect these funds, given the parties do not have enough property or employment income to reasonably repay these loans or investments if they were dissipated or lost or wasted by [REDACTED] or [REDACTED] (*Id.*)

The Court concludes [REDACTED] cannot or will not represent [REDACTED] [REDACTED] on any interest in this proceeding he may have in the marital estate related to the funds transfers as [REDACTED] contends they are gifts. (*Id.*)

The Court concludes equally, but for different reasons, [REDACTED] cannot represent or protect [REDACTED] interests as her prior attempts to do so, such as through legal vehicles like the post-nuptial agreement, have failed and distribution of even half of the marital estate to [REDACTED] by divorce would eliminate [REDACTED] ability to recover his funds transfers in substantial part. (Id.)

The Court also concludes as such the handling of the funds transfers by [REDACTED] for investment or loan and now with [REDACTED] contention they are a gift and should only be considered such for division in the marital estate, creates an untenable conflict for [REDACTED] and, as such, she cannot protect [REDACTED] financial interest in the dissolution of marriage proceedings and pursue her own claims. (Id.)

#### Judgment

The Court having made its special findings, applied such to the law, and issued its conclusions thereon, as set forth *supra* determines [REDACTED] [REDACTED] has met his burden and be and hereby is determined to be an intervenor as a matter of right in this divorce action and is granted intervention as a matter of right, with the caption hereinafter modified to reflect [REDACTED] [REDACTED] as an intevenor.

So ordered this \_\_\_ day of [REDACTED] [REDACTED]

[REDACTED]

Copies to:

[REDACTED]