

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**DAVID WEIGEL,**

Plaintiff,

-against-

**Index No. 365034/19**

**REFEREE'S REPORT**

**GEORGINA WEIGEL,**

Defendant.

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**THE SUPREME COURT: NEW YORK COUNTY**

**A P P E A R A N C E S:**

For Plaintiff:

David Weigel, *pro se*<sup>1</sup>

59 John Street #4C

New York, NY 10038

For Defendant:

Law Offices of Daniel B. Nottes, PLLC

150 East 58<sup>th</sup> Street, 22nd Floor

New York, NY 10155-0002

(646) 370-6100

By: Daniel B. Nottes, Esq.

By order of the Honorable Tandra L. Dawson, dated January 6, 2022, the financial issues of “equitable distribution, spousal maintenance, child support and add-ons, counsel fees and other fees and separate property claims, if any” were referred to the Special Referee to “hear and report.”

This matter was assigned to the undersigned Special Referee for hearing on March 21, 2023 via email. The parties were contacted via email as to the trial date of Monday, March 27, 2023 at 2:00 P.M., and that no further adjournments would be granted. Both sides acknowledged that they would appear. The filing of the transcription of the hearing was not waived by the

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<sup>1</sup>Taylor Koss, Esq. Represented to the Court that he never been the attorney of record on the financial side of the instant matter, and does not represent plaintiff.

parties<sup>2</sup>. (CPLR 4401). All exhibits marked as evidence accompanies this report. I also take notice of the County Clerk file.

After the parties confirmed the March 27, 2023 hearing date, plaintiff David Weigel (plaintiff) contacted the Special Referee that he could not attend, because a dear friend was in the hospital. Plaintiff was directed to submit proof of the medical emergency forthwith, and if no documents were submitted before the hearing date, he would be deemed in default. It is noted that the hearing was scheduled for 2:00 P.M. , and the court breaks for lunch at 1:00 P.M. Prior to the commencement of the hearing, no documents were received from the plaintiff; therefore, the Special Referee deemed the plaintiff in default.

After giving plaintiff a fifteen minute courtesy, the Special Referee defaulted plaintiff at 2:15 P.M. The hearing commenced forthwith. Defendant's counsel argued that plaintiff's non appearance should result in plaintiff be deemed in default since plaintiff's medical excuse was not founded since his friend's accident was on March 22, 2023 prior to plaintiff's application for the adjournment, and that his friend's funeral was not until March 29, 2020 or March 30, 2023, after the hearing date. Defendant's counsel argued that there was no excuse for plaintiff not to be in court on March 27, 2023. Plaintiff was defaulted for his non appearance.

Defendant Georgina Weigel (defendant) was ordered to submit arguments on papers regarding the issues of " equitable distribution, spousal maintenance, child support and add-ons, counsel fees and other fees and separate property claims, " which defendant promptly submitted.

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<sup>2</sup>The transcript is designated by "T." The noted testimony is designated by page number. Exhibits introduced by the plaintiff are designated "Plf Ex." Exhibits introduced by the defendant are designated "Def Ex."

The parties were married on May 30, 2009, and there are two children of the marriage, Marquesa Weigel, date of birth, January 5, 2009 and Evo Weigel, date of birth, April 3, 2011. The children of the marriage reside with the defendant, whose address is confidential due to the fact that the instant action is a case from the Integrated Domestic Violence part.

The instant action was commenced by the filing of the Summons and Complaint on April 8, 2019. The grounds for divorce alleged in the Verified Complaint is Irretrievable Breakdown of the marriage for at Least Six Months (DRL §170 (7)). After a review of all documents submitted, I recommend the following:

Defendant proved grounds in that the relationship between plaintiff and defendant had broken down irretrievably for a period of at least six month.

I recommend that the adjusted gross income of the plaintiff in 2018 was approximately \$801,600 and the adjusted gross income of the defendant in 2020 was \$160,243. It is noted that plaintiff's most recent income is not known since plaintiff defaulted. In determining maintenance, pursuant to Maintenance Guidelines Law, based on a marriage of approximately ten years and the standard of living of the parties, it is recommended that defendant's reasonable needs with respect to maintenance are \$12,000 per month given the range per the advisory schedule is 15% to 30% of the marriage. It is recommended that plaintiff pay defendant \$12,000 maintenance per month directly to defendant for a period of three years.. The award is retroactive to the date of commencement, April 8, 2019.

As for child support for the two children of the marriage, I recommend that the applicable child support percentage is 25%, and the parties are responsible for a total child support in the amount of \$40,750 per year. Plaintiff's pro rata share is 65% and defendant's pro

rata share is 35%. Therefore, plaintiff's obligation for monthly child support is \$26,487.50 per year, or 2,207.29 per month. The plaintiff shall pay defendant 2,207.29 per month commencing, August 1, 2023, and the parties will split add-on costs and expenses 65% plaintiff and 35% defendant until the emancipation of the children of the marriage.

I recommend that the parties will claim the children of the marriage on their tax returns on alternating years, beginning with plaintiff in 2023, and defendant in 2024.

As to equitable distribution, I recommend that the parties each shall be awarded fifty percent of the marital assets. As for the former marital residence located at 59 John Street, I recommend that the property be placed immediately on the market to be sold, and that the parties each be awarded fifty percent of the proceeds of the sale after all debt on the property is paid off. Defendant is awarded exclusive use of the residence until it is sold. Defendant will not impede the sale of the property. While defendant is residing in the former marital residence, she is responsible for maintenance and use and occupancy. Until the property is sold, plaintiff is responsible for the mortgage.

Any asset or property solely in plaintiff's name shall remain in plaintiff's name. Any asset or property solely in defendant's name shall remain in defendant's name.

As for counsel fees, plaintiff shall be held responsible for 50% of defendant's counsel fees of \$408,282.05, which amounts to \$204,141.02.

Further, defendant is entitled to a judgment of divorce on the ground of DRL §170(7), and defendant is entitled to resume her prior surname of *Dimasin*.

Each party has been mailed a copy of this report. In accordance with CPLR 3302 and NYCRR § 202.44(a), following the filing of the report and notice to each party of the filing of the

report, defendant shall move to confirm or reject all or part of the report within fifteen (15) days after notice of the filing of the report. If plaintiff fails to do so, then defendant shall so move within fifteen (15) days after notice of the filing is given (*see, Gould v Venus Bridal Gown and Accessories Corp.*, 148 Misc.2d 589 [Sup. Ct. NY Co. 1990]). If neither side files a motion, I report and recommend that the Court *sua sponte* confirm the finding set forth above, after thirty (30) days has elapsed.

This constitutes the report and recommendation of the Special Referee

I recommend that upon motion, pursuant to CPLR §4403, that the Court confirm this report in accordance with the above findings.

Accordingly, I herein recommend that the underlying motion, held in abeyance pending the Referee's report and a motion pursuant to CPLR §4403, be determined in accordance with the above finding.

DATED: December 4, 2023

  
SUE ANN HOAHNG  
SPECIAL REFEREE