

973258

STATE OF INDIANA)
COUNTY OF LAKE) SS:

SUPERIOR COURT OF LAKE COUNTY
CIVIL DIVISION ROOM NO. TWO
SITTING AT EAST CHICAGO, INDIANA

FILED IN OPEN COURT

IN RE: THE MARRIAGE OF:)
BONNIE WEIS)
and)
JOHN WEIS)

APR 9 1987

CLERK LAKE SUPERIOR COURT No. 295-1359

ORDER

The hearing on all pending matters resumes this date and is concluded. The court now takes all issues under advisement.

SO ORDERED this 24th day of September, 1986.

Morton E. Kanz

The court, having taken all pending matters under advisement, being now duly advised, finds that:

1. The court has jurisdiction of the subject-matter of this action and of the parties to it.
2. The petitioner (Bonnie) had been a continuous and bona fide resident of Lake County, Indiana, for more than the six months immediately preceding the filing of this cause.
3. This Court, on May 16, 1986, dissolved the marriage of the parties.
4. Bonnie is not pregnant.
5. A. There was one child, Phillip Eric Weis, born to the marriage of the parties, on October 1, 1978.
B. The respondent (John) adopted two of Bonnie's natural children: Jimmy Leroy Weis, born November 15, 1971, and Chet Allan Weis, born

-1-

STATE OF INDIANA/S.S. NO.
LAKE COUNTY
FILED FOR RECORD
APR 19 12 04 PM '88

DULY ENTERED
FOR TAXATION

APR 19 1988

Anna M. Antos
AUDITOR LAKE COUNTY

Hyatt Legal Sec.
1165 E Ridge Rd
Buffalo 46319

935
28.00

September 19, 1970.

C. Custody is not in issue: the children's best interests are served in remaining in their mother's exclusive custody, subject, however, to their father's right of reasonable visitation.

6. The provisional hearing (conducted on December 20, 1985), at which John did not appear, produced a provisional order requiring him to pay child support of \$300.00 every other week, certain creditor and household expenses, incurred and future medical and related expenses attributable to Bonnie and the children, and Bonnie's attorney's fees of \$750.00 (one-half within thirty days of the provisional hearing).

The order further directed the court's bailiff to execute in John's stead a wage-assignment, to be enforced upon submission of Bonnie's affidavit that John had failed to pay support for more than three days following his payday. Pursuant to such an affidavit, a wage-assignment was submitted on August 1, 1986, and re-submitted in amended form on August 15.

7. John has been employed at Stauffer Chemical Company some 17 years currently as First Class Operator (of steam turbines). He has no other employment. In 1985, he earned gross income of \$45,483.39, of which 1,824 hours were paid at the regular hourly rate, 485.75 in overtime and 309 at double-time. After deductions for taxes, Social Security, union dues, insurance and various saving accounts,¹

¹These totaled \$410.80.

John has a few articles of household furnishings in his apartment: television set, tables, clock-radio, stereo and telephone. He would wish, among those articles at the marital residence, the following: all of his tools; two shotguns and a gun cabinet; a safe (and its contents; including a coin collection - pennies); a photo album; and his personal effects. Bonnie points out that he also has, and may retain, a compound bow.

Contested items include the safe, antique wall clock and curio cabinet. The latter was a gift to Bonnie from John and it is appropriate therefore that she have it - as well as the clock, while John may have the safe.

16. The parties split a tax refund, each receiving approximately \$1800.00, with John applying his portion toward bills, Bonnie hers to home renovation. When she had received her 1985 tax refund (approximately \$80.00), she wanted to keep all of it and an argument ensued. John became so angry he tore up the check. The evidence also vaguely suggests she received, but never endorsed, a \$45.78 State tax refund.

17. John has participated in his employer's profit-sharing plan, withdrawing from it 3 to 10 times over the years. When he was contributing to it, it was at the rate of \$100.00 a week - with the company matching. He stopped doing so, however, early in 1985. Some of the money was used to pay support for the children of his former marriage. In 1983, he withdrew \$5,858.69, in September of 1985 (and thus just prior to the separation), \$8,173.58. Bonnie was unaware of these withdrawals until the company representative so testified at the final hearing, and had received no (direct) portion of any of those proceeds. John insisted that the monies were used for bills - which is difficult to credit, at least as to the 1985 with-

drawal. As of June 30, 1986, there was \$2,066.55 in this plan, of which \$1,472.11 was vested - that is, may be withdrawn at anytime. Withdrawal, however, is subject to a penalty: non-participation for a year.

18. John also participates in a stock option through his employer and currently owns 22 shares of Cheseborough Ponds common stock (the value of which ranges between \$35.00 and \$40.00 a share). Withdrawals are not permitted, however, for seven years - approximately 1990 in John's case.

19. John participates too in his company's retirement plan and his interest is vested. Based upon his current accrued service, if he was to retire at age 65 he would receive monthly benefits of approximately \$400.00. If he retires earlier, his benefits would be less. Lump-sum withdrawal is not possible.

20. John has also maintained an account in the credit union associated with his employer. The evidence did not suggest whether there was any accumulation in it as of the final hearing. However, as indicated earlier, contributions to it through payroll deduction were made through 1985.

21. The parties' creditors, besides the various mortgage loans earlier indicated, include Cousins Jewelers, with a balance, at the final hearing, between \$400.00 and \$450.00, and Sears (the balance of which was not suggested by the evidence),

22. Bonnie wishes the marital home, exclusively, with the responsibility, however, only for the first mortgage. She would allow John the income property and its mortgage, as well as the second mortgage on the Martha property. Additionally she wants awarded to her a sum equal to John's savings plan withdrawals in

1933 and 1985.

John asked this court to order both parcels of real estate sold and the equity split.

23. In determining the just and reasonable distribution of the parties' property, the court considers that John enjoys superior earnings, earning capacity and economic circumstances. Bonnie has limited skills and the continuing responsibility of child-rearing. While not the first marriage for each, the parties lived together some eleven years, some eight of them during the marriage, and produced one child, while John adopted two of Bonnie's, supporting, for a time, though pursuant to the parties agreement, several of her children. The vast bulk of the marital property was acquired during the years the parties were together, and in that time John essentially provided the family income, Bonnie the family and child-care duties, while occasionally working outside the home.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED that:

1. Bonnie is hereby awarded custody of the parties' children, Phillip Eric Weis, Jimmy Leroy Weis and Chet Allan Weis, subject only to John's right of visiting at reasonable hours and frequencies and upon at least 24 hours' notice.

2. Beginning with his payday immediately following the date of this decree and weekly thereafter, John shall pay towards the support of his children the sum of \$143.00 and, to that end, shall immediately execute an amended wage-assignment. It shall be a further component of his support responsibility that he pay the monthly installment of the second mortgage associated with the real estate located at 2512 Martha Street, Highland, Indiana. John shall be exclusively responsible for all of his children's reasonable and necessary medical, dental, hospital and prescription expenses. Provided that he is substantially current in fulfilling the foregoing obligations,

John shall, as between the parties, be exclusively entitled to claim the children as his exemptions for all tax purposes and Bonnie shall, accordingly, execute any and all documents at his request for that purpose.

3. Bonnie shall have and recover of John, in reimbursement of monies advanced by her during the provisional period for obligations of his, the sum of \$2,943.93. Toward the payment thereof, she shall be entitled to a certain check of the parties' tenants in the sum of \$275.00, dated September 8, 1986, and payable to her, provided that it is still negotiable. Execution upon this judgment, which shall bear interest at the statutory rate, is hereby stayed to July 1, 1987.

4. John shall be further responsible for:

A. Delinquencies accrued with respect to his provisionally-ordered obligation in the period since the final hearing, to the date hereof and,

B. To the extent any of those obligations were paid for by Bonnie, she shall be entitled to reimbursement therefor from him.

Bonnie may petition this court within a reasonable time hereafter to determine the amounts and appropriate distributions of such delinquency, if any, as well as the appropriate sanctions therefor.

5.A. All right, title and interest in and to the following described real estate; to-wit:

27-20-101
The West 60 feet of the East 390 feet of part of the Southwest Quarter of the Northwest Quarter of Section 23, Township 36 North, Range 9 West of the 2nd Principal Meridian, in Lake County, Indiana, described as follows: Commencing at a point on the North line of said Quarter Quarter Section 660 feet East of the Northwest corner thereof; thence running South parallel with the West line of said Quarter Quarter Section 160.30 feet; thence East 566.60 feet to the West right-of-way line of the Chicago, Indiana and Southern Railroad also known as the New York Central Railroad Company; thence North along said West right-of-way line 153.04 feet to the North line of said Quarter Quarter Section; thence West along the North line of said tract 566.60 feet to the point of beginning, in the Town of Highland, Lake County, Indiana,

of John be, and the same is hereby, divested of and from him and vested in Bonnie.

B. The Clerk of this Court, the Auditor of Lake County and the Recorder of Lake County, respectively, shall, with respect to said real estate, timely perform the duties imposed upon them pursuant to I.C. 6-1.1-5-6, upon payment by Bonnie of the costs therefor to which each is entitled.

C. As between the parties, Bonnie shall be exclusively responsible for payment of the first mortgage balance due upon that property, holding John wholly free and harmless of any obligation therefor.

6. A. All right, title and interest in and to the following described real estate, to wit:

34-187-37
Lots 47 and 48, Block 2, Resubdivision of Part of Jackson Terrace in the City of Hammond, as shown in Plat book 18, page 4, in the Office of the Recorder of Lake County, Indiana,

of Bonnie be, and the same is hereby, divested of and from her and vested in John.

B. The Clerk of this Court, the Auditor of Lake County and the Recorder of Lake County, respectively, shall, with respect to said real estate, timely perform the duties imposed upon them pursuant to I.C. 6-1.1-5-6, upon payment by John of the costs therefor to which each is entitled.

C. As between the parties, John shall be exclusively responsible for the mortgage associated with the foregoing property, holding Bonnie wholly free and harmless from any liability with respect thereto.

7. A. Bonnie is hereby awarded the 1978 Chevrolet van.

B. John is hereby awarded the 1984 van and the 1972 Chevrolet Camaro.

8. Each party shall have the exclusive ownership of the property currently in his possession, provided that:

A. Bonnie shall specifically have the antique wall clock; curio cabinet; and a basic set of tools.

B. John shall have the safe; coin collection; remaining tools; shotguns; compound bow; gun cabinet; photo albums; and his personal effects.

9. John is hereby awarded the exclusive interest in his profit-sharing, stock option and retirement plans, as well as his credit union savings account (if any).

10. By way of offset to the property herein awarded John, Bonnie shall have and recover of him the sum of \$5,000.00, provided, however, execution upon said judgment is hereby stayed to December 31, 1987. That judgment, however, shall bear interest at the statutory rate.

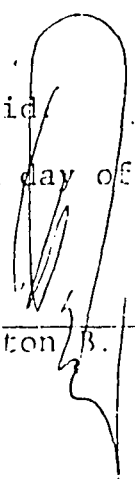
11. As between the parties, John shall be exclusively responsible for payment of all indebtedness of the parties (except for the marital residence first mortgage), holding Bonnie wholly harmless with respect thereto.

12. Ricardo Casas shall have and recover of John the sum of \$1,000.00.

13. Each party shall, at the request of the other, timely execute any and all documents reasonably necessary to effectuate the terms of this decree.

14. The costs of this action are paid.

ALL SO ORDERED AND DECREED this 7th day of April, 1987.



Morton B. Kanz

Judge

The United States of America



STATE OF INDIANA, COUNTY OF LAKE, ss:

I, the undersigned, Clerk of the Lake SUPERIOR Court of Lake County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify that the above and foregoing is a full, true, correct and complete copy of the Order of Court dated April 7, 1987 in Cause No. 285-1359 entitled, In Re The Marriage Of: BONNIE WEIS and JOHN WEIS, as fully as the same appears of record in my office as such Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in East Chicago, Indiana in the said County, this 18 day of April, A. D., 1988

[Signature] SUPERIOR Court. Clerk Lake

By [Signature] Deputy

he was left with a net for the year of \$25,958.41, which would break down to average \$2,163.20 a month, \$503.06 a week.²

It should be noted that he claims no (tax) exemptions.

As of August 17, 1986, John had earned gross income of \$28,643.48 (which would project for the year to \$45,654.45 - thus virtually identical to 1985).³ As to his hours, based upon foregoing data, 1,920 thereof would be regular, 461 overtime and 239 double.⁴ However, there were no deductions being made for savings of any kind in 1986.

On the basis on the gross deductions for taxes, Social Security, union dues and insurance through August 17, 1986 (but exclusive of support deductions, which begin with his August 10th payday), his average monthly net was \$2,419.86, weekly \$562.76.⁵

²John is paid weekly.

³As of September 7, however, his gross rose to \$30,412.23, projecting 1986 total gross to \$44,401.52.

⁴John testified that overtime has been "coming down every year" and that in 1986 he has received it an average of once a month, recent exceptions being attributable to other operators being on vacation. The figures, however, speak for themselves.

⁵On August 17, his actual net was \$676.27, and that was after the \$150.00 deduction for support as well.

John believes that, without overtime, his monthly net would approximate \$360.00.

8.A. Notwithstanding John's substantial spendable income⁶ by the September 3, 1986, hearing, the parties' home first mortgage had been paid only through June, its second mortgage only partially paid (\$200.00 of a \$288.00 payment) through June, while the mortgage payment (\$235.00 a month) on their income property was likewise paid only through June.⁷

Installment payments on the parties' remaining vans were current as of the September 3rd hearing.

John represented that support was current to the end of July. The utilities and base telephone expenses, however, were paid only until March or April of 1986 when, John testified, they "got too much to keep up with." He further believes that all medical and related billings mailed to him were current as of the September 3rd hearing.⁸

⁶The provisional order, by its specific terms, was based upon earning a weekly net of approximately \$450.00, Bonnie approximately \$58.00.

⁷the rental payment is \$275.00, with the tenants responsible for the utilities, the parties the water. By the September 3rd hearing, the August and September rental payments had not been received. Subsequently, the tenants' check in the sum of \$275.00 was mailed (in a letter postmarked September 11th) and is currently held by the court.

⁸John has medical insurance via his employer with a deduction of approximately \$175.00 a year, the company then paying 60%, he the remainder.

John has paid Bonnie's attorney none of the provisionally-ordered fees because he never "got a bill", though he acknowledged he read the order "once or twice".

He has been paying Sears at approximately \$50.00 per month, but has made no payments on the Cousins Jewelers account.

John attempted to explain his delinquencies on the basis that the wage-assignment "got him behind". However, it is noted the first deduction did not begin until August 10th. Beyond that, he states he simply has insufficient money - and that the "case is taking too long".

Because he believes himself current in support, John wishes his wage-assignment terminated.

B. According to Bonnie, John's support delinquency began January 22, 1986, so that, as of August 1, his arrearage has risen to \$800.00⁹. During that period of twenty-eight weeks, \$4200.00 would have been due. Receipts in evidence total, however, \$4000.00, demonstrating, thus, a \$200.00 arrearage. Additionally, there was no evidence of payments between July 30th and the 1st (August 10th) wage deduction. Hence, the support arrearage as of the final hearing appears to have been \$350.00.

⁹Her Citation petition, filed August 1, alleged an arrearage of \$998.00.

Bonnie paid towards the residential home second mortgage in the period of July to August the sum of \$756.00. She also paid utilities payments totaling \$778.28 early in 1986 but she could not keep up and the service was terminated. She later had it restored in her name (borrowing from a cousin therefor), and paid thereafter an additional \$541.37. She also paid, towards telephone service, \$232.51. Finally, she paid medical and prescription expenses totalling \$290.77.

Bonnie, then, should have reimbursement from John for the foregoing sums she paid. Additional, any delinquency of his provisional obligations should be his exclusive responsibility to the date hereof, and any monies advanced therefor by Bonnie in that period should likewise be reimbursed her by him.

C. John is in contempt of court by reason of his arrearages and should accordingly pay Bonnie's additional attorney's fees therefor in the sum of \$250.00.

D. While the evidence suggested some change in the parties' circumstances from the time of the provisional order, including the fact that Bonnie no longer had income, it was clear that John's income had not appreciably changed but, rather, had been understated in the provisional order. Moreover, the provisional order imposed upon him virtually all of the household expenses and credit accounts in addition to the support order. Finally, the evidence did not show why, for the better than year and a half that elapsed since her last employment was terminated, Bonnie did not seek employment - all of the children, after all, are in school.

The Court is therefore not satisfied there has been evidence of a change of circumstances so substantial and continuing, that the provisional order should have been modified.

9.A. The monthly household expense for Bonnie and the children, exclusive of the second mortgage, easily exceeds \$1100.00. As for John, his monthly living expenses, including the rental of a one-bedroom unfurnished apartment, approximate \$700.00, exclusive of any credit balances, the residential second mortgage and the income property mortgage.¹⁰

B. John believes that support of \$125.00 to \$150.00 a week is reasonable, while Bonnie believes \$256.00 per week the appropriate amount. Given, however, the parties' respective incomes and needs he should pay weekly support of \$143.00, and assume exclusive responsibility for the children's reasonable and necessary medical and related expenses and well as the residential second mortgage.

10. Bonnie was not employed at the time of the final hearing. She had last worked at the Budget Inn Motel, as a maid, for approximately three months beginning in September of 1985 (and thus at the time of the separation and the provisional order), 25 hours a week, at \$3.50 an hour, until she received her "walking papers". She has apparently not worked since. Her last job prior thereto was with Land 'O Frost, for approximately 2 years, in the 1979 - 1980 period. Bonnie did not complete high school and has had no formal

¹⁰The income property mortgage, however, is offset by the property's monthly rental income.

training of any kind.

11. Bonnie was the primary parent and homemaker in this marriage, John the essential breadwinner though, when she had income, it was use for household purposes. Theirs was a marriage in which Bonnie never saw his paychecks and he never disclosed his financial circumstances. Similarly, John never saw Bonnie's checks and never sought to.

12. The parties are the owners in fee, as tenants in common, of the (marital) home and real estate located at 2512 Martha Street, in Highland, Indiana. The property was purchased originally by John in 1975 (and thus prior to the parties' marriage) and Bonnie and her children then moved in with him, on January 7, 1976. Bonnie then had four of her five children with her (three boys and a girl) and was receiving Welfare benefits. She gave up those benefits prior to her marriage to John when he agreed to provide for her and the children. Prior to moving in, the parties and the children had all lived together at another residence from 1974.

The down payment on the property was between \$2500.00 and \$3,000.00. The property had two mortgages then, both assumed by John, the first, approximately \$15,900.00, the second between \$5,000 and \$10,000.¹¹

On March 21, 1980, the parties obtained a loan from Avco Financial Services, secured by the lien of a second mortgage against their marital residence in the principal amount of \$5,646.71, for the purpose of providing the down payment for the purchase of their income property.

¹¹ It is not clear from the evidence whether, at some point, these mortgages was consolidated into one (first) loan account or the then second mortgage was the original account twice subsequently renewed into the current second mortgage.

On September 15, 1982, the Avco loan was re-financed, to generate new monies in the sum of \$12,624.81. The proceeds thereof were used to fund remodeling at the family home (including soffits and a new garage, costing between \$2,000.00 and \$4,000.00) and to pay in advance for the full future support of John's two unemancipated children of a former marriage (in the sum of \$4500.00) as well as to pay a support arrearage (in the sum of \$500.00), all pursuant to an "Agreed Modification" order approved by the Lake Circuit Court. ¹²

The property was listed for sale in June or July of 1985 for \$39,900.00, but no offers were ever received and it was taken off the market in December of that year. The remodeling was done at the suggestion of the realtor. That is the only evidence tending to suggest the value of that property. Its first mortgage balance, at the final hearing, was \$11,985.22. There was no evidence presented concerning the second mortgage balance.

13. The parties' income property, located at 6917 Harrison Avenue, in Hammond, Indiana, was purchased by them on September 23, 1980, subject to a then existing first mortgage lien. There is no evidence of its balance, and neither is there evidence of the value of that property.

¹²Part of that settlement was financed too by a withdrawal from his profit-sharing plan.

14.A. At the separation, the parties owned several vehicles:

1. A 1972 Chevrolet Corvette, purchased for approximately \$5600.00 but since traded-in for

2. A 1980 Ford Van.

Because John "traded down", it was an "even trade". However, as of the final hearing, it had a credit balance of approximately \$7,150.00. John has been driving it.

3. A 1984 Dodge Van, purchased in 1984 - repossessed, however, in late 1985 or early 1986.¹³

B. Since the separation, John purchased:

1. In December of 1985, a 1978 Chevrolet Van, with a final hearing balance of approximately \$3100.00.

2. In December of 1985 or January 1986, for \$850.00 cash, a 1972 Chevrolet Camaro. It is, however, inoperable, with many missing parts - and is, besides, uninsured.

While Bonnie would prefer having the Camaro, given its condition she would wish the Chevrolet Van.

15. The parties' (five-bedroom) home is fully furnished and, but for certain items (indicated below) wished by John, Bonnie should have their exclusive ownership.¹⁴

¹³ As a result, there remains a deficiency balance (including attorney's fees) of approximately \$2700.00.

¹⁴ Bonnie brought her household furnishings into this marriage.