



Circuit Court of Arlington County

1425 North Court House Road
Arlington, Virginia 22201

WILLIAM T. NEWMAN, JR.
CHIEF JUDGE
BENJAMIN N.A. KENDRICK
JUDGE
JOANNE F. ALPER
JUDGE
JAMES F. ALMAND
JUDGE

JUDGES RETIRED
PAUL F. SHERIDAN
WILLIAM L. WINSTON
THOMAS R. MONROE
PAUL D. BROWN
CHARLES H. DUFF
CHARLES S. RUSSELL
(JUSTICE RETIRED)

August 1, 2011

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RE: Canedo v. Canedo; CL09-363

Dear Counsel:

Trial in this matter was held on April 12, 13, and 14, 2011, and May 23, and 24, 2011. In lieu of receiving closing arguments, the Court asked counsel for each party to submit written Findings of Fact and Conclusions of Law on the pending issues by July 11, 2011. The Court then severed the remaining issues concerning awards of child support and attorneys' fees and costs. Those issues are to be taken up at a separate hearing to be scheduled after the Court has ruled on child custody, and equitable distribution of the marital property.

The Court's final disposition was to occur July 27, 2011. However, upon the filing of Defendant's Emergency Motion to Stay, Plaintiff's Response, and the filing of Plaintiff's Rule to

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Show Cause, this Court stayed it's ruling pending the Court's review of those documents. This opinion resolves the matter of custody of the minor child. At this time, Plaintiff's Rule to Show Cause is denied.

Having taken this matter under advisement and given the opportunity to review the exhibits, the evidence and the arguments of the parties, as well as the written Findings of Fact and Conclusions of Law submitted by counsel, I issue the following opinion resolving the outstanding issues.

I. Summary of the Pleadings

In her Complaint, wife seeks (i) a divorce from husband on the ground of cruelty, or alternatively, upon expiration of the statutory period, on the ground of 1-year separation. Additionally, wife seeks: (ii) spousal support, or alternatively, a reservation of the right to seek such support in the future; (iii) joint legal and primary residential custody of the parties' minor child, Graciela Marta Canedo ("Gracie"), born November 3, 2005; (iv) child support; (v) "equitable distribution" of the parties' marital property; (vi) an order directing the husband to pay for and designate the wife or Gracie as the beneficiary of an existing life insurance policy or his "Servicemembers Group Life Insurance" benefit during Gracie's minority; (vii) the right to move Gracie with her to Italy or any foreign country to which her employments require; and, lastly, (viii) her attorney's fees and costs. Husband was served with the Complaint, in person, by a special process server on April 1, 2009.

Husband was granted leave to respond to wife's Complaint. He filed an Answer June 1, 2009, praying for dismissal of the Complaint. Alternatively, husband prayed for (i) primary custody of Gracie; (ii) support for Gracie; (iii) "equitable distribution" of the parties' marital property; and (iv) his attorney's fees and costs. Husband then filed his Counterclaim seeking (i) a divorce from the wife upon the ground of the parties' 1-year separation (ii) primary custody of Gracie; (iii) support for Gracie; and (iv) "equitable distribution" of the parties' marital property.

The wife answered husband's Counterclaim, denying many of the essential allegations thereof, and then praying that it be dismissed, thereby joining the issues for trial.

II. Grounds for Divorce

The first issue presented to the Court is whether the grounds for divorce have been met by one of the parties. Plaintiff moved this Court to grant her a divorce on the ground of cruelty. However, virtually no evidence was offered by the wife at trial in support of the fault allegations in her Complaint. The testimony offered by wife's witness, Major Sarah Goodson, was only sufficient to corroborate wife's alternative ground for divorce based upon the parties' 1-year separation. As wife's allegations regarding husband's cruelty were both unproven and uncorroborated, the Court finds that wife abandoned this ground for divorce.

Having reviewed the evidence presented, the Court finds that Plaintiff, Mrs. Canedo, has sufficiently proven and established by corroborated evidence, grounds for divorce based upon a 1-year separation. The evidence supports that Plaintiff is a *bona fide* resident and domiciliary of the Commonwealth of Virginia and has been for at least 6 months prior to the filing of the Bill of Complaint. The parties are both over the age of eighteen. Plaintiff is not currently an active duty

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member of the United States Armed Forces. Defendant is currently an active duty member of the United States Armed Forces, specifically the United States Marine Corps. The parties were married on August 15, 2004 in Oahu, Hawaii, and separated on or about January 23, 2008. The parties have remained continuously separate and apart, without interruption or cohabitation, for a period in excess of 1 year since the date of separation, and it has been the intent of at least one of the parties since that date for the separation to be permanent. There was one child born of the marriage, to-wit, Graciela Marta Canedo, born November 3, 2005, and there were no other children born to or adopted of this marriage.

Accordingly, the Court grants Plaintiff's request for a final decree of divorce *a vinculo matrimonii* pursuant to Virginia Code Section 20-91(A)(9)(a).

III. Child Custody

The next issue before the Court is an award of child custody. When determining the custody and visitation arrangements for a minor child, the Court gives primary consideration to the best interests of the child. This Court considered all of the factors set forth in Virginia Code Section 20-124.3, to the extent evidence was presented.

As a preliminary matter, this Court finds that the Plaintiff, Denese Canedo ("mother"), was not a credible witness. Mother repeatedly misrepresented facts to the court on even the most basic matters.

Further, this Court finds that mother's allegations of sexual abuse of the minor child, Graciela Canedo, are unfounded. The experts testifying on mother's behalf, including psychologist, Dr. Mary Lindahl, child therapist, Dr. Deanna Beech, and forensic interviewer, Kristen Webb of the Armed Forces Center for Child Protection (AFCCP), made their various diagnoses and findings of sexual abuse within a context established by mother's false allegations, misrepresentations, and calculated strategy of misinformation. Knowing that these experts were mandated reporters, mother disclosed fabricated allegations of father's sexual abuse and history of domestic violence, and manipulated Gracie into making disclosures at advantageous times during the course of these divorce and custody proceedings. Having considered the extensive testimony of numerous experts on behalf of both the mother and the father, despite father's testimony regarding an inappropriate incident involving his 4-year old half-sister when he was a juvenile, and having reviewed evidence of allegedly pornographic photographs of the minor child found on father's electronic devices, this Court does not find that Graciela is a sexually abused child.

Accordingly, the Court makes the following factual findings with regard to the Section 20-124.3 factors:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs.

Gracie is 5 years old, and is in good to excellent physical health, though mother has, by her own admission, willfully withheld information about Gracie's well-being from the father. Particularly, mother failed to inform father when the child was sick, hurt, or at risk of physical

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harm. Mother has kept Gracie, and information about Gracie, from her father for her own unjustifiable purposes.

It was only through court papers and trial testimony that father learned that mother was involved in a motor vehicle collision in Italy when Gracie was in the vehicle with her, sometime in 2009. The extent of any injuries Gracie received as a result of the accident is unknown by the father to this day. In addition, in the last 2 years, mother took Gracie to Africa with her on several trips to countries such as Senegal and Morocco. These countries have active, low-level insurgencies, and the population is at high risk for the transmission of infectious diseases. A battery of immunizations had to be given to Gracie before she could be taken there. Mother willfully failed to inform father of her intention to take these trips with Gracie, or to consult with him beforehand about possible medical problems the immunizations might cause Gracie. Mother did not consult with father about the advisability of Gracie's receiving such immunizations, or of Gracie's taking such trips.

Due to work and other reasons, during the last 2 years mother has traveled internationally for periods of up to 4 days and left Gracie in the care of others in Italy. Gracie does not speak the language fluently. On at least one occasion, mother left Gracie with a local Italian family unknown to father except to the extent mother testified about the family at trial. Also, while mother and Gracie resided in Italy, mother left Gracie with someone the mother considers just a babysitter. Mother failed to give any of these caregivers father's contact information in the event that an emergency befell mother while she was traveling out of the country. Major Sarah Goodson, one of Gracie's caregivers in Italy, testified that she was never provided with any emergency contact information for father but was instead specifically instructed by mother not to contact father in the event of an emergency. Major Goodson testified that she was instructed to contact mother's maternal aunt, Ms. Mary Regan Snook, not the father. Major Goodson further testified that she was only provided with Ms. Snook's email address for emergency contact information. It is apparent from this evidence that mother's stated concern for Gracie's welfare has limitations.

The evidence shows that Gracie has enjoyed very little stability. Her mother has moved her from place to place every other year. Gracie has been robbed of any opportunity to maintain close relationships with anyone other than her mother, and mother has isolated Gracie to such an extent that she has led Gracie to believe she is, and needs to be, solely dependent upon her mother. Mother has disrupted the child's routine, removed the child from familiar environments and taken the child to a foreign country where she does not speak the language and where she is far from any family. Mother has done this solely to satisfy her own personal ambitions and in disregard for the best interests of Gracie.

In mid-2008, while father was deployed in Iraq, mother removed Gracie from Japan to take up residence in Arlington, VA. Then, in mid-2009, knowing that father had succeeded in gaining early transfer orders from Japan and was in the process of re-establishing his residence in Virginia, mother left a desirable job at the Department of State and removed Gracie from Virginia to take up another job and residence with the U.S. Army in Vicenza, Italy. In mid-2011, mother removed Gracie from Vicenza, Italy to establish residence in Stuttgart, Germany, where mother has accepted another job with the Department of the Army. At the time of the May 2011 phase of trial, mother and Gracie were living in a hotel. The temporary job in Germany is subject to rules of limited overseas service, and may require mother to move again in as few as 3 years.

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Each of these moves subjects the child to social and emotional upheaval, unnecessary stress, and further estranges Gracie from the child's father, and father's extended family, particularly father's mother who lives with him in Arlington, VA. Gracie continues to be estranged from father's relatives in South Carolina, with whom Gracie had been close.

This Court finds that mother has emotionally abused Gracie. Mother breast-fed Gracie until the age of 3.5-years old, then used the occasion of father's trip with Gracie to South Carolina to wean Gracie from her breast. Mother pointed to the resulting natural symptoms of separation anxiety displayed by the child as some evidence that her father had sexually molested the child. Mother manipulated the child to believe her father sexually molested her, and that her father poses a risk to her, when these claims appear to the Court to be entirely fabricated. Father has flatly and repeatedly denied all of mother's allegations.

This Court finds that no evidence has been provided demonstrating that the child was sexually molested. Evidence was submitted regarding statements made by Gracie to Dr. Deanna Beech, Gracie's therapist in Italy in September 2009. These alleged disclosures occurred a few weeks after Arlington Child Protective Services ("CPS") reported to mother and father in writing that reports that father sexually abused Gracie were determined to be "unfounded." The Court also heard evidence regarding disclosures made by Gracie to Kristen Webb of the Armed Forces Center for Child Protection in Bethesda, Marland in November 2009. The Court reviewed the video recordings and transcripts of this 2-day interview, as did Dr. Maggie Bruck, a leading authority and expert in her field, who opined that the interviews were conducted in such a poor way, and under circumstances such that the statements made by Gracie were unreliable on their face. Gracie had already been interviewed a number of times previously regarding the same allegations, including 2 interviews by Arlington County CPS. At no time did Gracie say anything to the effect that father had inappropriate sexual contact, or any offensive contact whatsoever. Dr. Bruck also testified that the statements made during the interview strongly indicated that they were the result of Gracie's being coached by someone. This Court's conclusion is that mother is that "someone." Mother had Gracie in her exclusive custody under circumstances that gave her total control and influence over Gracie's thoughts and actions. Further, mother had the motive to plant lies in Gracie's mind, the means and skills to plant those lies, and years' worth of unrestricted opportunities to manipulate Gracie and reinforce those lies.

The evidence presented shows that Gracie's disclosures of alleged sexual abuse occurred after mother had exclusive access and control of her for a period of more than 9 months, and only after multiple interviews full of leading and repetitive questions. None of Gracie's statements concerning sexual abuse were impromptu or spontaneous on Gracie's part. Mother's calculated allegations came only after father had refused to sign a passport for Gracie that would allow mother to move with the child unopposed to Italy. Mother planned those statements and manipulated Gracie so that the disclosures could be utilized when mother needed to gain advantage in the custody and divorce proceedings. Mother sought to drive father out of her life and Gracie's life, and further sought to have the Marine Corps imprison father to effectively trump his rightful claims to the child. Mother made allegations of father's sexual abuse and allegations of domestic violence with a variety of medical professionals whom she knew to be mandated reporters for 9 months before the child made any disclosures of her own. Mother lied to Dr. Beech that she suspected father of sexually abusing Gracie for the purpose of prompting

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Dr. Beech to obtain a protective order, to recommend that father undergo a psychosexual evaluation, and to recommend that all visitation both telephonic and in person, be supervised.

Mother took Gracie to her late-morning interviews deprived of sleep, without breakfast, and promised the child “brownies” if she “didn’t play the ‘silent game’” with interviewers. Mother utilized punishment and reward tactics through sleep deprivation and food. These tactics are taught in military counter-intelligence schools, which mother attended, for the purpose of gaining actionable intelligence from terrorists. These methods are not to be used to manipulate defenseless children. This Court agrees with Dr. Maggie Bruck’s testimony that the disclosures made by Gracie about sexual abuse by the father are “unreliable” and they should not be considered as evidence that such abuse occurred.

In addition, this Court finds that mother utilized false allegations that father had child pornography or child erotica on his computers and other electronic devices. These allegations were raised before this Court a number of times through extensive motions in an attempt to establish a context in which the Court would evaluate the allegations of sexual abuse. Ultimately, it was father’s counsel who had forensic evaluator, Sensei, appointed to examine the media, consisting of 8 electronic devices. After father advanced approximately \$12,000, Sensei’s evaluation identified 2 still scenes in which Gracie appeared, out of more than 7,000 images, including “deleted” images. One scene entails almost 18 identical pictures of Gracie wearing a “hoodie” and yellow rain boots, and the other 4 pictures are of Gracie standing naked in the kitchen in the parties’ home in Japan. Sensei did not discover pictures of any other child, naked or otherwise. The Court does not find that the pictures of Gracie were posed, or provocative. Jesse Lindmar, Sensei’s forensic evaluator, and former police officer, showed the pictures to Detective Lightly of the Fairfax County Police Department, who did not find them to constitute child pornography. Further, father credibly testified that the 18 pictures were all made at one time as he tested out a new camera. This Court’s comments during the trial regarding 4 of the photographs, which were framed and pointed toward the bench on mother’s counsel table, were directed at the inappropriate method through which the photographs were being displayed, and not with regard to the substance of the photographs.

Gracie has undergone at least 6 interviews, forensic evaluations, and a SANE examination at the age of just 3.5 years old. According to Dr. Maggie Bruck’s expert testimony, false allegations, even though they are false, can become true memories in the mind of a defenseless child who lacks the mental and emotional defenses to ward off lies that are continually repeated. Without intervention from mental health experts and the Court, a child can come to believe lies because there is no opposing truthful narrative. Mother’s lies to Gracie have been repeated so often, and from the authority figure in Gracie’s life, such that Gracie’s mental well-being is of concern to this Court.

Gracie’s mental health and well-being have suffered from mother’s alienation of Gracie from her father. During an approximately 2-year period of investigation and adjudication, mother campaigned for a military protective order, and a military installation debarment order against father from Camp Ederle in Vicenza, Italy, where the child and mother resided. Mother prevented father and Gracie from developing a normal and healthy father-daughter relationship. Mother also sought a civilian restraining order, which was not awarded by the court. Mother routinely refused to allow telephone communication between Gracie and her father, and returned mail from father to her and to Gracie unopened. Mother declined requests for personal visits to

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Gracie from father and father's relatives, and denied visitation through video-teleconferencing (Skype). Mother also declined requests and blocked efforts made by father's extended family to cultivate a normal healthy relationship with Gracie.

Furthermore, this Court finds that mother embarked on a campaign of denigration of the father to Gracie. Instead of using the terms familiar to Gracie of "papa," "your dad," or "your father," mother would refer to father as "Billy" when speaking to the child. Mother attempted to erode father's place of authority in the family. If father was successful in getting an international call through and accepted by mother, mother would tell Gracie, "Billy is on the phone...if you want to talk with him," in a dissuasive tone. Mother had no intention and made no effort to encourage Gracie to maintain a relationship with her father. Also, mother would keep all calls on speakerphone to prevent Gracie from having any privacy. Father was only permitted to speak with Gracie if he promised mother and Gracie on speakerphone "not to lie to Gracie" during the call.

2. The age and physical and mental condition of each parent.

Father is 41-years old and in excellent physical condition. He is a graduate of the Virginia Military Institute and has a master's degree in business administration. Father is an officer in the U.S. Marine Corps, currently on active duty. Upon father's motion, father and mother underwent full psychological evaluations conducted by Dr. Robert McFarland. Dr. McFarland concluded that father was not a pedophile, and has no other mental health or behavioral disorder that requires mental health treatment. Dr. McFarland testified that father self-reported a history of alcohol abuse, and also reported an incident that occurred when he was a juvenile, involving his 4-year old half-sister. Father testified openly at trial regarding both issues. This Court accepts the expert opinion of Dr. Robert McFarland that the so-called "psychosexual evaluation" requested by mother is not likely to produce any useful information about father. These evaluations are the state of the art in accurately diagnosing and treating persons with alleged sexual disorders but are used in "pre-adjudicative cases." In a case where father has adamantly denied any abuse, a "psychosexual evaluation" is simply inadequate for its purposes. This Court does not find from the evidence presented that father's admissions present a risk to Gracie.

Mother is in good physical condition and health, and appears to be of above average intelligence. She completed two bachelor's degrees from Louisiana State University and received a Master's degree in International Security Policy from Columbia University. Mother is also a graduate of some military intelligence and counter-intelligence schools. Mother has had a lengthy career as a civil servant with the Department of State and the Department of the Army. After mother finished her graduate degree, she received a commission in the United States Navy Reserves, where she served as an attaché for 8 years. Mother then began a career in the U.S. civil service as an international relations specialist. Mother was unable to maintain her affiliation with the U.S. Army National Guard or the Navy Reserves due to her inability to promote beyond the rank of lieutenant or to meet the basic reserve credit points for a full reserve year. Mother testified that she gave up her 12-year military reserve career in order to be a full-time mom.

Mother's mental health is an issue of concern for this Court. Mother has a history of using mood altering prescription medication for mental health problems such as depression and anxiety. Mother was prescribed Alprazolam as early as 1995 and Prozac in 2003. Mother was

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under the psychiatric care of Dr. Susan Swineheart while she resided in Italy. Dr. Robert McFarland testified that mother appeared to be suffering from PTSD-like symptoms resulting from the divorce, which at times affects mother's sleep and appetite. Dr. McFarland testified that mother was without signs or symptoms of any diagnosable mental health disorder, but this Court notes that Dr. McFarland's evaluation of mother was limited to 2 interviews, over the course of 2 days, in comparison to 5 separate interviews conducted of father over a period of 1.5 months.

3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the children's lives, the ability to accurately assess and meet the emotional, intellectual and physical needs of the children.

The mother has had exclusive access and control of Gracie for the last 2 years. Mother moved to a foreign country far away from where Gracie could access family and where the child did not speak the language. Mother has isolated the child from anyone the mother does not approve of, and has established an un-healthy co-dependent relationship between herself and the child. Through her actions, mother has demonstrated to this Court that she has an inappropriate understanding of how to love, care for, and nurture her child. Mother's attempts to poison Gracie's mind regarding her father reveal that mother can not positively involve herself in Gracie's life, nor has she demonstrated the ability to accurately assess and meet Gracie's emotional and intellectual needs. This Court questions mother's explanation that she moved to Europe because she knew employment in Europe would afford her more quality time with Gracie, and offer Gracie a more diverse and cultured upbringing. Mother has left Gracie in the care of others, without providing father's contact information or any useful emergency contact information, and has taken Gracie to several African countries that pose a number of physical risks. Mother's ability to tend to Gracie's physical needs is reasonably questioned by this Court.

Father had a loving and warm relationship with Gracie when he had access to her earlier in her life. Despite father's determined attempts to maintain contact with Gracie over the past 2 years, mother has been largely successful in keeping him away from herself, and from Gracie. Father's credible trial testimony made plain his love for Gracie, which has endured despite mother's attempts to quash it by denying father contact with his child. Despite mother's efforts, father demonstrates sensitively to Gracie's needs and appropriate wants. Father has set forth a plan for Gracie to thrive in his primary custody in Arlington, VA, and has the means to implement that plan. Father shares his home with Gracie's paternal grandmother, Patricia Ferrufino. Gracie knows Ms. Ferrufino, and was close to her. Ms. Ferrufino has a multi-state (including Virginia) license as a practical nurse, and is ready, able, and willing to assist father in caring for Gracie. Gracie will have her own room that has been appropriately decorated for a child of her age, and will attend the Congressional School in Falls Church, VA. Gracie will have a stable home in Arlington, VA. Father testified he is in a "non-deployable billet" with the USMC, he expects to retire in 2013, and he intends to continue to reside in Virginia. Gracie will have stable health care (mental and physical), a benefit available to her at essentially no cost as a dependent of the father in connection with his USMC service.

4. The needs of the children, giving due consideration to other important relationships of the children, including but not limited to siblings, peers and extended family members.

The father intends to stay in Arlington, VA at the end of the trial and beyond his military retirement in 3 years. Mother, however, testified that she does not know where she will be in 3 years, and is unable to predict the future. During her testimony at the civil divorce trial and in her petition for custody, mother requested that the Court order father to pay mother sufficient child support payments for mother to afford an *au pair* in Germany where she now resides and wants to move Gracie. Mother estimates the cost of the *au pair* to be approximately \$20,000 per annum, and testified that the *au pair* would take care of Gracie, and take her from school to afternoon activities while mother is at work. The *au pair* would relieve mother from the inconvenience of having to interrupt her workday or commute back and forth to shuttle Gracie around. This Court finds that Gracie does not need to be raised by an *au pair*. The paternal grandmother is available and willing to take care of Gracie after school or anytime the father is not available, and will do so at no cost.

5. The role that each parent has played and will play in the future, in the upbringing and care of the children.

During Gracie's early years the father was an active participant and contributor to the child's care and welfare. The father and daughter enjoyed a close bond until father was deployed to Iraq and mother moved from Japan back to the United States. Following his return from Iraq, and when Gracie was a toddler, father visited Gracie every couple of months from Japan, as often as circumstances allowed him. To further develop their relationship, father mailed letters every day and called Gracie every day while in Iraq and Japan, even though these efforts required significant cost, and required father to set his alarm for 2:00am to wake up and place these calls.

When mother moved to Italy with Gracie, she severely limited father's ability to contact Gracie, and used false allegations of sexual abuse as an excuse to justify her alienation of Gracie from her father. Father's limited role in the upbringing and care of Gracie since she was 2-years old is the result of mother's deliberate actions, and this Court does not find the evidence or testimony regarding father's limited involvement to be credible. Mother testified that father made no attempts to arrange supervised visitation through his counsel during Gracie's time in Italy. However, father was faced with military protective orders, and faced the constant threat of false allegations of sexual abuse.

6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child.

This Court finds that mother's attempts at alienation have been extensive, and her efforts to co-parent have been non-existent or at best, superficial. Mother engineered false allegations of father's child sexual abuse, false allegations of father's possession of child pornography, and

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false allegations of father's history of domestic violence. Mother used an admission of father's that many years before, and as a minor, he had an inappropriate encounter with his much younger half-sister. Although mother had this information for years, she chose to utilize it in an attempt to bolster her allegations during the custody proceedings. Mother knew that the resulting investigation would result in a prolonged separation between Gracie and her father, would erode their relationship, and would provide mother with all of the advantages she sought in the divorce and custody proceedings.

Mother championed false allegations against father each time an agency found, after lengthy and thorough investigations, that the allegations were unsubstantiated or unfounded. Though living in a separate continent, and for lack of any apparent need, mother actively campaigned for a military protective order and a civilian restraining order to prevent father from having access to Gracie. When these were not immediately forthcoming, mother convinced her local commander to issue an order of debarment, which prohibited father from accessing services at U.S. Army Garrison, Vicenza, and effectively prevented father from visiting his daughter in Italy.

Mother embarked on a campaign of parental alienation during her 2-year period of exclusive access and control of Gracie. Mother routinely refused father telephone communication with Gracie, refused father's mail and packages addressed to her, and also mail addressed to Gracie, and had it returned to father unopened. Mother declined requests for personal visits and visitation through video-teleconferencing (Skype). Mother also declined similar requests and blocked similar efforts to cultivate normal, healthy relationships for Gracie from father's extended family members. In addition, and as discussed above, mother constantly denigrated father to Gracie, referring to him as "Billy" rather than "papa," or "your dad," or "your father."

If this Court were to award mother custody, given her past history, it would be reasonable to expect that she would erect every possible obstacle imaginable to impede a normal and health relationship between father and daughter. It is evident from mother's Rule to Show Cause that mother's propensity to actively support Gracie's relationship with her father is non-existent. Mother has established a history of erecting barriers for father to visit Gracie overseas where she resides.

7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child.

The trial in this matter was highly contentious. As such, the Court was not provided with extensive evidence regarding this statutory factor. From the evidence that was provided, including the testimony of the parties, and the proposed written Findings of Facts and Conclusions of Law, this Court finds that father has the willingness and demonstrated ability to maintain a close and continuing relationship with the child. Mother, too, has the willingness and demonstrated ability to maintain a close and continuing relationship with the child. However, mother has shown this Court that her ability to cooperate in and resolve disputes regarding matters affecting the child is severely hampered by her active campaign to alienate the father

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from the child. It is the hope of this Court that father and mother are able to co-parent Gracie in the future.

8. The reasonable preference of the children, if the court deems the children to be of reasonable intelligence, understanding, age and experience to express such a preference.

The Court did not consider this factor due to Gracie's age. Mother's suggestion in her proposed Findings of Fact and Conclusions of Law that Gracie "would like the opportunity to tell the Court" that she would prefer living with the mother, and that she does not feel safe in her father's home only further reinforces this Court's finding that mother has inappropriately involved the child in mother's divorce and custody proceedings.

9. Any history of family abuse as that term is defined in § 16.1-228, or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6.

This Court finds that there is no such history of abuse in this case.

10. Such other factors as the court deems necessary and proper to the determination.

Mother took advantage of this Court's good will by fabricating false allegations against father during the *pendente lite* period that she was allowed by the court to take Gracie to Italy. Mother dragged out the civil divorce proceedings by filing unnecessary motions for pictures and other records that she already had copies of. Mother refused material that was requested in Requests for Production of Documents, and unnecessarily complicated and obfuscated matters before the Court.

As stated above, the Court does not find Denese Canedo to be a credible witness. She was misleading and misrepresented basic facts during trial. Mother has been dishonest with father, dishonest with Gracie's regular caregivers, dishonest with professionals who provided services to or for Gracie, and at length, dishonest with this Court. The father has had at times a committed, honest, and loving relationship with his daughter, but who for the past 2 years has been kept away from him by the unjustifiable and willful actions of the mother. Mother pursued a determined course of action to destroy any good memory Gracie might have of her father, while planting false memories and impressions in Gracie's mind of sexual molestation by her father.

Gracie has been removed from Italy by her mother, and whatever social contacts she may have had there are now gone. Gracie was then moved to Germany shortly before the May 2011 phase of trial, and mother testified that she and Gracie had been living in a hotel since moving there, and had not set up regular housekeeping. Gracie has been living in Arlington, VA in her father's home with her paternal grandmother, Ms. Ferrufino, since May 24, 2011. Gracie has visitation with her father under the grandmother's supervision.

Child Custody Conclusion

It is the ruling of this Court that Gracie be placed in the father's sole legal and primary physical custody. Mother is allowed reasonable supervised visitation in Virginia. Mental health counseling for the mother is recommended.

IV. Equitable Distribution of Real and Personal Property

The second issue before the Court is a request for an equitable distribution of the parties' real and personal property. The Court has reviewed the following statutory factors, as set forth in Virginia Code Section 20-107.3(E), to determine the proper distribution of property:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;
3. The duration of the marriage;
4. The ages and physical and mental condition of the parties;
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of §20-95;
6. How and when specific items of such marital property were acquired;
7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;
8. The liquid or nonliquid character of all marital property;
9. The tax consequences to each party;
10. The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties; and
11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

Upon a review of the evidence and arguments of the parties and upon application of the statutory factors, the Court makes the following distributions for the reasons stated.

The parties' marriage was very brief, lasting approximately only 3.5 years. The parties entered into the marriage with substantial pre-marital property. The balance of the parties' assets are found in real estate property, life insurance, retirement accounts, and lesser assets such as a used vehicle, a used boat, and other tangible personal property.

The husband owns a single-family home at 831 23rd Street South, Arlington, VA that is mortgaged through Bank of America. Wife owns a single-family home at 5057 22nd Street South, Arlington, VA that is mortgaged through Suntrust Mortgage. Both homes were used as rental

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properties during the marriage. Monthly rents from these properties were used in large part to pay for the mortgages of each pre-marital property and pay the mortgage of a jointly owned house in the State of South Carolina.

Wife has asked the Court to consider rents received by husband as income in calculating child support, to include rents he no longer receives since moving back into his pre-marital home to establish a proper home for Gracie. However, wife never acknowledged the rents she receives from her property at 5057 22nd St. Arlington, VA, and has refused requests to provide information regarding these rents. Wife kept this rental income to herself.

Wife testified that she believes husband's property has become "hybridized" but that hers has not, despite the fact that rents were collected and mortgage payments were made to both properties during the marriage. Wife further testified that she made significant upgrades and managerial contributions to the husband's house because she claims to have paid for some remodeling and helped one or two of the tenants on occasion. However, wife was unable to provide any receipts for these claimed contributions. Instead, wife provided only a few invoices that she claims to have paid, but husband in fact, paid most. Wife did not prove that she made any real contributions to the husband's property at all.

Husband's counsel stipulated to the fact that wife interacted with some of husband's tenants and therefore, the Court did not have to hear the testimony of Colonel Ousman Kane, which would have prolonged the trial even more. The contributions made by wife were no more than those that would be expected from any spouse and were not extraordinary in any regard. Husband also testified that because most of the tenants refused to have anything to do with wife, he had to take care of the properties and the tenants most of the time anyway, despite having to do so at different times from different time zones in Japan and from a combat zone in Iraq.

In addition to their respective premarital homes, the parties bought a home together at 14 Fraser St., Lady's Island, SC. This property is jointly owned. Husband does not dispute that the down payment for the home was made by wife and from her accounts. However, wife refused to make any contributions to the \$2,096 monthly mortgage since the home was purchased despite repeated requests by husband for her to do so after the parties' separation. Wife testified that she began making \$500 per month payments to the lender just 8 months ago. However, as husband testified, these payments were made separately to the bank with instructions to be applied to principal only. Wife's payments did not relieve husband from having to pay the full mortgage on a monthly basis, and he did so. It can be inferred from wife's conduct that she knew that father, a USMC military officer, had to pay the monthly debt or face severe consequences to his career. Therefore, wife refused to pay her fair share of the mortgage on the property to increase the pressure on the husband by saddling him with this extra debt during the divorce.

In preparation for trial, wife requested, and husband helped facilitate, an appraisal of husband's pre-marital home at 831 23rd St. in Arlington, and also of the jointly-owned property at 14 Fraser St. in SC. Husband owned his pre-marital home for 5 years before meeting wife, and

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the home, which has been his principal residence at various times, appreciated substantially before the marriage. Although wife's Virginia Real Property Appraiser, Mr. John Hunt, testified as to the current value of husband's property, there is no evidence before this Court as to the value of the husband's pre-marital home at the time the parties married. Thus, the extent to which, if any, this property increased in value during the marriage and before the parties had separated can only be the subject of speculation. Wife's attempt at a "Brandenburg" calculation for this property is without any value since there is no evidence before the court of its value when the parties married, only the price paid for the property at some time in 1999, 5 years before the parties married.

Wife did not provide the Court with an appraisal of her pre-marital home at 5057 22nd St. Arlington, VA, but instead she asserted that this property, which was purchased just a year before the parties married, should be considered purely pre-marital, despite the monetary and non-monetary contributions by father during the parties' marriage. Husband testified that his marital contributions include, for example, USAA Home Owners, Fire and Valuable Personal Property insurance payments on policies maintained at various times during the marriage. The rents received from this property also constituted marital income. Further, the reduction of the principal of the loan during the balance of the marriage was also a marital contribution. Wife's attempt at a "Brandenburg" calculation for this property is, similarly, without any value since there is no evidence before this Court of its value when the parties married, only the price paid for the property at some time in 2003, before the parties married. Both parties are in agreement that this property's FMV is approximately \$300,000.

Equitable Distribution Conclusion

Based upon the evidence submitted to the Court, and upon review of the written Findings of Facts and Conclusions of Law submitted by counsel for each party, this Court finds that each party should keep their respective pre-marital homes. Neither party has demonstrated any significant interest in the other's pre-marital home. The FMV of the parties' jointly owned SC property, net of a hypothetical realtor's 6% commission if it had to be sold, but not reduced by any other cost of sale, is about \$15,000. Husband is awarded this property as his sole property and without any credit or set off given to wife for the same. Husband is awarded the Harley Davidson, as this was premarital property. Husband is awarded the Toyota "Prius" as his own property. Husband is awarded the boat and trailer.

The values of all of the stocks, bonds, and investment accounts at the time of the parties' separation, plus what increases there have been since then to the marital components thereof are split equally between the parties. Each party is to keep his or her own U.S. Government retirement, without any credit or set off given to the other party. The values of all of the savings accounts at the time of the parties' separation are split equally between the parties.

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Wife has requested a 50% interest in the cash value of insurance policies held by husband that were obtained or contributed to in the marriage. Husband has had to borrow money against the cash value of all extant policies in order to pay legal bills in this civil action, a proper and allowable purpose, and, therefore, they no longer have any cash value. Husband purchased a policy for wife and paid \$248/month during the length of the marriage. Husband has sought information regarding this policy, but, as he testified at trial, it is titled in wife's name. Husband has requested information regarding this policy from wife and also offered to continue to pay for the policy as long as wife designated Gracie as the beneficiary. This Court finds that wife should maintain her Federal Employees Group Life Insurance coverage that is currently in effect for the benefit of Gracie during her minority, naming husband as the trustee of those funds.

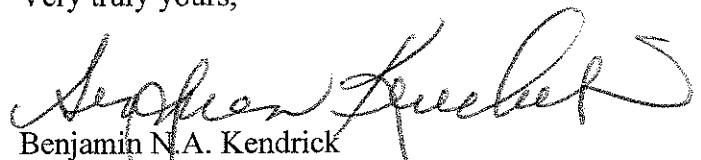
Husband is awarded the two dogs, "Coucous" and "Anies."

Wife earns a good deal more money than husband, and therefore no spousal support should be awarded to either party. However, this Court grants both husband and wife reservation of the right to seek such support in the future.

V. Conclusion

Counsel for Mr. Canedo should prepare an order memorializing the Court's opinion, and provide space for opposing counsel to note her objections. The parties are ordered to appear before the Court on August 26, 2011 for presentation and entry of the order unless a fully endorsed order is submitted in advance of that date. If both counsel agree, please correct any error discovered.

Very truly yours,


Benjamin N.A. Kendrick
Circuit Court Judge