

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

In Re the Marriage of:)
JOHN C. RUSSWURM)
BARBARA L. FIGARO)
)
JOHN C. RUSSWURM,)
)
)
Petitioner,)
)
v.) Case No. 15AF-CC00559
)
BARBARA L. FIGARO,)
)
)
Respondent.)

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT Respondent Barbara L. Figaro will call up for hearing and determination her Motion to Reopen Evidence; Amended Motion to Reopen Evidence, for New Trial, to Amend the Judgment, and for Revision of Clerical Error;, and Motion for Relief of Judgment on Thursday, July 7, 2016, at 9:00 a.m. or as soon thereafter as the same can be heard.

BAIRD LIGHTNER MILLSAP

By _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Notice of Hearing was served upon the following by electronic filing transmittal this 15th day of April, 2016:

Rudy Arambulo, Trilakes Law Firm, 301 W. Pacific St. Ste A, Branson, MO 65616

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RESPONDENT'S MOTION FOR RELIEF OF JUDGMENT

COMES NOW, Respondent Barbara L. Figaro, by and through her attorneys, Baird Lightner Millsap, and for her Motion for Relief of Judgment pursuant to Rule 74.06 of the Missouri Rules of Civil Procedure, for mistake and/or excusable neglect and/or for clerical error, states as follows:

1. This case was tried on Tuesday, March 22, 2016.
2. As of the time of the previous Motion to Reopen Evidence, a final judgment was pending in the case.
3. A Judgment was entered in this case on April 18, 2016.
4. Three (3) days following the entry of the Judgment on April 18, 2016, the Court set the case for evidentiary hearing on June 21, 2016.
5. At the trial of the case, Respondent attempted to object to and deny the accuracy of the Form 9 Consolidated Statement of Marital and Non-Marital Assets and Debts, particularly the items and values submitted in said Form 9 as Respondent's requests and values that the Court used in determining a final judgment in the case.

6. Respondent states that numerous items listed on the Form 9 used by the Court do not exist and should not be included in the calculations that the Court used to determine a final judgment.
7. Respondent states that numerous property valuations listed in the Form 9 submitted to the Court were incorrect, overstated, or awarded to the incorrect party.
8. Respondent states that her previous attorney erroneously submitted and/or agreed to incorrect property schedule on behalf of Respondent constituting mistake and/or excusable neglect.
9. Respondent commissioned a full appraisal of the contents of the apartment in New Jersey, attached hereto as Exhibit "A", in which it was determined the total property value to equal \$1,345.00, though the Court valued the same as \$26,335.00. The apartment is a 700 square foot apartment and could not possibly contain \$26,335.00 worth of property.
10. The Form 2 submitted at Court does not accurately reflect Respondent's values. Previous counsel for Respondent attempted to cure this error by introducing Respondent's handwritten values at the trial as Respondent's Exhibit "I".
11. In the existing Judgment of Dissolution of Marriage entered April 18, 2016, the Court did not value the items of property.
12. The Court issued a letter and property schedule prior to the entry of the Judgment that described the Court's finding. The Judgment of Dissolution of Marriage is believed to reflect the findings set forth in said letter. There are numerous errors and miscalculations in said property schedule. Among them are the following:
 - a. The value of the equity in the 2015 Nissan Rogue is miscalculated.
 - b. The value of the equity in the 2009 Toyota is miscalculated.

- c. Respondent would assert that the value of the Kubota tractor is \$15,000.00 rather than \$8,200.00, and the \$8,200.00 was erroneously submitted to the Court as Respondent's value.
- d. The Federal Credit Union, Barbara Figaro should be valued at \$13,000.00.
- e. The Court did not value the NYS Deferred Compensation Plan, John Russwurm, which both parties valued at \$35,000.00.
- f. On Page 4 of 9, Section N, the vanity, vanity mirror, make-up desk and vanity do not exist, yet were awarded to Wife at a total value of \$800.00.
- g. The downstairs pictures on Page 4 of 9 are duplicated. The vanity at the middle of Page 4 does not exist.
- h. The 8x8 Rubbermaid Shed and 8x12 Rubbermaid Shed are duplicated as "Two Portable Sheds" two (2) lines below on Page 4 of 9.
- i. The Court did not value all of Petitioner's guns, which Respondent testified were worth \$25,000.00. Rather the Court valued them at \$7,492.00, and further found that Respondent had asserted a value on said guns of \$5,000.00. Said value is incorrect.
- j. The Court found that Respondent alleged her household furnishings in New Jersey were worth \$26,335.00 when in fact she asserted, in accordance with the appraisal, that they were worth \$1,345.00.
- k. On Page 5 of 9, the pictures in living room (excluding trout picture) and pictures of property are duplicates of one another.

- l. As an example of the problematic values set forth in the Schedule, the glassware awarded to Wife on Page 5 of 9 at \$100.00 is actually two (2) wine glasses, and thus, the value of the same is far overstated.
 - m. On Page 6 of 9, Husband did not list his computer as an asset and the same was not divided by the Court, though Wife's used computer was awarded to her at \$500.00.
 - n. As another example of the overstatement of the values upon the property, the rear deck furniture (Plastic Chairs on Page 6 of 9) are Walmart style plastic chairs that are broken. They are worth nowhere near the \$200.00 attributed as valued by Mr. Russwurm in the Court.
13. The Court erroneously classified the 2011 Kawasaki Jet-Ski as Husband's non-marital property. Petitioner apparently testified that said Jet-Ski was purchased from his inheritance, but this does not change the fact that it was purchased during the marriage and is therefore marital property. There was no evidence submitted by which the Jet-Ski could be considered Husband's non-marital property, and the party asserting that an item of property is non-marital bears the burden of demonstrating by clear and convincing evidence the non-marital nature of said property.
14. The Court erred in classifying the K80 Krieghoff Shotgun as non-marital property. This shotgun, valued by the Court at \$8,000.00 was purchased with money from the sale of a marital pontoon boat, and is thus marital property. Further, the party asserting that an item of property is non-marital bears the burden of demonstrating by clear and convincing evidence the non-marital nature of said property.

15. Respondent's actual values, a revaluation of the property by the Court, and a reclassification of the "non-marital property" as marital property, as set forth above, will result in a completely different judgment and distribution of assets to the parties.

16. This Motion is supported by Respondent's Affidavit, filed contemporaneously herewith.

WHEREFORE, Respondent Barbara L. Figaro prays the Court to set aside the Judgment of Dissolution entered April 18, 2016 pursuant to Rule 74.06 of the Missouri Rules of Civil Procedure; to receive additional evidence on such matters addressed therein; to grant a new trial on the issues in the case; to amend the Judgment; to amend the clerical errors set forth in the Judgment (as shown in the Court's letter and Form 9 entered April 4, 2016; and for such other and further relief as the Court may deem just and proper.

BAIRD LIGHTNER MILLSAP

By _____

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of June, 2016, I electronically filed the above and foregoing document using the Court's e-filing system which sent notification to the following:

Rudy A. Arambulo, Trilakes Law Firm, LLC, 301 W. Pacific St., Ste. A, Branson, Missouri 65616,