

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

CARI LYNNE SHERRILL
(f/k/a **KELLER**),

Plaintiff,

vs.

KLETE D. KELLER,

Defendant.

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

14-CVD-4834 (CTM)

ORDER

**(Permanent Child Support and
Attorney's Fees)**

DEC 01 2016

THIS CAUSE came on to be heard and was heard before the Honorable Christy T. Mann, judge presiding over the September 28, 2016 civil, non-jury session of the District Court for Mecklenburg County, North Carolina on Plaintiff's claims for permanent child support and attorney's fees. Present in court were Plaintiff, represented by William T. Medlin, IV, and Defendant, who proceeded *pro se*. After reviewing the record and hearing the evidence, the Court makes the following

FINDINGS OF FACT:

1. Both parties are residents of the State of North Carolina.
2. The parties were married on September 20, 2008 and separated on January 28, 2014. The parties are now divorced.
3. The parties are the parents of three minor children, namely [REDACTED] Keller, born January 24, 2010, [REDACTED] Keller, born April 1, 2011, and [REDACTED] Keller, born April 1, 2011.
4. Plaintiff has primary custody of the children and has them in her care 365 nights per year.
5. Plaintiff filed a Complaint in this matter on March 19, 2014, seeking child support and attorney's fees.
6. On September 11, 2014, this Court entered an Order for Temporary Child Support which provided, *inter alia*, that Defendant would pay Plaintiff temporary child support in the amount of \$191.00 per month, and scheduled a review hearing to be held on November 5, 2014.

7. In the September 11, 2014 Order for Temporary Child Support, the Court found that Defendant has had various jobs, has a bachelor's degree from the University of Southern California, and that shortly after the parties separated he had been unemployed except for a few swimming clinics he had taught for the Fitter and Faster Swim Tour. The Court found Defendant to be voluntarily underemployed. It was the Court's hope at the time that Defendant would step up, grow up, and take his financial responsibility to the children seriously.

8. On December 10, 2014, this Court entered a Modified Order for Temporary Child Support which provided, *inter alia*, that Defendant would pay temporary child support to Plaintiff in the amount of \$361.00 per month and provided that the m [REDACTED] would be reviewed in approximately February, 2015.

9. In the December 10, 2014 Modified Order for Temporary Child Support, the Court found that Defendant's continued underemployment was voluntary and a result of Defendant's naïve indifference to the children's immediate financial needs. Again, the Court hoped that Defendant would take his responsibility to the children seriously and to obtain employment.

10. On May 21, 2015, this Court entered a Second Modified Order for Temporary Child Support which provided, *inter alia*, that Defendant would pay temporary child support to Plaintiff in the amount of \$1,250.00 per month.

11. In the May 21, 2015 Second Modified Order for Temporary Child Support, the Court found that Defendant was teaching at Little Otter Swim School and worked at MC Custom Construction and did swim clinics for the Fitter and Faster Tour. The Court set child support at that time on Defendant's income at the time from those three sources.

12. As of the trial on September 28, 2016, Defendant was back to where he started. He is only doing Fitter and Faster Tour swim clinics and does not have other employment.

13. In spite of the Court's coaxing and encouraging Defendant to obtain meaningful employment, Defendant has failed to rise to the occasion, and the parties' children are financially dependent on Plaintiff's parents to maintain the standard of living that the family enjoyed while Plaintiff and Defendant were married.


14. But for Plaintiff's parents, the Court does not know what, if any, advantages the children would have.

15. Defendant is old enough to know better, but is still trying to figure out what he wants to do with his life, and despite having three small children who should be financially dependent on him and Plaintiff, Defendant does not have regular employment where he has to get up and go to work each day.

16. Plaintiff currently works for The Sarver Group and earns a monthly income of \$350.00 from that, and also receives a monthly advance on her inheritance in the amount of \$5,000.00. Plaintiff's current gross monthly income is \$5,350.00.

17. Plaintiff's husband provides health insurance for the minor children at the rate of \$291.07 per month.

18. Plaintiff incurs work-related child care for the children at the rate of \$446.67 per month.

19. Plaintiff has one other dependent in her home, an infant named .

20. Defendant recently inherited a lump sum of approximately \$200,000.00 in cash from his grandmother.

21. Defendant's inheritance is income for the purposes of calculating child support.

22. It is just and reasonable for the Court to prorate Defendant's lump sum inheritance over five years, such that Defendant's monthly income from the inheritance is \$3,333.33 per month.

23. Defendant does approximately two Fitter and Faster Swim clinics each month, at the rate of \$1,500.00 per clinic, or \$3,000.00 per month.

24. Defendant's income for the purposes of calculating child support is \$6,333.33 per month.

25. Defendant owes a duty of support to the minor children.

26. Application of Worksheet A of the North Carolina Child Support Guidelines results in a child support obligation of \$1,658.00 per month, which is appropriate under the circumstances of this case and meets the needs of the minor children.

27. A deviation from the North Carolina Child Support Guidelines is inappropriate.

28. Defendant should pay retroactive child support to Plaintiff for the months of January and February, 2014 at the rate of \$191.00 per month, the temporary child support amount set in the September 11, 2014 Order for Temporary Child Support.

29. Defendant's child support arrears owed under the temporary child support orders is as follows:

| | |
|------------|----------|
| March 2014 | \$191.00 |
|------------|----------|

| | |
|----------------|-------------------|
| April 2014 | \$191.00 |
| May 2014 | \$191.00 |
| June 2014 | \$191.00 |
| July 2014 | \$191.00 |
| August 2014 | \$170.00 |
| September 2014 | \$170.00 |
| October 2014 | \$170.00 |
| November 2014 | \$170.00 |
| Total | \$1,635.00 |

30. Defendant's combined retroactive child support and child support arrears are \$2,017.00, which Defendant should pay to Plaintiff as set forth herein.

31. As of the filing of the Complaint in this action, Defendant had not provided adequate financial support for the children based on the circumstances.

32. Plaintiff is an interested party, acting in good faith, with insufficient means to defray the expenses associated with this action.

33. Plaintiff has incurred more than \$10,000.00 in attorney's fees related to this action.

34. Defendant should be ordered to reimburse Plaintiff \$10,000.00 in attorney's fees as set forth herein.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. The Court has jurisdiction of the subject matter and the parties to this action and has the authority to enter this Order.
2. Defendant owes a duty of support to the minor children.
3. Application of Worksheet A of the North Carolina Child Support Guidelines is appropriate and meets the needs of the minor children.

4. A deviation from the North Carolina Child Support Guidelines is inappropriate.

5. Defendant should pay retroactive child support and child support arrears to Plaintiff as set forth herein.

6. As of the filing of the Complaint in this action, Defendant had not provided adequate financial support for the children based on the circumstances.

7. Plaintiff is an interested party, acting in good faith, with insufficient means to defray the expenses associated with this action.

8. Defendant should be ordered to reimburse Plaintiff \$10,000.00 in attorney's fees as set forth herein.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS NOW, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. Defendant shall pay to Plaintiff the sum of \$1,658.00 per month in child support, effective with a payment due on or before October 1, 2016, and continuing in a like manner each and every month thereafter.


2. Plaintiff shall be responsible for the first Two Hundred Fifty Dollars (\$250.00) per year of the minor child's uninsured health care expenses, after the payment of which the parties shall share further expenses equally. The party incurring such expenses shall provide documentation to the other party regarding such costs, and the other party shall reimburse the paying party for his or her equal share of said costs within fourteen (14) days of receipt of such documentation.

3. Defendant shall pay to Plaintiff the sum of \$2,017.00 in combined child support arrears and retroactive child support by October 8, 2016.

4. Defendant shall pay to Plaintiff the sum of \$10,000.00 as partial reimbursement for Plaintiff's attorney's fees by October 8, 2016.

5. This Order is enforceable by the contempt powers of the Court.

This is the 23 day of November, 2016.



The Honorable Christy T. Mann
District Court Judge Presiding