

FA-387050

DUNCAN SIMMONS

VS.

ORA SIMMONS

SUPERIOR COURT

J. D. OF NEW HAVEN

AT NEW HAVEN

JULY 23, 1998

B E F O R E:           THE HONORABLE LYNDA MUNRO, JUDGE

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

For the Plaintiff: RALPH DUPONT, ESQ.

For the Defendant: FRANK KOLB, ESQ.

Mary Lou Coppola Court  
Recording Monitor

THE COURT: All right. Let me explain to counsel and most importantly the parties what's about to occur. You've been through a trial before and that trial ended with a written Memorandum of Decision. The Court has a choice between issuing a written Memorandum of Decision or an Oral Memorandum which is rendered into a typewritten transcript and then the Court signs the transcript in the file and that constitutes the Memorandum of Decision for all post judgment purposes.

The counsel in this case has tried this case very smoothly and as a result of the prior Memorandum of Decision in the Supreme Court case many of the issues were, at least as to the decision for the Memorandum of Decision, the issues at least were clearly before the Court. This Court had to hear its own evidence in this hearing and make its findings but it wasn't like other cases where I knew absolutely nothing walking into it.

Now, preliminarily while the parties were not present, counsel appeared before this Court for scheduling on status conference issues or status conference on scheduling issues, and Ms. Simmons' counsel made it clear that he was going to be, immediately at the conclusion, pursuing, if alimony were awarded, and if the award of alimony provided for modifiability if it were awarded, he intended to pursue a motion of modification. It struck this Court as an extraordinarily poor use of judicial resources and your time and money to have, if that were to occur, you come back and do that again. It being a Court trial and not a trial before a jury where lay people may not be used to bifurcating their brain as it were, I indicated to counsel with their general acquiescence that the Court would do both hearings in one, and so that is why if you occasionally felt puzzled why you were being asked about things from your marriage and then about economic issues post Judge Alander's decision, that's why we had the two hearings in one.

The Court is going to render the decision on the original judgment first without reference to anything after that, and then at the conclusion the Court is going to take up the question, or entertain the question of the oral Motion for Modification of alimony.

Now, so as to not prejudice Ms. Simmons through her counsel the Courts aware that the

Practice Book, post October 1, requires those motions to state the basis for the motion to modify and not having a written motion before me it would suggest that the Court and therefore opposing counsel might not have known, but by the examination of Ms. Simmons, it's clear opposing counsel is aware what the economic issues were if a modification were to be entertained and at the time that the Court considers that motion the Court will consider it from the point of view of income and expenses so that that which might have been fairly stated in the context of a motion would be covered in any case.

This matter was tried, excuse me one minute, Madam Monitor, I need a transcript of these proceedings and I should have told you that and you can talk to Carrie afterwards about how to get it to me. All right? Thank you.

This matter was tried before the Court, Judge Alander, and days in November of 1996, a written memorandum of decision on the trial of the matter was issued on January 6, 1997. The matter was appealed and the Supreme Court took the matter and the issue that occupied a large portion of the Supreme Court's decision which is not before this Court was whether Dr. Simmons' medical degree constituted property subject to equitable division under 46b-81 in the State of Connecticut. The Supreme Court determined that it did not. That was an affirmance of the trial court decision and therefore was not the basis of the reversal.

Among other orders issued by the trial Court Judge Alander declined to grant alimony to either party and specifically to Ms. Simmons. The Supreme court, speaking through Chief Justice Callahan as the author of the majority opinion found that to be a reversible error and reversed the matter for further proceedings rescript before the trial court which were to be "consistent with the opinion." That was the extent of the guidance of the rescript from the Supreme Court.

The Supreme Court also in its decision, obviously both spoken dicta and determined in referenced statute, but besides that it referred as indicated in footnote 18 to Sunbury vs. Sunbury, which invoked the talismanic language of the carefully crafted mosaic and therefore allowed the trial court to consider all financial orders in this matter at the time of the retrial of this case while at the same time reaffirming its findings Judge Alander's orders regarding property settlement

were a fair exercise of the Court's discretion pursuant to 46b-81. The Court, this Court, mindful of footnote 18, finds that it is necessary, based upon the evidence before this Court, to recraft all the financial orders in this matter so that a carefully crafted mosaic of orders in regard to 46b-81 and 46b-82 fairly considers the impact of each order upon the parties so that one order does not do destruction or harm to the other.

The Court notes that Judge Alander's finding and issuance of an order of dissolution of marriage is not disturbed and these parties have been divorced since January 6th, 1997. This Court in these decisions is carefully considering the statutory criteria for an equitable division of the property of the marriage of 46b-81 and alimony at 46b-82 and the Supreme Court decision in this matter. The Court has also considered carefully the statutory criteria for the award of counsel fees. The Court is not ala Caffey vs. Caffey going to recite each and every statutory criteria, it would serve no purpose. The Court is aware of each of the criteria and will attach what significance and importance this Court finds is vital for a proper and fair determination in the issues in this case mindful of the guidance of the Supreme Court.

The parties stipulated that Judge Alander's findings as to the parties age at the time of the dissolution of marriage is left intact and their health is left intact. The Court may make passing reference thereto but those findings stand as findings of this Court. The parties were married in September of 1983 in Fayetteville, North Carolina. As of the November hearing in 1996 these parties had been married 13 years. Dr. Simmons who was Mr. Simmons at the time was approximately 23 years old at the time of the marriage. He was employed in the Army. The evidence before this Court does not grain the status of his employment. The Court notes that prior findings indicate that he was a sergeant. While it is not before this Court it's not of substantial importance. What is important is he remained in the Army for approximately 18 months.

Prior to his college education during the period of time of this marriage he had about six or eight college credits and was not in any way shape or form very far along in his college education. Dr. Simmons went to Campbell University during the period of time of the marriage and obtained a Bachelor's Degree. He made a judgment that he desired to go to medical school

and went to medical school in Greenville, North Carolina at East Carolina. He completed his medical degree in 1994. During those periods the Court will refer in passing to his income. His income was not a major full time employment except for those periods of time when he was not in school. He received support on occasion from his grandmother which support he feels a moral obligation to repay and has no legal indebtedness to his grandmother as placed before this Court. Ms. Simmons acknowledges that there was an expectation that a large portion, if not all sums received from his grandmother would be repaid by Dr. Simmons.

Dr. Simmons, during the period of time of the marriage removed to the State of Connecticut to go to the St. Raphaels Surgical Residency Program for which he was accepted, it was a five year period of residency. As of November 19, 1996 he had completed two full years of the residency and was in the midst of completing his third year of the five year program. During medical school he took out student loans, Federal student loans of approximately \$10,000 per year. East Carolina apparently had an advantageous tuition in that the tuition was only \$2,200 per semester or a total of \$4,400 per year. Of his loans therefore, \$5,600 was directly contributed to the marital household. Other employment that Dr. Simmons undertook during the period of time for the pursuit of his education was the delivery of newspapers and work with a lawn service as well as periods of time that he had available for full and continued employment with a medical servicing company, the work of which was never actually made exactly clear to this Court, but it provided for full time wages. It would appear during the entire period of time of this marriage that Dr. Simmons has been in good health and is so considered.

Ms Simmons is 20 years older than Dr. Simmons in 1996. She was 20 years older than Dr. Simmons in 1983 at the time that they were married. This has been a consistent fact throughout the period of time of their marriage. Prior to her marriage to Dr. Simmons she bought six children into this world and during the period of time of their marriage it should be noted that two of the sons lived with the parties for a period of 18 months to 2 years. Tax returns disclose that they took the children as dependents, exemptions for two years and two years only. She has been married on one prior occasion. At the time of the marriage she was employed working in a restaurant as a bartender and continued in that as

full time employment for a period of two and a half years. During the period of time of her employment she also attended school for a medical certificate program relatively obtained that certificate at the local Fayetteville Technical Community College in 1985. This procured a basis for her to seek employment outside of her career at that point which had been a bartender and then she worked as a medical technician as disclosed by the income that the Court will report shortly.

Subsequent to that, Ms. Simmons, has well chose to better her education as Dr. Simmons had and completed and worked hard at, as Dr. Simmons had worked hard in his education, in gaining an Associate Degree in nursing. She ultimately in 1991 attained her Associate Degree in nursing and from that time period forward has always been working full time as a nurse. The evidence is not clear how long Ms. Simmons ever went without any employment. It varies, from the parties' testimony of anywhere of just under a year to a year and a half. The income records and financial affidavits indicate that the lowest point for the parties in terms of Ms. Simmons was 1990 for income and in that year she had virtually no income and that's the only year she shows for virtually no income during the period of time of the parties' marriage.

As of November 1996 these parties have no substantial assets. There had been a 20th century mutual fund account which was a joint asset and the Court specifically finds it was a joint asset. It was listed in joint names. It was joint with rights of survivorship pursuant to the Exhibits before the Court. Dr. Simmons withdrew \$5,800 from that account, a balance of approximately \$1800 was available to Ms. Simmons at or about the time of the parties separation, which will be discussed more completely hereafter.

The parties had a Subaru. The financial affidavit of Dr. Simmons discloses it to be valued at \$500 in 1996. The Court has no reason to find that not to be so and therefore accepts the value. There is a 996 Saturn which the Court finds has a value of approximately \$17,000 net after debt of \$1600 and a 1979 Blazer with a value of approximately \$1500. The parties each have insignificant sums of money in bank accounts operating as checking accounts. Less the parties evidence further confusion let me remind you that I'm issuing this opinion as of the November 1996 hearing. There were various furnishings of the marital estate and the parties as

described hereinafter divided up their marital furnishings. No particular value has been attached to any of them except for one financial affidavit discloses that there is a black leather couch and two sleeper couches which after devaluation for use the Court finds the cumulative value to be approximately \$600. Finally, there is a stamp, and to the extent that I pronounce it incorrectly, a "Philatelic Collection" and a coin collection that Dr. Simmons procured over time from his -- in large part from his father by way of gifting since and when he went into the Army at age 18 up until a short time prior to the parties' separation. Based upon the evidence before the Court the Court finds, with the exception of the book testified to by Ms. Simmons, that that coin and stamp collection remained in the possession and or custody and control of Dr. Simmons and therefore its ultimate disposition is with him.

The Court is constrained under *Krafick vs. Krafick* to assign values to assets where there is sufficient information in the evidence. for the Court to be able to determine an asset value for which the Court would reference a decision issued this week of *Bornemann vs. Bornemann*.

The Court finds from the evidence provided by way of the testimony of Dr. Simmons that that stamp and coin collection value is approximately \$50,000. The plaintiff, Dr. Simmons, in 1996 at the time of the hearing, debts of approximately \$66,551 of which \$43,551 are medical school loans and \$10,000 as indebtedness to his grandmother. Ms. Simmons, the defendant, has debts of \$9,000. The parties both show a debt to the IRS, \$3,000 on Dr. Simmons' financial affidavit, \$4,000 on Ms. Simmons financial affidavit. The Court had insufficient evidence before it to determine whether those are separate debts or a joint debt. The orders of the Court will reflect the lack of sureness about that from the record.

The Court must consider based upon the circumstances of the parties in 1996 their education, and all of the other statutory criteria including employability, the contributions and their ability to acquire future assets, capital assets and income, the situation of the parties.

Ms. Simmons is as of 1996 a registered nurse. She is earning to her apparent maximum capacity at the time of these orders. In 1986 her income was approximately \$3100. As she bettered herself educationally her income continued to increase With the benefit of the medical certification program her income rose in 1987 through 1989 to approximately \$13,000 with one

year a little less. In 1990 when she was not engaged in this activity as well as her nursing program she showed little or no income. In 1992 having received her nursing RN her income showed a steady increase. In 1992 it's about \$34,093, almost \$36,000. In 1994 the year the parties moved to the State of Connecticut the income for Ms. Simmons is difficult to determine. Her W2 suggests its about \$29,500 but when you add the parties W2's together the income is about \$6,000 less than is disclosed on the tax return. It's not clear to the Court who to attribute that to. In 1995 Ms. Simmons earned \$67,000 and in 1996 extrapolating one month off of her 1996 tax return which was put in before the Court her income was going to be approximately \$50,000 to November 1996 or approximately -- or as shown on her financial, strike that. Or as shown on her financial affidavit which is not inconsistent with these findings.

Therefore it's fair to say that the work done by Ms. Simmons during the period of time of this marriage to procure first a medical certificate degree and then a registered nurse position has allowed her to be able to steadily increase her income in increments as indicated here. during the period of time of her doing this she continued to contribute to the martial estate in intangible ways as the wife in this family while Dr. Simmons first completed his Bachelor's Degree and then completed his medical school for his medical degree.

Dr. Simmons' income is also before the Court and it does not include as the Court relates it any monies received from his grandmother which show approximately \$10,000 in debt and does not include the indebtedness as income. The period of time which the Court looks at Dr. Simmons was doing landscaping in 1986 and made about \$2700. He was also delivering newspapers and the income in the financial affidavits on this -- strike that, and the tax returns on the newspapers is not at all clear, but from a reading of the four years of tax returns in which he was delivering newspapers it appears that he made about \$3100 to \$3400 net after expenses and before his own personal taxes yearly in delivering newspapers.

The first year that his income reaches a level of significance beyond that is in 1989 when he makes approximately \$11,000 aside from those other sources of income as a medical technician. He then shows no such income before several years because he was fully occupied as

a medical student. In 1994 his W2 was \$20,500. Once again, that's the year in which the W2's don't match the tax return and between the parties there's about 5 -or \$6,000 more income apparently. 1995 as a resident in a New Haven program Dr. Simmons income was \$40,653. In his financial affidavit for the period of 1996 references his income as having increased. To some extent it shows a gross of approximately \$845 per week.

In terms of additional indebtedness Ms. Simmons, from the evidence before the Court, for the period of time of June 3rd through -- strike that, from the period of time ending November 13th, 1996 which appears to be the conclusion of the first trial of this matter had attorney's fees of \$5,364 against which she had paid a retainer of \$3,000 and therefore had an unpaid legal balance in November 1996 of \$2364.

The trial of this case has proceeded at a very economical pace and will conclude in a day and a half. It's remarkable to the Court when parties try a case two years later what they focus on as important and what they gloss over either intentionally or assuming that the world shares a certain level of common knowledge which perhaps we don't all share. There was a remarkably little testimony about the cause of the breakdown of the this marriage and it is as the parties must know one of the statutory criteria. On the one hand it was refreshing to hear a little less than a little more compared to other cases. On the other hand the Court's not aware if the paltry evidence was intentional or not.

The following is found by the Court: Dr. Simmons early in the marriage chose to have a one occasion affair with another woman. His concern that he may have contracted gonorrhea impelled him to confide this indiscretion to his wife. He then cast the blame for the dissolution of the marriage on Ms. Simmons for her jealousy and distrust of him with other women throughout the period of the time of the balance of the marriage. The Court finds no evidence before it to indicate that Dr. Simmons had in any way stroven to reestablish a trust in Ms. Simmons such that she would not feel the jealousy that may be resulting from his entertaining attention to other women during the period of time of the marriage.

That she did not choose to end the marriage at the time of the disclosure of the affair indicates to this Court and this Court finds that the affair itself did not cause the breakdown of the marriage, that Dr.

Simmons chose to have an affair indicated an insensitivity to Ms. Simmons needs and his commitments to her as part of the bonds of marriage.

The testimony discloses that when the end of this marriage came Dr. Simmons was aware it came far before Ms. Simmons was. He chose to take a weekend away without telling her where he had gone and having instead confirmed all of her distrust by lying to her and telling her he was at work. There is latent in that ability to lie about that and then confirm it again upon his return until he was confronted with an inability to maintain that lie. There is absolutely implicit in that a lack of respect for the marital bonds and for his obligations for trustworthiness, fidelity and honor towards Ms. Simmons.

Dr. Simmons would have this Court believe that he left in a surreptitious and deceptive manner because he was afraid Ms. Simmons was going to kill him because she had said that she was going to kill him. Ms. Simmons has acknowledged that in fury. On one occasion she said to him, "I'm so mad I could kill you or I could shoot you." That was not challenged in any significant way. The Court does not deem that as a threat that a reasonable person would take seriously and rather an excuse to engage in treachery.

Leaving Ms. Simmons at the hospital for four hours while Dr. Simmons was at the house clearing out that which he felt he was entitled to take and it was non an unreasonable number of things that he took, but leaving her at the hospital for four hours thinking she was delivering a paper of utmost importance to Dr. Simmons is one more reflection of a person who shows no care or respect for the needs or emotions of another person.

Therefore, balancing the testimony before this Court this Court must find in the nature of human relationships as between Dr. Simmons and Ms. Simmons, Dr. Simmons is the cause of the breakdown of this marriage because he failed to treat his wife, as evidenced by the testimony before this Court, with the decency and respect any human being is due.

The property that was removed by Dr. Simmons as testified by him is not contradicted and he remains interested in retrieving 1115 rolltop desk, certain medical files he believes he left behind and certain coins and or stamps he believes he left behind. A marital estate that has assets of no significance whatsoever but for the stamps and coins received by Dr. Simmons from

his father leaves this Court incredulous that those items of the most significant value would be left behind by Dr. Simmons in a four hour search of the house willingly. Therefore the Court is constrained to find that those items were and are in the custody and control of Dr. Simmons. They are and have been a gift to him from his father and therefore possess all of the sentiment and nurturance that is implicit in the relationship he had with his father and the Court deems it appropriate that he continue to own those coins and stamps.

The Court has, via the tax returns, it was allowed in, there's an affectionate note from Mr. Simmons who was the tax preparer for Dr. Simmons and while they were married for Ms. Simmons and it is clear that that was a relationship that Dr. Simmons enjoyed with his father and that these gifts were a token of that relationship. The Court sees for Ms. Simmons a limited number of years available for her to procure some assets, some capital assets, some retirement and some economic security given her age and her past inability to acquire any capital assets and the Court considers that in the fashioning of these orders.

Further, the Court notes that she as of the fashioning of these orders is in the State of Connecticut where she has relocated to satisfy Dr. Simmons' need for his surgery residency and that this is not the place of her residence historically. The Court further notes that she has been supportive of his endeavor, having also moved with him to Greenville so that the parties could be close to his place of medical school, the parties both acknowledging that that was a grueling experience. As a result she did the driving for the better part of the year to finish up her nursing degree which was a choice of her and the parties which was not unreasonable under the circumstances.

The Court having, as indicated, considering all of the criteria makes the following orders: and the Court notes for the parties once again, since sometimes they don't follow legal things the dissolution of marriage has already entered. The Court by way of lump sum alimony orders the plaintiff to pay to the defendant the sum of \$4,060 within 120 days of today's date. The Court notes that this is a non-taxable event for both parties. However, it is in the nature of spousal support and therefore is not dischargeable in bankruptcy. If it is not paid within 120 days of today's date it shall bear interest at the rate

of 10% per year dating back to today's date.

The Court issues this order of lump sum alimony mindful of the equities of the parties in terms of that which was lost each having to replace themselves from their own income at the time of the separation of the parties, their various needs both for housing and for utilities.

By way of property settlement the Court orders to each to maintain and own their motor vehicle -- strike that. The Court orders that each party shall own a motor vehicle in their respective possession and control and sign whatever paperwork is necessary to transfer one to the other and the same for bank accounts.

By way of periodic alimony the Court orders the plaintiff to pay \$1 per year as periodic alimony. This alimony shall terminate sooner upon either parties death, the re-marriage of Ms. Simmons, co-habitation by Ms. Simmons shall be a ground as defined by statute and case law, shall be a grounds for modifiability. These orders of \$1 per year alimony are modifiable as to amount. The parties shall each year by February 10th of each year, give each other copies of their W2's and 1099's from the year previous. From the first trial in this matter the Court orders counsel fees to be paid by Dr. Simmons to Ms. Simmons in the amount of \$2,000 at the rate of \$150 per month commencing on the first day of each month starting with the month of October.

The Court orders counsel fees for the first trial because in the mosaic of this case the Court finds that if Ms. Simmons would be forced to pay her own counsel fees it would defeat the purpose and intent of the financial orders in these matters mindful of the economic potential of Dr. Simmons as a resident and the economic security for him as a resident and his obtainment of his medical degree and his ability to do non-medical work on the side as well as Ms. Simmons need and right to consider her need to acquire capital assets given her age in life and her need to meet her financial expenses.

In regard to liabilities with the IRS debt as an exception which will be noted hereinafter the parties are each to pay their respective liability on their respective financial affidavits.

As to the IRS debt, presuming that it is a joint debt, and that is both parties are legally liable to the Internal Revenue Service for the debt Dr. Simmons is to pay the debt in a manner to satisfy the

Internal Revenue Service and indemnify and hold Ms. Simmons harmless thereon.

These are the orders of the dissolution of the marriage. The Court is now asked at this time to consider whether a modification of alimony is in order as of the present date. The parties have submitted financial affidavits and provided evidence and testimony and exhibits of the circumstances of the parties presently. The Court notes in order for there to be a modification of alimony the Court must find that there's a substantial change of circumstances that has occurred since the entry of the order on the dissolution and the Court does not in this instance mean since one minute ago, but since November 1996.

The following additional facts are found. Notwithstanding the fact that Dr. Simmons had satisfactorily completed three years of his surgical residency he chose to leave his surgical residency program. Had he stayed with the surgical residency program he would be in the last year of completion of it today. His income would have risen somewhere in the nature of \$1800 per year or \$2,000 per year to a maximum of approximately \$50,000 for this year completing.

Thereafter, upon satisfactory completion of his surgical residency Dr. Simmons income would be entering into the market at a modest level of approximately \$100,000 per year. Dr. Simmons unilaterally chose not to complete his surgical residency. The Court specifically finds that he was not terminated from the surgical residency, notwithstanding the footnote in the Supreme Court decision. Dr. Simmons gained employment instead at Waterbury Hospital as an emergency room per diem clerk, strike that, per diem doctor, and his income is an approximate amount of 100 to \$104,000 per year. That is based upon actual time worked and based upon his historical earnings for the past year. Dr. Simmons resigned from his position at Waterbury Hospital effective this week. The testimony of Dr. Bader via the deposition which came in as a transcript, indicates that in several instances Dr. Simmons' work at Waterbury Hospital was unsatisfactory in terms of care given to patients. It did not meet the level of care required or expected of a physician in the emergency room of Waterbury Hospital. It is not clear, therefore, whether Dr. Simmons would have been granted a one year extension on his contract, the contracts being for one year at a time.

The unevenness of performance that Dr. Simmons relied upon as one of his reasons for leaving the surgical residency program is not dissimilar to the complaints of unevenness in performance at Waterbury Hospital. His other reason for leaving the surgical residency claimed was financial. The Court finds that reason not valid. No one leaves a surgical -- strike that. The Court finds it impossible to believe that Dr. Simmons would abandon the goals that he had for becoming a surgeon and perhaps a plastic surgeon for the temporary amelioration of his income for a period of time of two years which would have been what the time it would take to complete the surgical residency.

The leaving for uneven performance would suggest that this was a matter for further counseling between Dr. Simmons and Dr. Rheinhold or other individuals at the hospital. Dr. Rheinhold's testimony indicated and disclosed and the Court finds that he and other resources at St. Raphael's Hospital were available to discuss with Dr. Simmons and work with Dr. Simmons on those matters in which he felt and there was some feeling that his performance was uneven. The Court specifically notes however that that unevenness was not sufficient to put him in a position that he had not satisfactorily completed three years. In fact he had and it's an indication of his capacity and ability as a medical doctor.

Now, we have Dr. Simmons unemployed. The Court finds based upon the evidence before the Court that Dr. Simmons has an earning capacity of \$100,000 per year at the present time. Ms. Simmons has not sat on her hands since the time of the dissolution of the marriage. Her earnings were based upon her regular straight hours about \$37,000 gross and she showed a capacity in the year prior to the dissolution to earn with all of her overtime and shift differentials up to about \$67,000 per year. Ms. Simmons has relocated herself to the State of Texas through this cross-country program which provides a beneficial income and tax benefits but requires a person to be fluid in terms of where they will live and prevents them from the ability to long-term entrench themselves in a particular community and gain roots. Ms. Simmons is, at one point my notes say 57, the other point says 58 years old, the difference is probably as a matter of months, and the Court will accept the lower figure of 57 years old for the present hearing.

Social security allows Americans to retire at a reduced rate at age 62. The normal retirement,

people of Ms. Simmons age is age 65, some of us that are younger have 66 and 67 to look forward to as social security has determined what is the normal retirement age for full social security benefits. At the present time these are the only retirement benefits that Ms. Simmons will have. Indeed she's been married to Dr. Simmons for longer than 10 years and she will make therefore the choice whether her benefits or his benefits are the better benefit package for her.

Since the time of the dissolution of the marriage she has not been able to acquire any significant assets, having perhaps most significantly a few thousand dollars in the bank. She has turned over a car and bought another car the actual value of it is not terribly significant. Whether the loan exceeds the car by 1,000 or the car exceeds the loan by 1,000. In any case it's not a significant asset.

Her income through Cross Country varies greatly. Because of the tax advantage of being an itinerant nurse she is able to procure some of her income after tax dollars rather than at before tax dollars. The net effect of that from the exhibits before the Court is that Ms. Simmons currently when working to full capacity nets approximately 900 to \$950 per week with the benefit of her housing allowance, her travel allowance and her subsidy allowance.

The period of time since the dissolution of marriage has not resulted in either party obtaining any significant retirement benefits or as indicated previously from Ms. Simmons. Dr Simmons remains 20 years younger as he was at the time they were married and the time they were divorced than Ms. Simmons, so while she has eight years to come up with some capital assets to provide for her retirement he, to his great fortune has 28 years for that ultimate goal. The financial affidavit of Ms. Simmons shows various expenses which while in a position to have them be expenses less than at the time of the dissolution of the marriage by about \$100 there is probably, to use the term of the trade, fluff in there, somewhere in the nature of \$75 per week of non-essential expenses disclosed on Ms. Simmons' financial affidavit and perhaps 10 to \$15 per week of expenses which are over estimated. These expenses do not provide for an IRA. They do not provide for a 401k. They do not provide for the purchase of an annuity or any other retirement plan. They do not provide for a savings account. They do not provide fur a credit union account or any other such plan The sum effect

of two years and steady increase of income for Ms. Simmons upon her relocation is the ability to accrue approximately \$2,800 in savings.

Dr. Simmons income has essentially doubled and then some and his expenses have disclosed that he has been able to pay down debt in instances of \$2,000 -- \$2600 to the IRS, about \$2,000 to his grandmother and about \$2,000 in attorney's fees.

He has essentially shown a debt to the credit union of \$5,000. It shows no balance due but the Court presumes that it remains a \$5,000 debt although the weekly payments would indicate that it had been diminished to some extent.

Would the staff mind if I go over a few minutes? Anybody mind? All right. I'll owe it to you on the other end. Thank you.

The only significant accretion in debt is to an electronics store, Noboby Beats the WIZ in the amount of \$1,000. By the nature of the accretion and the debt the Court will consider it for a non-essential, but discretionary purchase. Eased upon the expenses disclosed on Dr. Simmons' financial affidavit and giving him full credit in no "fluff" and his income which the Court finds consistent with his earning capacity he still has a net ability to save although no such savings had been disclosed in any significant way in the amount of approximately \$200 per week.

The Court, having therefore considered the assets and the income of the parties finds that there has been a substantial change of circumstances in that Dr. Simmons' income has d doubled and then some Ms. Simmons' income has gone up significantly and the parties expenses have changed to a lesser extent, but once the Court finds a substantial change of circumstances on one instance, in this case income, and earning capacity, the Court need look no further.

Therefore, the Court considers at this time all of the statutory criteria for the award of alimony and whether or not there should be a modification to the \$1 per year alimony, having recited the facts as found by the Court and considered those criteria the Court orders Dr Simmons to pay to Ms. Simmons alimony in the amount of \$125 per week commencing one week from this Friday.

Further, the parties shall continue to provide W2's and 1099's to each other in February of each year as disclosed by the Memorandum of Decision. That alimony is modifiable as to amount. It shall

continue to sooner terminate upon the death of either party, the re-marriage of Ms. Simmons, and further upon the Court modifies the circumstances, upon the co-habitation of Ms. Simmons with a man held out as if they were married as defined by statute and case law.

The last consideration is the attorney's fee claim by Mr. Kolb for Ms. Simmons as claimed in his argument from both the prior proceeding that the Court's rendered a decision on and this modification motion. In regard to that claim the Court declines to order attorney's fees.

Those are the orders of the Court and the transcript will be placed in the file. Now, I did not issue an order in the Memorandum of Decision on the Supreme Court \$300 or the transcript fee. Counsel had indicated that there was an agreement that whatever was was and that nothing was required as an order of the Court in regard to that issue and I will leave it as such because whatever the Supreme Court order the Supreme Court ordered and the parties had already made their agreement in regard to the \$65 sitting fee, I believe it was.

Now, it is my practice at this time to ask Counsel whether they think I missed anything. Sometimes that happens, it's not an opportunity to disagree, simply whether you think I missed anything. On behalf of Dr. Simmons, Counsel, do you think I missed anything?

MR. DUPONT: In my notes, I did not pick up anything or hear anything that the Court overlooked.

THE COURT: Thank you. Attorney Kolb?

MR. KOLB: Only if -- I don't know whether or not the Court overlooked the issue of life insurance.

THE COURT: The Court didn't overlook it. The Court expressly and explicitly entered no orders on life insurance because the Court had no testimony or evidence before it on insurability of Dr. Simmons or premiums. There was a case that came out in the last five weeks on that, I forget the name of it, and it re-affirmed a prior case, I can't enter the order without the evidence.

MR. KOLB: With that I have nothing to -- I cannot say the Court forgot anything. Thank you,

your Honor.

THE COURT: Okay. Thank you. Good luck to both of you.

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VS.

ORA SIMMONS

SUPERIOR COURT

J.D. OF NEW HAVEN

AT NEW HAVEN

JULY 23, 1998

**CERTIFICATION**

I certify that the foregoing is a true and accurate transcript of the above entitled case heard and recorded at Superior Court, 235 Church Street, New Haven, Connecticut 06510 before the Honorable Lynda B. Munro, Judge.

Signed and dated this 12th day of August, 1998.