

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO.: 08-16475 FC 16

IN RE: THE MARRIAGE OF

CYNTHIA A. RODRIGUEZ,

Petitioner/Wife,

vs.

ALEXANDER E. RODRIGUEZ,

Respondent/Husband.

**HUSBAND'S ANSWER TO WIFE'S PETITION FOR DISSOLUTION OF
MARRIAGE AND HUSBAND'S *COUNTER-PETITION* FOR DISSOLUTION
OF MARRIAGE WITH MINOR CHILDREN**

Respondent/Husband, **ALEXANDER E. RODRIGUEZ** ("Husband"), through his undersigned counsel, hereby files his Answer to the Petition for Dissolution filed by Petitioner/Wife, **CYNTHIA A. RODRIGUEZ** ("Wife"), and hereby responds as follows:

1. Husband admits that this purports to be an action to dissolve the parties' marriage. However, Florida is a "no fault" state, meaning that a party may seek to dissolve a marriage without a showing of cause. Accordingly, the remaining allegations in Paragraph 1 are immaterial and impertinent, and should be stricken as such in accordance with Rule 12.140, Fla.R.Fam.L.P. (as governed by Rule 1.140(f), Fla.R.Civ.P. (2008)).¹

¹ Moreover, in accordance with Husband's previously stated desire to only litigate the issues relevant to the enforcement of the parties' Prenuptial Agreement - - and to not publicly address issues which are not relevant to the issues surrounding the enforcement of the Prenuptial Agreement - - Husband will send a letter to Wife's counsel and request that Wife voluntarily withdraw these immaterial allegations (and amend her Petition for Dissolution accordingly). In the absence of being able to resolve this issue out of the court record, Husband will file a formal Motion to Strike pursuant to Rule 1.140(f), Fla.R.Civ.P. (2008).

{LITIGATION\6605\0001\M0571333 v.1; 7/28/2008 07:43 PM}

2. Admitted.

3. Admitted.

4. Admitted.

5. Husband admits that the parties' marriage is "irretrievably broken." However, Florida is a "no fault" state, meaning that a party may seek to dissolve a marriage without a showing of cause. Accordingly, the remaining allegations in Paragraph 5 are immaterial and impertinent and should be stricken as such in accordance with Rule 12.140, Fla.R.Fam.L.P. (as governed by Rule 1.140(f), Fla.R.Civ.P. (2008)).²

6. Admitted.

7. Admitted.

8. Admitted. Husband admits and acknowledges that Wife is a loving and nurturing mother. Husband is confident that he and Wife will be able to continue to work with one another to co-parent their children together and that they will be able to agree upon a time-sharing schedule that takes into consideration the children's and Wife's schedules and the practical realities of Husband's professional life, without the need for Court intervention.

9. Husband has been paying, and will continue to pay for all of the minor children's actual, reasonable and bona fide expenses *pendente lite*. Husband admits that the parties' minor children will need to be supported once the parties are divorced and he acknowledges his financial ability to support his children. Consistent with the terms of the parties' Prenuptial Agreement, §61.30, Fla. Stat. (2008), and *Finley v. Scott*, 707 So.2d 1112 (Fla. 1998), Husband requests that the Court undertake an analysis of the actual, reasonable and bona fide needs and lifestyle of the parties' children in determining the amount of child support to be paid.

² See footnote 1.

10. Husband admits the allegations in Paragraph 10 to the extent consistent with terms and obligations imposed on him under the parties' Prenuptial Agreement.

11. Husband denies any duty to support Wife beyond those obligations specifically set out in the parties' Prenuptial Agreement and Florida law. Husband reaffirms the obligations imposed on him under the parties' Prenuptial Agreement which Wife executed with the assistance of counsel of her own choosing, freely and voluntarily, on her own volition and with full and complete financial disclosure of Husband's income, assets and liabilities.

12. Husband admits that the parties own a piece of real property in Coral Gables where the parties resided during their intact marriage as their "marital home." Husband reaffirms the obligations imposed on him under the parties' Prenuptial Agreement which Wife executed with the assistance of counsel of her own choosing, freely and voluntarily, on her own volition and with a full and complete financial disclosure of Husband's income, assets and liabilities.

13. Husband reaffirms the obligations imposed on him under the parties' Prenuptial Agreement which Wife executed with the assistance of counsel of her own choosing, freely and voluntarily, on her own volition and with a full and complete financial disclosure of Husband's income, assets and liabilities.

14. Denied. The parties' Prenuptial Agreement controls the distribution of any "jointly acquired property." Accordingly, with respect to "assets acquired during the marriage," the Prenuptial Agreement should be enforced pursuant to its terms.

15. Admitted to the extent consistent with the parties' Prenuptial Agreement.

16. Denied. The parties' Prenuptial Agreement controls the distribution of any assets acquired by the parties during their marriage. Accordingly, with respect to the "real and personal property now in Wife's possession," inclusive of the personal property contained in the marital

home, Husband requests that the Court enforce the Prenuptial Agreement that Wife signed with the assistance of counsel of her own choosing, freely and voluntarily, on her own volition and with a full and complete financial disclosure of Husband's income, assets and liabilities.

17. Husband admits and acknowledges his obligation to maintain life and health insurance for the benefit of the parties' minor children during these proceedings and upon dissolution. Husband's obligation to provide benefits to Wife, upon the dissolution of the parties' marriage, are governed by the parties' Prenuptial Agreement. Pursuant to the parties' Prenuptial Agreement, Wife will be receiving substantial assets which will afford her the ability to pay for her own health insurance upon dissolution.

18. Admitted to the extent consistent with the parties' Prenuptial Agreement.

19. As of this filing, Wife has not conceded (despite Husband's request that she do so) the validity of the parties' Prenuptial Agreement. The Prenuptial Agreement provides that the prevailing party, in any action over the validity of the Prenuptial Agreement, will be entitled to recover from the non-prevailing party, the reasonable attorney's fees and costs incurred in connection with such an action. Accordingly, with respect to Wife's requests for fees and costs for her "attorney's and other professionals," Husband denies Wife's entitlement pursuant to the terms of the Prenuptial Agreement.

20. Denied. Wife executed the Prenuptial Agreement with the assistance of counsel of her own choosing, freely and voluntarily, on her own volition and having the benefit of a full and complete financial disclosure of Husband's income, assets and liabilities. Accordingly, the Prenuptial Agreement must be enforced consistent with its terms.

WHEREFORE, Respondent/Husband, **ALEXANDER E. RODRIGUEZ**, requests that the Court dissolve the parties' marriage in accordance with the terms of the parties' Prenuptial Agreement, adjudicate all issues concerning the parties' minor children and provide such other relief as this Court deems just and proper.

**HUSBAND'S COUNTER-PETITION FOR DISSOLUTION
OF MARRIAGE WITH MINOR CHILDREN**

Husband, **ALEXANDER E. RODRIGUEZ** ("Husband"), through his undersigned counsel, hereby files his *Counter-Petition for Dissolution of Marriage with Minor Children* against Wife, **CYNTHIA A. RODRIGUEZ** ("Wife"), and alleges:

1. **RESIDENCE OF HUSBAND:** Husband has been a resident of Florida for more than six (6) months prior to the filing of this Petition.
2. **MARRIAGE OF THE PARTIES:** Husband and Wife were married to each other on November 2, 2002, in Dallas, Texas.
3. **MILITARY AFFIDAVIT:** Both Husband and Wife are over the age of eighteen (18) and neither is, nor has been within a period of thirty (30) days prior to the filing of this Petition, a person in the military service of the United States of America as defined by the Amended Soldiers' and Sailors' Civil Relief Act of 1940.
4. **MARRIAGE IRRETRIEVABLY BROKEN:** The marriage between the parties is irretrievably broken.
5. **MINOR CHILDREN:** The parties have two (2) minor children born of the marriage, to wit: **NATASHA A. RODRIGUEZ**, born on November 18, 2004 and **ELLA A. RODRIGUEZ**, born on April 21, 2008 (the "Minor Children"). (A completed Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit will be filed with the Court once Husband is able to return the original verification page.)

6. **SHARED PARENTAL RESPONSIBILITY:** It is in the best interest of the Minor Children that the Court enter an order providing that the parties share parental responsibility over the decisions affecting the Minor Children, including, but not limited to, their wealth, health, education and religious upbringing.

7. **TIME-SHARING:** Husband is a professional baseball player. In that employ, he is required to travel extensively from spring training in March through the end of the baseball season in September (and more often than not through the baseball playoffs in October). Given the realities of Husband's professional life, Husband request that both parties are designated as "co-residential" parents, realizing that the children are likely to spend more time with Wife given the realities of Husband's professional life. Husband is confident that he and Wife will continue to work with one another to co-parent their children together and that they will be able to coordinate a mutually acceptable time-sharing schedule that takes into consideration the children's and Wife's schedules and the practical realities of Husband's professional life without further Court intervention.

8. **CHILD SUPPORT:** Husband acknowledges his obligation to support his children in accordance with §61.30, Fla. Stat. (2008). Husband has been paying, and will continue to pay, for all of the Minor Children's expenses *pendente lite*. Consistent with the terms of the parties' Prenuptial Agreement, §61.30, Fla. Stat. (2008), and *Finley v. Scott*, 707 So.2d 1112 (Fla. 1998), Husband requests that the Court undertake an analysis of the actual, reasonable and bona fide needs and lifestyle of the parties' children in determining the amount of child support to be paid.

9. **DISTRIBUTION OF "SEPARATE" AND "JOINTLY ACQUIRED" PROPERTY:** Husband requests that the Court first adjudicate the validity of the parties' Prenuptial Agreement and then distribute the "separate" and "jointly acquired" property in

accordance with the terms of the Prenuptial Agreement reached between the parties on October 3, 2002.

10. **DISTRIBUTION OF “JOINT”/“MARITAL” DEBTS:** Husband requests that the Court distribute any “joint” or “marital” debts (as defined in the Agreement) consistent with the terms of the Prenuptial Agreement reached between the parties on October 3, 2002.

11. **ATTORNEY’S FEES AND COSTS:** As of this filing, Wife has not conceded to the enforcement or validity of the Prenuptial Agreement (despite several requests by Husband’s counsel that she do so). Because Wife is challenging the validity of the Agreement, Husband is entitled to recover from Wife the reasonable attorney’s fees and costs he incurs defending against Wife’s challenge to invalidate the Prenuptial Agreement, should he prevail in such an action.

WHEREFORE, Husband, **ALEXANDER E. RODRIGUEZ**, request that the Court:

- (a) take jurisdiction over this cause, the parties, their children and the subject matter;
- (b) enter a Judgment dissolving the marriage of the parties;
- (c) adjudicate all issues concerning the parties’ children, including, but not limited to, child support, “shared parental responsibility” and time-sharing (if necessary);
- (d) ratify and enforce the parties’ Prenuptial Agreement pursuant to its terms; and,
- (e) provide such other and further relief as this Court deems just and proper.

KLUGER, PERETZ, KAPLAN & BERLIN, P.L.

Counsel for Respondent/Husband

Miami Center, 17th Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Phone No. (305) 379-9000
Fax No. (305) 379-3428

BY: _____


ALAN J. KLUGER

Florida Bar No.: 200379

BY: _____


JASON R. MARKS

Florida Bar No.: 144584

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was furnished via facsimile and U.S. Mail on this 30th day of July, upon **Maurice Jay Kutner**, Kutner and Associates, 11th Floor-Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130; **Earle S. Lilly, Esq.**, Lilly Law Office, 4544 Post Oak Place, Suite 380, Houston, TX 77027; and **Cynthia L. Greene, Esq.**, Greene Smith & Associates, P.A., 7340 S.W. 61st Court, Miami, Florida 33143.

BY: _____


JASON R. MARKS