

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLIFFORD L. BAIR,
Plaintiff

vs.

JESSICA A. BAIR,
Defendant

:
: **No. 05-20358**
:
: **CIVIL ACTION – LAW**
: **IN DIVORCE**
: **Petition to Enforce Order/Petition**
: **for Contempt & Petition for**
: **Special Relief**

OPINION AND ORDER

This matter came before the Court on Plaintiff Clifford L. Bair’s Petition to Enforce Order/Petition for Contempt and Petition for Special Relief. After evidentiary hearing held on May 8, 2007 and after review of pertinent orders and documents, the Court notes that the basic issue raised by Mr. Bair is that he has not received some of the personal property as required by the Master’s Report and orders of the Court, and that Ms. Bair should either provide the property to him or she should be assessed a monetary payment to him for property not provided.

Mr. Bair acknowledges he received much of the property from Ms. Bair claimed in his petition, but he claims certain parts or pieces are missing from this property. Mr. Bair claims this failure to receive some of the property unfairly impacts the equitable distribution scheme in this case.

The Court notes in reviewing the file that the Masters and Court have been struggling, along with the parties, in the division of personal property.

The Master indicated she felt the personal property issues to be “minimal” and she accepted the appraisal of the property of Roan, Inc. Master’s report, p. 7. She notes she will consider the division of the property to be on an equal basis and she gives a value to the

property for equitable distribution purposes as zero. Master's report, p. 10. The Master notes the parties had spent approximately three (3) hours going over what has been called the "freebie" list. Ms. Bair was to receive the checked items and the handwritten items on the freebee list. Mr. Bair was to receive the unchecked items.

Apparently, problems occurred in regard to the marital property after the Master's Report equitably divided the parties property and Judge Richard Gray issued a further order dated February 7, 2007, after a conference with the parties, where he found that Mr. Bair should receive items checked on a property list attached to Judge Gray's order, along with any other personal property awarded in the Master's report dated October 26, 2006. Judge Gray also ordered that Mr. Bair be able to retrieve all the items from the marital residence on or about February 24, 2007.

It is this Court's understanding that the listed personal property had been stored and has been located at the former marital residence for approximately three (3) years. Ms. Bair now lives at this residence.

Mr. Bair did go to this residence on February 24, 2007 and he did pick up much of the property, but he complains some of the property was not there so he did not receive it and some of the property that he picked up was missing certain parts or pieces.

Plaintiff Exhibit 1 contains sixteen (16) items, which Mr. Bair contends he did not receive or he received with parts missing. Thus, he claims he should be reimbursed for these items by Ms. Bair.

The Court does not find Mr. Bair has proven that Ms. Bair wrongfully hid or sold any of these items. While Mr. Bair speculates this may have occurred, he has not proven this to be the case.

The evidence shows that these items have been stored or located at the marital residence for approximately three (3) years. It is not surprising that parts or pieces of certain property might now be missing. While unfortunate, it is not unexpected for this length of time. The Court will address each item on Mr. Bair's list, Plaintiff Exhibit 1.

1. Fence for 10" table saw. Mr. Bair did pick up the table saw on February 24. The fence is missing. The Court believes the fence has simply been misplaced over the years. Thus, the Court cannot attribute fault for this to either party. Also, the Court notes the saw is 6-7 years old.

2. Dremal rotary tool, circular saw cordless drill. Mr. Bair did obtain miscellaneous power tools on February 24. The Court sees no basis for relief if a particular tool was missing.

3. Miscellaneous shop manuals. Ms. Bair still has the manuals. She claims Mr. Bair did not pick them up on February 24. Ms. Bair shall promptly (within fourteen 14 days of receipt of this order) provide the manuals to Mr. Bair.

4. Two missing fly fishing rods. Mr. Bair obtained some of his fishing rods. Two were missing. The Court cannot determine what happened to these two (2) rods over the three-year period.

5. Two (2) tackle boxes. Mr. Bair obtained the tackle boxes. He complains some of the things he expected to be in the boxes were not there. As these boxes were stored for an approximately three-year period, the Court cannot attribute fault.

6. Stihl 029 chain saw. Ms. Bair testified this item has been there. She did not know what happened to it. The Court cannot say the evidence proves she hid or sold this item.

7. Four drawer steel file cabinet. Ms. Bair testified she has this item. She shall promptly provide it to Mr. Bair within fourteen (14) days of receipt of this Order.

8. Miscellaneous lawn and garden tools. Mr. Bair acknowledges he received some of the tools. He complains he did not find all the tools he wanted. The Court can see no basis to award him relief as to this item number.

9. Accessories for Stihl weed trimmer. Mr. Bair obtained the weed trimmer on February 24. The Court cannot assess Ms. Bair because some accessories were missing.

10. Log Splitter. The Court has the most concern about this item. The Roan value is listed at \$850.00. Ms. Bair acknowledged she had taken this item to a repair shop several years ago and never paid the repairs or picked up the item. Her behavior in this regard has not been responsible. Ms. Bair shall pay the repair bill and arrange for the return of this item within thirty (30) days. If she locates the item and pays the bill she should contact Mr. Bair so he may arrange to pick up the item himself. If she cannot locate this item and the item is effectively lost, the Court will assess her to pay to Mr. Bair one half of the Roan value or 425.00. This sum shall be paid to Mr. Bair within a 3-month period and may be paid in three (3) monthly installments.

11. Thirty foot chain. Mr. Bair did not find this item. Ms. Bair says it was there. Ms. Bair shall provide this item to Mr. Bair within fourteen (14) days. If she does not return the item, she shall pay the assessed value of \$20.00 to Mr. Bair.

12. Airco Torch Set. Mr. Bair obtained this item, but claims pieces are missing. In light of the time this item was stored, the Court cannot find this was the fault of Ms. Bair.

13. Craftsman Table/Bench Lathe. This item is missing parts or accessories. The Court does not feel we can blame Ms. Bair for this.

14. A wooden chifferobe, missing drawers. As the Court understands the testimony Ms. Bair claims that Mr. Bair could have taken the drawer, but he did not and she may not be able to find them at this time. Ms. Bair should do a diligent search for the drawers and return them to Mr. Bair. If she cannot find them, the Court will assess her to pay Mr. Bair \$25.00.

15. Keys for ATV. Ms. Bair testified that the keys have been missing for a long time and that Mr. Bair had to hot wire the vehicle to use it. She also claims Mr. Bair had the keys when he moved out. It appears to the Court that the keys have been lost for a significant period of time so the Court will take no further action on this claim.

16. Keys for gun cabinet. Ms. Bair testified that the keys have been missing for some time and Mr. Bair was aware of this. She also noted she has no reason to use or access the gun cabinet. The Court will take no further action on this claim.

In light of these findings the follow is entered.

ORDER

AND NOW, this 17th day of May 2007, after hearing on the Petitions of Clifford Bair to Enforce Order (contempt) and Special Relief, it is **ORDERED and**

DIRECTED as follows:

Ms. Bair shall promptly return the following property to Mr. Bair within fourteen (14) days of receipt of this Order.

- The shop manuals and tool books
- Four drawer steel file cabinet
- Thirty feet chain. If this item is not found by Ms Bair she shall pay Mr. Bair

\$20.00, the assessed value of the chain.

- Missing drawers for the wooden chifferobe. If this item is not found by Ms.

Bair she shall pay Mr. Bair \$25.00, assessed value of the item.

Ms. Bair shall pay off the repair bill for the log splitter and make arrangements

to have Mr. Bair pick up the log splitter within thirty (30) days. If she cannot now locate the log splitter, she shall pay to Mr. Bair one-half of the assessed value of the log splitter, or \$425.00. This sum may be paid within a 3-month time period from the date of this Order and may be paid in three (3) monthly installments.

The Court will **DENY** claims for attorney fees as Mr. Bair was able to pick up much of his property of February 24, 2007 as ordered by Judge Richard Gray.

Likewise, the facts in this apparently contentious situation between these parties do not warrant a finding of contempt.

By The Court,

Kenneth D. Brown,
President Judge

cc: Work file
Gary Weber, Esquire (Lycoming Reporter)
Jill Spayer, Esquire
Paul Petcavage, Esquire
Family Court