

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LINDA SUSAN DUNLAP, Plaintiff	:	NO. 04-21,314
	:	
vs.	:	
	:	
THOMAS GENE DUNLAP, Defendant	:	CIVIL ACTION LAW - DIVORCE
	:	Request for Attorney's Fees

OPINION AND ORDER

AND NOW, this 9<sup>th</sup> day of July 2010, a hearing was conducted on Plaintiff's Petition for Enforcement of the Agreement filed November 16, 2009, and the request for attorney's fees contained in Defendant's Reply and New Matter filed November 23, 2009. It is noted that at the time of the hearing neither the Plaintiff nor her counsel attended the hearing, but the record in the matter supports a finding that counsel was notified of the hearing.

Plaintiff's Petition for Enforcement is hereby dismissed as moot since a comprehensive agreement was executed by all parties in December 2009. Defendant's Petition for Attorney Fees is hereby granted. In support of this decision, the Court finds as follows:

1. After substantial testimony in the equitable distribution hearing, the parties reached an agreement which was memorialized on the record in front of the undersigned on July 31, 2009, with a provision that a comprehensive written agreement would be drafted by Plaintiff, circulated, and signed by all parties.
2. On August 12, 2009, Plaintiff's counsel forwarded to Defendant a drafted agreement.
3. On September 9, 2009, Defendant counsel sent Plaintiff's counsel the draft with changes requested by Defendant.
4. On September 18, 2009 Plaintiff's counsel sent a revised agreement to Defendant's counsel.

5. On September 25, 2009 Defendant's counsel wrote to Plaintiff's counsel indicating that the "revised agreement" did not contain the requested changes.
6. On September 28, 2009, October 22, 2009, October 26, 2009, November 2, 2009, and November 9, 2009, letters and responses to letters all concerning language to be included in the agreement were exchanged.
7. Finally, a telephone conversation took place on November 13, 2009 between the paralegals from the respective law firms attempting to resolve language in paragraph #10 of the agreement which was the subject of the dispute. Apparently some progress was made as a result of this telephone conversation.
8. However, on November 16, 2009, Plaintiff's counsel filed the Petition for the Enforcement of the Agreement that is the subject of these proceedings.
9. On November 17, 2009, Defendant's counsel contacted Plaintiff's counsel advising her of the error contained in paragraph #10 and requested Plaintiff's counsel to withdraw the Petition for Enforcement. Plaintiff's counsel apparently acknowledged the error, corrected it and was advised of its acceptability by Defendant's counsel.
10. The Petition for Enforcement, however, was never withdrawn and an answer and new matter was filed by Defendant's counsel.
11. The Court, not having been advised of any resolution, on November 20, 2009, scheduled an argument and factual hearing on the Petition for Enforcement and Defendant's new matter involving request for counsel fees. The hearing was scheduled for December 22, 2009 at 2:30 p.m. in Courtroom #2 in the Lycoming County Courthouse.
12. Upon notification of this date, Defendant's counsel requested a continuance of the December 22, 2009 hearing date. That request was granted and the matter was rescheduled for February 4, 2010 at 9:00 a.m. in Courtroom #2.
13. As a result of the discussions and resolution reached in November 2009, the final written settlement agreement was fully executed on or about December 14, 2009.

14. At no time prior to the hearing was any correspondence, message or phone call received notifying the Court that the matter was resolved.
15. Shortly before the hearing on February 4, 2010, Defendant's counsel placed a call to the Court inquiring as to whether the hearing was still scheduled. The Court replied in the affirmative.
16. At the time of the hearing, Defendant's counsel arrived from Harrisburg and upon explanation of the situation; the Court dismissed the Petition for Enforcement as moot in view of the presentation of the final written property settlement agreement but proceeded with Defendant's counsel Petition for Attorneys Fees.

The Court will acknowledged that this action has been a long and divisive divorce filling five expanded filed folders and consuming nearly an entire shelf in the Prothonotary's Office. The Court has further observed that the nature of these proceedings has caused a seriously deteriorated relationship between the parties' counsel. Courtesy in this matter was nearly non-existent.

Nonetheless, the Court finds Plaintiff's counsel had an affirmative duty to either formally discontinue the Petition for Enforcement or to at least advise Defendant's counsel that she did not intend to proceed with the hearing. While it is true, that Defendant's counsel's call to the Court might have better been directed to Plaintiff's counsel as to the status of the hearing, it does not relieve counsel of her duty to timely address this kind of matter. With this in mind, the Court finds Plaintiff's petition was both unnecessary and ill-advised. It is hard for the Court to accept that counsel's failure to withdraw the petition was nearly an oversight and therefore, it must assess an element of bad faith.

The Court has considered the statement by Defendant and found that many of the charges warrant reduction. For example, the charge for the request of a continuance should not be included; as such the continuance was for Defendant's benefit. After consideration of the various equities contained in this matter, the Court believes that at a minimum, Defendant's counsel should be reimbursed for her needless trip to Lycoming County for the enforcement issue.

ORDER

Accordingly, it is hereby Ordered and Directed that Plaintiff's counsel pay to Defendant's counsel the amount of \$500.00 within thirty (30) days of the date of this Opinion and Order.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Yaw, Esq.  
Paige Macdonald-Matthes, Esq.  
2080 Linglestown Road, Harrisburg PA 17110  
Gary Weber, Esq.