

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

DZ,		:	NO. 09-20,457
	Plaintiff	:	
		:	
vs.		:	
		:	
CZ,		:	
	Defendant	:	IN DIVORCE

OPINION AND ORDER

AND NOW, this 24th day of July, 2012, at a time set for a Hearing on Husband's Petition for Contempt filed December 15, 2011, the Court notes that testimony was taken in this matter on April 2, 2012, and July 24, 2012. During both hearings, Husband was represented by his counsel, Richard Callahan, Esquire, and Wife was represented by her counsel, Meghan E. Young, Esquire. The issue raised in Husband's Petition for Contempt revolves around the parties' marital residence located at 75 Spring Lake Crest, Watsonstown, Delaware Township, Northumberland County, Pennsylvania. On November 3, 2009, the parties entered into a Stipulation as a result of a Petition for Special Relief filed by Husband which granted Wife exclusive possession of the residence and provided for Wife to pay various bills associated with the residence until such time as she could either refinance the mortgage or she vacated the residence. The Stipulation also provided for the sale of the residence in the event that Wife was unable to refinance.

Wife vacated the residence on or about May 5, 2010. Wife advised Husband that she would be vacating the residence. After Wife vacated the residence, Husband returned

to the residence and immediately began making arrangements so that the residence could be listed for sale and sold. There was a considerable amount of garbage left at the residence and items which needed to be repaired before the residence could be sold. Husband spent approximately one month cleaning the residence and having repairs made so that the property could be listed for sale. Ultimately, the property was sold in July, 2011. The property was sold for approximately \$24,000 less than the parties owed on both the mortgage and second mortgage. The sale was accomplished through a short sale to the mortgage company. Neither Husband nor Wife have any knowledge as to whether or not the mortgage company will be seeking repayment of the approximate \$24,000 which was written off by the mortgage company or if either Husband or Wife will be required to claim the forgiven sums as income.

Husband received a total of \$2,065.00 from the sale of the residence.

Husband requests that Wife be held in contempt of Court for her failure to comply with the Court Order of November 3, 2009, and further requests that Wife be ordered to pay reasonable costs in bringing the matter, including reasonable attorney's fees as well as any other relief the Court deems just. Specifically, Husband is requesting a total payment from Wife in the amount of \$13,060.02 which includes the arrearages owed on the mortgage and second mortgage at the time Wife vacated the residence, the 2009 and a portion of the 2010 taxes, insurances which were owed on the property, utilities which were owed on the property, the clean-up costs Husband incurred, as well as the repair costs that Husband incurred. Wife alleges that she is not obligated to pay Husband anything as Husband was not required to make the payments on the mortgage or second

mortgage as the mortgage company accepted a short sale of the residence. Wife further argues that she is not responsible for any of the clean-up costs or the repairs to the residence as she alleges that the damages were in place prior to Husband leaving the residence, or in the alternative, that the repairs were not actually made to the residence before the new seller purchased the residence.

The Court finds that Wife is in contempt for her failure to comply with the Court Order of November 3, 2009, in that she failed to pay the mortgage, taxes and hazard insurance, including any past due amounts that were due and owing on the marital residence. The Court, however, denies Husband's request that he receive from Wife the sum of \$6,062.33 for the delinquent amount owed on the mortgage at the time Wife vacated the residence and \$527.78 which was the delinquent amount owed on the second mortgage at the time Wife vacated the residence. It is clear from the testimony presented to the Court that Husband did not pay these sums towards the mortgage and second mortgage on Wife's behalf, but rather these are the sums that were due and owing by Wife at the time she vacated. In light of the fact that the mortgage company accepted a short sale and allowed the property to be sold without the full payment of the mortgage being satisfied, the Court will not order Wife to pay these sums to Husband at this time. If Wife is obligated to pay these sums, it would be payment owed to the mortgage company, not Husband. At this point in time, it is unclear as to whether or not the mortgage company will be seeking reimbursement from Husband and/or Wife for the amount of the mortgage that was not paid at the time of the sale or if possibly Husband and/or Wife will have to pay taxes on the amount which was forgiven by the mortgage

company. If, at any point in the future, the mortgage company seeks contribution from either Husband and/or Wife, or in the alternative, the IRS seeks payment of income tax as a result of the mortgage forgiveness against either Husband and/or Wife, either party may file a further petition with the Court to request that the Court enter an order concerning the distribution of that debt between the parties. Neither party is prejudiced from making any arguments as to what portion of any forgiven balance of the mortgage is owed by either party or any credit which may be owed to the parties for payments made.

Husband also requests Wife to pay to him the sum of \$1,466.79 for 2009 property taxes and \$609.86 towards the prorated portion of the 2010 property taxes. It is clear from the testimony presented that neither party paid the 2009 taxes, but rather they were made by the mortgage company. The amount was thereafter considered a portion of the amount owed on the parties' mortgage as a negative escrow balance. In regard to the 2010 taxes, Husband failed to provide any proof to the Court that he paid these taxes. The Court therefore denies Husband's request for contribution to the 2009 and 2010 property taxes.

Husband requests that Wife reimburse him the sum of \$104.23 towards homeowner's insurance. Husband's Exhibit 5 indicates that at the time Wife vacated the residence, there was a past-due amount of \$32.41 for the homeowner's insurance. As the Court Order dated November 3, 2009, requires Wife to be responsible for the insurance during the period of time that she occupied the marital residence, Wife shall reimburse Husband the sum of \$32.41.

Husband next requested reimbursement for utilities which he alleged were due and owing at the time Wife vacated the residence. Husband failed to provide any utility bills or receipts for payment showing that he paid any of the outstanding utility balances owed by Wife at the time she vacated the residence. Husband's request for reimbursement for the utilities is therefore denied.

Lastly, Husband requests compensation for the clean-up and repairs done to the marital residence in order to prepare it to be sold. Husband provided an estimate totaling \$1,905.77 for repairs to the residence, a receipt for trash removal for \$138.12, and various receipts from Lowe's, K-Mart and other stores showing supplies, etc., totaling \$482.63. The Court is convinced from the testimony presented that Husband did a considerable amount of work to make the residence in a condition presentable for listing on the market for sale. Additionally, it is clear and not disputed by Wife that Wife allowed garbage to remain in the residence. Though Wife testified that she did intend to come back to the residence to dispose of the trash, it was ultimately Husband who was responsible for removing the trash and cleaning up the residence. In addition to the costs Husband incurred to make sure that the home was in a presentable condition, Husband also spent a considerable amount of time at the residence cleaning it up and bringing it to a proper condition for sale. While the Court will not compensate Husband for his time, Husband shall be reimbursed for the monies he incurred to repair and get the home in a presentable condition for sale.

Based upon the foregoing, Wife shall pay to Husband the total sum of \$2,558.93 for the costs he incurred in relation to the marital residence as stated above. This amount,

however, is reduced by the amount of proceeds Husband received from the sale of the residence which totaled \$2,065.00. Wife shall therefore pay to Husband the balance of \$493.93 within thirty days of today's date. Additionally, Wife shall pay to Husband the sum of \$500.00 for attorney's fees that he incurred in having to bring this matter before the Court. Therefore, Wife shall make a total payment to Husband in the amount of \$993.93 within thirty days of today's date.

By the Court,

Joy Reynolds McCoy, Judge