

FILED
Court of Appeals
Division II
State of Washington
2/9/2018 10:52 AM

The Washington State Court of Appeals Division II

Marilyn Louise McCormick

Appellant

v.

Jack D Miller Pro-SE

Respondent

RESPONDENTS BRIEF

By:

Jack D. Miller

18812 111th St E

Bonney Lake, WA 98391

Jackdmiller84@outlook.com

John S. Stocks

Van Siclen, Stocks & Firkins

721 45th St Ne

Auburn, WA 98002

jstocks@vansiclen.com

TABLE OF CONTENTS

| | | |
|------|----------------------------|---|
| I. | INTRODUCTION..... | 1 |
| II. | ASSIGNMENT OF ERROR..... | 1 |
| III. | STATEMENT OF THE CASE..... | 2 |
| IV. | ARGUMENT..... | 4 |
| V. | CONCLUSION..... | 4 |

I. INTRODUCTION

The Superior Court of Washington has explained in both the Motion for Revision and Reconsideration brought by the Appellant, that award of attorney's fees is not mandatory. Judge Schwartz heard all arguments at the June 02, 2017 hearing for Revision, which not only addressed the Motion of Contempt but also a Motion of Termination/Modification of Spousal Support. After which using his discretion denied attorney's fees.

The Superior Court of Washington has explained in both the Motion for Revision and Reconsideration on June 30, 2017, that attorney's fees is not mandatory. Both Verbatim Transcripts have been made available by the Appellants statement of Arrangements.

After careful consideration of both motions, Judge Schwartz in his discretion denied attorney's fees and upheld a Court Review with Commissioner Johnson.

Attorney's fees are not mandatory and this Court should not reverse the discretionary decision of the Washington State Superior Court and deny the Appellants request for attorney fees.

II. ASSIGNMENT OF ERROR

The Superior Court did not error in its denying of attorney fees. After reviewing all facts in both motions for Review and Reconsideration, the Superior Court properly used its discretion to deny attorney fees.

III. STATEMENT OF THE CASE

In the June 02, 2017 hearing for revision the appellant brought two main issues before the Court. Contempt proceedings from the respondent and the modification procedural issues initiated by the Petitioner. (RP June 02, 2017 pg4 line 4 – 10). The procedural issue brought by the Respondent and her attorney Mr. Stocks, was that Mr. Miller had filed a Motion instead of a Petition and Summons that subsequently the Motion for Review on July 18, 2017 should be cancelled. (RP June 02, 2017 pg 4 line 12 – pg 8 line 9) The response by Mr. Miller (RP June 02, 2017 pg 14 line 14 – pg16 line 2) argued against any procedural wrong doings

The matter of procedural wrong doings was denied By Judge Schwartz and ruled that a Motion not a Petition can be brought for the matter of Modifying Spousal Support. (RP June 02,2017 pg 29 line 11 – pg 30 line 5) and upheld the Review Hearing set by Commissioner Johnson for July 18, 2017.

I'm sure Mr. Stocks spent time in preparing and presenting an argument in Court that was denied and should not be entitled to attorney's fees.

On October 16th, 2016 I was terminated from my position as General Manager of Rairdon Honda of Sumner. It was a position I held with the corporation since July of 2010. Upon my termination I lost a substantial \$20,000 a month income that I was not able to duplicate. That is a point acknowledged by Commissioner Johnson and Judge Schwartz at the June 02, 2017 hearing. (RP June 2, 2017 pg30 line 17- pg31 line 8.)

In January of 2017 I was still unable to find comparable employment, with comparable income that would provide me the means to pay \$2500.00 per month in spousal maintenance and meet my financial obligations in both personal and court ordered debit.

On March 1st, 2017 I was forced to file a Motion to Terminate/Modify Spousal Support Under RCW 26.09.170 (1) b to be effective date of filing. At the April 20th hearing I informed Commissioner Johnson that I was expecting a Federal Tax Return and would be able to pay the past due January and February 2017 \$5,000 spousal maintenance before the April 28, 2017 continuance hearing. (CP 282) Which was done and stated in the Appellants Brief (pg 2) . Commissioner Johnson also reserved the March and April 2017 monthly maintenance payments until the May 2nd Hearing (CP 282) I had authority from the court to reserve payments.

At that contempt hearing Commissioner Johnson acknowledged the January and February spousal maintenance had been paid in full extra amount totaling \$5,300, as stated in the appellants brief (pg 2). Commissioner Johnson also found that Mr. Miller was not in contempt and that failure to pay was not intentional however Commissioner Johnson left the explanation section of the order blank. (CP 333-39, 379-91) and ordered a review hearing for Modification of Maintenance on July 18, 2017

Following this contempt hearing Ms. McCormick retained the services of Mr. John Stocks to file a revision hearing to Superior Court which was held on June 02, 2017. As stated in the Appellants Brief.

I believe that \$5,715.00 is unreasonable in this case and Judge Schwartz believes they are not warranted. (RP June 02, 2017 pg 34 line 15- pg39.)

The Appellant by way of her Attorney Mr. John Stocks filed for a Motion of Reconsideration with Judge Schwartz on June 12, 2017 in its decision to deny attorney's fees. (CP 421-47) Judge Schwartz again denied attorney's fees citing that the Court has discretion and he will use it to deny attorney's fees. (RP June 30, 2017 pg 6 line 7 – pg 7)

Judge Schwartz used his discretion on Attorney Fee's I also believe that \$5,715.00 in attorney fees is outrageous if not predatory.

IV. Argument

Attorney fees are not mandatory and the Washington State Superior Court used its discretion to not award attorney's fees. The discretion of the Superior Court should be upheld by this Appellant Court and deny attorney's fees.

The amount of attorney's fees sought is unreasonable and should be denied.

V. CONCLUSION

The discretion of Washington State Superior Court denying attorney fees does not violate any legal Authority of Washington State. The Superior Court does have discretion in awarding "reasonable" attorney fees under RCW. 26.18.160 however, not mandatory.

Superior Court Judge Schwartz agreed that the attorneys were in fact unreasonable and ruled denying attorney's fees.

Dated this 9 day of February, 2019



Jack D Miller

Certificate of Service

I certify that on February 09, 2018 I caused a copy of the foregoing documents to be served on the following party of record via email

John Stocks

721 45th ST NE

Auburn, WA 98002

johnstocks@vansiclen.com

JACK MILLER - FILING PRO SE

February 09, 2018 - 10:52 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50907-5
Appellate Court Case Title: In re the Marriage of: Marilyn L. Miller, Appellant v. Jack Miller, Respondent
Superior Court Case Number: 14-3-00382-9

The following documents have been uploaded:

- 509075_Briefs_20180209105206D2882659_1724.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Respondent Brief Feb.pdf

A copy of the uploaded files will be sent to:

- jstocks@vansiclen.com

Comments:

Sender Name: jack Miller - Email: jackdmiller84@outlook.com
Address:
18812 111th st e
BONNEY LAKE, WA, 98391
Phone: (253) 261-2804

Note: The Filing Id is 20180209105206D2882659