

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FAMILY DIVISION
CASE NO. 50 1971 DR 004137 FD

IN RE: THE FORMER MARRIAGE OF:
SHARON ANN CABANA

n/k/a SHARON ANN MAYO,
Petitioner/Former Wife,

and

WILLIAM A. CABANA,
Respondent/Former Husband.

REPORT ON CONTEMPT HEARING

DATES OF ORDERS TO BE ENFORCED: July 28, 1972, January 24, 2006 and January 6, 2006

DATE OF HEARING: October 1, 2008

OBLIGATION: Payments of \$250.00 per month to past due alimony arrears

FORMER WIFE

PRESENT: Yes

ADDRESS: 220 Almeria Road, West Palm Beach, FL 33405

ATTORNEY: None

FORMER HUSBAND

PRESENT: Yes

ADDRESS: 1050 Capri Isles Boulevard, #F105, Venice, FL 34292

ATTORNEY: None

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Former Wife filed a Motion for Civil Contempt/Enforcement (DE 419) against the Former Husband on July 16, 2008, alleging the Former Husband has not made any of the \$250.00 per month payments to the accrued alimony arrears since July, 2006.

Both parties appeared for the hearing at which the Former Husband argued the Court should no longer enforce these arrears as it amounts to "indentured servitude" for him and he ought to be afforded the opportunity to have "closure" in his life as to this obligation rather than the continued anxiety this case presents for him. Among other arguments, the Former Husband further argued the matter is an invasion of his right to privacy and in violation of his constitutional rights among other arguments. In deference to the Former Husband's arguments and in an attempt to understand the history of the situation, the Magistrate has thoroughly reviewed the entire Court file in this matter.

2. A review of the Court file is revealing and insightful to the Former Husband's present argument. This case was initially filed by the Former Husband as a divorce case. However, in the February 5, 1971 Final Judgment, the Former Husband's request for a divorce was denied, but the Former Wife's prayer for separate maintenance was granted since the Court found the equities of the case lied with the Former Wife. The Court further found at that time that the Former Husband was unemployed, but "quite employable", and required him to pay 15% of his income as child support and 15% of his income as alimony. In an April 15, 1971 Order, the Court further found that the Former Husband's conduct was "indicative of an intention on the Former Husband's part to sweat the Former Wife in an effort to get a divorce" referring to the Former Husband's lack of payment.

A Contempt Order then entered on May 27, 1971 in which the Court found the Former Husband refused to provide income information and refused to pay 30% of his income to support the Former Wife and the four then-minor children of the parties. Again in a February 22, 1972 Order, the Former Husband was found in contempt for his wilful failure to pay child support and alimony and the Court found that "throughout this litigation the Former Husband has to a great extent ignored the Court's Order, making token payments to his wife and children, all the while living with another woman". The Court once again denied the Former Husband's request for a divorce while he was ignoring the Court Orders and stated his Petition for Divorce would be stayed until he purged the contempt by fully complying with the Court Order.

In an Order on Motion to Purge Contempt (DE 11) entered on February 28, 1972, the Court stated the Former Husband has continued to remain unemployed since October, 1971, has made no *bona fide* effort to obtain employment, but rather has "long since decided that he was going to pay for the benefit of his wife and children the absolute minimum possible". The Court pointed out that the Former Husband was an educated, competent individual in good health and stated "there is no doubt in the Court's mind that had he any desire to adequately provide for his family, he could do so".

3. A Final Judgment Dissolving Marriage (DE 16) was entered by the Court on July 28, 1972, requiring the Former Husband to pay \$25.00 per week alimony and \$50.00 per week child support. The temporary arrears at that time totalled \$2,948.45. It is interesting to note that the Former Husband's alimony obligation of \$25.00 a week was never modified and remained at that meager amount until it was ultimately terminated. At the time the children had all reached majority, the Former Husband owed alimony and child support arrears of \$40,703.45, which amount was reduced to judgment.

The Former Husband spent the ensuing years attempting to terminate and avoid his continuing alimony obligation. A Contempt Order was entered in January, 1991 (DE 27). An Order of Commitment (DE 40) was entered on May 3, 1991. At that time, there was a finding that the Former Husband was a self-employed computer consultant and that his testimony "cast doubt on his credibility". The Court stated that the Former Husband presented records that he had deeded property back to his parents which the Court found, even if true, "would be a sham transaction made by Mr. Cabana to avoid having to pay his Court-Ordered child support". The Court once again found the Former Husband was "deliberately unemployed".

As far back as October 4, 1999, the Former Husband was making a request to have his support balance "somehow forgiven" (DE 67). Again on December 24, 1999, the Former Husband requested that his debt be reduced or eliminated (DE 69). He inquired of the Court on January 25, 1999 (DE 71) how to reduce or eliminate his payments. The Former Husband sent correspondence in October, 2001 (DE 73) stating that his debt should be paid off.

4. On April 5, 2004, the Former Husband filed a Supplemental Petition for Modification of Alimony (DE 89) which ultimately was granted on January 24, 2006, on the basis that the Former Wife no longer had a need for the alimony. The Order on Former Husband's Supplemental Petition for Modification of Alimony and Former Wife's Prayer for Attorney Fees and Costs (DE 324) terminated the Former Husband's ongoing alimony obligation retroactive to the date his Petition was filed. However, in the 219 docket entries between the time the Petition was filed in April, 2004, and granted in January, 2006, the Former Husband, on a *pro se* basis, did everything possible to obfuscate the litigation. This included filing an action in the United States District Court which was ultimately dismissed for lack of federal jurisdiction and filing an action for a declaratory judgment and Motion to Challenge the Constitutionality of the permanent alimony statute which was accompanied by a 48 page Memorandum of Law prepared by the Former Husband in which he made multiple citations to statutes and case law.

The Former Husband also filed various Motions challenging the constitutionality of discovery rules in which he also presented a great deal of legal research including a 17 page memo arguing a violation of his right to privacy and a denial of equal protection under the law. In a September 27, 2005 Order Denying Former Husband's Motion and Memorandum of Law to Terminate Alimony (DE 237) the Court specifically enjoined the Former Husband from re-filing any pleadings seeking the relief sought in his Motion and Memorandum to Terminate Alimony.

5. The Court specifically ruled in the Order on Former Wife's Motion to Dismiss Supplemental Petition for Modification of Alimony (DE 238) entered on September 7, 2005, that the **"Former Husband is not entitled to relief from any past due alimony arrearages accumulated prior to April 5, 2004, or interest thereon."** That Order is *res judicata* to the Former Husband's present and continuing request to somehow relieve him of the alimony arrears which accrued during all the years they were owed and not paid. Also, another Order entered on the same date titled Order on Declaratory Judgment Motion to Challenge the Constitutionality of the Permanent Alimony Statute (DE 239) denied the Former Husband's continuing challenge to his alimony obligation.

The Orders were appealed by the Former Husband to the 4th District Court of Appeal. The Former Husband submitted another Memorandum of Law (DE 266) on September 29, 2005, in which he again argued that Fla. Statute Section 61.08 impermissibly infringes the Florida Constitution Separation of Powers (Article II, Section 3). In November, 2005, the Former Husband recycled his Memorandum of Law (DE 281) yet again arguing that Florida Family Law Rule 12.285 (Mandatory Disclosure) impermissibly infringes the Constitutional Article I, Section 23 Right of Privacy.

6. The Fourth District Court of Appeal issued a Mandate in this case on May 25, 2007 (DE 411) with a per curiam decision stating that "even if Section 61.08 violated the right to privacy, it would not relieve appellant [the Former Husband] of liability for his alimony arrearages, because they have become vested." That ruling is dispositive of the Former Husband's continuing request to relieve him of these vested alimony arrears.
7. The only issue at this juncture is whether or not the Former Husband is presently in contempt for his failure to comply with the Court Order (DE 308) entered on January 6, 2006, to pay the sum of \$250.00 per month as a periodic contempt purge payment to satisfy the balance due on the alimony arrears.

8. An Order Adjudicating Former Husband in Contempt and Containing Judgment (DE 308) was entered by this Court on January 6, 2006, finding child support and alimony arrears of \$87,660.92, including interest through March 31, 2004. The Court specifically found the Former Husband has the ability to pay at least \$250.00 per month “notwithstanding the Former Husband’s egregious misrepresentation as to his lack of income and assets”. The Court found the Former Husband either has accounts in his name or transferred to the name of relatives. The Court concluded “the Former Husband has been deceitful in his disclosure of assets and income”. The Former Husband was incarcerated for his noncompliance with the Court’s Orders.

In the Order on Former Husband’s Supplemental Petition for Modification of Alimony and Former Wife’s Prayer for Attorney Fees and Costs (DE 234) entered on January 24, 2006, (the Order which terminated the Former Husband’s alimony obligation), the Former Wife was awarded attorney fees as a result of the Court’s finding of the Former Husband’s “deliberate, willful and persistent failure to comply with Court Orders and procedural rules and by lying and hiding his income and assets.”

9. During the years the Former Husband was litigating his Petition for Modification and spending what obviously had to be many hours in preparing pleadings and memoranda, the Former Husband was also spending many hours publishing articles posted on the internet and sold to other individuals as to how to proceed in similar circumstances. In 2004, the Former Husband copyrighted a publication titled “Fight Back! How to Challenge Alimony Laws and Contempt of Court Hearings”. Within his publication, the Former Husband addressed topics such as how to prepare a Financial Affidavit and explain it so that you can justify a negative difference between income and expenses, how to cover your assets by putting assets in someone else’s name, working off the books for cash, having your employer pay a reduced rate but providing other benefits, and creating income that is untraceable through normal means. The Former Husband also established a website (abolishalimony.org) with a mission to expose the inequity in the judicial system. He also created the web development for “the prudent pedaler” an on-site business.
10. The Former Husband claims no earnings, income or assets other than the receipt of social security in the amount of \$810.00 per month and an average of \$61.00 per month from internet sales of an eco-product. The Former Husband acknowledged that very occasionally he drives someone someplace for which he is paid \$10.00 per hour, but he did not include that income on his Financial Affidavit. The Former Husband has otherwise made no attempt to apply for any employment. The Former Husband stated he is not qualified to do so. The Former Husband’s efforts devoted to this case belie that statement as the Former Husband is obviously intelligent and capable as previously found by the Court and by the fact that he can devote the many hours he has devoted to his obsession with the inequities of this case. Those efforts could just as easily be applied to obtain employment.

The Former Husband stated that he volunteers countless hours to the Coast Guard Auxiliary, working as their webmaster and directing their communications as well as teaching computer skills to members and the public. However, the Former Husband denied he could do any similar work for pay and only does that on a voluntary basis.

The Former Husband further explained that he cares for his 92-year-old mother and does all of her housework and laundry, but he would be unwilling to provide similar services for anyone else for pay. The Former Husband also works out at the YMCA three times a week and stated he rides his bicycle to and from the YMCA, a distance of four to five miles.

The Former Husband stated he doesn't own a car so he doesn't drive much. Yet, the Former Husband's listed car expenses on his Financial Affidavit, including \$51.00 per month for automobile insurance, \$5.00 per month for AAA and \$100.00 per month for gas. The Former Husband explained those expenses are for a car which had been owned by his deceased father, but which his mother allows him to use. He does not need the car to help his mother since she has her own vehicle. The Former Husband cannot claim a lack of transportation by not having a car and then expect to use the expenses which are indicative of automobile ownership as an excuse for not making payments to alimony arrears.

The Former Husband only pays \$76.00 per month for his Section 8 HUD subsidized housing rent. He receives food stamps of \$37.00 per month, an amount not included in his income on his Financial Affidavit. Although the Former Husband has discretionary expenses including \$18.00 per month for Netflix, \$25.00 per month for entertainment, \$10.00 per month for gifts, \$22.00 per month for his YMCA membership, \$10.00 per month for the Coast Guard Auxiliary membership fee and \$64.00 per month for internet/cable service, the Former Husband argues he should not be deprived of those services in order to be compelled to make the payments to his alimony arrears. However, the Former Husband is easily capable of earning additional sums to pay those discretionary expenses if he deems them important and he then can apply his available income to make the payments to the alimony arrears.

11. This case has lingered in the system for an inordinate amount of time. The legal separation of the parties was in 1971. It is now 2008, thirty-seven years later. The Former Husband's permanent alimony obligation was terminated effective in 2004. The vested alimony arrears do not disappear and will not be eliminated as desired by the Former Husband. The Former Husband seeks "closure" after spending thirty-seven years in an effort to do everything possible to avoid the Court's jurisdiction and his responsibility to his family. Had the Former Husband redirected his efforts to meet his obligation, he would have had his desired "closure" by now. It was the Former Husband's choice, even after the children emancipated, to avoid paying the minimal \$25.00 per week alimony obligation.

The Former Husband has chosen at every step to avoid making the payments and to instead focus his energy on efforts to try to be relieved of any responsibility for the Court Orders in this case. It did not change regardless if they were temporary support payments, ongoing child support payments, ongoing alimony payments or payments to vested arrears. Had the Former Husband spent a small portion of the effort he has expended in attempting to avoid the obligation in satisfying the obligation, this matter would be closed.

12. The Former Husband continues to have the ability to make the Court-Ordered payments to the accrued and vested arrears. The Court specifically finds the Former Husband has the ability to make the \$250.00 per month payments to arrears. His refusal to make even one payment of any amount since July 11, 2006, is willful and contemptuous. The Former Husband has the ability to pay \$250.00 each and every month.

RECOMMENDATIONS:

1. The Former Wife's Motion for Civil Contempt/Enforcement should be granted.
2. An Order Adjudicating Former Husband in Contempt should be issued. The Former Husband should be required to purge the contempt by paying \$250.00 per month on the first (1st) day of each and every month. The Order should provide for the Former Husband's immediate incarceration for his failure to pay a \$250.00 purge payment on the first (1st) day of each and every month and the matter should be set for a Commitment hearing at the beginning of each month in the event the Former Husband fails to make the required purge payments. The next purge payment of \$250.00 per month is due November 1, 2008. A Commitment hearing should be set before the Magistrate for November 4, 2008, at 1:30 p.m. for which the Former Husband should be ordered to appear if the purge payment is not made.

DATED: 17 October 2008



LINDA S. GOODWIN
GENERAL MAGISTRATE

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Copies to:

William Cabana, 1050 Capri Isles Boulevard, #F105, Venice, FL 34292

Sharon Mayo, 220 Almeria Road, West Palm Beach, FL 33405

RECORD: 9:48:05

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATION MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH RULE 12.490 (F), FLA. FAM. L.R.P. YOUR EXCEPTIONS MUST BE FILED WITHIN TEN (10) DAYS OF THE ABOVE DATE AND YOU MUST SERVE A COPY ON THE OPPOSING PARTY AND THE MAGISTRATE. YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED, IF NECESSARY, FOR THE COURT'S REVIEW. ELECTRONIC RECORDING IS PROVIDED IN THIS CIRCUIT AND A COPY OF THE TAPE OF YOUR HEARING CAN BE OBTAINED THROUGH THE OFFICE OF COURT ADMINISTRATION (355-3745).

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