

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

AMY D. ACKER,
Petitioner,

vs.

GRIFF D. ACKER,
Respondent.

RULING AND ORDER

Case No. 134906101

Judge Paul B. Parker

Before this court are the respective parties Requests for Attorney fees. Petitioner asks for \$57,214.49 and Respondent \$48,998.00.

Attorney fees may be awarded in an action to establish an order of custody, parent-time, child support, alimony, or a division of property pursuant to Utah Code Annotated Section 30-3-3(1). That award of attorney fees may also include costs, witness fees including expert fees, etc. all as required to enable the other party to prosecute or defend the action. An award of attorney fees must be based upon the evidence of financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of the requested fees. Oliekan v. Oliekan, 147 P.3d 464; 2006 UT App 405 (Utah Ct. App. 2006)

Petitioner's need is documented in the Findings of Fact and is as follows: 1) Petitioner did not work outside during the marriage by agreement of the parties but was responsible for the care of their home and children. Petitioner has a degree in Family and Consumer Studies. That degree had limited application outside the home and did not significantly increase Petitioner's ability to earn money.

Petitioner did have a part time job marketing cosmetics but her ability to earn income is limited by the parties' decision to have her work in the home. Based on her skills and the testimony of a vocational evaluator, this court imputed income to Petitioner of \$2,286 per month less taxes for a net income of \$1,714.50. 2) The parties maintained a high standard of living during the marriage. Petitioner contributed to that standard of living by managing the home and caring for the children which allowed Respondent to devote extensive time and effort to his employment. After review of the Petitioner's needs this court found Petitioner's monthly expenses including child care, were \$10,441.26. 3) Given the respective income of the parties, child support paid to Petitioner was set at \$3,791 per month. 4) Given the Petitioner's monthly expenses, the imputed income and child support, this court awarded alimony paid to Petitioner of \$5,000.00 per month. 5) The combined child support, alimony and imputed income are barely enough to meet Petitioner's need and do not include any left-over income to pay legal fees. Petitioner states in her Request and it is not disputed that she is still not employed. Therefore, Petitioner's difficulty in paying legal fees is aggravated by the fact that she is currently actually living on less money that she needs.

Respondent's ability to pay is documented in the Findings of Fact and is as follows: 1) Respondent was able to greatly increase his ability to earn during the marriage, partly because of Petitioner's efforts and he currently earns \$30,214 per month although his 2014 income was significantly even higher. Considering taxes, Respondent's net income is \$21,950 per month. 2) After careful review, Respondent's monthly expenses were found to be \$8,753.24. Adding child support and alimony, Respondent's total expense per month are \$17,544.82. 3) Respondent's excess income is therefore \$4,405.18.

Concerning the marital property this court finds as follows: 1) Respondent dissipated stock, that was marital property, for his benefit. The value of the stock was \$222,000. 2) To account for Respondent receiving that entire asset, this court awarded Petitioner the marital home including any equity. The home was sold. The equity proceeds were \$148,028.22. 3) To balance the respective debts and assets of both parties, even with the entire equity value of the home going to the Petitioner, this court awarded Petitioner \$31,154.02 in cash. 4) Respondent's company purchased a house for him although they had not done that for any other employee. Although, Respondent states that he is paying the company back for the house, that purchase without a down payment is a significant asset for Respondent and allows him to live in a house worth over \$500,000. On the other hand, Petitioner will need all the equity value in the marital home plus the additional cash to purchase another house. Without a job, Petitioner will have significant difficulties borrowing any substantial amount of money to add to that awarded to her in the Decree. Therefore any home purchased will be a significant reduction from her life style during the marriage and even that reduced home will take all of her cash.

This court has reviewed the affidavits from each side and finds that the amount of attorney fees claimed by each is reasonable given the length of the proceedings, the difficulty of the issues, and the motions and appearances before, after and during the two days of trial. The Petition was filed in November 2013. The case is two years old during which the parties battled over several temporary orders and contempt before the commissioner and then the trial and post-trial motions before this court. Both attorneys are experienced and documented their time and resources spent in the case. Petitioner's counsel was admitted to practice in 1975 and has emphasized litigation and family law in her practice. Her rate of billing of \$350.00 is reasonable and not disputed. Counsel for Respondent did not include a statement of his years of practice but his bar number is 4110 indicating long service and his billing rate of \$325 per hours is consistent with Petitioner's counsel and is also not disputed. Neither side disputes the hours spent by opposing counsel and their staff. Therefore, the \$57,214.49 expended by Petitioner and the \$48,998.00 expended by Respondent are reasonable.

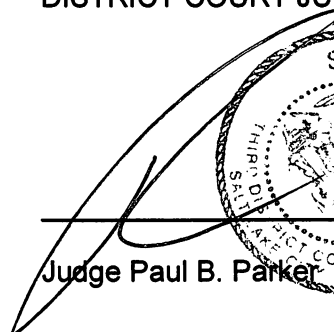
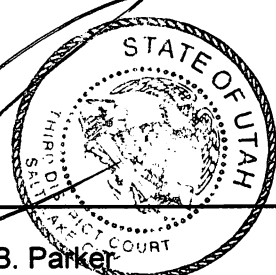
Finally, Respondent has already paid \$8,711.80 of Petitioner's legal fees. Petitioner has borrowed other money from her family to pay legal fees. With credits for all payments, Petitioner currently owes \$38,128.91.

All the facts being considered, this court finds that Petitioner cannot afford to pay her remaining legal fees. Respondent has the ability to pay those fees and the fees are reasonable. However, credit must be given for fees already paid by Respondent and this court will not reimburse fees paid by other members of Petitioner's family. Respondent is therefore ORDERED to pay \$38,128.91 which is the amount still owed and not paid previously by Respondent or other members of Petitioner's family.

This is the final order of this court and no further other is necessary.

DATED this 3 day of March, 2015.

DISTRICT COURT JUDGE



Judge Paul B. Parker