

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

V. ELAINE ECK,	:	
Plaintiff	:	
	:	
v.	:	No. 99-20,523
	:	
STANLEY E. ECK,	:	
Defendant	:	

**OPINION**  
**Issued Pursuant to Pa. R.A.P. 1925(a)**

The issue in this case is the award of \$360 counsel fees to Elaine Eck from Stanley Eck. The purpose of this award is to compensate Mrs. Eck for the money she had to pay her attorney, Janice Yaw, for her diligent efforts to get Mr. Eck's attorney, Scott T. Williams, to release the money owed to Mrs. Eck from the couple's escrow account. Mr. Eck admits he owed the money to Mrs. Eck, and has in fact paid it. Mr. Eck merely resents having to pay the attorney fees Mrs. Eck incurred to achieve that result.

**Factual Background**

Mr. and Mrs. Eck recently experienced one of those nasty, divorces from hell which are all too common to the family court bar. On 6 June 2001, this court issued an order resolving the Exceptions both parties filed to the Master's Report on Equitable Distribution. So long as no appeal was filed, the only thing left for this ex-couple to do was distribute the escrow account. On 15 June 2001, Ms. Yaw wrote to Mr. Williams informing him that Mrs. Eck was not going to appeal and asking him to distribute the

escrow account held by Mr. Williams. The letters attached to Ms. Eck's petition<sup>1</sup> tell the saga of Mrs. Yaw's adventures in obtaining the money owed to her client.

### **Discussion**

Attorney fees may be granted as a sanction for "dilatory, obdurate or vexatious conduct during the pendency of a matter." 42 Pa.C.S.A. §2503(7). We find Mr. Eck's conduct was dilatory for the following reasons.

Initially, Mr. Williams agreed his client owed Mrs. Eck \$3798.50, but disputed the amount of interest she was entitled to and refused to distribute the account because of a personal property dispute. *Letter from Mr. Williams dated 6/26/01*. Later, however, he backed down on the personal property issue but suddenly informed Ms. Yaw he did not agree with the \$2000 which Ms. Yaw believed was due for Equitable Distribution. *Letter from Mr. Williams dated 7/12/01*. Ms. Yaw wrote back, clearly explaining why he was wrong. *Letter from Ms. Yaw dated 7/11/01*. After receiving another letter from Mr. Williams which demonstrated he still did not understand why his client owed the \$2000, Ms. Yaw elaborated on her explanation in another letter. *Letter from Ms. Yaw dated June 12, 2001*.<sup>2</sup> However, it was not until August 1, 2001, apparently in preparation for the upcoming hearing, that Mr. Williams saw the light and sent the \$2000.

The issue surrounding the \$2000 arose out of the "Distribution" section of the

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<sup>1</sup> The title of the petition, in which Ms. Yaw covers all her bases, gives the reader a good flavor of this case: "Petition for Special Relief/Petition for Contempt/Petition to Distribute the Escrow Account/Petition for Retroactive Alimony Pendente Lite."

<sup>2</sup> The court notes that this letter is missing from the exhibits attached to Mr. Eck's Statement of Matters Complained of on Appeal.

Master's Report issued on October 19, 2000, which distributes \$2000 cash from Mr. Eck to Mrs. Eck. Early in the litigation, Mr. Eck had paid Mrs. Eck \$2000, which was to be considered an advance payment on support or equitable distribution. *Order of June 3, 1999*. On August 9, 2000, a court order notes that Mr. Eck elected to use the credit toward his APL obligation, and Mr. Eck paid Mrs. Eck \$2000 less than the APL amount he actually owed. At that time, Mrs. Eck contended Mr. Eck should receive no credit at all because the \$2000 was paid from marital funds. The court left that decision to the Master, who resolved it in favor of Mr. Eck.

The Master's Report awarded Mrs. Eck a \$2000 distribution from Mr. Eck. Mr. Williams claimed his client did not have to pay cash because of the \$2000 credit. The problem with that position, of course, is Mr. Eck already used the \$2000 credit toward his APL obligation. If he now wanted to use it for his equitable distribution obligation, he would then owe \$2000 for APL. Either way you look at it, Mr. Eck owed Mrs. Eck \$2000. Unfortunately, Mrs. Eck incurred a \$486.00 legal bill in order to get that money.

We find Mr. Eck's behavior, or that of his attorney, to be dilatory. Merriam-Webster's 7<sup>th</sup> Collegiate Dictionary defines dilatory as "tending or intended to cause delay." Mr. Williams' conduct, whether at the direction of his client or not, caused a delay in payment to Mrs. Eck. If this delay was not prolonged, that was only because of Ms. Yaw's efforts. Without her letters and her filing of the special relief petition it is not obvious when, if ever, Mrs. Eck would have received the money.<sup>3</sup>

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<sup>3</sup> We note that Mr. Williams' letter of August 1, 2000, in which he admits his client owes the \$2000, was written after Ms. Yaw served him with the petition. It appears that only then, in preparation for the upcoming hearing, did Mr. Williams and Mr. Eck conduct a thorough investigation of the matter, which of course revealed Ms. Yaw

We also find the behavior to be obdurate, which Merriam-Webster defines as “stubbornly persistent in wrongdoing” or “resistant to persuasion or softening influences.” Even after Ms. Yaw twice explained to Mr. Williams why his position was wrong, Mr. Williams did not release the money until twenty days later, with a hearing looming over his head.

In his Statement of Matters Complained of on Appeal, Mr. Eck argues he has violated no court order. We fail to see how that is relevant. Mr. Eck also argues there is no record of injury to Ms. Eck because of Mr. Eck’s failure to pay the \$2000 prior to August 1, 2001. We reject that argument because the injury, of course, is the money Mrs. Eck had to pay her attorney to convince Mr. Williams to release the amount owed to her. Mr. Eck next argues the court has made no finding his conduct was dilatory, obdurate, or vexatious. The court’s findings are formally stated in this opinion, and we note that under Pennsylvania case law, an evidentiary hearing on counsel fees is not necessary when, as here, the underlying facts are admitted and undisputed. Kulp v. Hrivnak, 765 A.2d 796 (Pa. Super 2000).

Mr. Eck next contends Mr. Williams was not an escrow agent, and refers to the order of 16 March 2000. Whether or not Mr. Williams was technically an escrow agent makes little difference, although we note that paragraph 6 of that order refers to the account as an “escrow account.” Nonetheless, the clear intent was that the funds were to be held until the resolution of all financial matters, at which time the money would be distributed accordingly. Mr. Williams maintained control over the account, and therefore

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was correct.

had a responsibility to both parties to ensure the money was distributed in a timely manner. If there was any dispute over the distribution, Mr. Williams certainly had an obligation to spend the time and energy necessary to determine the accuracy of Ms. Eck's position. Mr. Williams apparently did not do so until Ms. Yaw filed a petition.

Mr. Eck next takes offense at this court's use of the word "calisthenics" to explain Ms. Yaw's efforts to convince Mr. Williams to release the money owed to her client. The court considers the term "calisthenics" to be an accurate, if colorful, description of Ms. Yaw's actions.

Mr. Eck next contends Ms. Yaw was not actually right, because she at first requested the \$2000 as equitable distribution and later as APL. In fact, Ms. Yaw's position was that the \$2000 was owed, whether it was considered APL or equitable distribution, and that position was correct.

Mr. Eck next contends Mr. Williams had no duty to determine what was owed. This is similar to his escrow argument, and is rejected for the same reasons.

Mr. Eck next attempts to explain his oversight by the large number of orders which were entered during this messy divorce. In support of that argument, Mr. Eck states that Mr. Williams also had other cases to work on during the pendency of the matter. That is no doubt true, and judging by her ubiquitous presence in the Lycoming County Courthouse, the court would be willing to wager that Ms. Yaw also had a few other cases during that time. A heavy workload does not diminish an attorney's responsibility in each of his or her cases. Neither does the complexity of a case.

Next, Mr. Eck quibbles over the court's use of the phrase "numerous letters" to

describe Ms. Yaw's correspondence. The record shows Ms. Yaw wrote six letters to Mr. Williams to attempt to iron out the escrow issue. While it is true only two of the letters explained in detail why Mr. Eck owed the \$2000, that is two letters too many.

Lastly, Mr. Eck argues there is no evidence showing that \$360 is a reasonable fee. Ms. Yaw submitted copies of the correspondence haggling over the escrow, as well as a bill charging \$135 per hour for 3.6 hours, amounting to \$486.00. The court considered that to be a bit steep, and awarded \$100 per hour, which is certainly reasonable. What is *unreasonable* is that Mrs. Eck had to incur another legal bill in order to obtain the money she was owed.

BY THE COURT,

Date: \_\_\_\_\_

\_\_\_\_\_  
Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
Scott T. Williams, Esq.  
Janice Yaw, Esq.  
Gary Weber, Esq., Lycoming Reporter