

IN THE DISTRICT COURT IN AND FOR WAGONER COUNTY  
STATE OF OKLAHOMA

WAGONER COUNTY  
DISTRICT COURT  
4/11/2018 PM 1:06  
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DISTRICT COURT  
4/11/2018

IN RE THE MARRIAGE OF )  
TOSHA V. MCDUGLE, )  
Petitioner, )  
and )  
KEVIN W. MCDUGLE, )  
Respondent. )

Case No. FD-2017-181

PETITIONER'S MOTION FOR INTERIM ATTORNEY FEES, COSTS AND SUIT MONEY  
AND BRIEF IN SUPPORT OF MOTION

COMES NOW the Petitioner, by and through her attorney, Amy B. McFarland, and pursuant to 43 O.S. §110, moves for assessment of interim attorney fees and suit money on the following grounds:

1. In divorce/dissolution of marriage litigation, such expense may be taxed as costs against the opposing party and the imposition of such cost against Respondent at this time is reasonable. 43 O.S. §110. 12 O.S. §942 provides for "costs" which may be awarded to include any fees assessed by court clerks, reasonable expense of giving notice, statutory witness fees, subpoena service fees, \$0.10 per page copying expense (or amount authorized to be charged by law for medical records) necessarily used at trial, trial transcripts the court determines are necessary to resolve the case, and reasonable expenses for taking and transcribing deposition testimony, for furnishing copies to the witness and opposing counsel, and for recording deposition testimony on videotape, but not to exceed One Hundred Dollars (\$100.00) per two-hour videotape, unless the court determines that a particular deposition was neither reasonable nor necessary, and any other expenses authorized by law to be collected as costs.

2. The Petitioner is seeking an interim award of attorney's fees and suit money based on the following:

a. The Respondent has the financial means available through his companies, which Petitioner alleges are marital assets.

b. The marital estate includes businesses known as Lawyer Marketing Services, Inc., Expect 3 Digital Marketing, Inc. and a possible third business the Petitioner will need to complete discovery on to find out more information. Said businesses must be appraised for purposes of property division.

c. Petitioner is without funds to pay her attorney's fees beyond the retainer.

3. Petitioner needs to incur the following expenses herein in the preparation of this case, to -wit:

a. Business appraisals of two (2), possibly three (3) businesses owned by the parties in the capacity set forth hereinabove;

b. Attorney fees, expert witness fees and other legal fees in the preparation of this case.

4. Petitioner has obtained the name of a business evaluator, Don DeSelms, who has been contacted by Petitioner's attorney. That said business evaluator has advised Petitioner's attorney the documentation that he would need in order to provide an accurate evaluation of the businesses. That due to the fact that the parties own interest in two (2), maybe three (3) businesses, the business evaluator has stated that his retainer fee would be \$5,000.00, with the possibility of additional funds required for trial preparation and testimony. Petitioner expects said business evaluation to cost upwards of \$10,000.00, so Petitioner is requesting the Court award her \$10,000.00 for expert witness fees.

5. Petitioner believes that a forensic audit of the Respondent's business holdings may be necessary as the only avenue available to the Petitioner to verify the Respondent's ability to pay alimony, debts of the parties and Petitioner's equitable share of the businesses is through a business evaluation completed by a Certified Public Accountant.

6. Petitioner's counsel estimates legal fees upward of sixty (60) hours at an hourly rate of \$200.00 and estimates para legal fees upward of sixty (60) hours at an hourly rate of \$85.00. These rates, as shown, include the estimated time of trial preparation and trial. Said approximation of expenses total \$20,000.00.

7. Petitioner has limited income and is without means to provide for her own attorney's fees and litigation expenses. Petitioner's Application for Temporary Order requests alimony and Petitioner believes that the evidence will show that she demonstrates a need for support alimony and that the Respondent has the means to pay. McLaughlin v. McLaughlin, 979 P.2d 257. Further, without said means to support herself and Petitioner's request for alimony, Petitioner is in need of suit monies to continue in the defense of her case. That Petitioner believes that if the Court were deny her request for suit monies and attorney's fees, that Petitioner will be at an unfair advantage in this case, as the Petitioner has not worked since inception of the marriage at the request of the Respondent for her to be a stay at home and home school their children. That Respondent in addition to owning his own businesses works as a consultant and is also an Oklahoma State Representative. Respondent has the only source and means of income at this time.

8. Respondent has exclusive control of the parties' finances and has the ability to pay Petitioner's attorney fees and suit money in a reasonable amount as requested herein.

9. That the Petitioner was a stay at home mother during the parties' marriage and has not worked outside of the home. That the Petitioner stays at home with the minor children who have diagnosed illnesses and they need constant supervision.

10. That Respondent recently reduced the amount of money that he put in the joint marital account by \$1,850.00 with no notice to the Petitioner. Petitioner at this time is at the mercy of the Respondent for basic necessary funds to survive and be able to feed and provide for the minor children who live with her and to pay joint bills.

13. Based upon the "balancing of the equities" test set forth in Thielenhaus v. Thielenhaus, 890 P.2d 925 (Ok. 1995), an award of attorney's fees and litigation expenses is warranted in favor of Petitioner.

### **BRIEF IN SUPPORT OF MOTION FOR SUIT MONEY**

The authority of this Court to award suit money for preparation of a case for trial is found in 43 O.S. Section 110, which provides in pertinent part, as follows:

"After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or a judge thereof in vacation,...may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; .. Provided further, that the court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys."

Clearly, the intent of the statute is to provide access to the courts, with counsel, for those who by reason of financial circumstances, cannot pay the costs. This is in keeping with the mandate of the U.S. Constitution, as interpreted by the case of Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28L. Ed. 2d 113 (1971), where the U.S. Supreme Court held that indigents have a constitutional right to proceed in divorce actions without payment of court fees. This case was recognized by the Oklahoma Supreme Court in the case of State ex. rel McCalister v. Graham, 531 P.2d 1367, 1368 (Ok. 1975). That case also restated the rule expressed in Otjen v. Mayhue, 476 P.2d 317 (1970 Ok. 204), as follows:

"Construction of a statute should be reasonable in order that the legislative intention in adoption of such statute will be given expression and the object and purpose intended will be accomplished."

No Oklahoma cases have been found dealing with the costs of discovery. However, another case citing Boddie, supra, has dealt specifically with the costs of court reporters' fees for

transcripts in divorce cases. That is the case of Hart v. Superior Court, In and for County of Pima, 492 P.2d 433 (Ariz. 1972). In that case, the court dealt with the issue as follows:

“The petitioner’s position in this special action is that respondent’s order denying the motion to waive costs of the service of a court reporter for the certified transcript constitutes failure to exercise discretion which the respondent judge has the duty to exercise, or in the alternative constitutes a failure required by the law and for which he has no discretion.

We believe that the issues of this special action have effectively been decided by the United States Supreme Court in Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L. Ed.2d 113 (1971). In Boddie, the appellant, welfare recipients of the State of Connecticut, challenged certain state procedures for the commencement of litigation including payment of court fees and costs for service of process. In sustaining the appellants’ challenge, the court noted the basic importance of marriage in our society and the fact that although there are many legal relationships that can be entered into and dissolved without the imprimatur of the state, this was not so in the case of divorce. A divorce can only be legally accomplished by invoking the state’s judiciary machinery. The court then states:

‘Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims or right and duty through the judicial process must be given a meaningful opportunity to be heard.’ 401 U.S. at 377, 91 S.Ct. at 785, 28 L.Ed.2d at 118.

Boddie further instructs us that (1) a state rule or statute generally valid may be unconstitutional on its application to certain individuals when it deprives those individuals of protected rights; (2) the right to be heard must be protected against denial by particular laws that operate to jeopardize it for particular individuals; (3) a cost requirement valid on its face, may offend due process because it operates to foreclose a particular opportunity to be heard.

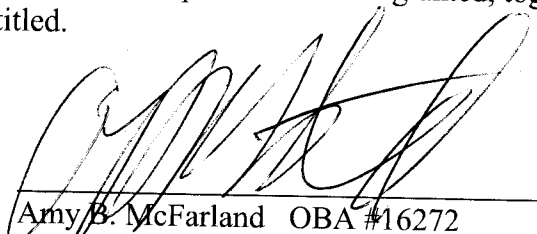
Therefore it is ordered that the superior court authorize the cost of publication and in the event the defendant fails to file an answer, the cost of the reporters transcript upon hearing as requested by the petitioner.”

In the instant case, the Petitioner has no income while the Respondent controls the marital estate including two (2) businesses, liquid cash, credit cards, bank accounts, money market accounts and various other assets. A ruling against this relief would create a hopeless Constitutional dilemma for the Petitioner, in that without counsel, she would have to enter the courtroom to assert her legal rights without being on an equal footing with Respondent.

**CONCLUSION**

It is therefore submitted that Petitioner is entitled to an order, directing the Respondent to pay the Petitioner's legal fees and suit money under the equal protection and due process clauses of the U.S. Constitution as well as the statutes and case precedents of the State of Oklahoma.

WHEREFORE, Petitioner prays that the above requested relief be granted, together with such other relief as to which she may be entitled.



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**Verification**

State of Oklahoma, County of Wagoner, ss:

Tosha V. McDugle, of lawful age and being first duly sworn upon oath, states: I am Tosha V. McDugle, Petitioner above named. I have read the foregoing instrument and state that all statements contained therein are true and correct.

Tosha V. McDugle  
Tosha V. McDugle, Petitioner

Subscribed and sworn to before me on June 14, 2017, by Tosha V. McDugle, Petitioner above named.

My Commission Expires:

04.19.2021  
Commission # 01006692

Nicole' Willis-Stilwell  
Notary Public

