

RECEIVED
AUG 24 2010

JUDGE KEITH MEISENHEMER
MULTNOMAH COUNTY CIRCUIT COURT
503-988-3985

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

In the Matter of the Marriage of:
KAINE ANDREW HORMAN,
Petitioner,
and
TERRI LYNN MOULTON HORMAN,
Respondent.

Case No. 1006-66084

RESPONDENT'S HEARING
MEMORANDUM REGARDING
SCHEDULING ISSUES

Respondent Terri Horman (Wife) respectfully submits this memorandum in support of her position regarding the scheduling of two pending hearings regarding abatement and suit money.

1.

Relevant Factual and Procedural Background

Petitioner Kaine Horman (Husband) filed a petition for dissolution of marriage on June 28, 2010. In paragraph 17 of the petition, Husband stated that "[e]ach party should be responsible for his or her own attorney fees and costs incurred herein if this proceeding is uncontested." Notwithstanding that statement, on July 26, 2010, Husband filed a motion for suit money pursuant to ORS 107.095. Husband also demanded that the court order Wife to disclose the source and amount of money paid to one of her attorneys, Stephen Houze. On July 28, 2010, Wife filed a motion to abate the divorce proceeding and requested an expedited hearing on the matter.

Subsequently, Husband requested that his motion for suit money be heard immediately

1 following the hearing regarding abatement. The sole issue in this scheduling
2 conference is the manner in which the two pending motions are heard by the court.

3 2.

4 **Argument**

5 The Oregon Rules of Civil Procedure vest the trial court with broad discretion in
6 the management of cases. See, e.g., ORCP 51, 52, 53, and 58. That authority
7 includes the setting of hearings and trials. UTCR 6.010, 6.030, 7.020.

8 Here, Wife filed a motion to abate the dissolution proceeding, because she is a
9 *de facto* suspect in the disappearance of Kyron Horman. Because she is at the center
10 of a police investigation, Wife contends she is unable to proceed in the ordinary course
11 to protect her rights as to discovery, property division, support, and, particularly, custody
12 and parenting time issues. In response to Wife's motion for abatement, Husband filed
13 seven pages of objections.

14 Counsel for Wife believes the facts will show that good cause exists for the
15 abatement, as required by SLR 7.055(7). Further, to provide guidance to the court on
16 the abatement issue, it is anticipated that counsel for Wife will need to survey law from
17 other states, as well as federal case law. Wife's lawyer also needs adequate time to
18 prepare a reply to Husband's voluminous factual and legal objections.

19 Notwithstanding the amount of work that each party will need to do in preparation
20 for the hearing on the abatement issue, Husband is asking that the court set his motion
21 for suit money immediately following the hearing regarding abatement. In the event that
22 the court grants Wife's motion for abatement, Husband's motion for suit money will be
23 moot. By setting the two hearings on the same date, both parties will needlessly spend
24 money preparing for a hearing that may not occur. That is contrary to Oregon law,
25 which does not require the doing of a useless act. *Daugharty v. Gladden*, 217 Or 567,
26 578 (1959). Finally, if the court denies the motion to abate the divorce case, neither

1 party will suffer any prejudice by thereafter setting the suit money hearing in the regular
2 course.

3 Counsel for Wife is mindful that the court intends to adhere to ordinary
4 procedural processes in this divorce, barring a ruling in Wife's favor on her abatement
5 motion. In Multnomah County, requests for temporary relief are usually set out 30 to 60
6 days or more from the filing of a show cause motion. In a retained case, depending on
7 the court's docket, a hearing may be set even further out. Husband has not requested
8 an expedited hearing on this issue, and there is no viable reason he should need to do
9 so. Husband has a significant income and had substantial savings when he filed for
10 divorce. He can pay for his lawyer from his income and the assets in his control.

11 That is in contrast to Wife, who is unemployed and without any source of income,
12 and who has no significant assets. Indeed, it appears that the gravamen of Husband's
13 motion for suit money, and the urgency with which he is pursuing this matter, are not
14 based on the parties' respective financial needs, but on a desire to somehow interfere
15 with Wife's professional relationship with Mr. Houze.

16 Wife's liberty interests are at issue. To that end, Wife has every right to continue
17 her professional relationship with Mr. Houze without Husband undermining her ability to
18 have competent representation of her choice.

19 Under all of these circumstances, counsel for Wife anticipates that it will take
20 time and effort to adequately address the legal issues arising from both of the pending
21 motions. It is not in the interest of either party, or in the interest of judicial efficiency, for
22 Husband's motion for suit money to be fully briefed and prepared before the court has
23 the opportunity to rule on Wife's motion for abatement.

24 Because neither party will suffer any prejudice of any kind by decoupling the two
25 hearings, Wife respectfully asks that the court set the matters on two different dates.

26 ///

3.

CONCLUSION

For the reasons set forth above, Wife respectfully asks that the court set the hearings on the pending motions on different dates, with sufficient time between the two hearings for counsel for both parties to properly prepare.

DATED on August 24, 2010.

THE LAW FIRM OF PETER BUNCH, LLC



Peter Bunch, OSB No. 942210
Attorney for Respondent
Trial Attorney: Peter Bunch

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26