

PAID

ENTERED
JUL 28 2010
IN REGISTER BY CB

FILED
10 JUL 28 AM 11:23
FOR MULTNOMAH COUNTY

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 MOTION TO HOLD
CASE IN ABATEMENT
(Expedited Hearing Requested)

MOTION

Respondent Terri Lynn Moulton Horman (Wife) moves the court for an order holding the above captioned case in abatement.

POINTS AND AUTHORITIES¹

A. Introduction.

On June 28, 2010, Petitioner Kaine Horman (Husband) caused Wife to be served with a Summons and Petition for Dissolution of Marriage. For the reasons set forth below, Wife is seeking an order abating the dissolution proceeding.

B. Applicable Law and Argument.

Multnomah County Supplemental Rule (SLR) 7.055 (7) provides the court to abate any case for "good cause shown." That rule provides as follows:

"(7) For good cause shown, the Presiding Judge may abate any case upon motion of counsel or upon motion of the Court.

¹ All facts are supported by the accompanying Declaration of Peter Bunch and the record and file.
Page 1 - RESPONDENT'S MOTION TO HOLD CASE IN ABATEMENT

1 “(a) Unless prohibited by law, an abated case may be dismissed,
2 without prejudice, for want of prosecution following notice by the Court of intent to
3 dismiss pursuant to ORCP 54B(3) two years from the date of the removal order if
4 the case has not been removed from abated status or dismissed at an earlier
5 time. A case may be removed from abated status upon motion of counsel or on
6 the Court's own motion.

7 “(b) No abated case shall be placed on the trial docket, or be subject to
8 court arbitration or mediation, or have any motion practice conducted during the
9 period of abatement. Parties may by mutual consent proceed with discovery
10 during the period of abatement or inactive status.

11 “(c) A case will be stayed, rather than abated as provided in this section,
12 by a notice of bankruptcy.

13 “(d) Once a case is reinstated to the active trial docket, the case will be
14 assigned a trial date within 30 days.”

15 The issue in this proceeding is whether “good cause” exists to abate the
16 dissolution of marriage proceeding. “Good cause” is not defined in the Supplementary
17 Local Rules. Analogous case law, however, provides guidance on this issue. In
18 *Delcastillo v. Norris*, 197 Or App 134 (2005), the Court of Appeals construed the
19 meaning of “good cause” in the context of a dispute about an Independent Medical
20 Examination pursuant to ORCP 44. Noting that ORCP 44 did not define that term (as is
21 the case here), the Court of Appeals utilized the statutory methodology set forth in *PGE*
22 *v. Bureau of Labor and Industries*, 317 Or 606, 610-12 (1993) to resolve the dispute:

23 “*Webster's Third New Int'l Dictionary* 978 (unabridged ed. 2002) defines “good
24 cause” as “a cause or reason sufficient in law: one that is based on equity or
25 justice or that would motivate a reasonable man under all the circumstances.”
26 This definition leaves no ambiguity about the meaning of “good cause,” a
meaning that is in accordance with the longstanding principle that courts may
require a physical examination if it appears to promote the “ends of justice.”
Delcastillo at 139-40.

 The Court of Appeals further observed that the court's decision as to the existence of
“good cause” was a matter of discretion, based on equity or justice. *Id* at 140. There is
no principled reason why the definition of “good cause” in *Delcastillo* is not equally
applicable to Wife's motion; the issue is whether an abatement is reasonable under all

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Page 2 - RESPONDENT'S MOTION TO HOLD CASE IN ABATEMENT

KVPB/HORMAN, TERRI/ABATEMENT MOTION 02.DOC

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1 of the circumstances, and whether the "ends of justice" would be promoted by the
2 abatement.


3 As the court is aware, Wife is under intense scrutiny as part of an ongoing
4 investigation into the disappearance of Kryon Hormon. As a result, it is virtually
5 impossible for Wife's lawyer to proceed with divorce-related issues in an effective and
6 orderly fashion, as more specifically set forth in the accompanying Declaration of Peter
7 Bunch. Husband will not be prejudiced by abatement of the case, because Wife will
8 stipulate to the entry of a General Judgment of Dissolution of Marriage terminating the
9 marriage, with the court reserving jurisdiction to resolve all other issues in an ancillary
10 proceeding. See, e.g. *Berg and Berg*, 211 Or App 703, 706, 156 P3d 171 (2007).
11 Under all of the circumstances, an abatement of the pending dissolution of marriage
12 proceeding is appropriate.

13 CONCLUSION

14 For the reasons set forth above, Wife respectfully requests the court to enter an
15 order abating the dissolution of marriage proceeding until further agreement of the
16 parties, or further order of the court.

17 DATED on July 28, 2010.

18 THE LAW FIRM OF PETER BUNCH, LLC


19 
20 Peter Bunch, OSB No. 942210
21 Of Attorneys for Respondent
22 Trial Attorney: Peter Bunch
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CERTIFICATE OF SERVICE

1
2 I certify that I served a copy of the foregoing RESPONDENT'S MOTION TO
3 HOLD CASE IN ABATEMENT and the DECLARATION OF PETER BUNCH IN
4 SUPPORT OF RESPONDENT'S MOTION TO HOLD CASE IN ABATEMENT on the
5 following attorneys on July 28, 2010, by hand delivery, placed in a sealed envelope
6 addressed to the following at the address set forth below, and deposited in the U.S.
7 Post Office in Portland, Oregon, with postage prepaid.

8 Laura Rackner
9 Gearing Rackner Engel LLP
10 121 SW Morrison Street Suite 750
11 Portland, OR 97204-3117

12 Stephen A Houze
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Peter Bunch, OSB No. 942210