

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

FAMILY DIVISION

Sharon Ann Cabana, n/k/a Sharon Mayo,
Petitioner/Former Wife,

and

CASE NO. CD 1971 DR 004137 FD

William A. Cabana,
Respondent/Former Husband.

REPORT ON COMMITMENT AND MOTION HEARING

DATE OF ORDER TO BE ENFORCED: December 18, 2008

DATE OF HEARING: February 3, 2009

ISSUES: Commitment hearing set by Order of Court which adjudicated the Former Husband in contempt and required a monthly purge payments of \$250.00 toward the outstanding arrearage, commencing January 1, 2009. The parties also agreed to address, in the interest of judicial efficiency and economy, the Former Wife's correspondence filed January 8, 2009, which is treated as a Motion for Protective Order, and the Former Husband's Notice to the Court concerning this matter filed January 22, 2009. The Former Husband has also filed a Motion to Stay Proceedings which asks that the Court suspend the alimony purge requirements pending the outcome of his appeal to the Fourth District Court of Appeal from the Contempt Order.

FORMER WIFE/PETITIONER:

PRESENT: yes

ATTORNEY: none

ADDRESS: 220 Almeria Road, West Palm Beach, Fl. 33405

FORMER HUSBAND/RESPONDENT:

PRESENT: by telephone

ATTORNEY: none

ADDRESS: 1050 Capri Isles Blvd., #F105, Venice, Fl. 34292

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Contempt Order, entered December 18, 2008, requires the Former Husband to pay \$250.00 per month toward an alimony arrearage that is owed to the Former Wife. The Order was entered following a Contempt hearing held October 1, 2008, before a predecessor Magistrate, and after

consideration of Exceptions filed by the Former Husband, which the Court overruled. Within the Order was a provision scheduling a Commitment hearing for February 3, 2009. The Order provided the Former Husband could be excused from the hearing upon presenting proof that the payments were current. The Former Husband paid the first purge amount of \$250.00 due January 1, 2009. It was posted to his account on January 9, 2009. He testified he had made the payment due February 1, 2009, by mailing it to the State Disbursement Unit. The payment is not yet reflected on the ledger, so the Former Husband was informed the matter would be held under advisement until it was posted. As of this date, it is not yet posted on the ledger.

The Former Wife has a pending request for a protective order, from the Former Husband's demand for mandatory disclosure. The Former Wife represented in her request that when her financial information was disclosed in 2005, the Former Husband released it to an internet website. She is concerned that could happen again and she could become a victim of identity theft. The Former Husband in response filed a Notice which acknowledged he had posted such information in 2005, inadvertently, and had removed it when this was brought to his attention. The fundamental issue of concern to the Court, however, is why the Former Husband would be seeking financial disclosure from the Former Wife at this time. The alimony due is an arrearage payment only and the arrearage is vested. The ongoing alimony was terminated by a Court Order entered January 6, 2006. The Former Husband stated he filed a petition for modification seeking an award of alimony to him from the Former Wife, on October 8, 2008, and therefore financial disclosure is mandatory. The Final Judgment did not require the Former Wife to pay alimony to the Former Husband, and the Court does not believe it has jurisdiction to entertain the Former Husband's petition requesting such relief, thirty six years after entry of the final judgment. Section 61.14 *Florida Statutes*, authorizes the Court to enforce and modify a judgment for alimony at any time during the period provided for support. *Kelsey v. Kelsey*, 636 So. 2d 77 (Fla. 4th DCA 1994)(en banc). However, it does not appear that there is authority to impose an alimony requirement on a former spouse who was an alimony recipient and of whom alimony was not required in the final judgment. The Former Husband acknowledged he is taking a novel position and requested time to submit a memorandum of law in support of his petition. The Former Husband agreed not to pursue mandatory disclosure further until he has filed the memorandum and it has been considered and ruled on by the Court.

The Former Husband has also filed a Motion to Stay Proceedings, requesting suspension of the \$250.00 a month purge payment pending his appeal of the order adjudicating him in contempt. The Former Husband stated he would rely on his pleading and requested that it be reviewed by the Magistrate.

RECOMMENDATIONS:

1. It is recommended that the Court deny Commitment, so long as the SDU ledger reflects that the \$250.00 payment due February 1, 2009, is posted by the time of the expiration of the period to file exceptions. As of the date of preparation of the report, February 9, 2009, the

payment has not been posted. The Former Husband testified under oath at the commitment proceeding that the payment had been mailed to the State Disbursement Unit. If it is not posted within the exception period, then a commitment order for \$250.00 should be issued.

2. The Former Wife's Motion for Protective Order from Mandatory Disclosure is deferred. No disclosure shall be required of her pending receipt and review of the Former Husband's memorandum in support of his Petition for Modification of Alimony which requests that the Court award alimony to him. The Court seriously questions whether it has jurisdiction to grant such relief, but will give the Former Husband an opportunity to address the issue as he has requested.
3. The Former Husband's Motion to Stay is denied. The Circuit Court in this family law case has continuing jurisdiction during the appeal to enforce the alimony award. *Fla. R. App. P.* 9.600(c). There is a large amount of outstanding arrearage. The purge payment required is a modest \$250.00 a month, which the Court finds is within the Former Husband's means.

DATED: Revy 9, 2009



JOY B. SHEARER
MAGISTRATE

✓ Copies to:

Sharon Ann Mayo, 220 Almeria Road, West Palm Beach, Fl. 33405

William A. Cabana, 1050 Capri Isles Blvd., #F105, Venice, Fl. 34292

TAPE NO. JBS 1:32, 6F, 2/3/09

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATION MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH RULE 12.490 (F), FLA. FAM. L.R.P. YOUR EXCEPTIONS MUST BE FILED WITHIN TEN (10) DAYS OF THE ABOVE DATE AND SERVE A COPY ON THE OPPOSING PARTY AND THE MAGISTRATE. YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW. ELECTRONIC RECORDING IS PROVIDED IN THIS CIRCUIT AND A COPY OF THE TAPE OF YOUR HEARING CAN BE OBTAINED THROUGH THE OFFICE OF COURT ADMINISTRATION (355-3745).