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IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
FAMILY COURT DIVISION

SARAH G. O'GRADY	)	
	)	
Petitioner,	)	
vs.	)	Cause Number: 22SL-DR01621
	)	
	)	Division Number: 65
MATTHEW P. O'GRADY,	)	
	)	
Respondent.	)	

MOTION TO CITE AND HOLD RESPONDENT IN CONTEMPT AND MOTION FOR SANCTIONS

COMES NOW the Petitioner, Sarah O'Grady, by and through her attorneys David G. Waltrip, LLC, and more specifically, David G. Waltrip, Nicole A. Hahn, and Justin M. Hicks and files with the Court her first post-Judgment Motion to Cite and Hold Respondent in Contempt and Motion for Sanctions. In support thereof, Petitioner states the following:

FACTS COMMON TO ALL COUNTS

1. On April 5, 2022, Petitioner filed her Petition for Dissolution of Marriage.

2. On May 9, 2022, Respondent filed his answer to Petitioner's Petition for Dissolution of Marriage and Counter-Petition for Dissolution of Marriage.

3. Petitioner and Respondent have three (3) minor children ("Children") born during the marriage.

4. Petitioner and Respondent signed their Affidavits for Judgment, Proposed Judgment of Dissolution of Marriage, Proposed Marital Settlement and Separation Agreement, and Parenting Plan on August 23, 2023 and August 17, 2023 respectively and, on or about September 1, 2023 the Parties submitted to the Court.

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5. On or about September 7, 2023 (hereinafter the "Entry Date"), this Court approved and entered the Judgment of Dissolution of Marriage as submitted by the parties (hereinafter the "Judgment") and incorporated into the Judgment the Marital Settlement and Separation Agreement and Parenting Plan. (A Copy of the Judgment is attached, as Exhibit 1.)

COUNT I - MARITAL REAL PROPERTY

6. The Petitioner restates, adopts and incorporates by references, as if fully set forth herein, all of the allegations contained in the Facts Common to All Counts.

7. The Marital Settlement and Separation Agreement provides, in part, in section 3.2 that the marital real property (hereinafter the "Property") of the parties:

a. Is awarded to Petitioner, Sarah O'Grady;

b. Respondent, Matthew O'Grady, will pay the funds to pay off all of the debts on the house.

c. Respondent shall deposit a sum totaling the combined amount of the debts owed on the Property into an escrow account with Title Partners, Des Peres, Missouri for payment of all debts on the house and the title company will place those funds into a restricted escrow account.

d. After entry of the Judgment, the title company will conduct a closing with the parties, each appearing separately, to sign the quit claim deed, and the title company will pay off all of the debts on the Property.

e. The closing shall be set to take place and shall close not later than seven (7) days following the entry of the Judgment.

f. Respondent shall pay any fees and closing costs incurred by the title company for services provided by the title company.

g. In the event there are excess funds remaining in escrow after the payment of all debts associated with the Property, such funds shall be refunded to Respondent.

8. Respondent failed and refused to deposit funds totaling the combined amount of the debts owed on the Property into an escrow account with Title Partners or any other title company.

9. Respondent failed and refused to make arrangements for Title Partners or any other title company to conduct a closing of the Property within seven (7) days following the Entry Date.

10. Respondent did, however, pay funds directly to the holders of the deed of trust; home equity line of credit; and overdraft line of credit (hereinafter the "Loans") secured by the Property on or about August 30, 2023, thereby satisfying said Loans on the Property in full.

11. The unpaid real personal property taxes and unpaid homeowners' insurance premiums on the Property up to and including the Entry Date are marital debts associated with the Property.

12. The homeowners' insurance premiums for the Property were paid by the mortgage company to the homeowners' insurance provider of the Property from funds held in escrow on or about June 2023.

13. It was the intention of the parties that all debts owed on the Property, including the unpaid real property tax up to and including the Entry Date would be administered and paid at the closing of the Property.

14. As a result of Respondent's failure to schedule a closing with Title Partners, the unpaid real property taxes for the Property though the Entry Date were not paid to the St. Louis

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County Collector of Revenue.

15. Because the funds contained in the escrow account of the mortgagor were not administered at a closing of the Property, a check in the approximate amount of $5,694.94 was issued in the names Petitioner and Respondent as and for the funds remaining in the real estate escrow account upon payoff of the mortgage (hereinafter the " Escrow Check").

16. The Escrow Check was mailed to the address of the Property, the residence of the Petitioner, whereupon Respondent removed the Escrow Check from the mailbox of Petitioner without her knowledge or prior authorization.

17. The Escrow Check represents funds which were intended to cover marital debts and liabilities associated with the Property, specifically, the unpaid real estate taxes up to and including the Entry Date.

18. The Escrow Check does not represent "excess funds [resulting from overpayment] of all debts associated with the Marital Residence" to be refunded to Respondent pursuant to paragraph 3.2 of the Marital Settlement and Separation Agreement.

19. In September 2023, after the payment of homeowner's insurance on the Property was made, Petitioner called the homeowner's insurance provider to cancel the policy on the Property in the joint names of Petitioner and Respondent and created a new policy on the Property solely in the name of Petitioner.

20. As a result of the change of the account status, the insurance provider issued a check in the names of Petitioner and Respondent as and for the refund of premiums for the homeowner's insurance on the Property (hereinafter the "Insurance Check") in the approximate amount of $2,601.00.

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21. The Insurance Check represents funds which were intended to cover marital debts and liabilities associated with the Property, specifically, the premiums for the homeowners' insurance on the Property.

22. The homeowner's insurance premiums for the new account on the Property totaling $3,675.00 became due and owing on October 19, 2023. The Petitioner intended, but was unable, to use the Insurance Check toward the payment of the homeowner's insurance premiums as the check has not yet been endorsed by to Petitioner by Respondent.

23. On or about October 2, 2023 counsel for Respondent returned to counsel for Petitioner a quit claim deed for the Property as signed by the Respondent.

24. On or about October 5, 2023, following submission of the quit claim deed to the St. Louis County Recorder of Deeds, counsel for Petitioner learned that the initial, signed quit claim deed for the Property was refused by the Recorder of Deeds for lack of address of grantee, assignee, or mortgagee.

25. Counsel for Petitioner revised the quit claim deed for the Property on October 5, 2023 and sent a copy of the notification of the refusal and the revised quit claim deed to counsel for Respondent. Counsel for Petitioner requested counsel for Respondent's consent to resubmit the amended, signed quit claim deed or, in the alternative, for Respondent to sign the revised, unsigned quit claim deed. (A Copy of the communication is attached, as Exhibit 2.)

26. Respondent has indicated directly to Petitioner and via his counsel that he will not authorize or sign the corrected quit claim deed until such time that the Escrow Check has been endorsed to him by Petitioner. (See Exhibit 2.)

27. Respondent has further made representations directly to Petitioner and via counsel that the Escrow Check is his money and should be paid to him and further asserted that the

Check represents an overpayment of the Loans.

28. As a direct result of Respondent's failure to sign the quit claim deed for the Property, the title to the marital real property remains in the joint name of Petitioner and Respondent, contrary to the Judgment and terms of the Marital Separation and Settlement Agreement.

29. As a direct result of Respondent's failure to close the Property with Tile Partners as required by the Judgment and terms of the Marital Separation and Settlement Agreement, Respondent has created an unsatisfied marital debt for real property tax and homeowners' insurance premiums for which the terms of apportionment were not otherwise contemplated.

30. The amount of the 2023 real property tax liability is not known at this time, however, the 2022 real property tax liability on the Property totaled $7,683.26.

31. Petitioner requests that the Court order the Escrow Check to be endorsed to Petitioner to be used exclusively to pay the 2023 real property tax liability on the Property.

32. Respondent willfully disobeyed the Judgment despite full knowledge of the Judgment and of the obligations contained therein, and his acceptance of the terms of the Marital Settlement and Separation Agreement.

33. As a direct and proximate result of the Respondent's deliberate violation of the Judgment, Petitioner has been prejudiced by title to the Property remaining in the names of Petitioner and Respondent and the non-payment of the marital debts consisting of the unpaid real property tax liability up to and including to the Entry Date.

34. Respondent has had the present ability at all times to comply with the terms of the Judgment requiring him to: utilize a title company for closing of the Property; to sign the quit claim deed conveying the Property to Petitioner; and to allocate the funds paid to the parties as

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and for return of funds in escrow of the mortgage lender of the Property as well as the refund of homeowners' insurance premiums to the unsatisfied martial debt of the 2023 real property tax liability and homeowners' insurance premiums.

35. Petitioner further notes that Respondent is an attorney licensed to practice in the State of Missouri and, therefore, should be held to the highest of standards for compliance of this Court's Orders and Judgments

36. Petitioner requests an award of sanctions against Respondent for his willful and wanton failure to follow the Judgment.

37. But for the Respondent's failure to comply with the Judgment, the Petitioner would not have had to file this Motion and would not have had to incur the attorney's fees and costs in order to bring this Motion before the Court.

38. Because of the Respondent's willful refusal to abide by this Court's Judgment Petitioner has incurred attorneys' fees in the prosecution of this Motion to Cite and Hold the Respondent in Contempt and the Petitioner is seeking the award of attorneys' fees and the costs of this proceeding.

WHEREFORE, the Petitioner respectfully requests that this Court make and enter an Order for Respondent to Show Cause why he should not be held in contempt of this Court's Judgment; for an Order citing Respondent and holding him in contempt; for an Order for Sanctions against Respondent in such sums as the Court determines to be fair and just and order Respondent to pay such sums to Petitioner; Petitioner further requests that this Court enter an Order for the checks as and for the return of escrow deposits and refund of insurance premiums to be endorsed to Petitioner and be used exclusively for the payment of the 2023 real estate taxes

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and homeowners' insurance on the Property; Petitioner further requests that the Court enter an Order awarding Petitioner her attorney fees and costs incurred herein; and for such other and further Judgments and orders of relief that this Court deems just, proper, and appropriate in these premises.

COUNT II - EXPENSES FOR THE MINOR CHILDREN

39. The Petitioner restates, adopts and incorporates by references, as if fully set forth herein, all of the allegations contained in the Facts Common to All Counts and Count I.

40. The Parenting Plan provides in Part A, Paragraph 17.7, "The parties will divide private parochial and high school costs (tuition, books, fees, and uniforms) with Father paying 67% and Mother paying 33%. The division of the costs for the children's education as stated, herein, shall apply to the 2023-2024 school year, regardless of the date upon which tuition is due. Each of the parties shall pay their percentage of the costs for the children's education directly to the school whenever possible."

41. The deadline for payment of tuition for the 2023-2024 school year as assigned by the parochial school attended by the Children was August 1, 2023.

42. Petitioner paid her 33% share of the parochial school education totaling $4,271.66 directly to the school on or about July 26, 2023.

43. Respondent had knowledge of the deadline date and amount prior to the payment deadline as he received an email directly from the school regarding the payment of tuition and also received communication from Petitioner directly and via counsel.

44. Respondent has yet to pay his 67% share of the parochial school education totaling $8,586.05 directly to the school.

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45. The Marital Settlement and Separation Agreement provides, in paragraph 3.21.A, "The Parties may file married filing jointly for tax year 2022 upon agreement of the parties."

46. The Martial Settlement and Separation Agreement further provides in paragraph 3.21.B., "In the event either party elects to file married filing separately for tax year 2022 for both Federal and State taxes. Each party shall individually bear all costs associated with filing of the individual, separate returns as well as any and all tax liability, fees, penalties, and/or interest owed for tax year 2022. If there is a refund received, it shall be the sole property of the party who filed the return. If the parties file married filing separately in tax year 2022, SARAH shall claim [minor child] and [minor child] as dependants on her taxes and Matthew shall claim [minor child], pursuant to the Parenting Plan."

47. The Petitioner opted to file her Federal and State tax returns as married filing separately.

48. On or about October 17, 2023, Respondent via his counsel, informed Petitioner that his tax liability had increased by virtue of Petitioner filing her taxes married filing separately. He proposed that if Petitioner would file an amended, joint tax return with Respondent that Respondent would satisfy his obligation for the Children's parochial school education. (A Copy of the communication is attached, as Exhibit 3.)

49. Respondent is unjustly hinging the payment of his share of the parochial education of the Children on the filing of a joint tax return despite the payment of tuition being Respondent's obligation pursuant to the Judgment.

50. Addendum 1 to the Parenting Plan, Part B, Protocol for Reimbursement of Medical, Education, and Extracurricular Expenses, provides, in part, "Within 30 days of expenditure, each parent will provide the other with proof of payment for medical, education, and

extracurricular expenses as set forth in paragraph 6 Part B of the Parenting plan and for all other partes of this parenting plan referring to Addendum 1 for reimbursement procedures. For the purposes of this paragraph, 'proof of payment' means any of the following: statement, invoice, or cancelled check. " And further, "A parent incurring expenses requiring reimbursement shall send proof of payment t5o the other parent via Our Family Wizard. A parent owing money to the other shall reimburse the other parent within 30 days of receipt of proof of payment. If a parent fails to make payment by the 30th day following receipt of proof of payment, the amount due shall carry interest on it at the rate of 1% per month until paid."

51. Petitioner incurred two separate expenses for the education and extracurricular activities of the Children, one on August 29, 2023 totaling $325.00 and one on August 31, 2023 totaling $2,942.00. (A Copy of the Our Family Wizard Expenses are attached, as Exhibit 4.)

52. On August 31, 2023, Petitioner provided Respondent proof of payment by posting the receipts for payment and requesting that Respondent reimburse her for his 67% share of said expenses ($217.75 and $1,971.14, respectively). (See Exhibit 4.)

53. Respondent was obligated to reimburse Petitioner within 30 days of receipt of proof of payment.

54. The Parenting Plan provides in Addendum C to Part B, "Other Educational and Extraordinary Expenses," "Father will agree to maintain his family membership at the Missouri Athletic Club ("MAC") for 24 months following entry of judgment."

55. On or about October 16, 2023, the MAC membership was suspended due to non-payment of the account. The amount which must be paid to MAC to reinstate the membership, as of October 16, 2023, is $2,014.07. (A Copy of the Account Balance is attached, as Exhibit 5.)

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56. The suspension of the membership prevents Petitioner, Respondent and the Children from using any of MAC's facilities and participating in activities including swim team.

57. To date, Respondent has not reimbursed Petitioner for said educational and extracurricular expenses of the Children and has failed to maintain the MAC membership.

58. Respondent has willfully disobeyed the Judgment despite full knowledge of the Judgment of and knowledge of the obligations contained therein and his acceptance of the terms of the Marital Settlement and Separation Agreement and Parenting Plan.

59. As a direct and proximate result of the Respondent's deliberate violation of the Judgment, Petitioner has been prejudiced by the non-payment of the marital debts consisting of the unpaid portion of the parochial school tuition which became due before the Entry Date; failure to reimburse Petitioner for his 67% share of the educational and extracurricular expenses of the Children; and inability for her and the Children to enjoy the MAC membership and utilize the facilities and amenities thereto.

60. Petitioner fears that if the balance of the tuition remains unpaid, it is possible that the Children could be expelled from the parochial school.

61. Respondent has had the present ability at all times to comply with the terms of the Judgment requiring him to pay 67% of the parochial school education; reimburse Petitioner for his 67% share of educational and extracurricular expenses of the Children; and to maintain the MAC membership.

62. Petitioner further notes that Respondent is an attorney licensed to practice in the State of Missouri and, therefore, should be held to the highest of standards for compliance of this Court's Orders and Judgments

63. Petitioner requests an award of sanctions against Respondent for his willful and wanton failure to follow the Judgment.

64. But for the Respondent's failure to comply with the Judgment, the Petitioner would not have had to file this Motion and would not have had to incur the attorney's fees and costs in order to bring this Motion before the Court.

65. Because of the Respondent's willful refusal to abide by this Court's Judgment Petitioner has incurred attorneys' fees in the prosecution of this Motion to Cite and Hold the Respondent in Contempt and the Petitioner is seeking the award of attorneys' fees and the costs of this proceeding.

WHEREFORE, the Petitioner respectfully requests that this Court make and enter an Order for Respondent to Show Cause why he should not be held in contempt of this Court's Judgment of Dissolution of Marriage; for an Order citing Respondent and holding him in contempt; for an Order for Sanctions in such sums that the Court determines to be fair and just against Respondent and order Respondent to pay such sums to Petitioner; Petitioner further requests that this Court enter an Order requiring Respondent to pay his obligation for the parochial education of the minor children within fifteen (15) days; Petitioner further requests that this Court enter an Order requiring Respondent to reimburse Petitioner for his 67% share of the expenses incurred for the education and extracurricular activities of the minor children, plus interest at the rate of 1% per month, within fifteen (15) days; Petitioner further requests that this Court enter an Order requiring Respondent to pay his obligation for the MAC membership within fifteen (15) days; Petitioner further requests that the Court enter an Order awarding Petitioner her attorney fees and costs incurred herein; and for such other and further Judgments and orders of relief that this Court deems just, proper, and appropriate in these premises.

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I, Sarah G. O'Grady, the Petitioner herein, have reviewed the aforegoing and state upon my oath that the aforegoing is true and correct to the best of my knowledge, information, and belief.

SARAH G. O'GRADY

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

On this 18TH day of October, 2023, before me personally appeared SARAH G. O'GRADY, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Melanie Clair LeBlanc
Notary Public

My Commission Expires: 8/22/2027

MELANIE CLAIR LEBLANC
Notary Public - Notary Seal
St Louis County - State of Missouri
Commission Number 19602168
My Commission Expires Aug 22, 2027

Respectfully submitted,

DAVID G. WALTRIP, L.L.C.

/S/ DAVID G. WALTRIP

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing was filed and served via the Missouri Efiling System upon: Allison Schreiber-Lee, counsel for the Respondent, on this 24 day of October, 2023.

/S/ DAVID G. WALTRIP
DAVID G. WALTRIP

Not an Official Court Document