

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA  
CIVIL ACTION

P D,

Petitioner & father,

vs.

D B,

Respondent & mother,

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Case No. YY DR XXXX N

**ORDER ON MOTHER'S MOTION FOR ATTORNEY'S FEES**

This matter having come before the court on Date/2014 on the mother's "Motion for Attorney's Fees, Costs and Suit Monies," filed Date/2014, it is ordered:

**The finances of the parties as of Month/Day/2013 have been determined**

This case was tried on Month/Day/2013 and the Final Judgment was filed on Month/Day/2013.

A decision about attorney's fees is based on the income, assets and liabilities at the time of the judgment, not a later time, whether the basis for the fees is §61.16, *Wrona* or *Rosen*. *Minsky v. Minsky*, 779 So.2d 375 (Fla. 2d DCA 2000); *Duchesneau v. Duchesneau*, 692 So.2d 205 (Fla. 5<sup>th</sup> DCA 1997); *Mishoe v. Mishoe*, 591 So.2d 1100 (Fla. 1<sup>st</sup> DCA 1992).

So, the mother's and the father's post judgment job histories are not relevant to a motion for attorney's fees made pursuant to a reservation of jurisdiction over the issue for post judgment proceedings.

The court made findings in the judgment of their incomes, so those are the incomes of the parties when considering a motion for attorney's fees. The mother's income is zero. The father's is \$5,000 gross a month. On page 9 of the Final Judgment, paragraph 5 (2), the court found "no basis for imputing income to the mother."

The parties' assets and liabilities are reflected in their financial affidavits filed before the trial. The father's affidavit shows a net worth of \$77,095, which includes an IRA account of \$66,681. The mother's financial affidavit filed 5/31/2013 show a negative net worth of about (\$3,000). Her only asset is a 2007 car, for which she owes a car loan. She has other credit card and short term debts.

**Statutory and nonstatutory considerations**

The legal authority for the mother's request for fees is F.S. §61.16 and the factors in the decision of *Rosen v. Rosen*, 696 So.2d 697 (Fla. 1997).

Under the statute, "the financial resources of the parties are the primary factor to be considered" when deciding a motion for fees. *Rosen* at 700. Under *Rosen* "other relevant circumstances to be considered include factors such as the scope and history of the litigation; the duration of the litigation; the merits of the respective positions; whether the litigation is brought or maintained primarily to harass (or whether a defense is raised mainly to frustrate or stall); and the existence and course of prior or pending litigation." *Id.* The court has also considered the decision of *Wrona v. Wrona*, 592 So.2d 694 (Fla. 2d DCA 1991).

The non-financial factors in *Rosen* and *Wrona* factors must be considered on any motion for fees. So while "the financial resources of the parties are the primary factor to be considered," the

“scope and history of the litigation; the duration of the litigation; the merits of the respective positions; whether the litigation is brought or maintained primarily to harass (or whether a defense is raised mainly to frustrate or stall)” are also considerations.

### **Proof required at a fee hearing**

The lawyer seeking fees must testify and the lawyer must support her request with detailed billing records. “[Here], appellee’s attorney did not testify ... Without the attorney’s testimony as to the reasonableness of the hours expended and the hourly rate, the evidence does not support the award.” *Brewer v. Solovsky*, 945 So.2d 610 (Fla. 4<sup>th</sup> DCA 2006). *See also Warner v. Warner*, 692 So.2d 266 (Fla. 5<sup>th</sup> DCA 1997). The party requesting fees “must prove with evidence the reasonableness and necessity of the fee sought.” *Chouri v. Chouri*, 2 So.3d 987 (Fla. 2d DCA 2008).

To prove the hours worked, the “attorney fee applicant should present records detailing the amount of work performed.” *Florida Patient’s Compensation Fund v. Rowe*, 472 So.2d 1145, 1150 (Fla. 1985). An “award of attorney’s fees requires competent and substantial evidence. ... Competent evidence includes invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee.” *Brewer v. Solovsky, supra*.

The reasonableness of a fee is proven by proving the reasonable number of hours and the reasonable hourly rate. “The number of hours reasonably expended, determined in the first step, multiplied by a reasonable hourly rate, determined in the second step, produces the lodestar, ...” *Florida Patient’s Compensation Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985).

### **Corroboration by another attorney is not necessary in a dissolution or paternity case**

In a Chapter 61 case, the testimony of the lawyer seeking the fees does not have to be corroborated by another lawyer. §61.16 provides: “[a]n application for attorney’s fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter.”

### **Necessary and unnecessary litigation**

In general, this case was necessary because of the inability of both parents to work out a parenting plan, a parental responsibility order, a time-sharing schedule and a child support order on their own. They are equally responsible for this litigation.

However, although in general the positions taken by the parties were not unreasonable, the mother’s request for supervised time-sharing had no merit, as the court found in the Final Judgment. The court found the father capable of taking care of the child overnight and otherwise. He arranged his circumstances to do this. Further, the mother’s two untimely motions for rehearing were unnecessary litigation.

### **Reasonableness of the fees**

The court finds that the hourly rate charged by the mother’s attorney, \$225 an hour, is reasonable for an attorney in this community of her training and experience.

The court finds that of the total time her counsel spent on this matter, 38.6 hours, one hour was unnecessary, that is, the time required to file and have considered two untimely motions for rehearing. So, the total hours reasonably and necessarily required to represent the mother were 37.6 and the total reasonable and necessary fees were \$8,460. (\$225 x 37.6)

Of her costs, postage is not allowed as a taxable cost under the supreme court’s “Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.” Her remaining costs are allowed by those guidelines. Of her remaining costs, the court finds all of these were reasonable and necessary to the representation of the mother. So, her costs of \$411.20 were reasonable and necessary.

So, total fees and costs of \$8,871.20 were reasonable and necessary for the representation of the mother in this case.

**Need and ability to pay**

The court has considered the non-statutory factors and the need of the mother for financial assistance from the father to pay her fees and costs. The court has also considered the father's ability to pay.

She cannot pay her attorney a reasonable fee for her necessary services or pay her costs without financial assistance from the father. Further, he has the ability to pay her fees and costs while also paying his own. He has more income than she has, \$5,000 a month vs. zero, and he has an IRA account sufficient to pay her fees and costs.

**Order**

**Therefore, within 45 days the father is ordered to pay directly to the mother's attorney, \$8,871.20, by a check made payable to the mother's attorney and received by her within 45 days of this date.**

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

\_\_\_\_\_  
R. Thomas Corbin, Circuit Judge

Copies provided to:  
\_\_\_\_\_, Esq., and \_\_\_\_\_, Esq.