

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

K. S.,
Petitioner & former husband,

vs.
A. S.,
Respondent & former wife,

Case No. XX DR YYYY N

ORDER DENYING FORMER HUSBAND'S MOTION TO ABATE

This matter having come before the court on *Date omitted* / 2015 on the former husband's motion to abate, it is ordered:

1. Findings

On 12/19/2014 the magistrate made a report and recommendation that the former husband must pay \$3,500 to the former wife for her temporary fees and costs at the rate of \$300 a month. This recommended order of the magistrate was adopted as the order of the court on 1/5/2015. To date the former husband has paid nothing on that order.

The former husband's motion to abate asks the court to abate the requirement to pay \$300 a month to the former wife's counsel. At the hearing on his motion to abate the former husband testified that since that order was entered he paid "\$2,100" to a "financial expert" to assist him with the proof on his pending supplemental petition. The magistrate's report made a finding that he pays his lawyer \$2,500 every month to pursue his pending petition. He also pays his living expenses every month.

The legal basis for this temporary fee award was §61.16 and the court's obligation to "level the playing field" so that both parties have an equal ability to secure competent counsel and to pay the costs of the litigation.

2. Ruling

The motion is denied. The former husband had the ability to pay \$300 a month as ordered on 1/5/2015 because since then he paid his "financial expert" \$2,100 and he pays his lawyer \$2,500 every month. And he has paid all of his personal living expenses.

There is no presumption that his court costs and legal fees are necessary and reasonable and even if there were a finding to that effect, his fees and costs have no superior priority over those of the former wife. The former wife is entitled by law to an equal ability to secure competent counsel and to pay her costs of the litigation from the combined incomes and assets of the parties. That was the point of the magistrate's recommended order.

His pending supplemental petition asks to reduce or terminate his alimony obligation. So, the former wife's fees incurred defending against that petition are incurred to preserve the

obligation. Her fees, therefore, are incurred to maintain her financial support.

Financial support, that is, alimony or child support, and the fees required to secure these that are ordered to be paid by the obligor are the obligor's first obligation before he pays his own housing expense, groceries, light bill, "financial expert" and other costs of the litigation, and his own attorney.

His obligation of support and the fees necessary to secure it are not the last bill he owes after he has paid all of his own personal living and litigation expenses to his satisfaction. They are the first bill he owes. He then pays his own living and litigation expenses with what he has left.

So, he has always had the ability to pay the fees as ordered, \$300 a month, but he decided to use his money for his personal living bills and his litigation expenses first.

Because he had the ability to pay, his motion to abate is denied.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:

, Esq., and , Esq.