



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

(703) 248-2221

Fax: (703) 385-4432

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MARCUS D. WILLIAMS
STANLEY P. KLEIN
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RETIRED JUDGES

March 2, 2004

Jennifer E. Mandell, Esq.
Richard L. Downey & Associates
4126 Leonard Drive
Fairfax, Virginia 22030

Michael K. Murphy, Esq.
10560 Main Street
Penthouse 15
Fairfax, Virginia 22030

Re: *Rutledge v. Rutledge*, Chancery No. 156889

Dear Counsel:

This matter is before the Court on Respondent Ronald Rutledge's Motion for Reconsideration of this Court's January 16, 2004 bench ruling to the extent that it awarded the Petitioner, Kathleen Rutledge, attorney's fees associated with her motion to modify spousal support.

In support of his Motion for Reconsideration, Respondent Ronald Rutledge (hereinafter "Respondent") maintains that pursuant to Va. Code Ann. § 20-109(C), the Court lacks jurisdiction to award attorney's fees to the Petitioner Kathleen Rutledge (hereinafter "Petitioner") incurred in connection with her motion for modification of spousal support.

The parties entered into a Property Settlement Agreement (hereinafter "PSA") in March 1999 and a Final Divorce Decree which incorporated the parties' PSA was entered in July 1999. In July 2003, the Petitioner filed a motion to modify spousal support due to a material change in circumstances. On January 16, 2004, after a hearing was held on the Petitioner's motion, the Court ruled that the Petitioner was entitled to an increase in

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spousal support and awarded the Petitioner attorney's fees. The Respondent filed a Motion for Reconsideration of the Court's award of attorney's fees.

Pursuant to Va. Code Ann. § 20-109(C), if a contract signed by the party to whom such relief might otherwise be awarded is filed before entry of a final decree, the Court may not enter a decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fees or establishing or imposing any other condition or consideration, monetary or nonmonetary except in accordance with that contract.

The parties specifically address the issue of attorney's fees in their PSA. Section 11(C) of the parties' PSA provides that the husband will pay the wife \$3000 as and for the expenditure of attorney's fees necessitated by her as a result of the filing of the Bill of Complaint for Divorce. Also, Section 12(A) and 12(B) of the parties' PSA provides for an award of attorney's fees in the event of a breach of the parties' PSA.

The Petitioner did not bring her motion for modification of spousal support as a result of a "breach" of the Respondent's obligations under the PSA, and therefore, the provisions regarding attorney's fees due to a breach of the PSA under Section 12(A) and 12(B) do not apply. Further, although the parties' PSA provides for the modification of support, it does not provide for an award of attorney's fees associated with such modification. Va. Code Ann. § 20-109(C) specifically prohibits the Court from awarding counsel fees, except in accordance with the parties' contract.¹

Property settlement agreements are contracts and are subject to the same rules of interpretation as other contracts. *Smith v. Smith*, 3 Va. App. 510, 513 (1986). In construing a contract, the guiding principle is the intention of the parties as expressed by them through the words that they have used and courts are bound to honor the intentions of parties as expressed in their written agreements. *Wilson v. Holyfield*, 227 Va. 184, 187 (1994).

Here, the parties' PSA expressly provides for an award of attorney's fees in certain situations, but does not provide for an award of attorney's fees incurred as a result of either party petitioning for a modification of spousal support. Pursuant to Va. Code Ann. § 20-109(C), the Court cannot go beyond the terms of the parties' PSA. The PSA fails to provide for an award of attorney's fees for a parties' modification of spousal support, and the Court is without power to make such an award.

¹ The Petitioner contends that Va. Code Ann. § 20-109(C) does not apply to post-divorce petitions for modification of support, and therefore, pursuant to Va. Code Ann. § 20-79(b), the Court has broad equity power to award attorney's fees.

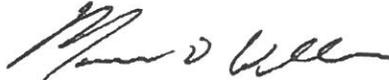
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The Respondent's Motion for Reconsideration is hereby granted. Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court will enter an Order consistent with this opinion and waive the endorsement of counsel.

A copy of the Order is enclosed.

Sincerely,



Marcus D. Williams
Circuit Court Judge

MDW/ad
Enclosure

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