

IN THE SUPREME COURT OF GEORGIA

DENNY C. CORMIER : CASE NO. S06D0017
APPELLANT :
VS. :
NANCY CORMIER :
APPELLEE :

APPELLEE'S RESPONSE TO APPELLANT'S
APPLICATION FOR DISCRETIONARY APPEAL

The appellee, NANCY CORMIER, submits to this Honorable Court that the Application For Discretionary Appeal filed by the appellant, DENNY C. CORMIER, is without merit, premature, and should be denied, based upon the following:

1. The appellant seeks this Court's review of proceedings in the parties' divorce action, being Superior Court of Colquitt County, Georgia, CAF#03-CVD-2211, including the Final Judgment and Decree entered August 3, 2005, Nunc Pro Tunc August 1, 2005.
2. The appellant contends that the aforesaid Decree was entered "ex parte". As evidenced by said Decree, this contention is without merit in that the appellant was provided proper notice of the date, time and place of the trial of the case, and the appellant failed to appear for trial.
3. The appellant contends that the trial court erred in failing to rule on his 'Petition For Writ Of Mandamus'. The 'Petition' filed by the appellant was legally insufficient and a nullity.

This contention is without merit. Furthermore, had same been properly filed, all acts of the trial court were discretionary in nature and not subject to challenge by mandamus. (O.C.G.A. Sec. 9-6-20; Banks v. Benham, et al., 270 Ga. 91).

4. The appellant contends the trial court denied him due process for "*ex parte ultra vires proceedings after procedurally proper removal to federal court*". The appellant's second attempted removal of the action to federal court was improper, without merit, and attempted for the purpose of delay and harassment of the plaintiff. Further, the United States Court Of Appeals For The Eleventh Circuit has entered a *sua sponte* dismissal of appellant's appeal to that court. The trial court did not lose jurisdiction of the action as the result of appellant's attempted second removal to federal court. (Pleming v. Universal-Rundle Corp. 142 F.3d 1354,1359 [11th Cir. 1998]; Edwards v. Alabama Dept. of Corrections, 81 F.Supp.2d 1242,1247 [M.D.Ala. 2000]; Styers v. Pico, Inc., 236 Ga. 258). This contention is without merit.

5. The appellant contends the trial court erred in making its award of alimony and division of property and debt without the aid of appellant's financial information and without consideration of a purported 'non-marital trust' of the appellee.

(A) At the commencement of the divorce action and while represented by counsel, the appellant filed a financial affidavit

with the court and provided minimal financial information to appellee. Thereafter, the appellant, *pro se*, repeatedly failed and refused to provide financial information requested by appellee and as directed by the court. The appellant failed and refused to appear for his deposition, as noticed by appellee and as directed by the court. The appellant failed to appear for trial or provide current financial information to the court. Any lack of appellant's financial information was the result of appellant's willful and intentional refusal to provide same.

(B) There is no evidence of a non-marital trust for the benefit of the appellee or that appellee is a deserting spouse, each of which the appellee has repeatedly denied.

The awards made by the trial court were based upon the evidence submitted at trial. This contention is without merit.

6. The appellant contends that Georgia's alimony statutes are unconstitutional. In 1979 the Georgia General Assembly completely revised Georgia's alimony and support laws. This Act [Ga. Laws 1979, p. 466] revised the law to be gender neutral and to conform to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This Act 'cured the constitutional defect in the alimony statutes.' (Osteen v. Osteen, 244 Ga. 445). This contention is without merit.

7. Subsequent to entry of the aforesaid Decree, appellant filed

a Motion For Re-Hearing which remains pending in the trial court; therefore, appellant's application is premature.

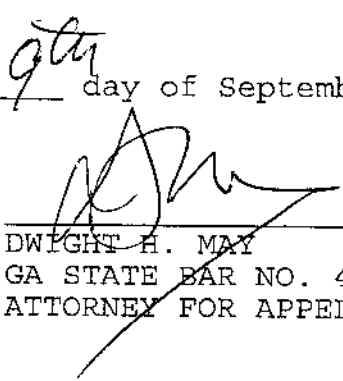
8. Throughout the divorce proceedings, the appellant blatantly disregarded and refused to comply with the trial court's orders, absolutely refused to engage in discovery, filed numerous meritless petitions, motions, etc., unnecessarily expanding the proceedings, and made untrue accusations against the trial court, all with the express intent and purpose of delay and harassment of the appellee and to thwart appellee's attempts to obtain the relief to which she was entitled.

9. The 'Proceedings Below' and 'Facts' set forth in appellant's Application to this Court contain numerous inaccurate and/or untrue statements, completely unsupported by the record in this action.

WHEREFORE, appellee submits to this Honorable Court that the appellee's Application For Discretionary Appeal sets forth no legal or factual basis for appeal, is submitted to this Court for the purpose of further delaying this action and is, therefore, frivolous and should be denied.

Respectfully submitted, this 9th day of September, 2005.

P.O. Box 1660
Moultrie, GA 31776
229/985-1724



DWIGHT H. MAY
GA STATE BAR NO. 478950
ATTORNEY FOR APPELLEE

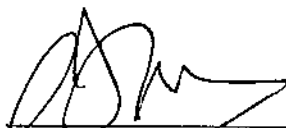
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing APPELLEE'S RESPONSE TO APPELLANT'S APPLICATION FOR DISCRETIONARY APPEAL upon appellant, pro se, by placing same in the US Mail, postage prepaid, in an envelope properly addressed to:

Denny C. Cormier
1000 Mallery Street #38
St. Simons Island, Georgia 31522

This 9th day of September, 2005.

P.O. Box 1660
Moultrie, GA 31776
229/985-1724



DWIGHT H. MAY
GA STATE BAR NO. 478950
ATTORNEY FOR APPELLEE