

**VIRGINIA ::**

**In the Circuit Court of Chesterfield County**

Guy Crocco,

Plaintiff,

v.

In Chancery No. 00-1200

Elizabeth Deuxanges, (f/k/a Elizabeth Crocco)

Defendant.

**Order Granting Defendant's Motion to Reconsider,  
Denying Plaintiff's Motion to Reconsider, and Entering Judgment for  
Spousal Support Arrears and Attorney Fees**

The parties appeared on October 24, 2003, to argue Plaintiffs Motion for Reconsideration and Motion for Contribution and Defendant's Motion for Reconsideration. Both Motions are in response to a letter ruling issued by the Court on July 15, 2003, in which the Court found that Plaintiff was in arrears on his spousal support obligation for the months from March 2003 through July 2003. The plaintiff asked for reconsideration on the grounds that 1) the Court lacks jurisdiction to establish spousal support arrearages where that issue was not noticed as one to be adjudicated; and 2) that the Court failed to recognize his right of contribution or indemnification or set off. The defendant asked for reconsideration on the ground that the Court had not fully recognized the totality of the arrearage.

For the reasons that follow, the Court hereby denies Plaintiffs Motions for Reconsideration and Contribution and grants Defendant's Motion for Reconsideration.

BACKGROUND:

By Final Decree entered September 26, 2002, the Court ruled as follows regarding spousal support:

In further consideration whereof, it is hereby ordered that based on the factors set forth in Section 20-107.1 of the 1950 Code of Virginia, as amended, and the reasons stated in the Court's opinion letter dated June 12, 2002, Wife is awarded \$3,000.00 per month as and for spousal support, for the first twelve (12) months beginning July 1, 2002. Thereafter, Wife is awarded \$1,000.00 per month as and for spousal support payable on the 1<sup>st</sup> day of each month . . .

The parties acknowledge and agree that Husband deducted from Wife's spousal support the amount of the monthly mortgage payments and Toyota Camry car payments for the months of July 2002, August 2002, and September 2002.

The agreement further provided that "as of July 1, 2002, she (Wife) shall timely pay the mortgage on the marital residence . . ."

By Notice dated March 25, 2003, the plaintiff filed a Motion and Order to Reinstate and a Notice and Motion for Enforcement and Attorney's Fees. The Motion for Enforcement provided as follows: "Comes now the Plaintiff, Guy Crocco, by Counsel, and moves the Court for an Order granting the enforcement of the Final Decree. ." with a wherefore clause that read as follows: "Wherefore, the Plaintiff prays that the Court enforce the Final Decree of September 26, 2002 . . ."

FINDINGS:

Plaintiff argues that the Court lacked jurisdiction to establish an arrearage in the defendant's favor because the matter before the Court was on the plaintiff's motion. The plaintiff cites no authority for this position and the Court has found none. Had the plaintiff filed a show cause, the argument might be well founded. The plaintiff, however,

filed a Motion for Enforcement. The evidence presented at the hearing did not support the plaintiff's argument. The Court granted Plaintiffs Motion in that it enforced the final decree. However, in doing so the enforcement inured to Defendant's benefit, not Plaintiff s benefit. Based on the motion that was filed, the Court did have jurisdiction to "enforce" the decree.

Plaintiff's Motion for Contribution, Indemnification, or Set-Off is not well founded. Under a *Pendent Lite* award entered by this Court in January 2001, Plaintiff was ordered to pay the mortgage payments on the parties' marital residence until further order of the Court. That Order made no provision for spousal support. In the Court's letter ruling of June 13,2003, the plaintiff was ordered to pay the defendant \$3,000.00 per month in spousal support for a one-year period. Thereafter, spousal support was reduced to \$1,000.00 per month. The marital home was awarded to the wife with an order that she refinance within ninety (90) days.

The Final Decree entered by the Court on September 26, 2002, provided in relevant part as follows regarding the marital residence, the mortgage and spousal support:

Until closing on the transfer or sale, Wife shall have exclusive use and possession of the marital residence, and as of July 1, 2002, she shall timely pay the mortgage on the marital residence...

... Wife is awarded \$3,000.00 per month as and for spousal support, for the first twelve (12) months beginning July 1,2002.

The parties acknowledge and agree that Husband deducted from Wife's spousal support the amount of the monthly mortgage payments and the Toyota Camry car payments for the months of July 2002, August 2002, and September 2002.

The decree was clear that as of July 1, 2002, the wife was responsible for the

mortgage payment and was awarded \$3,000.00 per month in spousal support from the husband.

During the hearing on May 15, 2003, Plaintiff indicated that the divorce decree asked him to pay the mortgage until Defendant got back from France and refinanced and since she had not done so he continued to pay to protect his credit rating and not have a foreclosure occur.<sup>1</sup>

While the plaintiff's motives were understandable, legally he was in error. The Court of Appeals addressed this issue in *Sanford v. Sanford*<sup>2</sup> and ruled as follows:

[I]t is the obligation of the divorced husband to pay the specified amounts according to the terms of the decree and . . . he should not be permitted to vary these terms to suit his convenience. . . [when circumstances change, to] warrant a change in the terms of the decree . . . [the husband's] remedy is to apply to the Court for such relief. To permit him to increase the amount of the specified payment at one time, reduce them at another, and require an adjustment of the difference in the future, would lead to continuous trouble and turmoil . . .<sup>3</sup>

The Court went on to state the proposition that:

Even a court of equity, in an effort to do equity, cannot disregard the provisions of a lawful decree, nor is such a court justified in off-setting against payments required to be made under such a decree voluntary payments . . . if a party to such a decree is not satisfied with its provisions relative to . . . payments required to be made for . . . support, such party may always come to court and ask for a modification of the decree.<sup>4</sup>

Contrary to Plaintiff's position, *McComb v. McComb*, 226 Va. 271 (1983) is not informative in this context because while it dealt with a joint debt paid compulsorily as opposed to voluntarily, it did not address the issue of payments made in nonconformity with a divorce decree.

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<sup>1</sup> (Hrg. Tr. May 15, 2003, at 40)

<sup>2</sup> *Sanford v. Sanford*, 19 Va. App. 241 (1994).

<sup>3</sup> *Id.* at 246.

<sup>4</sup> *Id.* at 246 (citing *Fearon v. Fearon*, 207 Va. 927, 931 (1967)).

The plaintiff requested leave to present additional evidence on the issue of why the husband made the mortgage payments. The evidence as to this issue was explored in the May 15,2003, hearing. The Court declines to take additional evidence on this point.

The Court finds that it did not fully credit the wife with the total amount of payments not made. The amount owed to Mrs. Crocco from October 2002 to May 2003 is \$17,624.49. Interest will accrue on each installment at the judgment rate as it became due.

The work performed by Defendant's counsel that appears to be directly related to the Motion to Reconsider appears to have begun on July 18,2003. While other work apparently relating to this case includes documents drafted as early as June, those documents were not filed with the Court except as exhibits in support of the attorney's fee request. The Court will only authorize attorney's fees and costs for work done from July 18,2003, through the Court appearance on October 24,2003.

Unless otherwise agreed to by the parties in writing, Defendant shall pay the arrearage at a rate of \$2,000.00 per month in addition to his \$1,000.00 per month spousal support obligation until paid in full.

**WHEREFORE**, it shall be and hereby is this \_\_\_ day of December 2003,

ORDERED, that Plaintiff's motions for reconsideration and for contribution are DENIED; and it is further;

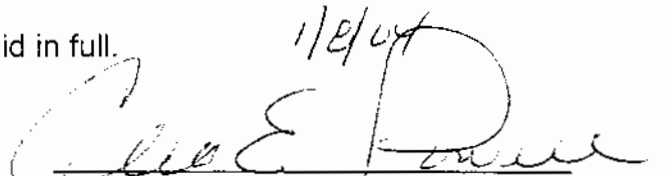
ORDERED, that Defendant's motion for reconsideration is GRANTED; and it is further;

ORDERED, that JUDGMENT for unpaid spousal support from October 2002 to

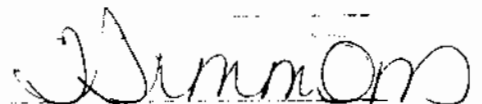
May 2003 in the principal amount of Seventeen Thousand Six Hundred Twenty Four Dollars and Forty-Nine Cents (\$17,624.49) plus interest of One Thousand Five Hundred Four Dollars and Ninety Cents (\$1,504.90) as of December 15, 2003, for a total of Nineteen Thousand One Hundred Twenty-Nine Dollars and Thirty-Nine Cents (\$19,129.39) be and the same hereby is ENTERED in favor of the Defendant, Ms. Elisa DEUXANGES and against the Plaintiff, Mr. Guy CROCCO, and it is further;

ORDERED, that JUDGMENT for attorney fees from July 18, 2003 to October 24, 2003 in the amount of Two Thousand Four Hundred and Fifty Dollars (\$2,450.00) incurred by Ms. DEUXANGES in connection with her Motion for Reconsideration be and the same hereby is ENTERED in favor of the Defendant, Ms. Elisa DEUXANGES and against the Plaintiff, Mr. Guy CROCCO, and it is further;

ORDERED that the Plaintiff, Mr. Guy CROCCO shall pay the foregoing sums directly to the Defendant, Ms. Elisa DEUXANGES as supplemental alimony at a rate of Two Thousand Dollars (\$2,000.00) or such lesser sum as may be due per month, on the Fifteenth (15<sup>th</sup>) of each month commencing on Monday, December 15, 2003 and continuing monthly thereafter until paid in full.

11/21/03  
  
The Honorable Cleo E. Powell, Judge  
Circuit Court for the County of Chesterfield

Seen and respectfully objected to. The foregoing attorney fee award should have included Four Hundred and Fifty Dollars (\$450.00) of legal services charged the Defendant on July 18, 2003. Those services consisted of a review of Virginia cases on non-confirming support payments, and that legal research provided the foundation for



both the defendant's motion for reconsideration and the alimony arrears awarded above.

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Counsel for Defendant, MME Elisa DEUXANGES

Seen and Objected to \_\_\_\_\_ :  
see attached objections.



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Counsel for Plaintiff, Mr. Guy Crocco

both the defendant's motion for records debarment and the alimony arrears awarded above.

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Seen and \_\_\_\_\_

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Counsel for Plaintiff, Mr. Guy Crocco

The Order is objected to the for following reasons:

1. The court erred in failing to require the Wife to comply with its order of September 26, 2002 and in failing to require her to reimburse Husband for mortgage payments and car payments he made directly to the creditors, where the court had ordered her to make these payments herself.
2. The court erred in failing to credit Husband's payments to the mortgage and car loan lenders in satisfaction of the spousal support award or, alternatively, to grant him an offset or recognize his right to contribution or indemnification.
3. The court failed to do equity and caused an unjust enrichment of Wife by its way of handling the problem of Wife's failure to pay the mortgage and car payments where Husband was the party liable to the creditor for these debts but wife was the party ordered by the divorce court to pay them.
4. Wife erred in determining that Husband had a duty to pay spousal support directly to Wife where the Final Decree that was entered did not order Husband to pay the support directly to Wife, and the court erred in characterizing Husband's payments as "non-conforming" payments.
5. The court erred in denying the Husband's motion for enforcement and attorney fees and for Reconsideration. The court erred in Granting Wife's motion and in awarding her attorney fees.
6. The court erred in denying Husband the right to take additional evidence and for discovery, while allowing Wife to produce additional evidence.
7. The court erred in denying Husband's motion for attorney fees and in granting Wife's motion for attorney fees.
8. All objections and arguments made heretofore in court and in Husband's brief are hereby renewed and preserved.