



Fee Award Reduced After "Reasonable" Settlement Rejected by Wife

In the recent case of *Hallac v. Hallac*, 88 So. 3d 253 (Fla. 4th DCA 2012), the Fourth District Court of Appeal affirmed an order limiting a wife's request for attorney's fees under Florida Statute § 61.16 due to her

rejection of what the court deemed to be a reasonable settlement offer.

The procedural history of *Hallac* is simple and developed rapidly. In August 2009, the wife filed for divorce in Palm Beach County after seven years of marriage. The financial affidavits filed in the case revealed the husband earned over \$500,000 a year in an investment management business while the wife had no income. Five months into the divorce litigation the husband offered his wife a settlement that included \$239,000 in assets, \$200,000 in lump sum alimony, and an additional \$20,000 towards attorney's fees. The wife rejected the husband's offer and the case proceeded to trial.

After hearing the evidence during the April 2010 trial, the trial court awarded the wife net assets of \$178,369 and bridge-the-gap alimony of \$8,000 per month for nine months. The wife did not appeal the final judgment.

Following the divorce trial both parties filed motions for attorney's fees. The wife moved for attorney's fees under the traditional §61.16 grounds of "need and ability to pay." The husband contended that, despite his high income, he was entitled to attorney's fees from wife as she had rejected an offer of settlement that was significantly better than anything she could have received at trial.

The trial court's order on the attorney's fee hearing found the wife's rejection of the husband's offer of settlement was unreasonable as she could not have expected to "do better" than the offer at trial. The trial court determined that, using the wife's valuations, she could not have expected to receive more than \$141,000 in net assets at trial, whereas the husband's last settlement offer was for \$439,000 in total assets. The trial court concluded that the wife had no reason to continue to litigate after the husband's last settlement offer and therefore denied her request for attorney's fees incurred after the offer and granted husband his attorney's fees for time spent litigating after making the offer. The trial court's attorney's fees order amounted to a net fee award in favor of the husband.

The wife appealed the trial court's award of attorney's fees to husband, contending the court abused its discretion in denying her attorney's fees incurred after the husband's settlement offer solely on the basis of her failure to accept the offer. The husband argued the trial did not abuse its discretion because his offer was reasonable to the point of making any litigation after his offer useless.

Judge Martha Warner, writing for a unanimous panel of the Fourth District Court of Appeal, affirmed the trial court's reduction in attorney's fees to the wife and reversed the award of attorney's fees to the husband. The Court reasoned that the wife's failure to accept a favorable settlement was a basis for limiting her entitlement to attorney's fees but reversed the fee award to husband because he failed to demonstrate the wife engaged in vexatious litigation. Judges Dorian Damoorgian and

Burton Conner concurred with Judge Warner's opinion.

The *Hallac* court relied on *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997) as a basis for denying the wife attorney's fees incurred during litigation after the husband's settlement offer. The *Hallac* court noted that under *Rosen*, "other relevant circumstances" besides the parties' need and ability to pay attorney's fees should be considered when determining entitlement to fees under § 61.16. Further, settlement offers are a "relevant circumstance" to be considered when setting a § 61.16 attorney's fee under the *Rosen* parameters. The trial court did not abuse its discretion in denying wife attorney's fees for her decision to litigate after the husband presented her with a reasonable settlement offer because the results she obtained at trial fell far short of the offer.

As to the award of fees to the husband, the *Hallac* court found the fees were not justified under § 61.16. Given the husband's vastly superior income, the only circumstance allowing the trial court to require wife to pay his fees would be through the court's inherent authority to assess sanctions for vexatious litigation under the inequitable conduct doctrine. The wife could not be required to pay husband's attorney's fees because her decision not to accept husband's settlement offer in and of itself did not represent the type of vexatious conduct or bad faith litigation needed to trigger sanctions under the inequitable conduct doctrine.

Although the long-term impact of *Hallac* is remains to be seen, it appears the days of the wealthy spouse being required to foot the tab for unrealistic divorce court litigation is over in the Fourth District. Family law practitioners, litigants, mediators, and counselors should take note of *Hallac*, as the case makes it clear that an impecunious spouse's entitlement to attorney's fees under §61.16 can be limited or even eliminated when a reasonable settlement is rejected.

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