

SEP 06 2007

TRIBAL COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

LYNNEA A. FERRELL  
CLERK OF COURT

SCOTT COUNTY

STATE OF MINNESOTA

In Re the Marriage of:

Court File No. 515-03

Teresa L. Coulter,

Petitioner

and

**ORDER**

Kenneth W. Coulter,

Respondent.

The parties settled their marital dissolution action in an order that was issued on May 14, 2004. That order included a section that described how the health insurance of each party and their children was to be provided.

The Respondent has now filed a motion for the reimbursement of out of pocket medical expenses, reimbursement for medical insurance premiums, and for attorney's fees under this provision. The Respondent argues that the language in the decree dissolving their marriage supports his interpretation. The Petitioner disagrees and has filed a counter motion requesting that certain property that was omitted from the original order be given to her.

The relevant portion of the marital dissolution order reads:

The Petitioner currently has health and dental insurance coverage through the SMSDC for herself, the Respondent, and the minor children. The Petitioner has agreed to maintain coverage for herself and the Respondent through the SMSDC and she further agrees to continue to pay monthly insurance premiums to continue to cover the Respondent for a period of ten (10) years starting March 1, 2004. This coverage shall continue to be provided through SMSDC for as long as Petitioner is able to provide that coverage, and thereafter, through private health insurance coverage that is comparable to the coverage now in place. The Respondent has agreed to cooperate with the Petitioner so as to obtain such coverage that is the most reasonably priced coverage available and comparable to the coverage now in effect. In the event the Respondent becomes employed or has access to other comparable insurance, he has agreed to obtain said coverage and any

costs associated with that not paid by an employer shall be paid by the Petitioner during the ten (10) year period referenced in this Judgment and Decree. The parties have further agreed that each will pay their own uninsured medical and dental expenses themselves, and any uninsured expenses for the minor children shall be paid by the Petitioner.

The Court disagrees, in part, with Respondent's reading of this section. The fairest way to read this section is to conclude that the Petitioner must pay Respondent's medical insurance premiums, if any insurance is in place, but that otherwise, each party is responsible for their own uninsured medical costs. This reading is supported by the fact that the second sentence and the second to last sentence state that Petitioner's obligation is to pay the insurance premiums of the Respondent. These sentences do not impose an obligation on the Petitioner to find insurance for the Respondent, or to make sure the Respondent always maintains his insurance. Instead these sentences only impose an obligation to pay insurance premiums on insurance that is in place. The last sentence then specifically states that uninsured costs are to be borne by each party.

The Respondent in this case was without insurance for a period of time. He argues that the Petitioner was responsible for a lapse in his insurance, and that under this section she must pay his uninsured medical costs from the period of the lapse, and that she must pay his uninsured costs under his new medical insurance. Such a reading cannot be supported by the language of this section. The section clearly states that each party is to pay their own uninsured medical expenses, and there is no obligation imposed on the Petitioner to make sure the Respondent maintains his insurance.

In addition, there is nothing in the record that indicates the Petitioner caused Respondent's insurance to lapse by some act of bad faith or malice. In fact, in an affidavit attached to his motion, Respondent alleges that the Community failed to notify him that his insurance was running out, and when he complained about the lack of notice, the Community extended his insurance for another six months. Respondent claims that at the end of this six month period, the Community did not re-notify him about his insurance lapsing and the Petitioner did not assist him in finding new insurance. However, once the Community terminated his insurance the first time, and told him it would extend his insurance for only six months, the Respondent had more than adequate notice that he should make sure he had new insurance. There is nothing in the May 14, 2004 order that imposes upon the Community or the Petitioner an obligation to insure that the Respondent sought out and enrolled in a new insurance program.

The Respondent's motion for coverage of his out of pocket expenses and his uninsured medical costs is denied. However, the Petitioner must continue to pay any insurance premiums on any insurance the Respondent obtains for the remainder of the period stated in the May 14<sup>th</sup> order.

The parties also dispute who should receive a piece of property that was omitted from the original property division. Normally, this Court can only modify an order dividing marital property if a motion is brought within one year of the order, which is clearly not

the case here. SMS(D)C Domestic Relations Code, Chap. III, Section 5(g). However, since this property was never included in the original order, this is not actually a motion to modify an existing property division. It is not as if the parties here are attempting to undo a previously settled decision by this Court. Instead they are looking to this Court for guidance on what is essentially a new issue, so that the time limit in Section 5(g) does not apply.

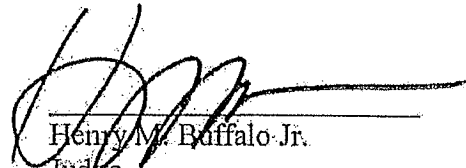
Respondent argues that the pontoon boat in question should be his because it was an upgrade from an earlier boat that had originally been a gift from the Petitioner. The trail the Respondent attempts to trace is too long. The Petitioner bought the pontoon boat, has kept the boat since the divorce four years ago, and she should keep it now. The Respondent also conceded at the hearing on this motion that the Petitioner should be able to keep the jet skis. The Petitioner's motion to amend the divorce decree to reflect her continuing possession and sole ownership of the pontoon boat is granted, and the decree is also amended to reflect her possession and sole ownership of the jet skis.

Both sides have requested attorney's fees for litigating these motions. Parties to a lawsuit normally bear their own costs and fees. Little Six, Inc. v. Prescott and Johnson, 1 Shak. A.C. 157 (Feb. 1, 2000). Neither party has presented evidence compelling enough to upset this presumption. Each party is to bear these own fees and costs for this litigation.

**IT IS HEREBY ORDERED:**

1. That the Respondents relief requested is **DENIED**.
2. That the Petitioner's motion to amend the divorce decree to reflect her continuing possession and sole ownership of the pontoon boat and jet skis is **GRANTED**.
3. The Respondent will do all that is necessary to provide a clear title to such property in the name of the Petitioner.
4. The request for attorney's fees and costs by both party's is **DENIED**.

Date: 9/5, 2007

  
Henry M. Buffalo Jr.  
Judge