

TRIBAL COURT
OF THE

FILED

OCT 15 2007

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SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

LYNNEA A. FERCELLO

CLERK OF COURT

STATE OF MINNESOTA

COUNTY OF SCOTT

In re the Marriage of

Wesley Eugene Brooks,

Petitioner,

And

Court File No. 575-07

Tara Lynn Corwin,
(f/k/a/ Tara Lynn Corwin-Brooks)
Respondent.

**Memorandum Decision, Amended Findings of Fact,
Conclusions of Law, and Judgment and Decree**

In this marriage dissolution matter, the Court entered a Memorandum Decision, Findings of Fact, Conclusions of Law, and Judgment and Decree on September 6, 2007. Thereafter, the Petitioner moved the Court to amend its Findings of Fact, Conclusions of Law, and Judgment in three general respects. The Respondent opposed the motion, and on October 2, 2007 the Court heard oral argument on the motion. At the close of oral argument, the Court ruled from the bench with respect to two aspects of the Petitioner's motion, pertaining to certain vehicle payments and to certain credit card debt, but reserved ruling on the third, pertaining to an award of attorneys' fees, pending the results of legal research. The Court now memorializes its first two rulings, making certain amendments to its Findings and Conclusions pertaining to the vehicle payments and

credit card debt, and the Court declines to amend its previous ruling with respect to attorneys fees, for the reasons discussed below.

Vehicle Payments. In his motion, the Petitioner contended that the Court erred in its Findings concerning the manner in which per capita payments are used to make payments on three vehicles – a 2005 Cadillac Escalade EXT, a 2005 Dodge Dakota pickup, and a 2006 Harley-Davidson Screaming Eagle motorcycle. In Findings No. 14, 17, and 18 the Court found that the monthly payments for those vehicles was made “from an account that [the Petitioner] maintains at the South Metro Credit Union”. The Petitioner argued that the payments are in fact made to the South Metro Credit Union (which financed the vehicles’ purchase) by virtue of an assignment that the Petitioner has directed the Shakopee Mdewakanton Sioux Community to make.

The Petitioner was correct: the record of the trial in this matter reflects that the payments are made by the Community to the South Metro Credit Union, and the Court will correct its Findings of Fact accordingly.

However, the Petitioner also contended that, by virtue of the error in the Findings, the Court effectively overstepped its authority when it directed that the vehicle payments continue to be made. The Petitioner observed that the Court lacks authority, under the Domestic Relations Code of the Shakopee Mdewakanton Sioux (Dakota) Community (“the Community”), to direct the Community to make per capita payments for any purposes other than for child support; and the Petitioner suggested that the effect of the Court’s September 6, 2007 Order was to improperly direct the Community to make the Petitioner’s car payments.

But, as the Court observed when it ruled from the bench on the Petitioner's motion, the Court did not direct the Community to do anything with the Petitioner's per capita payments, in its September 6, 2007 Order. The Court ordered the Petitioner to continue to make the payments – which surely is something that is within the power that the Community gave to the Court when it adopted the Domestic Relations Code.

Accordingly, although the Court will clarify Conclusions of Law numbers 6.a., 6.b., and 6.c., the Court will not otherwise amend the Order relating to the legal obligation of the Petitioner to pay the amounts owing on the vehicles in question.

Credit Card Debt. The Petitioner argued that the effect of the Court's September 2, 2007 Order was to give him responsibility for certain credit card debt that the Respondent incurred following the filing of the instant proceedings. That was not the Court's intent. Accordingly, as the Court indicated on the record at the close of oral argument on October 2, the Findings and Conclusions will be amended to allocate equally between the parties the consumer debt that was incurred prior to the date of the commencement of these proceedings.

Attorneys fees. Finally, the Petitioner argued that the Court did not make Findings of Fact that would legally justify the award to the Respondent of a portion of her attorneys fees. In Conclusion of Law No. 10, the Court awarded the Respondent \$6,500 in attorneys fees – in addition to \$1,000 in fees that were incurred in connection with the Petitioner's contempt of court – which represented approximately one-half of her fees

(and which, in dollar terms, was reduced by \$2,500 that the Petitioner had paid for the Respondent's car insurance). In Conclusion of Law No. 10, the Court said -

Because the Petitioner was in hiding during much of the time that these proceedings were pending, and because discovery and pre-trial procedures therefore were made substantially more difficult and less effective, the Court has concluded that it is appropriate to award the Respondent a portion of her attorneys fees.

The Petitioner, in the brief in support of his motion and in oral argument, contended that the Court's award was not tied to any particular aspect of the Respondent's attorney's itemized bills. He argued that those itemized bills do not indicate that the Petitioner's absence obliged the Respondent's counsel to spend more time on this litigation than she otherwise would have, and that unless the Court could tie its award to some such specific additional burden, the decision to award the fees was improper.

The Court disagrees. This matter was unusually difficult to litigate, for the Petitioner's legal counsel, the Respondent's legal counsel, and the Court, in substantial part because after the Petitioner filed the case he disappeared, fleeing from law enforcement authorities. He therefore was unavailable to participate in discovery that could have served to make a factually tangled case less problematic. Typically, mediation would be a logical course for the parties and the Court to consider in proceedings of this type, but that was obviously not possible here because the Petitioner was either on the run or in custody. (And it is worth noting that, before the Petitioner was apprehended, he clearly was aware of the manner in which this case was moving forward, because his legal counsel was able to speak with him by telephone.)

This Court has adopted, for many purposes, the Federal Rules of Civil Procedure; and for federal courts, the Supreme Court of the United States has said this about fee-shifting:

Thus, it is unquestioned that a federal court may award counsel fees to a successful party when his opponent has acted 'in bad faith, vexatiously, wantonly, or for oppressive reasons.' 6 J. Moore, *Federal Practice* 54.77(2), p. 1709 (2d ed. 1972); see, e.g., Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 n. 4, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968); Vaughan v. Atkinson, 369 U.S. 527, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962); Bell v. School Bd. of Powhatan County, 321 F.2d 494 (CA4 1963); Rolax v. Atlantic Coast Line R. Co., 186 F.2d 473 (CA4 1951). In this class of cases, the underlying rationale of 'fee shifting' is, of course, punitive; and the essential element in triggering the award of fees is therefore the existence of 'bad faith' on the part of the unsuccessful litigant.

Hall v. Cole, 412 U.S. 1, at 5 (1973).

With this authority in mind, it was and is the Court's conclusion that the Petitioner's behavior justifies the shifting, for punitive purposes, of one half of the Respondent's attorneys fees to the Petitioner.

Amended Findings of Fact, Conclusions of

Law, and Judgment and Decree

For the foregoing reasons, and based upon all the pleadings and materials herein, **Findings of Fact numbers 14, 17, and 18 are amended as follows:**

14. Prior to the parties' marriage the Petitioner transferred title to the 2005 Cadillac Escalade EXT vehicle to Respondent. Thereafter, throughout the time following the purchase, to and including the time of trial, the Petitioner has made monthly payments for the vehicle by way of assignment, directly taken by the Shakopee Mdewakanton Sioux

Community from the Petitioner's per capita payment proceeds and sent to the South Metro Federal Credit Union, the bank that financed the purchase of the vehicle.

17. Throughout the time following the purchase of the motorcycle that is the subject of Finding No. 16, to and including the time of trial, the Petitioner has made monthly payments for the motorcycle by way of assignment, directly taken by the Shakopee Mdewakanton Sioux Community from the Petitioner's per capita payment proceeds and sent to the South Metro Federal Credit Union, the bank that financed the purchase of the motorcycle. The Court finds that, prior to the parties' marriage, the Petitioner intended to give title of the motorcycle that is the subject of Finding No. 16 to the Respondent, while retaining any debt owing on the motorcycle as his own.

18. On Father's Day, 2005, the Petitioner purchased a 2005 Dodge Dakota pickup truck. Title to the truck was placed in TLC Design. The Respondent testified at trial that Petitioner intended the truck to be a gift to the Respondent's father, and the Petitioner testified that he intended the truck to be available to the Respondent's father while he was living in Minnesota. In purchasing the vehicle the Petitioner used a vehicle that he owned but that was encumbered beyond its value, and a vehicle that the Respondent owned. Throughout the time following the purchase

of the truck that is the subject of this Finding, to and including the time of trial, the Petitioner has made monthly payments for the truck by way of assignment, directly taken by the Shakopee Mdewakanton Sioux Community from the Petitioner's per capita payment proceeds and sent to the South Metro Federal Credit Union, the bank that financed the purchase of the truck. The Court finds that, prior to the parties' marriage, the Petitioner intended to give title of the vehicle that is the subject of this Finding No. 18 to the Respondent, while retaining any debt owing on the vehicle as his own.

For the foregoing reasons, and based upon all the pleadings and materials herein, **Conclusions of Law numbers 6.a., 6.b., and 6.c. are amended as follows:**

6. Vehicles.

- a. The 2005 Cadillac EXT vehicle is solely the property of the Respondent; but the debt owing on the 2005 Cadillac EXT vehicle is solely that of the Petitioner. The allocation of this debt to the Petitioner is not an award of the Petitioner's "per capita payments", inasmuch as the Court's order does not direct the Shakopee Mdewakanton Sioux Community to continue to make the vehicle payments, but instead directs to the Petitioner to do so.

- b. The 2006 Harley Davidson Screaming Eagle Motorcycle that is the subject of Finding No. 16 is solely the property of the Respondent, but

the debt owing on the motorcycle is solely that of the Petitioner. The allocation of this debt to the Petitioner is not an award of the Petitioner's "per capita payments", inasmuch as the Court's order does not direct the Shakopee Mdewakanton Sioux Community to continue to make the vehicle payments, but instead directs to the Petitioner to do so.

- c. The pickup truck that is the subject of Finding No. 18 is solely the non-marital property of the Respondent but the debt owing on the vehicle is solely that of the Petitioner. The allocation of this debt to the Petitioner is not an award of the Petitioner's "per capita payments", inasmuch as the Court's order does not direct the Shakopee Mdewakanton Sioux Community to continue to make the vehicle payments, but instead directs to the Petitioner to do so.

For the foregoing reasons, and based upon all the pleadings and materials herein,

Conclusion of Law No. 9.c. is amended as follows:

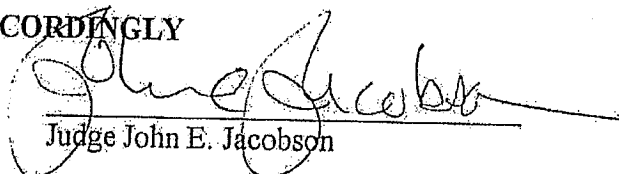
9. Debts.

- c. The consumer debts listed in Finding No. 28.c. that were incurred prior to February 23, 2007, when this matter was filed, are the joint and several responsibility of the parties. Debts incurred thereafter are the sole responsibility of the party that incurred them.

For the foregoing reasons, and based upon all the pleadings and materials herein,
the remainder of the Petitioner's Motion is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY

October 15, 2007



Judge John E. Jacobson