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### A Second Judge Awards Interim Fees In Divorce Action

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**I**N WHAT seems to be an emerging trend following a recent decision by a Brooklyn appeals panel, another Long Island judge has awarded interim counsel fees to a non-moneyed spouse, to be paid by her income-earning husband.

In *Gordon v. Gordon*, 202475/06, Supreme Court Justice Randy Sue Marber of Nassau County ordered Laurence Gordon, who works in real estate, to pay \$150,500 in interim counsel and expert fees to his wife, Lisa Gordon, an unemployed speech therapist.

Justice Marber's ruling is the second to follow the Appellate Division, Second Department's holding in *Pritchep v. Pritchep*, 28727/08, (NYLJ, May 14).

In that case, the panel ordered a "highly successful vascular surgeon" who earned roughly 400 times more than his wife, an intervention therapist, to pay \$75,000 in interim counsel fees.

In June, Justice Robert A. Ross, the supervising judge of Nassau's Matrimonial Center, also adopted the mandate in *Cohen v. Cohen*, 201308-07, and directed a securities trader to pay \$30,000 in fees to his wife, who had no income.

*Pritchep*, wrote Justice Marber, "reiterated and underscored the important purpose underlying Domestic Relations Law §237, the substance of which 'is designed to redress the economic disparity between the monied spouse and the non-monied spouse.'"

The parties in the case before Justice Marber were married in 1990 and had three children—two boys and a girl, aged 16, 14, and 13. In August 2006, Ms. Gordon brought a divorce action, citing cruel and inhumane treatment and abandonment as grounds.

In April 2007, Justice Marber awarded Ms. Gordon \$575 in weekly maintenance and \$500 in weekly child support. The judge also directed Mr. Gordon to continue to make payments on the marital residence and on the automobile, dental and medical insurance plans for Ms. Gordon and the children.

In support of her motion to renew the pendente lite application, Ms. Gordon argued that her husband had "misrepresented" his income to the court in 2006, stating that he would earn no more than \$445,000,

"when in actuality he earned \$637,357."

Ms. Gordon contended that during the marriage she had not been involved in the couple's finances, and never knew how much money her husband made until she received a complete tax return for 2006 as part of the litigation.

The additional money Ms. Gordon sought would allow her "to maintain a lifestyle commensurate with that enjoyed by herself and the children throughout the course of the marriage," according to the decision.

Ms. Gordon further stated she had been forced to borrow \$41,298 from her parents to pay her legal bills and still owed \$50,000 to her attorney, Michael Vessa, of Vessa Wilensky in Uniondale.

Since she had been kept "in the dark" regarding the couple's finances, Ms. Gordon also requested \$80,500 to pay experts and forensic accountants to evaluate Mr. Gordon's "business and real estate interests, the latter of which are allegedly worth in excess of \$100 million."

Mr. Gordon, in turn, asked the court to hold a hearing to determine whether his wealth, the bulk of which came from a "small minority interest" in a family real estate holding business, "is attributable to...[his] active management of the properties, or rather the result of passive market forces."

Ms. Gordon claimed "that by virtue of the active efforts of [Mr. Gordon], all of the subject commercial properties have increased in value," Mr. Vessa said, in an e-mail interview.

Mr. Vessa also cited his client's "numerous and uncounted indirect contributions that she made over the years which aided in the appreciation" of her husband's assets, as support for her claim that the real estate holdings should be equitably distributed as marital property.

In her decision, Justice Marber used the \$636,357 income figure for Mr. Gordon in ordering him to pay an additional \$519.31 in weekly child support.

"The record as developed indicates that the children of this marriage enjoyed a high standard of living residing in a home in Muttontown...as well as attending exclusive summer camps and being

lavished with Bar/Bat Mitzvahs costing in excess of \$70,000," the judge wrote. "Additionally, the record herein clearly evidences a great disparity in income between the Plaintiff and the Defendant."

Justice Marber denied Ms. Gordon's request for an additional \$1,876 in weekly maintenance, "in consideration of the financial obligations" with which Mr. Gordon was charged.

Pursuant to *Pritchep*, the judge ordered Mr. Gordon to pay \$70,000 in interim counsel fees. He cited Ms. Gordon's "protracted absence from the work force, the large income disparity as exists between the parties, and the complicated nature of the within litigation..."

That award will be difficult to pay, said Kenneth Koopersmith, the Garden City attorney who represents Mr. Gordon.

"I'm all for attorneys getting paid," said Mr. Koopersmith, who represented the wife in the seminal Court of Appeals case *O'Shea v. O'Shea*, 93 NY2d 187, which held that trial judges should "see to it that the matrimonial scales are not unbalanced by the weight of the wealthier litigants' wallet."

In this case, however, according to Mr. Koopersmith, his client has a "totally illiquid estate."

"The decision is a perfect example of how much more efficacious it would be if these awards were made at the conclusion of the case, when the court has the power to direct the sale of the property," Mr. Koopersmith said, in an interview.

He denied that Mr. Gordon had misrepresented his finances, saying that there is a difference between "projected income and actual income as it occurs."

Mr. Koopersmith said the next step is a court conference to "see what we can work out" in terms of payment.

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Justice Marber

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