



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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July 2, 2020

LETTER OPINION

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Counsel for Defendant

Re: *Andrew M. Munro v. Anne M. Munro*
Case No. CL-2013-1455

Dear Counsel:

This case presents an issue of apparent first impression, namely, whether a Petition for a Rule to Show Cause ("Rule") may be amended into a Petition to Terminate Spousal Support and whether such amendment relates back to the date of filing of the Rule. The Court has deemed Plaintiff's Rule an improper vehicle to terminate spousal

OPINION LETTER

support, inasmuch as Defendant has not disobeyed the Final Order of Divorce. Said divorce decree is not self-executing in terminating support in this instance wherein Defendant is alleged to be cohabiting with another man without remarrying in a situation analogous to marriage.¹ The Court finds the Petition for a Rule to Show Cause is a “pleading,” and thus in principle could be amended into a Petition to Terminate Spousal Support. However, and without reaching whether the Code section applies to causes not subject to a statute of limitations, the Court finds the amendment is not permitted to relate back pursuant to Virginia Code § 8.01-6.1, because Plaintiff has failed to establish the required elements evincing he exercised diligence, and that such amendment is not of unfair and substantial prejudice to Defendant. The Court further holds a) the amendment is not permitted under the rules allowing corrections to pleadings, because it is of unfair and substantial prejudice to Defendant and also untimely, coming after the Court held the Rule was not an appropriate means for termination of spousal support in this circumstance; and b) even if the amendment were permitted, spousal support cannot be terminated retroactive to the date of the original pleading filed under Virginia Code §§ 20-112 and 20-109(A), because no “petition to terminate” was pending during such period. This Court, therefore, is compelled to deny any relation back of Plaintiff’s Petition for Termination of Spousal Support to the date of filing of his Petition for the Rule to Show Cause.

¹ Plaintiff’s allegation has not been adjudicated and the Court is thus not in a position to determine whether it may be proven. At this juncture, the Court’s analysis is limited to whether Plaintiff’s action to terminate spousal support may relate back to the original date of the filing of the Rule.

Separately, Defendant requested the Court award her attorney's fees in connection with a Rule to Show Cause she pursued to obtain her agreed share of Plaintiff's inheritance from his late father. The Court declines to award the attorney's fees Defendant seeks, as the Property and Support Settlement Agreement of November 16, 2012 ("Settlement Agreement") between the parties did not specify a precise date for payment and the applicable Massachusetts one-year statute of limitations for creditors of the estate, which constituted a reasonable deadline after which payment would clearly be due, had not yet elapsed. As such, Defendant filed her action for contempt prematurely before the expiration of such period. The award of fees was further restricted by the Settlement Agreement, requiring the Court to deny Defendant the award of her attorney's fees.

BACKGROUND

Andrew M. Munro, Plaintiff, and Anne M. Munro, Defendant, divorced on March 21, 2013. Paragraph 1 of their Settlement Agreement sets out a payment plan for spousal support owed by Plaintiff to Defendant in descending monthly amounts from June 1, 2014, until May 1, 2020. These payments would terminate if, among other reasons, Defendant remarried or was "cohabitating with any non-family member in a relationship analogous to marriage." Pl.'s Pet. ¶ 2, Aug. 14, 2019. In April, July, or August 2014,² Defendant allegedly began to live with a man named Michael Richmond, with whom she went on vacations, shared a checking account, and bought groceries. In August 2015, Defendant relocated to Wisconsin with Mr. Richmond's help, and Mr. Richmond moved to Wisconsin

² Based on several of Plaintiff's filings, it is unclear to the Court which of these months is most accurate.

to live with her in July 2016. On August 14, 2019, Plaintiff filed an Affidavit and Petition for a Rule to Show Cause, alleging Defendant was violating the Settlement Agreement as she was cohabiting with another man. The hearing for this Rule was held on March 11, 2020, wherein this Court held that even if the allegations against Defendant were true, she was not in violation of any existing court order and thus not subject to the Court's contempt power. Plaintiff then moved orally to amend the Affidavit and Petition to include a request to terminate spousal support, and also filed a separate Petition to Terminate Spousal Support, requesting the date of termination relate back to the date of the original filing of his Petition for a Rule to Show Cause. Hearing on Plaintiff's motion to amend was held via video conference on June 12, 2020, whereupon the Court took the matter under advisement in consideration of the parties' dueling briefs.

Additionally, in Paragraph 19(L) of the Settlement Agreement, the parties agreed that should Plaintiff's father decease and leave him an inheritance, he would "share the inheritance with Anne on a 50/50 share basis up to an inheritance amount of \$166,000.00." Pl.'s Mem. Opp. Attorney's Fees 1. This Settlement Agreement was "incorporated into, but not merged" with the Final Order of Divorce dated March 21, 2013, and does not include a date for payment. *Id.* On October 16, 2018, Plaintiff's father died and Plaintiff began to receive inheritance sums. Defendant filed her own Petition for a Rule to Show Cause³ on June 19, 2019, regarding the funds owed to her under Paragraph 19(L), and such funds were deposited into the Registry of the Court on October 3, 2019,

³ This filing is what appeared to have touched off this round of cross-litigation between the parties.

pursuant to a court order of September 26, 2019. Defendant now seeks an award of attorney's fees incurred in her pursuit of the aforementioned funds.

ANALYSIS

I. The Petition to Terminate Spousal Support Does Not Relate Back to the Filing Date for the Original Petition for Rule to Show Cause Under Virginia Code § 8.01-6.1

Assuming for the sake of argument that Defendant began cohabiting with another person in a situation analogous to marriage, unlike in the case of remarriage, this is a circumstance which must be proved before spousal support is terminated as a matter of their Settlement Agreement. As Defendant did not remarry, the termination of spousal support is not self-executing. See Va. Code § 20-109(D). The agreement also does not allow for cessation of the support obligation to be retroactive to the first date of cohabitation.

Plaintiff originally filed a Petition for a Rule to Show Cause on August 14, 2019, and attempted to amend it on March 11, 2020, to incorporate a Petition to Terminate Spousal Support relating back to the date of the original filing. Virginia law has yet to directly address the permissibility and effect of such an amendment. Plaintiff asserts the amendment is proper as "the facts are the same, discovery is the same, evidence is the same, preparation is the same, and the law is the same." Pl.'s Reply Mem. Supp. Granting Pl.'s Mot. to Amend 1. Plaintiff might be able to amend the Petition for a Rule to Show Cause in one of two ways: 1) under the statutory provisions contained within Virginia Code § 8.01-6.1, or 2) under the Rules of the Supreme Court of Virginia applicable to

amending pleadings. The Court thus proceeds to examine such alternative avenues for amendment for their viability in this cause.

A. The Amendment Cannot Relate Back Under the Virginia Code § 8.01-6.1 Statutory Test

An amendment to a pleading may relate back to the date of the original filing

for purposes of the statute of limitations if the court finds (i) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading, (ii) the amending party was reasonably diligent in asserting the amended claim or defense, and (iii) parties opposing the amendment will not be substantially prejudiced in litigating on the merits as a result of the timing of the amendment.

Va. Code § 8.01-6.1 (emphasis added). Plaintiff's Petition for a Rule to Show Cause is a "pleading" under the ambit of the above statute. See Va. Code § 8.01-274.1; Va. Sup. Ct. R. 1:4. Virginia Code § 8.01-6.1 creates a three-part test for relating filings back to the original pleading: that the cause arises from the same transaction, the amendment was pursued with reasonable diligence, and there is lack of substantial prejudice to the party opposing amendment. Virginia Code § 8.01-6.1 permits relation back "for purposes of statute of limitations." This Court need not decide whether Plaintiff's claim for termination of spousal support is not amendable in the absence of a statute of limitations, in order to determine if he otherwise meets the three-part statutory test for relation back. Plaintiff seeks his amendment relate back to his original Rule filing because this would allow termination of spousal support to relate back to the original date of filing of his first pleading. However, even if the statute is restricted solely to claims subject to a statutory limitations window for filing, the attempted amendment by Plaintiff also does not meet *all* components of the three-part conjunctive test set forth below.

i. Termination of Spousal Support Arises From the Same Conduct, Transaction, or Occurrence as the Rule

The first part of the test requires the amended claim arise from the same transaction or occurrence set forth in the original pleading. The two pleadings are based on different statutes, Virginia Code § 20-109 and § 8.01-274.1, respectively. A rule to show cause is an entirely different legal vehicle than a petition to terminate, not simply a different “claim or defense,” but this difference is not dispositive. The Supreme Court of Virginia has illustrated how the “same transaction or occurrence” test is to be analyzed, albeit in a context differing from that of the instant case. The pleading of “not congruent theories” reflecting a “wide range of factual circumstances” does not mean the claims do not “arise out of the same transaction or occurrence” if “all the varied circumstances orbited around one core dispute.” See *The Funny Guy v. Lecego*, 293 Va. 135, 152-153 (2017) (discussing the “same transaction or occurrence” test in the context of multiparty litigation). Here, the Rule and the Petition to Terminate Spousal Support do orbit around the same core dispute, namely, whether Defendant’s alleged cohabitation would trigger termination of spousal support. Even if the first part of the Virginia Code § 8.01-6.1 test is met, nevertheless, the second and third elements are not met as further discussed below.

ii. Plaintiff Did Not Exercise Reasonable Diligence in Asserting the Amendment

The second part of the test is concerned with the diligence of the party seeking relation back. In Plaintiff’s Affidavit and Petition for the Rule, dated August 14, 2019, Plaintiff asserts “[t]hat in the July/August time frame of 2014, the Defendant advised [him] that she had moved into an apartment with a roommate located in Herndon, Virginia,” and

then “[s]ubsequently [he] learned that the roommate was a ‘Michael Richmond.’” Pl.’s Pet. ¶¶ 3-4, Aug. 11, 2019. Plaintiff stated in the next paragraph the pair cohabited “in Herndon, Virginia until August of 2015.” Plaintiff had this information for roughly five years prior to filing a *petition* regarding termination of support. The filing occurred less than two months before the contractually-scheduled end of the payments in May 2020. This course of events does not demonstrate reasonable diligence.

Furthermore, Plaintiff originally incorrectly pursued his Rule, though it would have been within his means to file a Petition for Termination of Spousal Support from the outset and thus avoid the issue of amendment and relation back entirely. Plaintiff has offered no adequate justification for either the delay or the misfiling,⁴ and thus the same may not be excused. See *Nida v. Hooker*, 4 Va. Cir. 430 (Alleghany 1976) (holding that in the absence of an explanation for a delayed filing, the court should not grant an extension).

iii. Defendant Would Suffer Unfair and Substantial Prejudice if the Amendment Were to Relate Back to Plaintiff’s Original Filing

The third prong of the statutory test addresses the prejudice that would fall upon the adverse party should the amendment be allowed to relate back. In this instance, Defendant appeared to be on notice of Plaintiff’s intent to terminate spousal support, especially given the substantive content of the original pleading. Plaintiff indicated discovery revealed Defendant either anticipated or should have anticipated a cause sounding in termination of spousal support was impending. Pl.’s Mem. 3. Yet, Defendant

⁴ Plaintiff was represented by different counsel years earlier when he first learned of Defendant’s alleged cohabitation with another man. It is unclear why prior counsel did not undertake to move for termination of spousal support as early as 2014.

asserts persuasively the original pleadings were the basis for a decision to litigate rather than attempt to reach settlement and, as such, she has expended resources in pursuit of litigation she perhaps otherwise would not have incurred. There is a strong presumption that a defendant's reliance upon the pleadings of a plaintiff is reasonable. See *Lee v. Lambert*, 200 Va. 799 (1959). Based on Defendant's reliance upon the actual pleadings, and the otherwise looming termination of the spousal support, it would be unfairly and substantially prejudicial to allow Plaintiff's amendment to relate back to the date of his filing for the Rule.

However, while Plaintiff's Rule and amendment of the same into a Petition to Terminate Spousal Support do not meet the prerequisites for relation back under Virginia Code § 8.01-6.1, this is not dispositive of whether Plaintiff may nevertheless amend his pleading and gain benefit of the earlier date of filing of his Rule. A plain and ordinary reading of § 8.01-6.1 is that it expands the window of jurisdiction in a case where a party seeks substantial amendment of a pleading *after* the applicable statute of limitations has expired, rather than restricting judicial discretion with the three-part test discussed hereinabove in amendment of other claims. Thus, the statute is silent on whether an amendment sought *under the Rules of Court*, in cases involving claims like Plaintiff's for termination of spousal support not carrying a specified limitations period, are clothed with the consequent effect of gaining the benefit of the date of filing of the first pleading. To answer this question, the Court turns to application of the Rules permitting amendment of pleadings.

B. The Amendment in this Case is Not Permitted Under the Rules of Court to Amend Errors in Pleadings

Plaintiff is not permitted to recover on a theory he has not pled. "No court can base its decree upon facts not alleged, nor render its judgment upon a right, however meritorious, which has not been pleaded and claimed. Pleadings are as essential as proof, the one being unavailing without the other." *City of Norfolk v. Vaden*, 237 Va. 40 (1989) (citing *Potts v. Matheison Alkali Works*, 165 Va. 196, 207 (1935) (citations omitted)).

In his Petition for a Rule to Show Cause, Plaintiff sought both

the issuance of an order requiring the Defendant to appear before this Court to show cause, if any there be, why she should not be held in contempt and punished for failure and refusal to abide by the Final Order of Divorce entered in this matter on March 21, 2013, and requiring the Defendant to refund any and all spousal support payments that she received in violation of said Final Order.

Pl. Pet. ¶ 10, Aug. 14, 2019. However, as Plaintiff did not explicitly request the termination of spousal support in his Rule, granting termination would amount to allowing recovery on a theory not pled, an impermissible course under Virginia law.

The Court having foreclosed termination of spousal support pursuant to the Rule, Plaintiff next sought to pursue the same relief by amending his original pleading to a Petition for Termination of Spousal Support,⁵ seeking a refund of the support paid back to August 14, 2019, instead of March 11, 2020, the latter being the date of filing of the

⁵ Inasmuch as the termination sought here is not statutory, Plaintiff has the burden of proving the requisite "cohabitation by . . . the contractual standard of a preponderance of the evidence." *O'Hara v. O'Hara*, 45 Va. App. 788, 794–95 (2005).

Petition to Terminate Spousal Support offered also as an amendment to the Petition for a Rule to Show Cause.

It is well known that “[l]eave to amend shall be liberally granted in furtherance of the ends of justice.’ Rule 1:8. That rule takes into account that new evidence may come to light during discovery, warranting the assertion of new claims or defenses.” *Ford Motor Company v. Benitez*, 273 Va. 242, 252 (2007). Here, however, Plaintiff’s amendment is occasioned not by the discovery of new evidence, but rather by the Court’s denial of his Petition for Rule to Show Cause as a path for termination of Defendant’s spousal support. In originally filing for a Rule, Plaintiff sought to have Defendant held in contempt or other such punishment as a means of compelling termination of spousal support. However, the Court’s power to hold Defendant in civil contempt is narrowly tailored in application. The original Rule pleading was clearly based on insufficient legal grounds for the punitive relief Plaintiff sought. Defendant has not violated what has been decreed, and, at most, only a contemplated prerequisite for contractual termination of spousal support may have been reached. See *Nassabeh v. Montazami*, 101 Va. Cir. 151 (Fairfax 2019) (discussing how the civil contempt power is restricted in function to disobedience of an explicit court decree).

Traditionally, Virginia Courts have held that substance is to be favored over form, but that concept has been limited primarily to excuse minor documentary lapses. See, e.g., *Virginia Beach Bd. of Realtors, Inc. v. Goodman Segar Hogan, Inc.*, 224 Va. 659, 663 (1983). Virginia law grants broad discretion to the courts regarding “[a]ll steps and procedures in the clerk’s office touching the filing of pleadings,” and “[t]he time allowed

for filing pleadings may be extended by the court in its discretion.” Va. Sup. Ct. R. 1:9. However, this discretion is founded upon specific facts of each case, and a court “may properly refuse an extension where the delay is due to negligence or carelessness on the part of a party.” *Jay-Ton Constr. Co. v. Bowen Constr. Servs.*, 62 Va. Cir. 414 (Portsmouth 2003); see also *Nida*, 4 Va. Cir. 430. As stated in Defendant’s memorandum, and previously addressed in the discussion of the § 8.01-6.1 test herein-above, Plaintiff’s late filing reflected a lack of requisite diligence as he waited until nearly the end of his spousal support obligation to file at all, and filed correctly only in response to an adverse ruling from this Court denying him the relief he sought to hold Defendant in civil contempt.

Plaintiff cites a number of cases, suggesting a denial of his amendment would constitute an abuse of discretion. *Barbee* stated that the “policy of our law, in order to attain the ends of justice, is to allow amendments to pleadings at any time *before final judgment*, upon such terms as may be necessary to protect the rights of the parties.” *Barbee v. Murphy*, 149 Va. 406, 413 (1928) (emphasis added). This holds true when the “defendant was not taken by surprise and did not ask for a continuance when the amendments were filed and fails now to show how his rights were prejudiced.” *Id. Dritselis* held that if “leave to amend a bill of complaint will not prejudice the defendant and the plaintiff has not previously amended his complaint, it is an abuse of discretion for the trial court to fail to allow the motion.” *Dritselis v. Dritselis*, 05 Vap UNP 0239053 (2005). In *Pantazes*, the defendant was allowed to amend her cross-bill of complaint on the day of trial to include a request for spousal support even though she never filed an amended pleading, as this was deemed of no surprise to Plaintiff. *Pantazes v. Pantazes*, 00 Vap

UNP 0129004 (2000). *Mortarino* held that where there is an absence of prejudice to the defendant and the pleading in question has not previously been amended, it is an abuse of discretion for the trial court to fail to allow the filing of an amended complaint. See *Mortarino v. Consultant Eng. Servs.*, 251 Va. 289, 296 (1996).

These cases Plaintiff cites have two characteristics that distinguish them from this cause. First, amendment sought in these cases was of no prejudice to the defendant. As already discussed herein-above in the treatment of the requirements for relation back under § 8.01-6.1, Plaintiff's amendment would be of unfair and substantial prejudice to Defendant. Second, and more importantly, Plaintiff's motion to amend came *after* the Court had ruled orally that the Rule would be denied. "An action is submitted to the court for decision when 'the parties, by counsel, . . . have *both* yielded the issues to the court for consideration and decision.' *Transcon. Ins. Co. v. RBMW, Inc.*, 262 Va. 502, 514 (2001) (emphasis in original) (citing *Moore v. Moore*, 218 Va. 790, 795 (1978))." *Gordon v. Kiser*, 296 Va. 418, 423 (2018). Thus, it would be an abuse of discretion for the Court to permit amendment of the Petition for a Rule into a Petition for Termination of Spousal Support when the Court had already decided upon submission from the parties that the Rule should be denied. See *Anheuser-Busch Co. v. Garland Cantrell*, 289 Va. 318, 319 (2015) (holding it was error for the trial court to grant a nonsuit after the parties had placed the case "in the hands of the trial judge for final disposition" by their oral arguments and submission of briefs on demurrer). For this Court to rule otherwise would invite amendment of pleadings to undermine adverse rulings on the merits, providing a second bite of the apple which precedent does not countenance.

Even if the Court were mistaken in denying Plaintiff's right to amend his Petition for a Rule to Show Cause to a Petition for Termination of Spousal Support, Plaintiff's goal to have the support terminate back to the date of his original filing is not permitted in this instance by application of two well-known statutes. "[N]o support order may be retroactively modified, but may be modified with respect to any period during which there is a *pending* petition for modification in any court, but only from the date that notice of such petition has been given to the responding party." Va. Code § 20-112 (emphasis added). Under "Code § 20-109(A), the only logical event after which a modification [or termination of spousal support] could be ordered is 'upon petition of either party.'" *Miller v. Green*, No. 1993-14-3, 2015 WL 3877010, at *3 (Va. Ct. App. June 23, 2015) (citing *Reid v. Reid*, 245 Va. 409, 414 (1993)). Plaintiff's Rule was neither a "*pending* petition for modification" under § 20-112 nor a "petition to terminate" under § 20-109(A), and as such, Plaintiff's Petition to Terminate Spousal Support filed on March 11, 2020, cannot reach back to the August 14, 2019, date of his filing of the Rule as the date of termination for support.

II. Defendant Is Not Entitled to Attorney's Fees for Seeking Her Share of Plaintiff's Inheritance Prematurely

Defendant seeks attorney's fees incurred in her pursuit of the agreed-upon portion of Plaintiff's inheritance from his late father. The Settlement Agreement does not set forth a due date for the payment of such inheritance, and Defendant filed a Rule to Show Cause on June 19, 2019, roughly five months after Plaintiff received enough of the inheritance to determine Defendant's share. Def.'s Resp. to Pl.'s Mem. Opp. Att'y's Fees, Ex. A.

Virginia law is clear that the Court may imply a reasonable time for performance in a contract that does not otherwise indicate a time frame. See *Merriman v. Cover, Drayton, & Leonard*, 104 Va. 428, 442 (1905). As “reasonable” may be a notoriously slippery word if not delimited by the context within which it is applied, this Court is left to determine whether Defendant’s filing after five months, but prior to the final inheritance payment expected to be given Plaintiff, is reasonable. Plaintiff asserts the time deadline of reasonableness for payment to Defendant should be determined as the expiration of the Massachusetts one-year creditor’s claim statute of limitations, as the will was probated in Massachusetts. Pl.’s Mem. Opp. Att’y’s Fees 2. In the absence of a contractually set timeframe, the statutorily prescribed one-year limitation is less arbitrary than Defendant’s choice of roughly five months, while still being finite and brief enough in duration so as not to inflict unnecessary inconvenience upon Defendant. Defendant also fails to consider what time may be additionally required to satisfy any claims against the estate, liquidate assets, pay required taxes on the estate, etcetera, all of which could take the full one-year period to accomplish before her claim against an expected inheritance could be confidently paid. As such, Defendant’s Rule to Show Cause was filed prematurely, and granting her attorney’s fees is unwarranted.

In addition to the question of timing, § 20-109(C) limits the ability of a court to award attorney’s fees in a spousal support dispute based on an agreement in the absence of terms permitting such an award. “Code § 20-109(A) empowers trial courts to modify a spousal support award, . . . Code § 20-109(C) expressly limits the court’s authority . . . according to the terms of a stipulation or contract signed by the parties.” *Rutledge v.*

Rutledge, 45 Va. App. 56, 62 (2005) (quoting *Blackburn v. Michael*, 30 Va. App. 95, 100 (1999)). Paragraph 7 of the Munro Settlement Agreement contains a waiver clause stating,

Each party hereby waives, releases and discharges, the other from any and all causes of action, claims or demands whatsoever, in law or in equity, which he or she may or may have or claim to have against the other by reason of any matter, cause, or thing whatsoever, except actions and claims founded upon the provisions of this Agreement.

Pl.'s Mem. 4, June 5, 2020. This is substantially identical to the wording in *Rutledge*, which the court found restricted the award of attorney's fees:

Each party hereby also waives, releases, and discharges the other party from any and all claims, causes of action, or demands whatsoever, in law or equity, which he or she might have or might claim to have against the other party by reason of any matter, cause, or thing whatsoever except in an action or actions for divorce or in an action or actions to enforce a provision or provisions of this Agreement.

Rutledge, 45 Va. App. at 67. Given the striking similarities in the language, an award of attorney's fees to Defendant is thus improper irrespective of the timing of her Rule to Show Cause.

CONCLUSION

This Court has considered an issue of apparent first impression, namely, whether a Rule may be amended into a Petition to Terminate Spousal Support and whether such amendment relates back to the date of filing of the Rule. The Court has deemed Plaintiff's Rule an improper vehicle to terminate spousal support, inasmuch as Defendant has not disobeyed the Final Order of Divorce. Said divorce decree is not self-executing in terminating support in this instance wherein Defendant is alleged to be cohabiting with

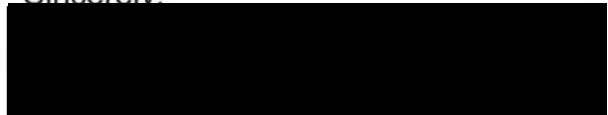
another man without remarrying in a situation analogous to marriage. The Court finds the Petition for a Rule to Show Cause is a "pleading," and thus in principle could be amended into a Petition to Terminate Spousal Support. However, and without reaching whether the Code section applies to causes not subject to a statute of limitations, the Court finds the amendment is not permitted to relate back pursuant to Virginia Code § 8.01-6.1, because Plaintiff has failed to establish the required elements evincing he exercised diligence, and that such amendment is not of unfair and substantial prejudice to Defendant. The Court further holds a) the amendment is not permitted under the rules allowing corrections to pleadings, because it is of unfair and substantial prejudice to Defendant and also untimely, coming after the Court held the Rule was not an appropriate means for termination of spousal support in this circumstance; and b) even if the amendment were permitted, spousal support cannot be terminated retroactive to the date of the original pleading filed under Virginia Code §§ 20-112 and 20-109(A), because no "petition to terminate" was pending during such period. This Court, therefore, is compelled to deny any relation back of Plaintiff's Petition for Termination of Spousal Support to the date of filing of his Petition for the Rule to Show Cause.

Separately, Defendant requested the Court award her attorney's fees in connection with a Rule to Show Cause she pursued to obtain her agreed share of Plaintiff's inheritance from his late father. The Court declines to award the attorney's fees Defendant seeks, as the Settlement Agreement between the parties did not specify a precise date for payment and the applicable Massachusetts one-year statute of limitations for creditors of the estate, which constituted a reasonable deadline after which payment

would clearly be due, had not yet elapsed. As such, Defendant filed her action for contempt prematurely before the expiration of such period. The award for the fees was further restricted by the Settlement Agreement, requiring the Court to deny Defendant the award of her attorney's fees.

The Court shall enter an order incorporating its ruling herein, and trial may thus proceed on Plaintiff's pending Petition for Termination of Spousal Support, which shall not be treated as an amendment to the Rule, with any potential relief retroactive only to March 11, 2020, the date of the Petition's filing, and THIS CAUSE CONTINUES.

Sincerely,

A large black rectangular redaction box covering the signature of the judge.

David Bernhard
Judge, Fairfax Circuit Court