



[Handwritten marks]

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA
2015 PH 4:17

In re the Marriage of:

[Redacted]

Petitioner,

and

[Redacted]

Respondent.

SALLY HOWE SMITH
COURT CLERK

CASE NO. [Redacted]
DOCKET [Redacted]
JUDGE [Redacted]

DISTRICT COURT
FILED
SEP 14 2015
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

PETITIONER'S RESPONSE AND OBJECTION TO RESPONDENT'S MOTION TO COMPEL AND DEEM REQUESTS FOR ADMISSIONS ADMITTED AND COUNTER-MOTION FOR WITHDRAWAL OF TECHNICAL ADMISSIONS

COMES NOW the Petitioner by and through her undersigned attorney, and hereby responds to Respondent's *Motion to Compel and Deem Requests for Admission Admitted* ("Motion") and further moves the Court to withdraw any technical admissions pursuant to Tit. 12 Okla. Stat. §3236.B. In response and in objection to Respondent's Motion and in favor of her own Motion herein, Petitioner would show the Court as follows:

- I. Respondent's Motion does not comply with District Court Rule 4.c. nor Local Court Rule CV 21 and should not be heard.

Respondent has not complied with the Rules of this Court as they apply to motions, particularly discovery Motions. First, Rule 4.c. of the Rules of the District

Courts require verification of all motions which raise fact. Verification may be made by a person having knowledge of the facts, or by a verified statement by counsel of what the proof will show. Respondent's Motion is not verified, and it should be denied without a hearing pursuant to Local Court Rule 4.d. which provides that, if a motion does not comply with the requirements of 4.b, it may be denied without a hearing.

In addition, Local Rule CV21 of the 14th Judicial District provides that:

The Court will refuse to set or hear any discovery dispute unless counsel for the movant advises the Court in the Motion that the lawyers have conferred with each other in person or by telephone in good faith but have been unable to resolve it. Correspondence alone will not satisfy this requirement.

Respondent's counsel did not confer with Petitioner's counsel before filing his Motion *at all*, and his Motion is made in bad faith. As verily stated in his Motion, Respondent's counsel called Petitioner's office on August 12, 2015, and left message. The very next day, on August 13, 2015, counsel filed his Motion without affording Petitioner's counsel an opportunity to return his call. Respondent's counsel did not confer nor make a reasonable attempt to confer in good faith with Petitioner's counsel before filing his Motion. For this reason, the Court should refuse to hear it.

II. Respondent's Motion is made in bad faith, is moot and should be dismissed.

Petitioner fully responded to Respondent's Discovery as timely as possible on August 20, 2015. Counsel's letter dated August 13, 2015, informing Petitioner's counsel of his intent to file his Motion on August 13, 2015, was received on August 14, 2015, as was a file-stamped copy of counsel's Motion. Counsel's representation that he made reasonable efforts to contact Petitioner's counsel prior to filing his Motion is disingenuous. Upon receiving counsel's letter and Motion, the undersigned first attempted to contact Respondent's counsel by phone. She then wrote the letter which is attached hereto as Exhibit A attempted to fax it to Respondent's counsel, but it did not go through. Being unable to get through to Respondent's counsel by phone or by fax communication, the undersigned then caused her letter to be both mailed and emailed to Respondent's counsel. As stated in Exhibit A, Petitioner's counsel was in the process of dissolving her law partnership, relocating her practice and setting-up office systems at the time when Petitioner's discovery responses were due but had a draft prepared to be finalized and verified by Petitioner. Respondent's counsel never responded to that letter and, on August 20, 2015, Petitioner's responses were both mailed and emailed to Respondent's counsel. Petitioner has complied with Respondent's Discovery, in good faith, and has not received any further word from Respondent's counsel. Respondent's Motion is

made in bad faith, is moot and should be dismissed.

III. The Court should permit withdrawal of any technical admission by Petitioner pursuant to Okla. Stat. Title 12 §3236.B.

The Court has the authority to permit withdrawal of an admission made under §3236 when presentation of the merits of a case will be sub-served by the admission and the party who obtained the admission fails to satisfy the court that withdrawal will prejudice him in maintaining his action on the merits. Here, Respondent seeks an order "deeming" Petitioner's admission to his property values and "deeming" Petitioner's agreement as to the division of that property. These issues have been hotly disputed, and any technical admission by Petitioner should be permitted to be withdrawn in the interests of justice and fair-play.

In order for the Court to make a well-reasoned determination of an equitable division of the marital estate *on the merits* of this case, the Court must first be able to consider actual evidence as to the parties' assertions of value. Presentation of the issues before the Court on the merits will be sub-served if the Court compels a technical admission of value and forces an agreement as to what is a fair division. This a contested divorce, and there is no agreement as to value or division of property. The Court should not permit Respondent to, essentially, "cram-down" his opinions without presenting evidence, nor should the Court relinquish its authority

to decide this case on the merits. Petitioner should be permitted to withdraw any technical admissions and present her evidence for the Court's consideration such that the Court can make fully-informed and well-reasoned determinations of the issues before it.

Permitting withdrawal of purely technical admissions will not prejudice Respondent. Respondent will still be able to present his evidence as to value. He will still be able to argue what he thinks is fair. Granting withdrawal of such admissions will not cause Respondent to lose a thing. Rather, denying Petitioner's request for withdrawal would only sub-serve a presentation of the merits of this case and prejudice Petitioner's claims as to value and a fair and equitable division of the marital estate. As set forth in Tit. 12 Okla. Stat §3235 regarding the scope of the Discovery Code, the Code is to be liberally construed to provide for, amongst other things, the just determination of an action. The interests of justice will not be served in this case by compelling an admission of Respondent's values and opinions which are undoubtedly disputed. As set forth in Tit. 12 Okla. Stat §3235 regarding the scope of the Discovery Code, the Code is to be liberally construed to provide for, amongst other things, the just determination of an action. The interests of justice will not be served in this case by compelling an admission of Respondent's values and opinions. Petitioner should be permitted to withdraw any admissions obtained

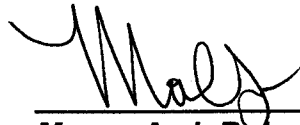
through a technicality to allow a judicial determination of what is fair and equitable based upon the evidence to be brought before the Court.

WHEREFORE, Petitioner prays that the Court overrule Respondent's *Motion to Compel and Deem Requests for Admissions Admitted*, grant her Motion to permit withdrawal of all technical admissions together with any and all other relief to which this Court, in its sound discretion, deems just and equitable.

Respectfully submitted,

ROBERTSON CORNELL

By:



Moura A. J. Robertson, OBA No. 14965

110 West 7th Street, Suite 2610

Tulsa, Oklahoma 74119

Telephone: (918) 382-9332

Fax: (918) 382-9319

ATTORNEY FOR PETITIONER,

[REDACTED]

Moura A.J. Robertson
Attorney at Law

Certified Fellow, American Academy
of Matrimonial Lawyers

M
MouraRobertson
FAMILY LAW

110 West 7th Street Suite 2610
Tulsa, OK 74119
Phone: 918.382.9332
Fax: 918.982.9319
www.mourafamilylaw.com

August 14, 2015

Ned Dismukes
Dismukes Law Office
1325 E. 15th St., Ste. 201
Tulsa, Oklahoma 74104

Re: In re the Marriage of [REDACTED]
Case no. [REDACTED] Docket [REDACTED]
Hon. James W. Keeley

Dear Mr. Dismukes:

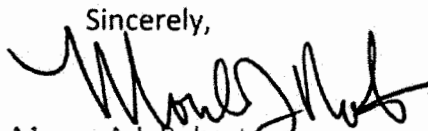
I received your letter dated August 13, 2015, today. Your Motion to Compel filed August 13, 2015 is premature.

I apologize for not being able to return your call yesterday. I was preparing for a trial set for today before Judge Miller and did not have the opportunity to do so. As you know, I have been in the arduous process of dissolving a seven-year law partnership and relocating my practice. As a result, I have become a little behind in my work. Likewise, as I have been setting-up my new practice, there have been some glitches in getting all my technology up and running. This includes computer, telephone and fax service. I have not been ignoring you, and I believe that we have everything worked-out now. I appreciate your patience and understanding.

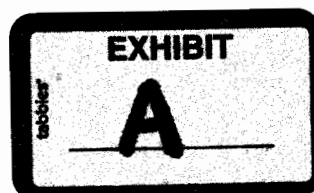
As to your first set of Discovery Requests, I have already prepared a draft of Ms. Melcalf's Responses and just need to finalize them and obtain her verification. I expect to accomplish that by the early part of next week. She is also working with my paralegal, Toni Reed, in responding to your second set of Requests.

On another note, it seems that the Scheduling Order we prepared and submitted to Judge Keeley's minute clerk never made it to the Judge for signature. I suggest that we fill-out a new one and resubmit it so we can keep this case on track.

I appreciate your patience.

Sincerely,

Moura A.J. Robertson

C: Via facsimile to [REDACTED]
[REDACTED] w/enclosures
File



CERTIFICATE OF SERVICE

I do hereby certify that on September 14, 2015, I caused a true, correct, and exact copy of the above and foregoing instrument to be:

_____ electronic service
_____ faxed
_____ e-mailed
_____ hand-delivered
✓ _____ mailed with proper postage thereon
_____ mailed via certified mail
_____ third-party commercial carrier

to: Ned Dismuke, Esq.
1325 E. 15th Street, Suite 201
Tulsa, Oklahoma 74120
ATTORNEY FOR RESPONDENT,
[REDACTED]



Moura A.J. Robertson

VERIFICATION

STATE OF OKLAHOMA

} ss.

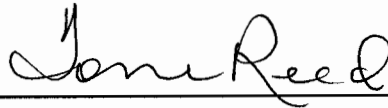
COUNTY OF TULSA

Moura A.J. Robertson, being first duly sworn, upon oath, deposes and states: that she is the attorney for Petitioner; that she has read the above and foregoing pleading; and, that she believes the testimony and evidence upon hearing will prove the facts and matters herein set forth are true and correct.



Moura A.J. Robertson

SUBSCRIBED and sworn to before me this date, September 14, 2015.



Notary Public # 11009512

(SEAL)

My Commission Expires: 10/17/15