

12HC

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA CIVIL ACTION**

BRUNO DIPASQUALE,  
Husband/Petitioner,

vs.

CASE NO.: 14-DR-1522

LISETTE DIPASQUALE,  
Wife/Respondent.

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**FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE**

THIS CAUSE came before the Court on several occasions wherein the parties announced settlement of various issues in their case including equitable distribution, alimony, shared parental responsibility and an agreed upon parenting plan. Additionally, the Court heard testimony and received evidence on August 16, 18 and 19, 2016 on the following issues:

- A. Dissolution of the Marriage;
- B. Child Support;
- C. Wife's Motion for Attorneys' Fees and Suit Costs;
- D. Husband's Motion for Attorneys' Fees and Suit Costs;

The Court having heard the testimony, reviewed the documentary evidence, considered the applicable law and heard argument of counsel, makes the following Findings of Fact and Conclusions of Law:

BACKGROUND:

1. The parties were married on April 20, 1996 in Bronxville, New York.
2. The Husband filed a Petition for Dissolution of Marriage on June 11, 2014.
3. The parties have two children of this marriage, to wit:
  - a. Isabella Lucia Dipasquale, born June 17, 1997; and
  - b. Lucrezia Teresa Dipasquale, born November 7, 2000.
4. During the pendency of this action, the oldest child attained the age of 18 and is emancipated.
5. The Court has personal jurisdiction of the parties and subject matter jurisdiction over this matter.
6. The parties testified that their marriage was irretrievably broken.

DISSOLUTION:

7. The Court hereby finds the marriage to be irretrievably broken and hereby dissolves the marriage of the parties.

PARTIAL MARITAL SETTLEMENT AGREEMENT:

8. The parties entered into a Partial Marital Settlement Agreement on May 11, 2015. The Partial Marital Settlement Agreement provides for equitable distribution of the parties' assets and liabilities and further provides that the Husband shall pay permanent periodic alimony to the Wife in the amount of \$15,000 per month. The Court adopts the Partial Marital Settlement Agreement in this Final Judgment of Dissolution of Marriage and the terms of the agreement are incorporated but not merged herein and the parties are ordered

to comply with same.

9. The Partial Marital Agreement identified the issues that remained outstanding, child support and the Wife's request for an award of attorney fees and costs.

PARENTING PLAN:

10. The parties entered into a Parenting Plan on May 12, 2016. The parties have agreed to Shared Parental Responsibility and to a week on/week off parenting schedule for their minor child. The Parenting Plan provides a schedule for holidays and school breaks. The Court adopts the Parenting Plan in this Final Judgment of Dissolution of Marriage and the terms of the Parenting Plan are incorporated but not merged herein and the parties are ordered to comply with same.

HUSBAND'S REQUEST FOR ATTORNEYS' FEES AND COSTS:

11. At the final hearing, the Husband requested an award of his attorneys' fees and costs pursuant to *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997). The Court found during the trial, the clear language of the Partial Marital Settlement Agreement failed to reserve jurisdiction over the Husband's claims for fees and costs and also contains express release and waiver language abandoning any such claims that pre-dated the execution of the Partial Marital Settlement Agreement. As such, the Husband's claim for any *Rosen* attorneys' fees for conduct that occurred prior to the execution of the Partial Marital Settlement Agreement is denied. Moreover, after reviewing all of the testimony and evidence presented at the trial, the Court cannot find any bad faith or other inappropriate conduct by the Wife which would merit the award of any *Rosen* attorneys' fees after the

execution of the Partial Marital Settlement Agreement. As such, the Husband's request for an award of attorneys' fees and costs is denied in its entirety.

CHILD SUPPORT:

12. The Wife receives alimony of \$15,000 gross per month and the Court finds that this is her income.
13. The Husband's income pursuant to his Financial Affidavit filed on June 1, 2016 is \$42,598 gross per month.
14. The Court adopts the above incomes for the purposes of calculating child support and has considered the equal timeshare of the parties pursuant to the Parenting Plan.
15. Based on all factors, the Court hereby finds that the Husband shall pay to the Wife the amount of \$367.54 per month commencing November 1, 2016 and continuing until the minor child attains the age of 18 or graduates from high school whichever is the later date. See the child support worksheet attached hereto as Exhibit "A."
16. The Husband shall continue to maintain Health Insurance for the minor child which has been factored into the child support obligations of the parties. The Husband shall pay 62% of the reasonable and necessary health, dental, psychological, vision, orthodontic and prescription needs of the child and the Wife shall pay the remaining 38%.
17. The Husband shall pay 62% and the Wife shall pay 38% of all agreed upon extracurricular activities of the child.
18. The Wife requested an award of retroactive child support to the date the parties physically separated in September 15, 2014. The request for retroactive child support is

denied based on the Husband contributing significantly to the expenses and support of the parties' children during the pendency of this litigation.

WIFE'S REQUEST FOR ATTORNEYS' FEES AND SUIT COSTS.

19. The Wife requested an award of her attorneys' fees and suit costs and the parties agreed to reserve on this issue in the Partial Marital Settlement Agreement.
20. The Court finds that the Wife has a need and the Husband has the ability to pay for the Wife's reasonable attorneys' fees and costs giving the disparity of the parties' incomes and the disparity in future earning potential between the two parties.
21. The Court makes the following findings of fact on the issue of the amount of fees and costs. The Court heard the testimony of Cynthia B. Hall, Esq., counsel for the Wife and Antonio J. Perez-Benitoa, Esq. who was called as an expert witness in support of the Wife's request. The Court also heard the testimony of Rebecca Zung-Clough, Esq., attorney for the Husband and Luis Insignaries, Esq., expert for the Husband.
22. The Law Firm of Silverio & Hall, P.A. (hereinafter the Firm) was retained by the Wife to represent her in this divorce action. The Wife signed their standard written fee retainer.
23. The Husband stipulated that the hourly rates charged by the Firm were reasonable.
24. The following were the fees and costs billed by the Firm to the Wife:

## ATTORNEY FEES:

Attorney/Paralegal	Hourly Rate	Number of Hours	Total Fees
Cynthia B. Hall, Esq.	\$450.00	233.7	\$105,165.00
Mark V. Silverio, Esq.	\$475.00	.8	\$380.00
Brian M. Silverio, Esq.	\$300.00	2.1	\$630.00
Paralegal	\$100.00	28.1	\$2,810.00
Paralegal	\$75.00	.1	\$7.50
Totals		255.3	\$108,992.50

## COSTS:

Type of Cost	Amount		
Clerk of Court	\$395.00		
Court Reporter	\$4,132.93		
Courier	\$64.00		
Westlaw	\$420.57		
Witness Fee	\$10.20		
Service of Process	\$180.00		
Copies	\$314.90		
Total	\$5,517.60		

25. The Wife also incurred 9.5 hour of attorneys' fees in the months of July and August 2016 and was billed \$4,275.
26. The Wife's total attorneys' fees were \$108,992.50.

27. The Firm engaged an expert attorney, Antonio J. Perez-Benitoa, Esq. to review their bills and their rates and to express an expert opinion as to an amount of a reasonable fee charged by the Firm to the Wife in this case. Perez testified that there were some clerical tasks and bills related to a domestic violence matter not properly chargeable to the Husband and he deleted that time from the Firm's bills. Antonio Perez-Benitoa testified that in reviewing all of the fees and costs, the amount total should be reduced by \$1,340.
28. The Court finds that the testimony of Cynthia B. Hall, Esq. and Antonio J. Perez-Benitoa, Esq. was credible and finds that the Wife's reasonable attorneys' fees were \$107,652.50.
29. The Court also award the fees charged by Antonio J. Perez Benitoa in the amount of \$3,017.50 (7.10 hours at \$425 per hour).
30. The Court makes the following findings of fact under Rule 4-1.5(b), Fees and Costs for Legal Services:

(b) Factors to be considered in determining reasonable fees and costs.

- A. The time and labor required the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

The Court finds that the time and labor required by the Firm was quite extensive as evidenced by the hours expended by Hall and the Court considered the skill and reputation of the Firm is considerable and each has extensive experience in handling family law cases.

- B. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

This factor is not applicable.

- C. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.

The Court finds that the fee and rates of fee charged by the Firm (its attorneys and paralegals) are customarily charged in Collier County, Florida for legal and paralegal services of a comparable or similar nature. Further, the Husband conceded the rates charged were reasonable.

D. The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained.

The Court finds: (i) the case had significant issues of alimony, including the term and amount, the Wife's needs and the Husband's ability to pay; (ii) this was a very high conflict case, particularly pertaining to children's issues, and which the Court concurs, which caused a substantial amount of time to be expended; and (iii) the subject matter of the representation involved all the typical issues in a divorce, alimony, parenting issues, equitable distribution, child support and attorney fees.

E. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client.

This factor is not applicable.

F. The nature and length of the professional relationship with the client.

This factor is not applicable.

G. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services.

Hall is a board-certified family law attorney who has been practicing in excess of 28 years.

H. Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

This factor is not applicable.



31. The Wife sought the award of costs. The Court finds that there was no opposition by the Husband to costs sought by the Wife. The hereby finds the costs billed by the Firm to the Wife in the amount of \$5,517.60 were reasonable and necessary and awards same.
32. Based on the foregoing findings of fact and applicable law, the Court concludes as follows.
33. There are several basic tenants of law applicable to the recovery of attorney's fees against the opposing spouse in a divorce action.

(i) Section 61.16, Fla.Stats. (2012) allows the recovery of fees and costs against the other spouse.

(ii) The first inquiry under the statute and the case law is whether one spouse has a need and the other spouse has the ability to pay. *Robbie v. Robbie*, 592 So. 2d 1006 (Fla. 4<sup>th</sup> DCA 1991).

(iii) This second inquiry is the financial status of the parties at the time of the trial or Final Judgment. *Davis v. Davis*, 108 So. 3d 660 (Fla. 5<sup>th</sup> DCA 2013); *Duchesneau v. Duchesneau*, 692 So. 2d 205 (Fla. 3d DCA 1997). Although the financial resources of the parties are the primary factor to be considered, other relevant circumstances are to be considered (the "Rosen factors"). The trial court has "wide leeway to work equity in chapter 61 proceedings" and section 61.16 is to be "liberally - - not restrictively - - construed to allow consideration of any factor necessary to provide justice and ensure equity between the parties." *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997). The *Rosen* factors are as follows:

- Scope and history of the litigation
- Duration of litigation
- Merits of the respective positions
- Whether the litigation is brought or maintained primarily to harass (or whether a defense is raised mainly to frustrate or stall)
- Existence of prior and pending claims

(iv) The Court must also determine that the fees sought are reasonable: *Duncan v. Duncan*, 642 So. 2d 1167 (Fla. 4<sup>th</sup> DCA 1994).


(v) It can be an abuse of discretion to grant only a partial attorney's fee award where, on balance, there is a substantial disparity between the parties' incomes. *Arena v. Arena*, 103 So. 3d 1044 (Fla. 2d DCA 2013). See also, e.g., *Lowman v. Lowman*, 724 So. 2d 648, 650 (Fla. 2d DCA 1999); *Anciaux v. Anciaux*, 666 So. 2d 577, 578 (Fla. 2d DCA 1996). If the parties stand on equal footing on equitable distribution, an award of attorney's fees is proper where there is a significant disparity in income. *Duncan-Osiyemi v. Osiyemi*, 117 So. 3d 882 (Fla. 4th DCA 2013) (notwithstanding an equal distribution of assets, a significant income disparity can justify an award of attorney fees and costs in marital dissolution action).

If the parties do not have the same financial circumstances after the Final Judgment, as in the instant case, then the award of fees is justified. *Humerick v. Humerrick*, 932 So. 2d 1142 (Fla. 2d DCA 2006).

34. Based on the foregoing law and findings, the Court finds that the Wife is entitled to reasonable attorney's fees to be paid by the Husband and that the Husband has the ability to pay them. The Court relies on the trial record at trial and the findings above.
35. On the issue of the reasonableness of the Firm's fee, the Court concludes that a reasonable fee to be award to the Wife is \$107,652.50.

36. The Court concludes that costs in the amount of \$5,517.60 are reasonable and taxable.
37. The Court concludes a reasonable fee for the Former Wife's expert, Antonio J. Perez-Benitoa, Esq., is \$3,017.50.
38. Accordingly, Final Judgment OF Attorney Fees and Costs is hereby entered against the Husband, BRUNO DIPASQUALE, and in favor of the Wife, LISETTE DIPASQUALE, in the amount of \$107,652.50 for attorneys' fees, \$5,517.60 for taxable costs, \$3,017.50 for expert witness fees, for a total amount of \$116,187.60, for which sum let execution issue. This judgment shall accrue interest at the legal rate of 4.75% per annum.
39. The parties are hereby ordered to abide by the terms of this Final Judgment and the Court reserves jurisdiction to enforce this Final Judgment.

DONE AND ORDERED in Chambers at Naples, Collier County, Florida this 15<sup>th</sup> day <sup>February</sup> of ~~January~~, 2017.

  
HONORABLE JOSEPH G. FOSTER  
CIRCUIT COURT JUDGE

Copies to:

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**CHILD SUPPORT GUIDELINES WORKSHEET**

Number of Overnights With

183

365

183

Number of Overnights With

183

365

183

Children Live With Others:

Number Of Children: 1 1 1 0 0

Percentage Share Of Support: 100.00% 38.37% 61.63%

	COMBINED	WIFE	HUSBAND
<b>Taxable Income Amounts</b>			
Self Employment Taxable Income	32,477.00	0.00	32,477.00
Social Security Taxable Income	10,000.00	0.00	10,000.00
Other Taxable Income	121.00	0.00	121.00
Taxable Spousal Support Income	15,000.00	15,000.00	0.00
Non Taxable Income	0.00	0.00	0.00
<b>GROSS INCOME</b>	<b>57,598.00</b>	<b>15,000.00</b>	<b>42,598.00</b>
<b>Spousal Support Payments</b>			
Deductible This Marriage	15,000.00	0.00	15,000.00
Deductible Prior Marriage	0.00	0.00	0.00
Non Deductible	0.00	0.00	0.00
<b>TOTAL SPOUSAL SUPPORT</b>	<b>15,000.00</b>	<b>0.00</b>	<b>15,000.00</b>
<b>Taxes</b>			
FICA - Social Security	612.25	0.00	612.25
FICA - Medicare	145.00	0.00	145.00
Self Employment Tax	1,079.72	0.00	1,079.72
Federal Income Tax	9,941.78	2,993.42	6,948.36
State/Local/Other Income Tax	0.00	0.00	0.00
<b>TOTAL TAX</b>	<b>11,778.75</b>	<b>2,993.42</b>	<b>8,785.33</b>
<b>Other Deductions</b>			
Mandatory Union Dues	0.00	0.00	0.00
Mandatory Retirement Payments	0.00	0.00	0.00
Parent's Health Insurance Payments	1,090.00	600.00	490.00
Child Support Ordered and Paid	0.00	0.00	0.00
<b>Total Other Deductions</b>	<b>1,090.00</b>	<b>600.00</b>	<b>490.00</b>
<b>Total Deductions</b>	<b>27,868.75</b>	<b>3,593.42</b>	<b>24,275.33</b>
<b>Net Monthly Income</b>	<b>29,729.25</b>	<b>11,406.58</b>	<b>18,322.67</b>

	COMBINED	WIFE	HUSBAND
<b>Minimum Child Support Need</b>	2,423.00	929.71	1,493.29
Shared Support Need	3,654.50	1,394.56	2,239.94
Number of Overnights With	365	183	182
Percentage of Overnights Payment Share to Other	100.00%	50.14%	49.86%
Pre Adjustment Transfer	0.00	0.00	427.78
Child Care Costs Paid	0.00	0.00	0.00
Uncovered Ins/Med/Dental Costs Paid	157.00	0.00	157.00
Day Care/Ins/Med/Dental Costs Share	157.00	60.24	96.76
Day Care/Ins/Med/Dental Share Adjust	60.24	0.00	0.00
<b>Presumed Amount To Be Paid</b>	<b>SHARED</b>	<b>0.00</b>	<b>367.54</b>
<b>Deviation Factors</b>			
<b>ADJUSTED GUIDELINES</b>			
<input type="checkbox"/> Manual Child Support Amount	0.00	0.00	0.00
<b>Net Available Income Analysis (For Family)</b>			
Available Income	29,729.25	11,774.12	17,955.13
Per Capita Income	5,887.06	17,955.10	0.00
Adjusted Affidavit Needs Excess / Deficit	29,729.25	11,774.12	17,955.13
<b>Available Income Analysis Without Children</b>			
Affidavit Needs Less Child Expenses	29,729.25	11,406.58	18,322.67
Available Income Without Children	29,729.25	11,406.58	18,322.67
Excess / Deficit Without Children	0.00	0.00	0.00
<b>Percentage Retained</b>	<b>Gross Income</b>	<b>78.49%</b>	<b>42.15%</b>
	<b>Net Income</b>	<b>103.22%</b>	<b>97.99%</b>

