

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

RAFAEL ACOSTA,

Plaintiff,

vs.

YOLY D'ACOSTA,

Defendant.

Case No. 05 D 336089

Dept. D

Decision and Order Regarding Enforcement of Retainer Agreement

This matter came on for a Motion Hearing on January 26, 2018. Attorney Marshall Willick, Esq., was present on behalf of Willick Law Group. Attorney Evangelina Garcia, Esq., was present on behalf of Yoly D'Acosta. The Court heard argument from Attorney Willick and Attorney Garcia regarding the Motion for Enforcement of Retainer Agreement Concerning Property Seized in Partial Satisfaction of Judgment and Opposition thereto.

During the Hearing, it was discovered Attorney Garcia failed to attach her exhibits to her Opposition, thus the Court granted her permission to file the exhibits at the conclusion of the Hearing. Attorney Garcia filed Supplemental Exhibits on January 29, 2018 that ranged from exhibit 1 to exhibit 15. The Court notes that it did receive an Exhibit Appendix filed November 27, 2017 as part of Attorney Garcia's Opposition in this matter. The Appendix described Exhibits 1 through 12. Additionally, the Court

1 received Supplemental Exhibit 13 filed December 19, 2017. Attorney Willick objected to
2 Exhibits 3, 13, 14, and 15 arguing these exhibits were not referenced in the Opposition
3 and thus should not be considered by the Court. The Court finds that Exhibit 3 was
4 referenced in the Exhibit Appendix filed November 27, 2017 and that Exhibit 13, filed
5 December 19, 2017, was clearly part of the record before oral arguments were heard on
6 January 26, 2018. The objection to consideration of these two documents is therefore
7 denied. Exhibits 14, 15, and J were all filed subsequent to the hearing without having
8 obtained leave of court to do so. These exhibits will be excluded and not considered by
9 the Court.

10 This matter originated from a previous *Decree of Divorce* entered on December
11 31, 2012 which awarded Ms. D'Acosta significant judgments. To date, Mr. Acosta has
12 not paid anything in satisfaction of the judgment to Ms. D'Acosta. On August 24, 2015,
13 Attorney Willick and Ms. D'Acosta entered into a new Contingency Fee Agreement that
14 terminated the previous Hourly Fee Agreement (Exhibit 2). The new agreement gave
15 Attorney Willick a share of any property or funds he was able to seize from Mr. Acosta.
16 On December 17, 2015, the Court entered an *Order For Transfer of Title to Property*
17 which transferred all property located in the United States to Ms. D'Acosta. This
18 included a property located at 359 Crestview Drive, Mount Charleston, Nevada 89124
19 ("Crestview Property") which was subsequently re-titled in Ms. D'Acosta's name.

20 On October 10, 2017, Attorney Willick received a letter from Attorney Garcia
21 notifying Attorney Willick that his services on behalf of Ms. D'Acosta were being
22 terminated and that Attorney Garcia was now taking over representation of Ms. D'Acosta
23 (Exhibit 6). On October 13, 2017, Attorney Willick responded to this communication
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1 with a demand for payment of reasonable attorney fees amounting to \$7,442.50 in
2 addition to \$1,766.58 in costs associated with the work at the Crestview Property (Exhibit
3 7). This letter was later represented to have been sent in “error” by Attorney Willick in a
4 letter sent to Attorney Garcia on October 20, 2017. The letter stated that the offer to settle
5 the amounts owed for approximately \$9,209.08 was being rescinded and the new amount
6 owed would be calculated per the Contingency Fee Agreement amounting to 1/3 of the
7 sum of the value of the Crestview Property. The amount owed being approximately
8 \$201,000. (Exhibit 9).

9 Attorney Willick argues the Contingency Fee Agreement is fully enforceable and
10 should be honored based on basic contract principles of law. Attorney Garcia argues (1)
11 the Court did not have jurisdiction over the matter, and (2) the Contingency Fee
12 Agreement is void and unenforceable as violating SCR 155.

13 Accordingly, the Court finds that jurisdiction is proper and the Court is permitted
14 to hear this dispute. Family Court has jurisdiction “to resolve issues that fall outside [its]
15 jurisdiction when necessary for the resolution of those claims over which jurisdiction is
16 properly exercised.” (*Landreth v. Malik*, 127 Nev. 175, 187 [2011]) *citing to Barelli v.*
17 *Barelli*, 113 Nev. 873, 877 [1997]). “To that end, our holding in *Barelli* recognized that a
18 judge sitting in the family court division had the power to resolve the case and
19 supplemental jurisdiction over other issues in the case.” (*Landreth*, 127 Nev. at p. 187).
20 The underlying issue in this matter is the divorce proceedings and *Decree of Divorce* that
21 was entered as a result, thus the Court’s jurisdiction is clear and appropriate.

22 The Court further finds the Contingency Fee Agreement violates, in part, SCR
23 155.

1 The Court finds the Contingency Fee Agreement does not violate SCR 155 on
2 two grounds discussed in the moving papers: (1) because the matter at hand involves
3 amounts due for *past-due* amounts and (2) because Ms. D'Acosta was fully notified in
4 advance of her options to proceed further. Ms. D'Acosta was granted a judgement that
5 she was not paid on. Attorney Willick entered into a Contingency Fee Agreement with
6 Ms. D'Acosta in a post-decree action to attempt to collect for the past amount due. This
7 Contingency Fee Agreement did not involve negotiations to modify the amount owed to
8 her as already calculated in the *Decree of Divorce*. Additionally, the Court finds that Ms.
9 D'Acosta was fully informed and understood the Contingency Fee Agreement. The
10 evidence presented to the Court shows that Ms. D'Acosta received very detailed
11 explanations of options in order to proceed further in her case and she knowingly and
12 willing chose to sign a new contingency based fee agreement.


13 However, the Court finds that the Contingency Fee Agreement does violate SCR
14 155 in regards to reasonableness. Based on Willick Law Group's Account Billing
15 Statement, the majority of the work that went into actually attaining the Crestview
16 Property for Ms. D'Acosta occurred while Ms. D'Acosta was still under an Hourly Fee
17 Agreement with Attorney Willick, and prior to the signing of the Contingency Fee
18 Agreement (Exhibit 3). The amount of work done after the Contingency Fee Agreement
19 was signed is miniscule compared to the legal work that was rendered and paid for on an
20 hourly basis prior. In fact, the work post-Contingency Fee Agreement mainly involved
21 the mere re-titling and selling efforts with a few letters regarding the dissolution of the
22 legal relationship between Ms. D'Acosta and Attorney Willick. To allow for Attorney
23 Willick to recover fees in excess of \$200,000 for what appears to be approximately
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1 twenty (20) hours of work completed over a span of two years is completely outrageous
2 and unreasonable. In light of the circumstances, this is not a reasonable sum that can be
3 enforced. The Court finds the reasonable amount for the services rendered is \$9,209.08.
4 This is the only amount of documented work provided to the Court that describes what
5 work was completed during the time the Contingency Fee Agreement was in effect.

6 As such, after careful review of the moving papers and exhibits, the Court finds
7 that in the instant Case, the Contingency Fee Agreement is unreasonable and thus,
8 unenforceable per the terms. The Court further finds the reasonable amount of services
9 rendered amounts to \$9,209.08. The Court further finds that Attorney Garcia is awarded
10 reasonable attorney fees in relation to the work completed to dispute the Motion filed by
11 Attorney Willick to enforce the Contingency Agreement.

12 IT IS SO ORDERED

13 Dated this 20th day of June, 2018.

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17 ROBERT W. TEUTON
18 DISTRICT COURT JUDGE
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