

CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

The Marriage of

CASE NO. 99-178-CA-01

MITCHEL KALMANSON,
Former Husband/Father,

and

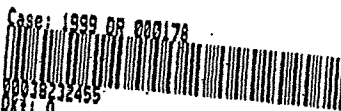
DONNA J. KALMANSON,
n/k/a DONNA ROBINSON BRANDA,
Former Wife/Mother.

2005 DEC 14 AM 10:59
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

**ORDER TO SHOW CAUSE WHY COURT SHOULD NOT VACATE JUDGMENT
AWARDING ATTORNEY'S FEES AGAINST RICHARD DUCOTE AND ORDER
STAYING ENFORCEMENT OF THE FINAL JUDGMENT DATED AUGUST 5, 2003**

Attorney Richard Ducote, filed a motion to vacate the August 5, 2003, final judgment requiring him to pay a portion of the Former Husband's attorneys' fees for bad faith litigation. Only one of the grounds alleged has merit. Mr. Ducote claims that he was not given notice that the Former Husband was claiming attorneys' fees against him personally. Although Mr. Ducote has not asked for a hearing on his Rule 12.540 motion, the Court finds that a hearing is necessary to determine whether Mr. Ducote was given adequate notice and an opportunity to be heard on his personal liability for attorneys' fees. The records reviewed by the Court do not support summary denial of Mr. Ducote's Rule 12.540 motion.

Therefore, the Court stays any further enforcement of the final money judgment against Richard Ducote dated August 5, 2003, pending further order of the Court. The Former Husband shall show cause why the motion should not be granted by supplementing the record with documents or legal citations on or before December 28, 2005.



BRIT 11518 A

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Notice and Opportunity to be Heard on Attorneys' Fees

When an attorney is sanctioned by the Court relying on its inherent authority, the Court must give the attorney "notice and opportunity to be heard, including the opportunity to present witnesses and other evidence." *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002). The Former Husband

noticed his request to assess attorneys' fees against Mr. Ducote, but the Former Husband did not certify that he furnished a copy to Mr. Ducote. A copy of the notice of hearing is attached as Exhibit A-1. The Former Husband did not certify that he furnished a copy of his June 11, 2003 motion for attorneys' fees to Mr. Ducote. A copy of the motion is attached as Exhibit A-2.

The hearing on attorneys' fees started on April 25, 2003, and continued on July 3, 2003. At the conclusion of the hearing the Former Wife and Former Husband were allowed to submit written arguments. The Former Wife did this in the form of a proposed final judgment. The Former Wife's proposed judgment assessed fees against Mr. Ducote, but he was not included on the certificate of service. A copy of the proposed judgment is attached as Exhibit B. The former Husband filed written arguments, but did not include Mr. Ducote on the certificate of service. A copy of the arguments is attached as Exhibit C.

Mr. Ducote was entitled to clear and direct notice of the request to hold him personally responsible for attorneys' fees, the time and date of the hearing, written arguments, and proposed judgments. There is no record evidence that he was furnished any of these documents. Unless the Former Husband can establish that Mr. Ducote was aware of the claim for attorneys' fees based on inherent authority and was furnished notice of the hearing on April 25, 2003 and the continued hearing on July 3, 2003, the Court must grant Mr. Ducote's motion.

There is some evidence that Mr. Ducote was on notice of the Former Husband's claim. The Court exercised jurisdiction to award attorneys' fees in the April 8, 2003 order imposing sanctions on the events causing Mr. Ducote's removal as attorney pro hac vice. Mr. Ducote was fully aware of this order. A copy of the order is attached as Exhibit D. He participated in the April 25, 2003, trial on attorneys' fees as a witness to his own attorneys' fees and was cross examined by the Former Husband. A copy of the clerk's notes attached as Exhibit E confirms his appearance. The Court entered an order on May 29 that mentioned the need to continue the attorneys' fee trial. He did not ask for rehearing after receiving the final judgment for attorneys fees, even though the Former Husband filed a motion for rehearing protesting the Court's failure to assess additional fees against Mr. Ducote. A copy of the Former Husband's motion for rehearing showing service on Mr. Ducote is attached as Exhibit F. These documents are not sufficient to deny Mr. Ducote's motion.

Order To Show Cause

The Court has not reviewed the motion to disqualify, a transcript of the disqualification hearing or the two attorneys' fee hearings. If portions of any transcript or other documents support a finding of notice, the Former Husband shall furnish them to the Court and to Mr. Ducote by December 28, 2005. At the same time, the Former Husband shall cite any legal authorities supporting his position that the Court should not set aside the judgment and schedule a new trial on Mr. Ducote's personal liability for attorneys' fees for failure furnish the motion and notice of trial to Mr. Ducote. If the documents do not establish that Mr. Ducote was furnished clear and direct notice of the request to hold him personally responsible for attorneys' fees and the time and date of the hearing, the Court will grant the judgment to vacate without further hearing.

Sufficiency of Notice on Motion to Disqualify

Mr. Ducote argues that he was given only twenty-four hours notice of the motion to disqualify him. This is not true. As the trial drew closer, the attorneys communicated with each other and the Court by facsimile. Although originals of all documents were supposed to be filed in Lake County where the official court file is located, some were filed directly with the Court in Marion County. Thus, the filing dates on the Lake County docket sheet are not necessarily correct and some documents filed with the Judge may not have been filed in the official court file. However, it is clear that Mr. Ducote was furnished a copy of the motion for disqualification on April 4, 2003, three days before trial on April 8. A copy of his letter to Mr. Rabinowitz acknowledging receipt of the motion on April 4, 2003, is attached as Exhibit G. He faxed his response directly to the Court on April 5, 2003, in compliance with the Court's order on April 4, 2003. The response and cover letter are attached as Exhibit H (attachments to original response omitted). The notice was timely.

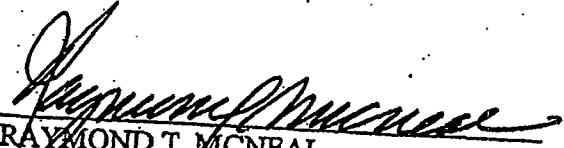
The Florida Bar v. Richard L. Ducote, 906 So. 2d 1060 (Table) (Fla. 2005)

Mr. Ducote also contends that Judge Martha Lott's finding that he did not violate the Rules Regulating The Florida Bar nullifies the Court's finding of misconduct and assessment of attorneys' fees. The ruling in *The Florida Bar v. Richard L. Ducote*, 906 So. 2d 1060 (Table) (Fla. 2005), does not supersede or overrule the Court's assessment of attorney's fees for bad faith litigation. Apparently, both the Former Wife and the Former Husband agreed that fees were appropriate. The Former Wife suggested that Mr. Ducote should pay attorneys' fees in the amount of \$7,590.00 to Mr. Kalmanson. See page 14, paragraph 5 of Exhibit B. The Court reaffirms the previous ruling which was upheld on appeal. *Ducote v. Kalmanson*, 905 So. 2d 898 (Table) (Fla. 5th DCA 2005).

Equitable Considerations


Mr. Ducote claims that the judgment should be set aside because it is inequitable. He alleges that Mr. Kalmanson has used it to attack his practice around the country and that the judgment caused him to file a petition for bankruptcy. These circumstances are regrettable, but they are not grounds for setting aside the judgment.

ORDERED at Ocala, Florida on December 12, 2005.


RAYMOND T. MCNEAL
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished to Mitchel Kalmanson, Former Husband/Father, Post Office Box 940008, Maitland, Florida 32794-0008, Norman D. Levin, Attorney for Former Wife/Mother, 165 West Jessup Avenue, Longwood, Florida 32750, Mark P. Rabinowitz and Seymour Benson, Previous Attorneys for Former Husband, Post Office Box 1171, Orlando, Florida 32802, Richard Ducote, Attorney at Law, 731 Fern Street, New Orleans, Louisiana 70118, and R. Colt Kirkland, Attorney Ad Litem, Post Office Box 1869, Ocala, Florida 32802 by U.S. Mail this 12 day of December, 2005.


DEBRA J. POWELL
Judicial Assistant

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR LAKE COUNTY, FLORIDA

IN RE: THE MARRIAGE OF

CASE NO. 99-178-CA-01

MITCHEL KALMANSON,
FORMER HUSBAND
AND
DONNA J. KALMANSON

CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
FLORIDA

2006 NOV 13 PM 1:27

ORDER

This matter taken up this November 13, 2006, on Richard Ducote's Rule 12.540 motion to vacate the August 5, 2003, judgment against him and on Judge McNeal's December 12, 2005, Order to Show Cause Why Court Should Not Vacate Judgment Awarding Attorney's Fees Against Richard Ducote and Order Staying Enforcement of the Final Judgment Dated August 5, 2003, with Mr. Ducote, Mitchel Kalmanson, William G. Roy, Jr., Mr. Kalmanson's attorney, Norman Levin, Ms. Robinson's counsel, present, and the Court considering the premises:

IT IS HEREBY ORDERED THAT:

- 1) The stay of enforcement issued by Judge McNeal on December 12, 2005, and filed on December 14, 2005, of the August 5, 2003, judgment against Richard Lynn Ducote shall remain in effect pending further orders of the Court;
- 2) Mitchel Kalmanson shall, pursuant to Judge McNeal's December 12, 2005, Order

to Show Cause, file with the Court, and serve upon Mr. Ducote and the other counsel, no later than December 13, 2006, proof that Richard Ducote was furnished clear and direct notice of the request to hold him personally responsible for attorneys' fees and the time and date of the hearing on such request, if such exists, and such proof must be in the form of certified copies of specific documents in the record, or copies of specific pages from the certified and dated transcript, and not vague or general references to transcripts or to the record;

If the pages from the record exceed 25 pages, Mr. Roy's Certification that they are true copies from the record will suffice.

3) If Mr. Kalmanson fails to submit sufficient proof under Paragraph 2, the Court will forthwith sign a judgment granting Mr. Ducote's motion and vacating the August 5, 2003, judgment against him, without any further hearing required;

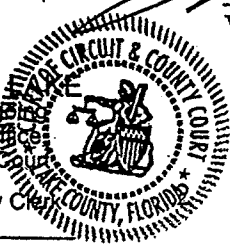
4) The Court will grant no extension of time for any reason whatsoever for Mr. Kalmanson to submit the proof required under Paragraph 2, since Judge McNeal ordered such to be done by December 28, 2005;

5) If Mr. Kalmanson timely submits sufficient proof under Paragraph 2, the Court will then set the matter for an evidentiary hearing.

This Order signed and a copy of this Order served on Mr. Kalmanson, Mr. Roy, his counsel, Mr. Ducote, and Mr. Levin, Ms. Robinson's counsel, in open court this November 13, 2006.

William T. Swigert
William T. Swigert, Judge

STATE OF FLORIDA, COUNTY OF
I HEREBY CERTIFY, that the above and foregoing
is a true copy of the document filed in this office
JAMES C. WATKINS, Clerk Circuit Court



By *J. Davis* Deputy Clerk
Dated 11-13-06

