

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, McClanahan and Senior Judge Willis

JEAN-PIERRE GARNIER

v. Record No. 2876-06-4

CATHERINE C. GARNIER

MEMORANDUM OPINION\*  
PER CURIAM  
JUNE 19, 2007

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY  
Leslie M. Alden, Judge

(David L. Duff; Peter J. Schwartz; The Duff Law Firm, on brief), for  
appellant.

(Gregory L. Murphy; Joseph B. Mullaney; Vorys, Sater, Seymour &  
Pease LLP, on brief), for appellee.

Jean-Pierre Garnier (husband) appeals from the circuit court's October 20, 2006 order. The order finalized the court's earlier finding that he failed to pay certain sums to Catherine C. Garnier (wife) as required by a May 15, 1998 final decree of divorce. On appeal, husband contends the trial court erred in entering the judgment against him because wife did not present any evidence supporting her assertions. Wife seeks attorney's fees and costs incurred in conjunction with this appeal. Upon reviewing the record and briefs, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

BACKGROUND

The parties were divorced by final decree dated May 15, 1998. On June 9, 2006, wife filed a petition for a rule to show cause, requesting that husband be found in contempt for multiple violations of the divorce decree. Wife alleged husband was required to transfer a life insurance

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\* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

policy to her and pay off any existing debt encumbering the policy. Following a September 8, 2006 show cause hearing, the trial court ordered husband to pay off the debt on the life insurance policy.

### ANALYSIS

#### I.

Husband argues wife “did not present any evidence whatsoever” at the show cause hearing and, “[b]ecause the trial court did not receive any evidence, by definition the trial court’s decision was without any evidence to support it” and should therefore be set aside.

However, wife provided the court with an affidavit asserting “the averments set forth in the Petition are true.” Nothing in the record indicates husband objected to the trial court considering the allegations contained in the affidavit. The petition included the assertion that the life insurance policy transferred to wife from husband was encumbered by his personal debt in violation of the terms of the divorce decree.

In making its ruling, the court relied on wife’s sworn affidavit and the allegations in her petition.

In a show cause hearing, the moving party need only prove that the offending party failed to comply with an order of the trial court. Frazier v. Commonwealth, 3 Va. App. 84, 87, 348 S.E.2d 405, 407 (1986). The offending party then has the burden of proving justification for his or her failure to comply. Id.

Alexander v. Alexander, 12 Va. App. 691, 696, 406 S.E.2d 666, 669 (1991).

Husband was provided the opportunity to rebut wife’s assertions, but chose not to do so. We find no error in the trial court’s ruling.

#### II.

Wife requests this Court to award attorney’s fees and costs incurred on appeal.

Upon a review of this appeal, we find that the husband’s case presented questions that were not supported by law or evidence. See Gottlieb v. Gottlieb, 19 Va. App. 77, 95, 448 S.E.2d

666, 677 (1994). Therefore, we award attorney's fees to wife and remand this case to the trial court for determination of attorney's fees and costs incurred in responding to this appeal, and for any costs and fees incurred at the hearing on remand.

Accordingly, the judgment of the trial court is summarily affirmed.

Affirmed and remanded.