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LETTERS

To The Editor

Contempt Order Not Easily Obtainable

I recently read with great interest Justice Ralph T. Gazzillo's detailed and erudite analysis of the roadblocks that impede the successful prosecution of a contempt motion. His decision in *Anderson v. Anderson* (NYLJ, Dec. 2) certainly provides a thorough explication of the difficulties one encounters in seeking to have a defaulting party held in contempt for failure to pay court-ordered support.

In the *Anderson* decision, Justice Gazzillo referenced the case of *Melcher v. Melcher*, which was a matter that I handled on behalf of a similarly constrained ex-wife, whose contempt motion failed for an alleged want of proof. As Justice Gazzillo explained:

A similar result can be culled from *Melcher v. Melcher*, Misc2d - NYLJ, June 1, 1995, p. 31 col. 5 wherein this very Court (Leis, J.) was presented with suitably analogous facts during a contempt hearing. The husband's "only real asset" was his interest in a business he shared with two partners. He owed his matrimonial attorney approximately \$150,000. He was also under an approximately \$200,000 court ordered obligation to his former wife with substantial payments to be made in installments. Before the first installment was due he executed a Confession of Judgment in favor of his attorney for the counsel fee debt and the law firm took his stock certificates for his business and sold them to his partners. Thereafter, he became a salaried employee of his former corporation and grossed \$55,000 a year, while his two former partners earned \$150,000 each.

The Court was so struck by this scenario that it referred the attorney's conduct to the Grievance Committee. As to the wife's contempt application, the opinion specifically addressed her allegations that the transfer of stock to the attorney's had been "a sham and a fraud and [was] part of a conspiracy" by the attorney, the husband, and his partners "to avoid paying [his wife]." In that the evidence did not support those contentions, the Court noted that it was thereby "compelled - to deny [the] application to hold

the [husband] in contempt." By extension, therefore, had the proof been otherwise, presumably contempt would have been available, without the need to first set aside the transaction.

Absent from Justice Gazzillo's summary were certain pertinent facts that seem to raise the contempt bar to a nearly unattainable height, however, in *Melcher*, the stocks that the husband relinquished were valued at trial at over \$300,000. Sometime between the court's decision and the date a judgment of divorce was entered, but before his obligation to pay the \$200,000 distributive award came due, those stocks were allegedly "seized" by the divorce attorneys, who doubled as his business attorneys, and with whom he continued to have a friendly relationship. His attorneys then sold the stock to defendant's partners for a proverbial song, i.e. \$20,000, payable in \$500 monthly installments. To stay the wife's attempt to have him held in contempt, the husband then filed bankruptcy, a proceeding which languished for approximately three years. Eventually, the husband withdrew his bankruptcy action, without having to suffer any sanctions. Thereafter, nearly four years later, our office was engaged to challenge the ex-husband's ruse.

From a litigant standpoint, the circumstantial proof in *Melcher* was truly compelling. Indeed, the only evidence of the husband's duplicity that was missing was a signed confession, or documentation evidencing that the ex-husband's partners were funneling to him his fair share of the profits, despite the \$55,000 per year salary fiction. Not surprisingly, such evidence was not readily available to convert this relatively great circumstantial case into a direct evidence case. Notwithstanding, Justice H. Patrick Leis found the proof somehow lacking as far as the husband's contempt case was concerned, but, nevertheless, felt that his alleged co-conspirator attorney deserved recognition before the Grievance Committee.

Hence, to punctuate what Justice Gazzillo charted in his decision, it is no easy task to persuade a trial judge to hold a defaulting ex-spouse in contempt.

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