

The Mongoose
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Judge Pratt Finally Rules

The divorce decree in *Messier v. Messier* (No. 2009-45158) awarded the wife "a portion of the benefits, if any, received by [the husband] upon exercise of the following ConocoPhillips Stock option awards, representing 60% of the community portions from [husband's] employment, subject to all related actual tax liabilities and withholdings..." The husband was not ordered when to exercise his stock options.

Two years later, the ex-wife had Bobby Newman file a lawsuit because the ex-husband had not exercised many of his stock options. Judge Pratt conducted a trial on December 19, 2012. Judge Pratt ruled that Mr. Newman would be granted almost all of the relief he was asking for (contempt, declaratory judgment, "clarification" that dramatically changed the ex-husband's obligations regarding the stock options, and \$77,000.00 in attorney's fees).

An entry hearing was set for March 25 and counsel appeared, including Don Fullenweider and Sallee Smyth for the ex-husband. After waiting for over an hour, the attorneys were told by the court coordinator that Judge Pratt would not come out into the courtroom if they were there. The lawyers were asked to leave their various motions and responses for the judge to read later. An attorney asked the coordinator if that meant that all of the other people in the courtroom waiting for a hearing would be denied a hearing if the lawyers in the *Messier* case refused to leave the courtroom. Mr. Jeffcoat, the coordinator at the time, predicted that if they stayed that Judge Pratt would simply not leave her chambers. So, the lawyers left their pleadings with Mr. Jeffcoat and left. They then waited and waited for a ruling. Ms. Smyth e-mailed the coordinator several times and he assured her that she would be notified when a ruling was made.

On June 5, Mr. Fullenweider received a notice that an order had been signed on March 25, the day of the entry hearing. That was odd since Mr. Jeffcoat had e-mailed Ms. Smyth on April 3 and said that he had not received any ruling from Judge Pratt and that he would let the attorneys know when a ruling was made.

The order as submitted by Mr. Newman is signed by Judge Pratt and is dated in her handwriting "March 25, 2013." By the time the ex-husband's attorneys received the notice from the District Clerk that an order had been signed, it was in theory too late to file a notice of appeal. The new order as submitted by Newman dramatically changed the husband's obligations and is clearly a substantive change from the divorce decree. The order submitted by Newman only awarded him \$59,198.75 in attorneys fees (instead of the \$77,000 Pratt had granted) but also orders the ex-husband to pay the ex-wife \$25,000.00 for her appellate attorney fees within one day of posting notice of appeal of this order. Interestingly, the order Newman submitted granted his client less relief than what Pratt had ruled. For example, the ex-husband was not held in contempt as Pratt had ruled (probably since the decree did not order him to exercise any of the options). Newman's order did find that the ex-husband had breached his fiduciary duty and ordered him to exercise each stock option as soon as its price reached the strike price if the ex-wife requested him to do so. The ex-husband was prospectively "fined" \$5,000 for each day he fails to exercise the stock options as ordered in the future.

Ms. Smyth filed a motion under TRCP 306a and TRAP 4.2 to extend the deadline to appeal because of late notice that the order had been entered. The affidavits attached to that motion tell the very odd story summarized above. Newman agreed to that motion and now the ex-husband is appealing this order.

It seems very likely that Judge Pratt did not sign this order on March 25 as she wrote when she signed the order. Her own coordinator was telling attorneys weeks later that no ruling had been made. The District Clerk did not get a signed order until early June when it sent out the required notice. On May 22, this newsletter ran a little article under the headline "Judge Pratt Ordered To Do Her Job." The first sentence of that article said, "The First Court of Appeals conditionally granted a writ of mandamus directing Judge Denise Pratt to get off her kiester and

issue a ruling in an enforcement case she heard in June 2012!" Lawyers started noticing after that article ran that Judge Pratt then began making rulings in cases she had heard months before. Some lawyers have reported that the orders they received were dated weeks or even months before the orders appeared in the court files.

The Texas Penal Code, Sec. 37.10 states in part:

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:(1) knowingly makes a false entry in, or false alteration of, a governmental record;

A judge who accidentally writes in the wrong date when she signs an order lacks the *mens rea* to have committed this crime. However, a judge who intentionally back dates an order she signs by a few months has made a "false entry" and would have committed a Class A Misdemeanor. I cannot say what Judge Pratt intended to do in this situation.