

## Guidance for Divorced Lawyers With Waning Practices: Learn To Live Poor

By Michael Booth

In a lesson in frugality for divorced lawyers, a state appeals court on Monday denied an attorney's request to have his alimony and child support payments reduced because of his law firm's dwindling financial performance.

The Appellate Division, in *Donnelly v. Donnelly*, A-2389-07 [digested at page 42], offered a simple warning: Don't take on a lifestyle you can't pay for and then try to make your former spouse feel the pinch.

Gregory Donnelly, of Wayne's Donnelly & Warner, concentrates his practice in commercial and residential real estate, personal injury and matrimonial work. During his 2003 divorce, his annual income was estimated at \$185,000 based on the prior five years. A property settlement agreement required him to pay \$1,000 a week in alimony to his wife Elizabeth and \$350 a week in child support for their three children.

In 2005, Donnelly applied to Superior Court Judge Michael Diamond in Passaic County for a reduction in payments, arguing that his income had dropped precipitously to \$80,000 a year. (His income had in fact been falling before the divorce, from \$301,705 in 1978 to \$130,000 in 2002.)

Donnelly blamed the decline on increased competition, rising office expenses and a decrease in the firm's personal injury and real estate practices. "My personal injury practice has suffered a steady decrease as a result of the Lawsuit Threshold and my real estate practice has suffered due to the number of new attorneys in the area who are

constantly vying for business," he said.

Donnelly asserted it was "absolutely impossible" to maintain his practice and to pay other living expenses while paying alimony and support at the set levels. Diamond found Donnelly's testimony unpersuasive and denied the request, noting that his lifestyle didn't seem to have suffered. He owned a new Lexus worth \$58,000, sold property in Pine Lakes to pay down a \$90,000 line of credit, bought a home in Wayne with a \$600,000 mortgage and — most notably — remarried, spending \$15,000 on his wedding and honeymoon. What's more, the decline in business did not seem of permanent nature such as would inhibit his ability to sustain himself while paying support and alimony, Diamond said.

A year later, Donnelly again applied for a reduction, saying his income for that year would be only \$50,000. He said he had sold his interest in the firm's building for \$175,000 in order to improve his personal finances. Diamond again said no, finding that Donnelly continued to enjoy an upscale lifestyle and to finance it by borrowing.

On Monday, the Appellate Division was likewise unmoved, observing that Donnelly "spent \$11,354 per month on his shelter, transportation and personal needs, revealing no effort to modify the lifestyle he enjoyed with his new wife and new child despite the alleged deterioration of his law practice."

Appellate Division Judge Clarkson Fisher Jr. noted, as had Diamond, that Donnelly "chose to take on greater financial obligations than would be reasonable if his earnings were steadily dwindling."

Fisher quoted from Diamond's second ruling: "Knowing what his obligation was to the plaintiff, ... he went out and spent more money, increased his overhead and said, 'I can't make it.' Well, then don't increase your overhead. Nobody tells you to buy an \$800,000 house, nobody tells you to buy a \$58,000 car, nobody tells you to do all these things. If you don't have it, you cut back. Even though it may hurt — you got to cut back . . . . Take a small house for a couple of years, rebuild and then sell it. You don't have to drive a big Lexus, you don't have to be showy to anybody. You can't afford it, you bite the bullet, you do what you got to do, but you have obligations to your children and to your ex-wife, but by doing what you have done here for whatever your reasons were, you can't come here and — cry wolf."

Fisher, joined by Judges Linda Baxter and Christine Miniman, said Diamond "correctly focused on Gregory's inequitable attempt to have Elizabeth and their children bear the brunt of the luxurious lifestyle Gregory adopted with his new wife in the face of his allegedly dwindling law practice and claimed inability to meet his existing support obligations. Rather than suggesting arbitrariness on the judge's part, the judge's comments exhibit a legitimate basis for denying the motion as well as good common sense and sound advice."

Neither Donnelly nor his attorney, Clifton solo Scott Bocker, returned a reporter's calls.

Elizabeth Donnelly's attorney, Elizabeth Vinhal, says she believes the ruling is important in these trying fiscal times. "With everything that's going on in the economy, the appeals court is probably flooded with these motions," says Vinhal, of Denville's Einhorn, Harris, Ascher, Barbarito & Frost. ■