

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

AT FRANKLIN

FAWN ██████████ FENTON,  
Plaintiff/Wife,

v.

JEFFREY RYAN FENTON  
Defendant/Husband.

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Docket No: 48419B

FILED 7/29/19  
ENTERED  
BOOK PAGE  
ELAINE B. BEELER, Clerk & Master

**HUSBAND’S RESPONSE TO WIFE’S MOTION TO SELL MARITAL RESIDENCE**

COMES NOW the Defendant/Husband, Jeffrey Ryan Fenton, by and through his attorneys of record, Charles M. Duke and Mitchell Miller, and for Response to Wife’s Motion to Sell the Marital Residence, would respectfully request that the hearing on the motion be continued for a short period of time, due to the fact that undersigned counsel only has been retained to represent the Defendant/Husband as of the filing date required of this response, the same being July 29, 2019, and an Agreed Order of Substitution of Counsel is being filed concurrently herewith regarding the same. Therefore, counsel for the Defendant would respectfully submit that additional time is necessary for undersigned counsel to review the matter fully and meet with their client, so as to fully and completely respond to a motion that will have such enormous bearing on the parties moving forward in this matter. Should the Court not allow a short continuance, and deem the hearing shall go forward as scheduled on August 1, 2019, for response to the Motion to Sell the Marital residence, Defendant would state and show as follows:

1. For the purposes of responding to the motion solely, the averments of Paragraph 1 of the motion are admitted
2. For the purposes of responding to the motion solely, the averments of Paragraph 2 of the motion are admitted.

3. For the purposes of responding to the motion solely, the averments of Paragraph 3 are admitted, to the extent that Plaintiff has taken out an Order of Protection against the Defendant. Defendant denies that he has committed any form of domestic abuse. Defendant avers that the Ex Parte Order of Protection is baseless, and that Plaintiff acted for improper purposes when she applied for that Order. Defendant would show that the Temporary Restraining Order, automatically binding on both parties pursuant to T. C. A. §36-4-106 upon the commencement of this cause, prohibits the parties from harassing, threatening, assaulting or abusing each other, that such prohibition adequately protects both parties' interests, and that Defendant has complied with the Temporary Restraining Order.
4. For the purposes of responding to the motion solely, the averments of Paragraph 4 of the motion are admitted.
5. For the purposes of responding to the motion solely, the averments of Paragraph 5 of the motion are admitted, with the exception that Defendant denies that the situation had become "unbearable." Defendant avers that Plaintiff, in fact, deserted the Defendant, when Defendant did not have the ability or means to support himself or pay for the first and second mortgage on the marital residence.
6. For the purposes of responding to the motion solely, the averments of Paragraph 6 of the motion are admitted, with the exception that Defendant avers that Plaintiff chose voluntarily to burden herself with rent payments and utilities for a separate residence so as to desert the Defendant when, in fact, she could have continued living at the marital residence. In addition, Defendant avers that he currently pays the utilities for the marital residence, and that Plaintiff has the ability to pay certain household bills for the marital

residence, as the financially advantaged spouse, but instead chooses not to do so. In support, Defendant would show the Court that Plaintiff filed for bankruptcy in April 2019 and reported having gross monthly income of Seven Thousand Five Hundred dollars (\$7,500.00), after-tax-deduction income of Five Thousand Eight Hundred Forty-Five dollars and four cents (\$5,845.04), actual expenses of Three Thousand Twenty-Five dollars (\$3,025.00), leaving a monthly net income of Two Thousand Eight Hundred Twenty dollars and four cents (\$2,820.04). Plaintiff's Voluntary Petition for Individuals Filing for Bankruptcy is incorporated and attached hereto as **Exhibit 1**.

7. For the purposes of responding to the motion solely, the averments of sentence one of Paragraph 7 of the motion are admitted. Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the averments of sentence two of Paragraph 7 of the motion and, therefore, denies same, and demands strict proof thereof. Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the averments of sentences three and four of Paragraph 7 of the motion and, therefore, denies same in their entirety, and demands strict proof thereof. Defendant respectfully avers that he must continue to reside in the marital residence at this time, as he has no other choices for a residence, nor any funds to secure an alternative residence, due to being deserted by the Plaintiff and her refusal to continue to pay the mortgage on the marital residence, the one viable marital asset, so as to maximize any possible return to the parties if they were allowed to sell the residence by reasonable means as opposed to some sort of "fire sale," as requested by the Plaintiff herein.
8. Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the averments of Paragraph 8 of the motion and, therefore, denies same in their

entirety, and demands strict proof thereof. Defendant admits that, currently, he has two individuals renting rooms in the marital residence, so as to be in a position to pay utilities and monthly expenses he must now solely pay due to being deserted by the Plaintiff.

Defendant respectfully avers that he must continue to reside in the marital residence at this time, as he has no other choices for a residence, nor any funds to secure an alternative residence, due to being deserted by the Plaintiff and her refusal to continue to pay the mortgage on the marital residence, the one viable marital asset, so as to maximize any possible return to the parties if they were allowed to sell the residence by reasonable means as opposed to some sort of “fire sale,” as requested by the Plaintiff herein.

9. Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the averments of Paragraph 9 of the motion and, therefore, denies same in their entirety. Defendant respectfully avers that he must continue to reside in the marital residence at this time, as he has no other choices for a residence, nor any funds to secure an alternative residence, due to being deserted by the Plaintiff and her refusal to continue to pay the mortgage on the marital residence, the one viable marital asset, so as to maximize any possible return to the parties if they were allowed to sell the residence by reasonable means as opposed to some sort of “fire sale,” as requested by the Plaintiff herein.

10. Defendant denies the averments of Paragraph 10 of the motion and, further, objects to the characterizations of Plaintiff of them as “threats.” Defendant admits that he objects and opposes to the marital residence being sold at this time, and in the fashion, sought by the Plaintiff, as Defendant has no other viable means for housing at this time, and, as a Tenant by the Entirety of the marital residence, Defendant respectfully submits he should

be allowed to remain in the marital residence while this litigation is pending. Defendant respectfully avers that he must continue to reside in the marital residence at this time, as he has no other choices for a residence, nor any funds to secure an alternative residence, due to being deserted by the Plaintiff and her refusal to continue to pay the mortgage on the marital residence, the one viable marital asset owned by these parties, so as to maximize any possible return to the parties if they were allowed to sell the residence by reasonable means, as opposed to some sort of “fire sale,” as requested by the Plaintiff herein.

11. Plaintiff’s allegation and concerns that Defendant is devaluing the home are unfounded. Installing security devices would tend to secure, not devalue the home. Moreover, merely renting rooms to tenants does not indicate any misuse, waste, or devaluation. To the contrary, rental income from these tenants provides Defendant a means to maintain the property.
12. Defendant generally agrees with Plaintiff’s assessment of the home’s value and sale potential and believes the home could sell for up to \$450,000.00. Plaintiff’s averments in Paragraph 12, however, would tend to indicate that Plaintiff’s averments in Paragraph 7 are not accurate; if the home could potentially yield \$130,000 to \$150,000 in proceeds, it is not reasonable to say that a foreclosure would wipe out all equity. More importantly, however, determining these matters at this stage of the divorce action is premature. Plaintiff should be required to maintain Defendant at his accustomed standard of living while an equitable distribution of the marital estate is determined. Based on her sworn bankruptcy Petition, Plaintiff should have sufficient resources to pay all or most of the mortgages on the home or otherwise provide Defendant an appropriate amount of spousal

support during the pendency of this cause. Accordingly, these matters should be reserved for further determination of the division of the marital estate.

13. Defendant denies Plaintiff's assertions in Paragraph 13. Plaintiff has the financial ability to continue to pay all or most of the mortgages, which would also avoid foreclosure.
14. Defendant denies Plaintiff's assertion in Paragraph 14. Defendant has merely asserted his legal rights to demand an equitable distribution of marital assets and has attempted to communicate with Plaintiff to form a strategy that does not leave Defendant homeless or financially ruined. It is Plaintiff who created the financial crisis at issue by refusing to pay the mortgages and Plaintiff who now asks this Court to order a fire sale of the most significant asset in this marital estate. The Court should deny this unreasonable and premature request.
15. Defendant denies Plaintiff assertions in Paragraph 15. Plaintiff can pay the mortgage. Her selfish refusal to do so is what has created a time-sensitive crisis. Defendant does not have another place to live or financial means to secure alternate living quarters. While Defendant understand that neither party will come through this divorce unscathed, to ask Defendant to immediately leave his home because of a financial crisis Plaintiff created is an unreasonable and insulting proposition. It should be denied.
16. Defendant strenuously objects to any order to sell the home before the Court has assessed the full marital estate, particularly while Plaintiff has the financial ability to pay the mortgages and thereby maintain status quo. In the even the Court does order a sale, an auction would be an unreasonable fire sale that would almost certainly yield proceeds far below what the home would bring if listed on the open market. Moreover, an immediate auction would expose Defendant to significant liability to current leaseholders residing in

the home. Defendant therefore would ask the Court to order Plaintiff to maintain the mortgage for three (3) to six (6) months so that the home may be sold in an orderly fashion on the open market, yield the most proceeds possible, and limit Defendant's liability to leaseholders.

17. Defendant objects to Plaintiff's request in Paragraph 17. Plaintiff voluntarily, and abruptly left the marital residence. She should bear all costs of her decision, and no reimbursement from the marital estate should be permitted. Plaintiff's request for an offset of the proceeds should be denied because her payments on the mortgages were required to keep Defendant in the manner of living to which he had become accustomed. Further, withholding proceeds from a sale to determine any offset would literally render Defendant homeless, without any income, and without any funds available to secure alternate housing. Plaintiff's request is a cruel and unreasonable concept that this Court should reject out of hand.

Defendant would further state and show unto the Court as follows:

18. As noted previously, Defendant currently rents two rooms of the marital residence, so as to have some means of income to pay the utilities for the marital residence and to have some source of income. Should the Court determine that the marital residence should be sold in some form or fashion at this time, the Court take into consideration that the Defendant will need ample time to notify the current tenants of their need to vacate the residence located at 1986 Sunnyside Drive, Brentwood, Tennessee 37027; therefore, the Defendant would request that he, along with the current tenants, be permitted to remain in the residence until the home is sold, and that he be permitted ninety (90) days to properly notify the tenants of their need to vacate the property.

19. As a result of the two (2) leases with one-year terms, the Defendant is put into a compromising situation which could result in serious liability. His only two options are to either sell the marital residence with two active leases, or to pay the tenants to vacate early. If he elected to pay the tenants to vacate early, he would most likely have to reimburse them for the remaining months of their lease, security deposits for their next rental, moving costs, etc.
20. As one could imagine, the financial burden to the Defendant is monumental when considering these expenses; if anything, if the Defendant is forced to vacate the residence and also reimburse his tenants for vacating early, then Plaintiff should have to share equally in the costs for reimbursing the tenants as well.
21. The Defendant would further respectfully submit and agree, as condition to his remaining in the residence, that he shall maintain the home in pristine condition, pay all utilities for the marital residence and pay the first mortgage on the marital residence.
22. The Defendant would further agree to permit Plaintiff to inspect the home to determine the status of the interior of the residence, provided he receive notice of no less than forty-eight (48) hours of her intent to enter the former marital residence.
23. The Defendant would further aver that the Plaintiff willingly/intentionally failed to notify the Defendant of her bankruptcy proceedings as well as her failure/inability to pay the mortgage in a timely fashion, and that throughout the duration of the marriage, the Plaintiff has been the primary breadwinner and primarily paid the parties' mortgage obligations, moreover Plaintiff is well-aware of the Defendant's inconsistent employment history due to his debilitating mental health diagnoses which affect his ability to maintain continuous and consistent employment.

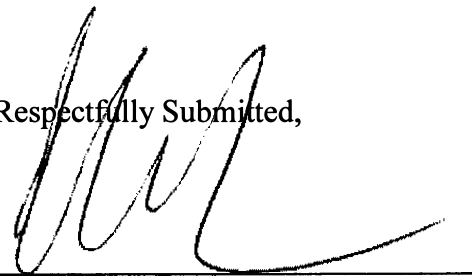


24. That the first and second mortgages as outlined in Plaintiff's Motion, are in the Plaintiff's sole name, and that according to these negotiable instruments, the Plaintiff is solely responsible for payment thereof. Because the Plaintiff failed to communicate with the Defendant as to the status of payment, and Defendant was not a party to the financial documents, it was an impossibility for him to have the ability to contact the lender to verify whether or not payments on the marital residence were being made in a timely manner, and to date is still unaware of when the last payment was received by the mortgage holders, as Plaintiff has failed or refused to provide him with this information.
25. In this aspect, it is arguable that the Plaintiff has unclean hands and that she is acting in bad faith because her past actions have undoubtedly created the present "emergency" as it relates to the possible foreclosure on the marital residence and the need to sell the home in an urgent fashion.
26. The Defendant specifically denies any allegation that he is guilty of domestic abuse towards the Wife, he acknowledges that an *Ex Parte* Order of Protection is in effect and that the hearing on the Order of Protection is set to be heard on August 1, 2019, which is the same day as the Plaintiff's Motion to Sell the Marital Residence is set.
27. The Defendant has not filed an Answer and Counter-Complaint to date as a result of an agreement between the attorneys to grant an extension to file such, and that this is irrelevant with respect to the Motion to Sell the Marital Residence as it has no bearing on the status of the marital residence and the mortgage payments.
28. As stated previously, Defendant acknowledges that he has two tenants residing in the marital residence, and that the rental proceeds are put towards the utilities and maintenance of the home and that he rented these bedrooms in an attempt to mitigate the

financial disaster that the Plaintiff put him in after she ceased paying the mortgage and the utilities, and deserted the Defendant.

29. The Defendant has transferred utilities into his name and that the utilities remain current, and that he agrees to maintain the status quo.
30. Should the Court order the sale of the marital residence, the Defendant would respectfully request that, pending payment of the existing first and second mortgages and any liens on the property, he be permitted an advance on his portion of the proceeds in order to obtain housing, as the sale of the residence will essentially leave him homeless, and without stable employment or rent from tenants, he has no other source of income at this time to rely upon for basic necessities and survival.

Respectfully Submitted,



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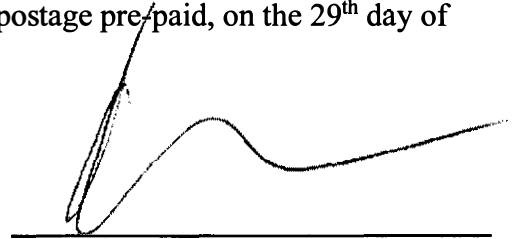
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*Attorneys for Defendant/Husband*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Response to Wife's Motion to Sell the Marital Residence, has been sent to Ms. Virginia Story, Esq. Attorney for the Wife, at 136 Fourth Avenue South, Franklin, TN 37064, via U.S. Mail, postage pre-paid, on the 29<sup>th</sup> day of July, 2019.

A handwritten signature in black ink, appearing to be 'J. Fenton', is written over a horizontal line. The signature is stylized and somewhat cursive.