

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

RICHARD ROSS,
Appellant/cross-appellee,

v.

SHERI LYNN ROSS,
Appellee/cross-appellant.

No. 4D07-4006

December 10, 2008

KLEIN, J.

The marriage of the parties was dissolved in 2003, and the husband, a patent and trademark lawyer, filed a petition for modification in October, 2005, alleging that his income and assets had decreased. He did not prevail, because several months before he filed the petition for modification, he received an attorney's fee in a case he had been working on for several years in the amount of one million, two hundred thousand dollars. To make matters worse, the husband did not include the fee as income when stating his income in the modification proceedings, and his explanation was that he did not do so because it was an aberration. The fee of course increased his income, and in addition his net worth, in direct contradiction to the petition for modification he filed soon after receiving the fee.

The issues raised by the husband are utterly without merit; however we agree with the wife on her cross-appeal and reverse the order denying her attorney's fees. We do so because, in addition to the husband being in a better financial position, this litigation was without merit and appears to have been brought primarily to harass. *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997).

Affirmed in part and reversed in part.

POLEN and STEVENSON, JJ., concur.

* * *

Appeal and cross-appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Alfred Horowitz, Judge; L.T. Case No. 02-1540 (38/91).

Tracy Belinda Newmark of The Newmark Law Firm, P.A., Hollywood, for appellant.

Terrence P. O'Connor of Morgan, Carratt and O'Connor, P.A., Ft. Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.