

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed November 28, 2007.

Not final until disposition of timely filed motion for rehearing.

No. 3D05-1480

Lower Tribunal No. 03-8327

Martin M. Berger,
Appellant/Cross-Appellee,

vs.

Melanie J. Gradus Berger,
Appellee/Cross-Appellant.

An Appeal from the Circuit Court for Miami-Dade County, Thomas S. Wilson, Judge.

Markus & Winter; Greene Smith McMillan and Cynthia Greene, for appellant/cross-appellee.

Beth E. Spiegel; Jay M. Levy, for appellee/cross-appellant.

Before GREEN, WELLS, and SUAREZ, JJ.

Corrected Opinion

SUAREZ, J.

We affirm the lower court's order denying charging lien and awarding attorney's fees and costs in favor of the wife except as to the amount. We reverse

on the wife's cross-appeal the amount of attorney's fees and costs awarded. On remand, the wife shall be entitled to 100% of the attorney's fees and costs based on the disparity in income between the parties as pronounced in the final judgment of dissolution of marriage as a result of the husband's greater earning capacity; the voluntary limitation of his income; and the wife's inability to earn. See Berger v. Berger, 954 So. 2d 1169 (Fla. 3d DCA 2007).

Affirmed in part, reversed in part, and remanded to recalculate the amount of attorney's fees and costs for the wife.