

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT -
DOMESTIC RELATIONS
DIVISION

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Doc#: 1626322119 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/19/2016 11:31 AM Pg: 1 of 10

IN RE THE MARRIAGE OF

BURTON WEINSTEIN,

*Petitioner/
Judgment-Debtor,*
vs.

PENNY WEINSTEIN,

*Respondent/
Judgment-Creditor.*

CASE NO.: 99 D 13656

LIS PENDENS NOTICE

I, the undersigned, do hereby certify that a Citation to Discover Assets ("Citation to Discover Assets") directed to **BURTON WEINSTEIN** ("**BURTON WEINSTEIN**"), Petitioner/Judgment-Debtor, and a Third Party Citation to Discover Assets ("Third Party Citation to Discover Assets") directed to **BURTON I. WEINSTEIN, TRUSTEE OF THE BURTON I. WEINSTEIN REVOCABLE TRUST DATED OCTOBER 11, 1996** ("**TRUST**"), of which **BURTON WEINSTEIN** is, on information and belief, the Settlor and the Beneficiary of said Trust, which is the title holder to the property affected by the above cause(s) defined hereinafter ("**Real Estate**"), to which **PENNY WEINSTEIN** ("**PENNY WEINSTEIN**"), Respondent/Judgment-Creditor, claims an interest to the extent of **BURTON WEINSTEIN's** legal and equitable interest in said Real Estate, pursuant to the Judgment entered in her favor and against **BURTON WEINSTEIN** in the amount of **\$132,750.00 plus prejudgment interest from September 2013**, entered on **September 6, 2016**, by **Judge Raul Vega**, in the above referenced matter, and the service of said Citation to Discover Assets and Third Party Citation to Discover Assets. To wit, said Real Estate is defined hereinafter in Exhibit A - ("**Legal Description**"):

Attorney for PENNY WEINSTEIN
Respondent/Judgment-Creditor


Christopher M. Goodsnyder

Dated this 19th day of September, 2016.

Prepared by and Mail to:

Christopher M. Goodsnyder, Esq.
PERL & GOODSNYDER, LTD.
14 North Peoria Street
Suite 2-C
Chicago, Illinois 60607-2609
312/243-4500 / 312/243-0806 (Fax)
Attorney Number: 39611

CCRD REVIEW 

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

Lot 8 in Block 3 in Villas North Subdivision, being a subdivision in the Northeast 1/4 of Section 1, Township 42 North, Range 11 East of the Third Principal Meridian, Cook County, Illinois.

PARCEL 2:

Easement for ingress and egress appurtenant to and for the benefit of Parcel 1, as set forth in the Declaration of Covenants, Conditions and Restrictions recorded April 19, 1979 as Document 24925612, and filed as Document LR3086710, and as created in the deed from American National Bank and Trust Company of Chicago, a National Banking Association, as Trustee under Trust Agreement dated June 1, 1976 and known as Trust Number 39164 to Alfred Levine and Rose Levine, his wife, dated August 17, 1983 and Recorded September 21, 1983 as Document 26786758 in Cook County, Illinois.

Parcel Index Number: 03-01-205-029-0000

Property Address: 4542 Lindenwood Lane, Northbrook, Illinois 60062

Property of Cook County Clerk's Office

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

In Re the Marriage of)

Burton Weinstein,)

Petitioner,)

And)

Penny Weinstein,)

Respondent.)

No. 99 D 13656

Calendar: 54

Post Decree

Judge: Raul Vega

Room: 3001

MEMORANDUM OPINION

This matter came to be heard on numerous motions and Petitions of the parties: Petitioner (a) filed: in 2015, a Petition for Rule to Show Cause and Other Relief against Respondent for her failure to provide a monthly itemized list and paid receipts for service providers, for medical, dental and pharmaceutical expenses she has sought reimbursement from him as per the parties' MSA; (b) on January 6, 2016, his Second Amended Emergency Petition to terminate Maintenance and Other Relief. Respondent filed: (a) on August 7, 2013, a Petition for Issuance of a Rule to Show Cause, For the Adjudication of Indirect Civil Contempt and for Other Relief, (b) on February 19, 2015, another Petition for Issuance of a Rule to Show Cause for Indirect Civil Contempt of Court and for a Money Judgment, (c) on March 18, 2015, another Petition for Rule to Show Cause for Failure of Petitioner to comply with the December 30, 2013 Order, and (d) a Petition for Award of Section 508(b) Attorney's fees; The Court heard the testimony of the parties and their witnesses; Petitioner, Burton Weinstein was represented by Leslie Datlow, and Respondent, Penny Weinstein was represented Norman Ruber of Berger/Schatz. The Court finds:

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1. The parties were granted a Judgment of Dissolution of Marriage on March 14, 2000.
2. The parties incorporated the terms of their December 19, 1996 legal separation judgment into their Marital Settlement Agreement which was incorporated in the Judgment for Dissolution of Marriage.
3. Penny Weinstein suffered from Parkinson's Disease when the legal separation Judgment was entered in 1996; her condition has not improved but rather it has progressed to the point where she needs a full time health care provider and she is unable to survive at home without the aid of a health care provider because she is unable to walk alone; she is unable to speak or communicate, as was shown during the hearing in this matter. She cannot eat without help. It is clear that her condition has worsened.
4. Paragraph 4.2 of the Marital Settlement Agreement provides:

Provided the Wife's health so permits, the Husband or his estates agree to allow the Wife to reside in the premises located..... as her principal residence. The parties agree, that for the purposes of this agreement, the Wife shall be deemed healthy and therefore allowed to reside in the current residence as defined herein, provided that the Wife, with the concurrence of her medical doctor charged with the treatment of the Wife's Parkinson's disease, is able to reside in a private residence with the assistance of a sole full time health care provider and not be medically required to reside in a nursing home or other long term healthcare facility.

5. Burton Weinstein agreed to also pay Penny maintenance as provided in Section 2.1 of the Marital Settlement Agreement. He agreed to pay Penny \$450,000.00 in a lump sum, payable in monthly payments of \$1,500.00; in the event Penny entered into a nursing home or long term care facility, the payment would be reduced to \$500.00 per month. In addition, Burton was to pay the real estate taxes and homeowner's insurance on residence in which Penny resided, \$1,500.00 monthly for the maintenance of her residence, no more than \$4,000.00 monthly for her home health care "as

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long as it is medically reasonable for the Wife to maintain herself in her residence, and no more than \$3,000.00 per year for her auto insurance.

6. Section 2.4 of the Marital Settlement Agreement provides, in pertinent part, that Burton's payments would continue until the death of either party or at such time when the Wife's medical condition requires her to be maintained in a hospital, nursing home or other similar type of long term health care facility; the parties contemplated Penny's inability to live in a private residence or living independently.
7. It is clear that the decision to place Penny into a nursing home or long term facility would rest on the shoulders of her medical doctor who was or is treating her for her Parkinson's disease, and not on Burton!
8. Burton entered into an agreement with Penny that this court finds to be clear and unambiguous. This Court understands that Burton wishes to have this Court find and declare that Penny should be placed in a nursing home in order to avoid and evade the consequences of his agreement, i.e. the payment of thousands of dollars while she continues to reside in the private residence.
9. But the testimony of Burton's expert witness, Dr. Cindy Zadikoff does not support Burton's request of this Court, nor does the opinion of Dr. Rezak, who is Penny's treating physician.
10. In fact, Dr. ^{Rezak's} ~~Rezak's~~ opinion is supported by Dr. Zadikoff. Dr. Zadikoff admitted that it was not medically necessary for Penny to reside at a nursing home. Absent any testimony that it is medically necessary for Penny to reside in a nursing home, this Court will not and cannot impose Burton's desire upon Penny.
11. Whether Penny needs a single live-in home health care provider or multiple individuals splitting shifts to provide her the care she needs is a red herring and not an issue that would negate the parties' intention for Penny to remain in her residence. This Court will not second judge Penny's decision in this respect.

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12. It is clear that Penny's primary Parkinson's disease physician is the only one that can make a decision as to Penny's residence in a nursing home. This Court will not disturb or second judge a medical doctor's opinion on this subject. Apparently Dr. Rezak believes that it is medically reasonable for Penny to continue living in her private residence.
13. Burton further argues that this Court should modify or terminate his maintenance obligation to Penny because of his poor health and finances but these were not conditions or terms contemplated by him when he entered into the marital settlement agreement.
14. Burton is an attorney who continues to work and who has pending cases where he will receive settlements and fees in the thousands of dollars. Burton represents litigants in workmen compensation and personal injury cases.
15. Part of Burton's argument to modify his obligation to Penny includes that she has investment accounts, that he lost a condo in Florida, IRS tax liens, his home with his current wife is in foreclosure, his law practice is not generating sufficient income and that he cannot cover his operating expenses, and that his current wife and her family have loan him money. This Court does not find Burton's arguments credible or persuasive; this Court finds that Burton is able to control the flow of income from his cases and settlements and that he has engaged in a pattern of conduct to frustrate Penny and his agreed upon obligation to her.
16. While Burton does have health problems, this Court is not persuaded or convinced that he is unable to work or that he doesn't continue to work and generate fees from his cases.

**PETITION FOR ISSUANCE OF A RULE TO SHOW CAUSE FOR ADJUDICATION OF
INDIRECT CIVIL CONTEMPT AND FOR OTHER RELIEF FILED ON AUGUST 7, 2013.**

17. This petition for indirect civil contempt relates to maintenance due from Burton to Penny for the period between August 2011 and July 2013.

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18. But this Court entered a judgment on September 16, 2013 in the amount of \$126,000.00. Any claim for maintenance prior to that date should have been included in that judgment. Accordingly, any claim for unpaid maintenance prior to September 16, 2013 is waived as it is res judicata. The only claim allowed is the claim for interest from the date of the judgment.
19. Therefore, Burton is not found in indirect civil contempt for the nonpayment of maintenance for the period between August 2011 and September 16, 2013 as this issue was dealt with or should have been dealt with when the September 16, 2013 judgment for \$126,000.00 was entered by this Court.

PETITION FOR ISSUANCE OF A RULE TO SHOW CAUSE ADJUDICATION OF INDIRECT CIVIL CONTEMPT AND FOR OTHER RELIEF FILED ON February 19, 2015.

20. This Petition seeks indirect civil contempt against Burton for nonpayment of maintenance for the time period from August 2013 through December 31, 2015. Again, since a judgment was entered on September 16, 2013, this Court will not find that Burton owes any further maintenance prior to that date. Accordingly, this Court finds that Burton owes maintenance from September 2013 to December 31, 2015 with interest. The Total maintenance, without interest is: 2013: \$18,750.00, 2014: \$27,000.00, 2015: \$87,000.00. The total maintenance owed by Burton, without interest, is \$132,750.00 as of December 31, 2015.
21. The Court finds that Burton owes interest on the outstanding principal balance of maintenance from September 2013 to date of payment.
22. This Court finds that Burton's failure to pay maintenance is without cause or justification, that he has the ability to pay and has chosen not to pay hoping that this Court will modify or terminate his obligation to pay maintenance and agreed to expenses for Penny. His failure to pay has been willful, known and contumacious requiring Penny to use legal means and litigation to obtain and secure compliance with the parties' agreement and settlement agreement. Burton continues to live and enjoy his standard of

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living without regard for his ill ex-wife, who he agreed to provide support for when he entered into the marital settlement agreement, knowing her illness and needs.

PETITION FOR ISSUANCE OF A RULE TO SHOW FILED ON MARCH 19, 2015 FOR FAILURE TO PAY PENNY \$10,000.00 PURSUANT TO COURT ORDER OF DECEMBER 30, 2013.

23. Burton was ordered to pay Penny \$10,000.00 in a court order of December 30, 2013 from the settlement from a workmen's compensation case.
24. Burton received on January 29, 2014 the amount of \$166,180.00; the check was returned for non-sufficient funds; Burton never reissued that check and had not done so through the date of the hearing in this matter.
25. This Court finds him in indirect civil contempt for the non-payment of the \$10,000.00 ordered on December 30, 2013. His non-payment has been willful and contumacious, and without legal cause or justification.

BURTON'S PETITION FOR RULE TO SHOW CAUSE AGAINST PENNY FOR FAILURE TO PROVIDE EXPENSE AND HEALTH CARE RECEIPTS

26. Burton has alleged and shown that Penny had an obligation to provide receipts for her health care expenses on a monthly basis. Penny has failed to provide the expense receipts from the date of the entry of the judgment in this matter; it is correct that Burton does not have the affirmative obligation to request these expense receipts and that Penny should have been providing them voluntarily; but it is also true that Burton has been paying the reimbursement expenses from the entry of the judgment and that it was recently, in 2015, that he has lodged Penny's failure to provide the expense receipts as an excuse or defense to non-payment.
27. By Penny's non-compliance and Burton's acquiescence of the required expense receipt requirement of the Marital Settlement Agreement, ^{there} have functioned to date.

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28. Nevertheless, Penny is in violation of the Judgment for her failure to provide the expense information. Penny has argued that Burton has waived his rights to request and demand the expense receipts through his past acquiescence to not demand them. The Court finds that Burton, through his conduct of paying expenses without requiring expense receipts in the past, has waived his right for the past 20 years.
29. However, now Burton has requested the expense receipts and Penny must comply with the expense receipts from the date he filed his Petition or beginning January 2015.
30. This Court does not find Penny in indirect civil contempt for her failure to provide expense receipts for her health care receipts because she acted based upon Burton's demonstrated conduct of not requesting the information up to point of filing his Petition.
31. Penny's conduct was with cause and legal justification based upon Burton's conduct and payment of expenses without objection until now.

PENNY'S PETITION FOR SECTION 508(B) ATTORNEY'S FEES

32. Penny filed a fee petition on May 8, 2015 seeking attorney's fees through December 1, 2015. This Court will grant Penny leave to amend its petition for attorneys under 508(b) and to supplement the fees incurred to the date of the end of the proceedings in this matter. Further, Penny's attorney shall provide the time records that this Court needs to determine whether the fees are reasonable.
33. This Court reserves its ruling on attorney's fees.

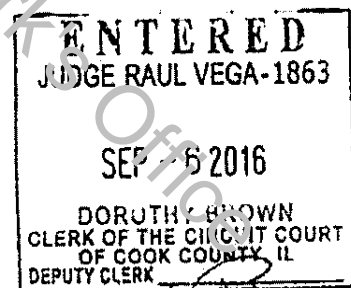
IT IS, THEREFORE, ORDERED:

- A. Petitioner's, Burton Weinstein's, Petition to terminate and modify maintenance is DENIED.

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- B. Petitioner's Petition for Rule to Show Cause against Respondent, Penny Weinstein, for failure to provide expense receipts for health care and expenses is DENIED; however, beginning in 2015 Penny shall comply with the provisions of the Judgment regarding receipts and expenses to be provided to Burton on a monthly basis. Penny shall provide the monthly expense reports and receipts for 2015 within 30 days of this order, and on a continuing basis thereafter as required by the parties' judgment.
- C. Burton is found in indirect civil contempt for failure to pay maintenance from September 2013 through December 31, 2015; Judgment shall be entered on the past due maintenance in the amount of \$132,750.00 with interest accruing from September 2013; Burton shall purge his contempt by making full payment of the interest and principal within the next 90 days or by December 6, 2015.
- D. Burton is found in indirect civil contempt for failure to pay Penny \$10,000.00 as ordered on December 30, 2014; Burton shall purge himself of this contempt by paying Penny the \$10,000.00 within 30 days of this order.
- E. Penny shall file an amended 508(b) attorney's fee petition within 30 days of this order with supporting time records.
- F. This matter is set for status on October 6, 2016 at 9:30 am in courtroom 3001 without further notice.

Entered: September 6, 2016



Judge Raul Vega #1863