

IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT

*,)
) Civil Action No. *
Plaintiff,)
) SCHEDULING ORDER
vs.) (FAMILY LAW)
)
*,)
)
Defendant.)

A SCHEDULING CONFERENCE was held between the court's scheduling clerk and counsel on the * day of *, 2015; counsel appeared as follows: * appeared for Plaintiff and * appeared for Defendant.

IT IS ORDERED:

1. MODIFICATION OF TIMES FOR DISCLOSURES UNDER W.R.C.P. 26(a)(1), (a)(1.1) and 26(e)(1). Self-executing discovery under W.R.C.P. 26(a)(1) and 26(a)(1.1) are expected to have been completed subject to ongoing disclosure pursuant to W.R.C.P. 26(e). Any modifications of times and procedures for disclosures under W.R.C.P. 26(a)(1), 26(a)(1.1) and 26(e) shall be agreed to and submitted to the Court in writing within thirty (30) days.

2. DISCOVERY. The discovery cut-off date is *. No discovery will be permitted beyond the discovery cut-off date without leave of Court. However, the parties may depose expert witnesses up to 3 weeks prior to trial.

3. DISCOVERY DISPUTES. To promote the just, speedy and inexpensive determination of discovery disputes, the Court may decide motions without a hearing upon the written submission of the parties. Failure of a motion to contain a good faith certification of efforts to resolve the discovery dispute without Court intervention will result in automatic denial of the motion. Any response to a discovery dispute motion shall be filed within ten (10) days. Replies to responses are not expected, but if necessary to address new issues raised by the response, a necessary reply shall be filed within three (3) days.

4. DESIGNATION OF EXPERTS. Disclosure of experts shall be made according to the procedure of W.R.C.P 26(a)(2) and in the time periods as follow. Plaintiff shall designate

expert witnesses by *. The Defendant shall designate expert witnesses by *. Rebuttal expert testimony will not be permitted absent good cause shown. These deadlines apply to those specially retained expert witnesses, designated pursuant to W.R.C.P. 26(a)(2)(B)(i), from whom an expert report is required. These deadlines also apply to those witnesses designated pursuant to W.R.C.P. 26(a)(2)(B)(ii), who are expected to provide opinion testimony but from whom no report or disclosure under W.R.C.P. 26(a)(2)(B)(i) is required. The disclosure of W.R.C.P. 26(a)(2)(B)(ii) witnesses shall be accompanied by the summary of the facts or opinions to which the witness is expected to testify and disclose the subject matter on which the witness is expected to present evidence, as specified in W.R.C.P. 26(a)(2)(B)(ii).

5. WITNESSES. The parties shall file a list of the names, addresses and phone numbers of all of their witnesses, *including expert witnesses, along with a summary of the testimony of each*, and provide the same to opposing counsel on or before *. Witnesses shall be designated as “*may call*” or “*will call.*” A party designating any “*will call*” witness shall be responsible for the attendance of such witness at trial, and any opposing party and the Court can rely thereon. Each party shall also designate those witnesses who “*will*” or “*may*” testify by deposition and any and all portions of the deposition testimony shall be designated. Failure to list witnesses according to this paragraph may result in them being stricken.

6. EXHIBITS. All exhibits shall be listed and marked on an index substantially similar to the Exhibit Form attached hereto. On or before *, the parties shall file a list of any exhibits intended for use in the case. Prior to the initial pretrial conference, counsel shall mark exhibits for identification and furnish copies to opposing counsel or if not feasible, make the same available for inspection (copies of exhibits shall not be attached to the pretrial memorandum or filed in the court file). Plaintiff’s exhibits shall be numbered in sequence and defendant’s exhibits shall be lettered in sequence. Unless written objection is filed and served not later than ten (10) days from the date of filing of said exhibit lists, all exhibits which have been noticed will be admissible if relevant. Large numbers of exhibits are not to be lumped under one number or letter. If the exhibits are to be introduced individually at the trial, they are to be listed individually on the exhibit form. The failure to mark exhibits and furnish copies to opposing counsel before the initial pretrial conference may result in any such exhibits being inadmissible at the trial.

7. FINANCIAL AFFIDAVITS. On or before *, both parties shall file Financial Affidavits, with income tax returns and W-2 statements attached for the previous two years. If

either of the parties is self-employed, sufficient financial information from the business shall be attached to the Financial Affidavit. The parties are both put on notice that if either of them fails to file a Financial Affidavit, they may be ordered to appear before the Court to show cause why they should not be held in contempt of court for failing to abide by the order of this Court. Financial Affidavit forms may be obtained from the Clerk of the District Court.

8. CO-PARENTING CLASSES. An Order For Co-Parent Education and File Completion Certificate was entered herein in this matter giving the parties 30 days to enroll in co-parenting classes and to file a certificate of completion. If the parties have not yet done so, they shall enroll in co-parenting classes and/or file their certificates of completion forthwith.

9. INITIAL PRETRIAL CONFERENCE. This matter is set for an initial pretrial conference in the District Courtroom of the Teton County Courthouse, Jackson, Wyoming on the * day of *, 2015 at *.m. One (1) hour is set aside for the hearing. The parties shall attend the pretrial conference along with their attorneys. The provisions of Rule 16, W.R.C.P. are incorporated herein by reference. All parties shall **file** their pretrial memoranda no later than five (5) days prior to the conference. The pretrial memoranda shall include the following:

A. STATEMENT OF PARTY

i. Personal data and history relevant to the issues including name, age, prior marriages, if any, children, present living situation of the parties and their immediate family. For instance, where each is residing; for the children, with whom they are residing and how the children are being cared for during the day if not by one of the parties. This item calls for a brief but comprehensive statement of the parties' personal history as it may relate to the divorce litigation.

ii. Present employment including identity and location of employer, nature of the job, length of employment, income and benefits, including health and accident coverage, if any, convertibility to non-group plan in the event of loss of employment, terms of retirement program, all deductions from salary or wages and prospects for the continuation of the employment.

iii. Employment history and employability including previous employment and income, education, training and work experience affecting employability. Include any other factors substantially affecting employability.

iv. Other income, whatever the source.

v. All assets showing source of the assets (i.e. jointly purchased, gift prior to marriage, etc.), value at the time of marriage, present value and basis for that value and statement of present salability. Please include real property descriptions and vehicle identification numbers and in whose possession each asset is in.

vi. Liabilities including amount, source, terms of the indebtedness.

vii. Any other information which counsel or the parties believe to be material to a property determination of the issues.

B. STATEMENT OF COUNSEL: Statement of the case by counsel of the client's position with respect to:

i. Division of assets and allocation of liabilities.

ii. Amount of child support:

a. Amount called for by the child support guidelines;

b. If it is urged, why there should be a departure from the guidelines.

iii. If alimony is claimed, the basis of the claim and the amount and duration proposed by the party.

iv. If client claims exclusive or superior entitlement to "the divorce", the reasons for that position.

v. Reasons, if any, for departure from "standard rules for custody and visitation."

C. ELIMINATION OF UNNECESSARY PROOF

i. Proof of child support shall be limited to:

a. Income or income potential of the custodial parent.

b. Income or income potential of the non-custodial parent.

c. Current budgetary needs of both parties.

Please note the Court has no inherent power to create assets to meet the real or perceived needs of both parties.

If other evidence is to be offered, the offering party shall set out such evidence in detail and provide cogent legal authority as case citation in support of its relevance.

ii. Proof of Alimony shall be limited to:

a. Income or income potential of the party seeking support.

- b. Income or income potential of the party opposing support.
- c. The current budgetary needs of both parties.

If other evidence is to be offered, the offering party shall set out such evidence in detail and provide cogent legal authority such as case citation in support of its relevance.

D. LIMITATION OF PROOF AT TRIAL: As to Section C, Parts i and ii: The proof at trial shall be limited to the elements set out. If other evidence is to be offered, it must be set out as provided above and cogent authority for its relevance must be recited. Evidence not specifically identified, as required above, will not be received.

E. STIPULATIONS. The parties shall enter into written stipulations of fact, of issues, and documents which will avoid unnecessary proof and shall submit such stipulations along with the pretrial memoranda. Factual matters to be submitted through an offer of proof shall also be reduced to writing.

F. OTHER MATTERS. The parties shall:

- i. Advise the Court of all pending matters; such as, but not limited to, motions, discovery, stipulations, issues regarding the conduct of the trial or any other issues which could be addressed prior to the trial, and such other matters as may aid in the disposition of the action.

- ii. Advise which witnesses will testify at trial, the scope of their testimony, and confirm that final reports of experts and their qualifications have been exchanged;

- iii. Confirm that all efforts of settlement have taken place;

- iv. Advise the Court of the proposed schedule for the orderly presentation of evidence at the trial and establishing a reasonable limit on the time allowed for presenting evidence. In considering said schedule, counsel shall consider any issues with regard to the conduct of the trial in order to facilitate the just, speedy, and inexpensive disposition of the action; and shall consider the avoidance of unnecessary proof of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 W.R.E.;

- v. Advise the Court of the length of time counsel anticipate using to conduct the trial of this matter.

G. FINDINGS. Requests for findings of fact or conclusions of law shall be filed along with the pretrial memoranda.

10. PRETRIAL MOTIONS:

A. At least forty-five (45) days prior to the initial pretrial conference counsel shall file all reasonably anticipated motions, including motions *in limine*. Generally, rulings on pretrial motions *in limine* are optional and tentative. Because such motions are asking the court to rule on motions without the benefit of the larger factual picture that develops at trial (they are out of context), the court may reserve ruling until trial subject to a renewed motion at trial. Pretrial rulings on motions *in limine* are therefore not to be expected unless their necessity is demonstrated by compelling reasons. If the court grants a motion *in limine*, the Court retains discretion to reconsider the ruling upon motion at trial.

Pretrial motions *in limine*, in order for the Court to consider them, shall meet the following requirements:

1) The movant opposing admission of the evidence shall move *in limine* to exclude certain evidence.

2) The movant shall state they have reason to believe that the responding party possesses the evidence and will offer or mention the evidence at trial.

3) The movant shall briefly but specifically state the ground on which the evidence is inadmissible.

4) The movant shall explain why an ordinary trial objection would be inadequate protection for the movant and why an advance ruling by the Court is required.

5) The movant shall present legal argument in favor of the motion.

All motions *in limine* shall include citation to and discussion of the relevant Wyoming Rule of Evidence and any applicable Wyoming law.

6) The response shall indicate whether the responding party intends to offer or refer to the objected-to evidence. If the responding party expects to offer or refer to such evidence, they shall identify why the evidence is relevant and admissible and shall present legal argument in favor of their position. If the responding party does not expect to offer or refer to such objected-to evidence, they shall indicate their non-objection to the motion *in limine*.

B. Although the parties should feel free to request oral argument on any motion and to give reasons why they believe argument would be helpful to the Court in reaching a decision, they are on notice that the Court may rule on any motion without a hearing as permitted by W.R.C.P. 6. Therefore, the parties are reminded that they should take full advantage of the

opportunity to fully brief the issues in their motions, responses, and replies. The written materials should direct the Court to the relevant law and evidentiary support for the motion or opposition thereto. The Court appreciates concise briefing and often finds that less is more. Where extensive briefing cannot be avoided, concise summaries are helpful.

C. Notwithstanding W.R.C.P. 6(c), **any reply briefs, supplemental memoranda or rebuttal affidavits shall be filed not less than one (1) week prior to hearing.**

Late submissions may not be considered by the Court.

D. If a reply brief is filed, counsel are directed to Wyo. R. App. P. 7.03 (as amended in May 2015), which the Court finds to be useful and appropriate for trial briefs. A reply brief shall be narrowly tailored and is limited to such new issues and arguments raised in the response brief. Counsel should not use the reply brief to repeat arguments and analysis appearing in their opening brief. Failure to comply with this requirement may result in the Court disregarding the reply brief.

E. Pretrial motions will be addressed at the initial pretrial conference unless separately scheduled as set forth below. The Court will consider at that time all dispositive motions, general pretrial motions, and any motions *in limine* that are ripe for decision, disposition of which the Court believes would contribute to efficiency in the pretrial and trial process. As noted above, it is anticipated that the Court's ultimate decision on most motions *in limine* will be deferred until trial. Parties should be prepared to argue any pending motions. However, oral argument on pretrial motions will be at the discretion of the Court. If, due to the number or complexity of motions that will be argued at the initial pretrial, counsel anticipate a separate motions hearing or a longer hearing for the initial pretrial conference is required, they shall move the Court as soon as possible and at least thirty (30) days before the initial pretrial conference, stating good cause and suggesting the time required for the hearing.

11. CONTINUANCES. In the absence of emergency or exceptional circumstances, the Court will not consider requests for continuances unless there is certification by the moving party that they conferred with the other parties/counsel in the case and represent their consent or objection, if any. If there is objection by any party to a proposed continuance, it shall be filed as soon as possible after the motion for continuance is filed and within five days of filing.

12. NOTICE TO COURT REPORTER. Any party requesting the reporting of a particular matter by the official court reporter shall provide notice to the official court reporter at

least three (3) working days before the matter is set for hearing. The three-day notice requirement will not be waived by the Court. The notice is required for all civil matters including jury trials. Rule 904 *Uniform Rules of the District Courts of the State of Wyoming*.

*13. ALTERNATIVE DISPUTE RESOLUTION. Counsel shall confer and agree on a mediator for this case. Counsel and the parties shall make themselves available for mediation on or before * and shall make a good-faith effort to settle this case.

*13. MEDIATION. The Court encourages counsel with their clients to evaluate the merits of their case at the earliest opportunity and seek settlement on terms such as are fair and just. Failure to reach settlement through informal efforts will likely lead the Court to review the matter for Court-ordered mediation pursuant to W.R.C.P. 40. The Court encourages good-faith settlement efforts and mediation if required. Early and realistic evaluation of the parties' respective cases, and timely settlement and mediation efforts, should serve to advance the purpose of W.R.C.P. 1 to secure the just, speedy and inexpensive determination of every action.

14. SETTLEMENT. In the event that this case settles, the parties shall promptly notify the Court in writing. The parties are informed that there will be no change in the scheduling of this matter by the Court until such time as the settlement is reduced to writing and a stipulation executed by counsel to that effect. There will be no continuances or canceling of the trial date based on telephone calls.

15. TRIAL. A trial date will be set at the initial pretrial conference. The case must be ready for trial in all respects by the time of the final pretrial conference.

DATED the * day of *, 2015.

Timothy C. Day
District Judge