

STATE OF MICHIGAN
COURT OF APPEALS

LARRY PATTERSON

Plaintiff-Appellee,

v

LUCINDA PATTERSON,

Defendant-Appellee,

v

MARY ST. JOHN, Guardian of JENNIFER
SUE PATTERSON,

Appellant.

UNPUBLISHED
December 6, 1996

No. 165537
LC No. 86-8500-DM

Before: McDonald, P.J., and Wahls and D. B. Leiber*, JJ.

PER CURIAM.

Appellant appeals as of right from the trial court's order denying her motion for attorney fees and expenses. We affirm.

Plaintiff and defendant were divorced in 1987. Defendant initially retained physical custody of both their minor children. However, in May 1986, defendant dropped their daughter, Jennifer at plaintiff's residence, and informed plaintiff he would be responsible for her. In 1990, Jennifer, then sixteen, left plaintiff's home, and went to live with her brother Jeffrey in his apartment. The circuit court granted Jeffrey custody of Jennifer and ordered plaintiff and defendant to pay him child support.

In August 1991, Jeffrey asked Jennifer to leave his home. At this point, appellant accepted Jennifer into her household. At an October 7, 1991, hearing the circuit court reviewed Jennifer's

* Circuit judge, sitting on the Court of Appeals by assignment.

custody arrangement. Although Jeffrey relinquished custody of Jennifer, neither plaintiff nor defendant sought to regain custody and the court failed to grant custody to anyone else. Consequently the court ordered the child support payments to be abated pending further hearings, and in effect left the matter of Jennifer's custody in limbo.

Appellant, wishing to obtain legal custody of Jennifer, approached the Friend of the Court for assistance. Upon their advice, appellant retained an attorney to seek reinstatement of child support and to formalize a guardianship arrangement with Jennifer. On November 6, 1991, the probate court appointed appellant Jennifer's guardian. On the same date the circuit court awarded custody of Jennifer to appellant and ordered plaintiff and defendant to pay appellant child support retroactive to October 7, 1991.

Thereafter appellant filed a motion seeking recovery from plaintiff and defendant of her attorney fees arguing the legal costs were "necessaries" equivalent to medical care and other expenses covered by the child support statutes.¹ The circuit court denied appellant's motion, ruling attorney fees are not "necessaries" within the meaning of the statute. Appellant's motion for reconsideration was denied.

We agree with the lower court insofar as he found attorney fees are not "necessaries" within the meaning of the support statutes at issue. The statutes define support as including the payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses. See citations contained in footnote 1. MCL 722.3; MSA 25.244(3), titled "Parents' support obligation," reads in part:

- (1) The parents are jointly and severally obligated to support a minor unless a court of competent jurisdiction modifies or terminates the obligation or the minor is emancipated by operation of law, except as otherwise ordered by a court of competent jurisdiction
- (2) The duty of support may be enforced by the minor or the child who has reached 18 years of age, his or her guardian, any relative within the third degree, an authorized government agency, or if the minor or the child who has reached 18 years of age is being supported in whole or in part by public assistance under the social welfare act . . . by the director of the state department of social services or his or her designated representative, or by the director of the county department of social services or his or her designated representative of the county where an action under this act is brought.

* * *

- (6) For the purposes of this section, "support" may include payment of the expenses of medical dental, and other health care, child care expenses, and educational expenses.

Although it is clear the statutes' use of the phrase "support may include" evidences the Legislature's intent that the list not be read exclusively, see *Michigan Bell Telephone Co. v Dep't of Treasury*, 445 Mich 470; 518 NW2d 808 (1994), and thus the statutes do not specifically exclude attorney fees from an award of support, this Court has consistently treated attorney fees as an issue separate from the award of support. See *Milligan v Milligan*, 197 Mich App 665; 496 NW2d 394 (1992). In *Milligan*, the plaintiff sued to enforce a child support order against her ex-husband and also sought attorney fees. Although the attorney fees could be seen as necessary to secure support for the benefit of the children, this Court did not consider the fees as part of the support costs. The issue of attorney fees was considered separately. *Id.* Similarly, in numerous actions involving child custody, attorney fees have been considered as a separate issue regardless of the theory the custody suit was brought for the best interests of the child. See, e.g. *Kruger v Martin*, 96 Mich App 660; 293 NWW2d 667 (1980); *Lyons v Lyons*, 128 Mich App 203; 339 NW2d 873 (1983).

MCR 3.206(C), which governs attorney fees in all domestic relations actions, provides the party requesting fees is to allege "that the party is unable to bear the expense of the action, and that the other party is able to pay." The aforementioned cases and MCR 3.206(C) are consistent with the theory attorney fees are distinct from the award of support. Legislative silence in the face of long-standing judicial construction suggests consent to that construction. *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985); *Wikman v City of Novi*, 413 Mich 617; 322 NW2d 103 (1982); *Smith v Detroit*, 388 Mich 637; 202 NW2d 300 (1972). We therefore conclude the court did not err in finding the attorney fees at issue were not "necessaries" within the meaning of the support statutes. Although we do not necessarily agree with the lower court's finding appellant should have attempted alternative measures, the court reached the correct result. An appellate court will not reverse a decision which reached the right result, although for the wrong reason. *Welch v District Court*, 215 Mich App 253; 545 NW2d 15 (1996).

Michigan courts have consistently held a trial court has discretion to award attorney's fees in custody cases. However, in this case appellant was asking the court to award attorneys fees as a form of support, not through its exercise of discretion. Moreover, even had the request been for a "traditional" discretionary award of attorney fees, under the facts of this case we would not find such an award proper. The fact appellant was forced to bring a separate action to obtain custody resulted from the court system's failure to address Jennifer's placement at the October 7, 1991, hearing when the court accepted Jeffrey's relinquishment of custody, not from any actions on the part of plaintiff and defendant.

Affirmed. Costs to neither party.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ Dennis B. Leiber

¹ MCL 722.3(6); MSA 25.244(3)(6); MCL 722.27(5); MSA 25.312(7)(5); MCL 722.3; MSA 25.244(3)