

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 19, 2015

v

ROBERT E. PARKS,

No. 320367
Macomb Circuit Court
LC No. 2010-003875-FC

Defendant-Appellant.

Before: RIORDAN, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order imposing court-appointed attorney fees of \$1,350 in relation to his conviction for first-degree criminal sexual conduct, MCL 750.520b(1)(f). We affirm.

I. FACTUAL BACKGROUND

This case was previously before this Court following defendant's conviction of first-degree criminal sexual conduct. See *People v Parks*, unpublished opinion per curiam of the Court of Appeals, issued July 31, 2012 (Docket No. 303683). The panel described the factual circumstances of the crime as follows:

At trial, the prosecution presented evidence that, on the day at issue, defendant argued with CW—his then girlfriend—at their home. There was testimony that defendant struck her several times, dragged her by her hair into their bedroom and shut the door. Once in the bedroom, defendant again began to strike her. CW testified that she thought that he was going to kill her; she said she was crying and asked him to stop hitting her. At some point defendant ordered her to take her clothes off and get on the bed. He then began to penetrate her while she cried and, at one point, wretched. Even after he went to the attached bathroom, she did not move from the bed because she was scared and did not believe she was free to leave. When he returned from the bathroom he ordered her to “stop acting that way” and asked how he was going “to bust a nut with your crying and acting this way.”

After defendant forced CW to have sex, he took her to a cellular telephone store to purchase a cell phone that she had allegedly promised him. An employee

saw CW and recalled that she appeared frightened. Defendant purchased a cell phone with his debit card but told CW that she had to reimburse him. He then took her to a bank where he used her debit card to withdraw \$200. After returning to the home, defendant left without CW to withdraw another \$300 from her account. She then went to a neighbor's home and called the police.

Defendant testified at trial and admitted that he slapped CW and dragged her into the bedroom by her hair during an argument. However, he stated that she consented to having sex with him to make up after their argument. [*Id.* at 1-2.]

In the first appeal, the panel affirmed defendant's convictions but remanded for resentencing because defendant did not properly waive his right to counsel at sentencing and because the trial court improperly scored Offense Variable 3. *Id.* at 1, 4. Nevertheless, the panel found that defendant had not demonstrated error in the imposition of attorney fees. *Id.* at 9. Defendant again appeals and challenges the imposition of attorney fees.

II. ATTORNEY FEES

A. STANDARD OF REVIEW

We review *de novo* questions of law, including the proper interpretation of a statute. *People v Martin*, 271 Mich App 280, 286-287; 721 NW2d 815 (2006). "Whether the law of the case doctrine applies is a question of law that we review *de novo*." *Duncan v Michigan*, 300 Mich App 176, 188; 832 NW2d 761 (2013).

B. ANALYSIS

Defendant contends that the trial court erred in imposing \$1,350 in attorney fees. He asserts that he is indigent and does not have the ability to pay.

Of initial significance is that we addressed this issue in defendant's first appeal. The panel stated:

Defendant's final argument is that the trial court erred in ordering him to pay attorney costs without first determining his ability to pay. However, our Supreme Court has held that a trial court does not have to assess a defendant's ability to pay at sentencing. *People v Jackson*, 483 Mich 271, 275; 769 NW2d 630 (2009). A defendant is only entitled to have the trial court assess his ability to pay when the fee is enforced. *Id.* at 292. Defendant has failed to demonstrate plain error affecting his substantial rights. [*Parks*, unpub at 9.]

The law of the case doctrine "provides that an appellate court's decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case." *People v Herrera*, 204 Mich App 333, 340; 514 NW2d 543 (1994). Although the trial court imposed a lesser amount at resentencing, defendant alleges no material change of facts that alters the legal analysis provided in the first appeal. Nor has defendant presented any evidence that an attempt at enforcement has occurred.

Pursuant to *Jackson*, 483 Mich at 275, a trial court is not required “to conduct an ability-to-pay analysis before imposing a fee for a court-appointed attorney[.]” Rather, “such an analysis is only required once the imposition of the fee is enforced.” *Id.* Thus, defendant has not demonstrated that he was entitled to have the trial court assess his ability to pay before imposing attorney fees in this case.

Moreover, even though the trial court was under no obligation to do so, it conducted an inquiry into defendant’s alleged indigency. At the January 14, 2014 resentencing hearing, the following colloquy occurred:

Defense Counsel: Well, that he is indigent and unable to pay the attorney fees.

The Court: And that’s based on he’s got an education, he’s got jobs in prison, he’s doing well, got a good block report, good reentry report, apparently supportive individuals on the outside, so I think at this point he does not appear to be indigent.

Defense Counsel: Would you let Mr. Parks—

The Court: What would you like to say, Mr. Parks?

Defendant: Under People versus Jackson, your Honor, it’s my ability to pay and I don’t—I don’t have me personally I don’t have the ability to pay. I mean—

The Court: My understanding is is [sic] that 50 percent of everything above \$50 in your account is taken for court cost and/or attorney fees; is that correct?

Defendant: Yes, your Honor.

The Court: And you’ve got a job in the MDOC?

Defendant: Yes, your Honor.

The Court: Okay. What’s wrong with that then? You have an income. You have an education. So the request for indigency and no attorney fees because of that is respectfully denied.

In light of the foregoing, defendant’s argument is further weakened because the trial court did inquire into his alleged indigency and concluded that he had the ability to pay the imposed fee. Defendant has not highlighted any evidence to counter the trial court’s findings.

III. CONCLUSION

The trial court did not err in imposing \$1,350 in attorney fees. We affirm.

/s/ Michael J. Riordan
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood