

Court of Appeals, State of Michigan

ORDER

Jacqueline Harris v Mark T. Harris

Docket No. 303533

LC No. 00-009198-DM

William B. Murphy
Chief Judge

Cynthia Diane Stephens

Michael J. Riordan
Judges

The Court orders that the unpublished per curiam opinion in this case, which was issued on May 10, 2012, be amended to correct a clerical error.

The second sentence of the second paragraph on page 1 is amended to read: "Following a hearing on December 17, 2010, Wayne Circuit Court Judge Bryan Levy entered a hand-written order awarding defendant attorney fees and costs of \$2,880."

In all other respects, the May 10, 2012 opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 29 2012

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELINE HARRIS,
Plaintiff-Appellee,

UNPUBLISHED
May 10, 2012

v

MARK T. HARRIS,
Defendant-Appellant.

No. 303533
Wayne Circuit Court
LC No. 00-009198-DM

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right a circuit court order that reduced a prior award of attorney fees and costs granted by a predecessor judge. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

In this contentious divorce case, defendant sought an award of attorney fees on the basis of plaintiff's misconduct with respect to post-judgment parenting time issues. Following a hearing on December 17, 2010, Oakland Circuit Court Judge Bryan Levy entered a hand-written order awarding defendant attorney fees and costs of \$2,880. On January 4, 2011, the case was reassigned to Judge Susan Hubbard. On January 7, 2011, plaintiff filed a motion requesting relief from Judge Levy's December 17, 2010, order. Plaintiff argued that the award was not legally authorized and that the amount awarded was excessive. At the hearing on plaintiff's motion, Judge Hubbard acknowledged that she had not reviewed defense counsel's statement of attorney fees and costs, but, without further explanation, agreed to reduce the prior award to \$1,800.

Defendant now argues that Judge Hubbard abused her discretion by reconsidering Judge Levy's prior award and modifying the amount awarded without any justification for the reduction. This Court reviews for an abuse of discretion a trial court's order granting a motion for reconsideration. *Corporan v Henton*, 282 Mich App 599, 605-606; 766 NW2d 903 (2009). An abuse of discretion occurs when a trial court's decision is outside the range of principled outcomes. *Id.*

MCR 3.206(C) states, in pertinent part:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

* * *

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

Where a party seeks an award because of misconduct or a violation of a court order, the award must be for attorney fees that were incurred because of the misconduct. *Reed v Reed*, 265 Mich App 131, 165; 693 NW2d 825 (2005). The party requesting attorney fees must prove that they were incurred and that they are reasonable. *Id.* at 165-166. Further, “[w]hen requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services.” *Id.* at 166. A court may not award attorney fees solely on the basis of what it perceives to be fair or on equitable principles. *Id.*

Here, Judge Hubbard did not abuse her discretion in granting reconsideration of Judge Levy’s December 2010 order awarding attorney fees because that award was not supported by any findings by Judge Levy. However, Judge Hubbard erred by reducing the amount of the award from \$2,880 to \$1,800 because the reduction was itself made without factual support and also without any findings. Judge Hubbard acknowledged that she did not have a copy of defense counsel’s statement of fees and costs. Further, she did not make any findings concerning what services were actually incurred by plaintiff’s misconduct, or the reasonableness of the requested fees, both of which were contested by plaintiff. Accordingly, although we affirm Judge Hubbard’s decision to grant reconsideration of Judge Levy’s order, we reverse the modified award of \$1,800 and remand for a determination of the services that were incurred because of plaintiff’s misconduct and a determination of a reasonable fee for those services in accordance with *Reed*, 265 Mich App at 165-166.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan