

STATE OF MICHIGAN
COURT OF APPEALS

KURT URBAN,

Plaintiff-Appellee,

v

JENNIFER BRIGGS,
f/k/a JENNIFER URBAN,

Defendant-Appellant.

UNPUBLISHED
March 6, 2012

No. 306307
Oakland Circuit Court
LC No. 2009-754763-DM

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

In this domestic relations matter, defendant Jennifer Briggs appeals as of right the trial court's order granting plaintiff Kurt Urban's motion to change domicile and awarding him attorney fees.¹ We affirm.

I. MATERIAL FACTS AND PROCEEDINGS

Plaintiff and defendant have two minor children, aged seven and eleven. The parties married in 1999 and moved to Wolverine Lake, Michigan about eight years ago. Plaintiff filed for divorce in January 2009, and the trial court entered a consent judgment of divorce in August 2009. The trial court granted the parties joint legal custody and plaintiff physical custody. The court permitted defendant parenting time every other weekend, two weekdays a week, alternate weeks in the summer, and alternating holidays. The judgment ordered that the children's overnight visits with defendant take place at defendant's mother's home and that no unrelated males be present during defendant's parenting time for one year. Defendant married Billy Briggs in December 2009. The trial court later modified the parenting time so that defendant

¹ Plaintiff argues that defendant erroneously seeks an appeal of right under MCR 7.203(A), with respect to the change of domicile issue. We disagree. Because the trial court found that a change of domicile would affect the established custodial environment of the minor children, the order actually affects custody, and thus, is considered a final order under MCR 7.202(6)(a)(iii). See *Thurston v Escamilla*, 469 Mich 1009; 677 NW2d 28 (2004).

could have the children at her and Briggs's home at any time, including overnight, and granted defendant additional parenting time in the summer.

Plaintiff experienced financial difficulty in Michigan and received a job offer in North Carolina earning \$100,000 a year. He moved the trial court for a change of domicile on January 18, 2011. The trial court held an evidentiary hearing and granted plaintiff's motion for change of domicile. This appeal followed.

II. CHANGE OF DOMICILE

On appeal, defendant argues that the trial court erred in several respects when it ruled on plaintiff's motion for change of domicile. Specifically, she claims that the court abused its discretion by precluding the Friend of Court family counselor Katherine Stahl from testifying, erred in considering events that occurred before the entry of the last custody order, applied an incorrect legal standard, and made findings under the change-of-domicile and best-interest factors that were against the great weight of the evidence. We disagree.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 160; 693 NW2d 825 (2005), citing *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

With respect to change-of-domicile actions, "[t]his Court reviews a trial court's findings in applying the *D'Onofrio* [*D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27 (1976), aff'd 144 NJ Super 352 (1976)] test under the great weight of the evidence standard." *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004), citing *Dick v Dick*, 147 Mich App 513, 516; 383 NW2d 240 (1985). This Court "may not substitute [its] judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *McKimmy v Melling*, 291 Mich App 577, 581; 805 NW2d 615 (2011), citing *Rittershaus v Rittershaus*, 273 Mich App 462, 472-473; 730 NW2d 262 (2007). We review the trial court's ultimate decision for an abuse of discretion. *Id.*, citing *Brown*, 260 Mich App at 600. "Where a finding is derived from an erroneous application of law to facts, the appellate court is not limited to review for clear error." *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990); see also MCL 722.28 ("To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue."). The same standards apply to a trial court's findings in applying the best-interest factors and its ultimate decisions in custody-change cases. See *Vodvarka v Grasmeyer*, 259 Mich App 499, 507-508; 675 NW2d 847 (2003).

A. PRECLUSION OF TESTIMONY BY KATHERINE STAHL

Defendant argues that the trial court erred in not permitting Stahl to testify at the evidentiary hearing. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403. "A trial court has a broad measure of discretion in determining whether to exclude relevant evidence and may properly rule in favor of exclusion

where a proposed witness's testimony would cause undue delay, a waste of time or needless presentation of cumulative evidence." *Wayne Co Sheriff v Wayne Co Bd of Comm'rs*, 148 Mich App 702, 710; 385 NW2d 267 (1983).

Here, the trial court was extremely concerned about the length of proceedings and repeatedly stated its desire to reach a decision quickly. The court stated that the hearing was supposed to last one day; however, it actually took four separate days spanning almost six weeks. Stahl made a Friend of the Court recommendation to the trial court that plaintiff's motion for change of domicile be denied. Defendant subpoenaed Stahl, but the trial court quashed the subpoena. The trial court's order quashing Stahl's subpoena indicated that the trial court believed Stahl's testimony would be cumulative to Stahl's report, not to *counselor Mary Linda Murphy's testimony* as defendant claims was the trial court's rationale.² Stahl's report was seven pages long and included extensive findings. Stahl obtained the information on which she relied in her report from a joint interview with plaintiff and defendant and a review of Friend of the Court Questionnaires and the Friend of the Court case file. Based on the limited exposure to the parties Stahl had in preparing her report, it is unlikely she would or could have testified with greater detail than she displayed in her report. Although Stahl's testimony would certainly have been relevant, the trial court's exclusion of it as cumulative under these circumstances was not an abuse of discretion.

B. CONSIDERATION OF EVENTS PRECEDING THE LAST CUSTODY ORDER

Defendant contends that the trial court erred by considering events that occurred before the entry of the last custody order. Generally, an issue must be raised, addressed, and decided by a trial court in order to be preserved for appeal. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005), citing *Fast Air, Inc, v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). "Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a 'failure to timely raise an issue waives review of that issue on appeal.'" *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008), quoting *Napier v Jacobs*, 429 Mich 222, 227; 414 NW2d 862 (1987).

Defendant points out three events mentioned at the hearing that occurred before the entry of the last custody order: a Facebook post by defendant in April 2009, defendant's infidelity during the marriage, and a domestic violence incident perpetrated by defendant just after plaintiff filed for divorce in January 2009. Defendant did not object to the testimony regarding her Facebook posting or to the trial court's passing mention of her infidelity. Additionally, defendant herself brought up the domestic violence incident. Therefore, defendant has waived these issues. We see no compelling circumstances indicating that failure to review these claims would cause a miscarriage of justice, and, accordingly, we will not review them on appeal.

² Defendant is correct that Murphy's testimony varied significantly from the content of Stahl's report, so Stahl's testimony could not properly be excluded as cumulative under that rationale.

C. BURDEN OF PROOF

Defendant claims that the trial court failed to apply the proper burden of proof. “When . . . parents share joint [legal] custody and one parent is seeking permission to relocate more than 100 miles away, the family court must consider the factors of MCL 722.31(4),” often referred to as the *D’Onofrio* factors. *Spires v Bergman*, 276 Mich App 432, 436-437; 741 NW2d 523 (2007); *Rittershaus*, 273 Mich App at 465. “The moving party has the burden of establishing by a preponderance of the evidence that the change in domicile is warranted.” *Mogle v Scriver*, 241 Mich App 192, 203; 614 NW2d 696 (2000). However, when the change of domicile will affect the child’s established custodial environment, the court must analyze the best-interest factors laid out in MCL 722.23, and the moving party must prove by clear and convincing evidence that the custodial change is in the child’s best interests. *Rittershaus*, 273 Mich App at 470, citing *Brown*, 260 Mich App at 583.

In this case, the trial court cited MCL 722.27(1)(c) and articulated the clear-and-convincing-evidence standard in its analysis of whether the change in domicile affected the children’s custodial environment. It is true the trial court did not restate the standard when drawing its conclusion that the move was in the children’s best interests, but the omission does not indicate that the court applied an incorrect standard. The court mentioned the preponderance-of-the-evidence standard only, and properly, in relation to the change-of-domicile factors in its analysis. See *Mogle*, 241 Mich App at 203. Additionally, the trial court issued an opinion and order pursuant to MCR 2.612(A)(1)³ on September 28, 2011, clarifying that it found that plaintiff had proved by clear and convincing evidence that the custodial change was in the children’s best interests. We do not believe any clerical error was actually made in the trial court’s opinion, and, even if it was, the trial court’s clarification resolved any doubts about whether it applied the correct legal standard. Even if the trial court had erroneously applied an incorrect legal standard, the error would be harmless because plaintiff has met his burden by clear and convincing evidence as discussed below.

D. GREAT WEIGHT OF THE EVIDENCE, D’ONOFRIO FACTORS

Defendant contends that the trial court’s factual findings with respect to the *D’Onofrio* factors were against the great weight of the evidence. MCL 722.31 states in pertinent part:

(4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court’s deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

³ It appears the clarification order mistakenly cited MCR 2.614(A)(1). MCR 2.612(A)(1) states: “Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party and after notice, if the court orders it.”

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Defendant argues that the trial court erred with respect to (a), (c), and (e).

1. QUALITY OF LIFE

With respect to factor (a), quality of life, "a substantial increase in income that will elevate the quality of life of the relocating parent and child supports a finding that a party has met its burden of proof under the first *D'Onofrio* factor." *Brown*, 260 Mich App at 601. Presence of extended family can also be considered in evaluating quality of life. See *Rittershaus*, 273 Mich App at 466-467.

Here, the trial court concluded that the proposed move would improve the quality of life for plaintiff and the children, noting that plaintiff's new house in North Carolina is large and there is plenty of room to play inside and out, the town is nice, the schools are good, and the boys would not need to go to daycare on a regular basis. The testimony indicated plaintiff's salary would be \$100,000 a year—quintupling his current salary. Plaintiff would only be supporting his two children on that salary. In contrast, defendant and Briggs earn an average salary of \$30,000, and Briggs has additional support obligations. Additionally, the record shows that plaintiff has extended family in North Carolina. The trial court's finding under factor (a) is not against the great weight of the evidence.

Defendant asserts that plaintiff has no support system in North Carolina, his five-year mortgage is extremely risky, and his history of financial trouble makes the proposed move very risky also. None of these contentions have merit. Plaintiff has family in North Carolina, and plaintiff's new employer, Gordon McGilton, is a longtime friend and has provided plaintiff with a tremendous amount of financial support and flexibility to make this move successful for plaintiff and the children. McGilton purchased a home for plaintiff and allowed plaintiff to make low payments until he can afford the full mortgage payment, at which time plaintiff will refinance with a regular mortgage. It appears from the record that it would be far riskier for

plaintiff to remain in Michigan, where he has only been able to earn \$20,000 a year the last two years, than to move to North Carolina, where he can make \$100,000 a year.

2. PRESERVING AND FOSTERING THE PARENTAL RELATIONSHIP

With regard to factor (c), preserving and fostering the parental relationship, “one must start with the premise that implicit in this factor is an acknowledgment that weekly visitation is not possible when parents are separated by state borders.” *Brown*, 260 Mich App at 603, quoting *Costantini v Costantini*, 446 Mich 870, 873; 521 NW2d 1 (1994) (Riley, J., concurring). “[T]he new visitation plan need not be equal to the prior visitation plan in all respects. It only need provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the noncustodial parent.” *Mogle*, 241 Mich App at 204, citing *Anderson v Anderson*, 170 Mich App 305, 310-311; 427 NW2d 627 (1988).

Here, the trial court noted that travel would be required regardless of the outcome of the change-of-domicile motion in order for the minor children to maintain a close relationship with both of their parents. The court stated that extended periods of parenting time and the use of technology could diminish the effect of separation. The court noted plaintiff’s willingness to accept any reasonable parenting-time plan that will allow the boys to live with him. The record shows plaintiff offered to give defendant the children all summer except for one week at the beginning and one week at the end, a lot of holiday time, all school break time, three weekends during the school year, and any time defendant wanted to come visit in North Carolina. The record also indicates plaintiff has always encouraged the boys to call their mother daily, has provided them their own phone to do so, has explored the possibility of Skype for the children to communicate with their mother from North Carolina, and has refrained from speaking negatively about defendant in front of the children.

The court expressed concern about defendant’s ability to foster and preserve the children’s relationship with plaintiff, noting that Briggs sent an anonymous letter interfering with plaintiff’s bankruptcy proceedings and that, throughout the hearing, defendant “demonstrated her disdain for [plaintiff] with both verbal and physical gestures.” The record also shows defendant reacted to plaintiff’s proposed move by demanding sole physical custody and threatening to control plaintiff’s ability to see the children. Moreover, defendant continues to speak negatively about plaintiff in front of the children. The trial court’s finding under this factor is not against the great weight of the evidence.

3. DOMESTIC VIOLENCE

Finally, with respect to factor (e), domestic violence, defendant claimed plaintiff did not prove this factor by a preponderance of the evidence because the incident occurred before the entry of the last order in this case. As previously noted, defendant cannot make this argument on appeal when she is the party who introduced this evidence in the trial court. *Vodvarka*, 259 Mich App at 514 (“[T]he *movant* cannot rely on facts that existed before entry of the [last] custody order”) (emphasis added); *Walters*, 481 Mich at 387, quoting *Napier*, 429 Mich at 227 (“[F]ailure to timely raise an issue waives review of that issue on appeal.”). Therefore, we will not review this issue on appeal.

E. GREAT WEIGHT OF THE EVIDENCE, BEST INTERESTS

Defendant contends that several of the trial court's factual findings with respect to the best-interests analysis were against the great weight of the evidence. Once a change of domicile is granted, if the order effectively changes the established custodial environment, the trial court is required to determine whether the move is in the children's best interests. *Rittershaus*, 273 Mich App at 470. Here, the trial court concluded the change of domicile would affect the children's custodial environment, and neither party challenges that conclusion on appeal. A moving party must prove by clear and convincing evidence that the custodial change is in the child's best interests. *Id.*, citing *Brown*, 260 Mich App at 583. This is the "most demanding standard applied in civil cases." *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009), quoting *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). Evidence is clear and convincing when it "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Id.*, citing *In re Martin*, 450 Mich at 227.

MCL 722.23 sets forth the best-interest factors to be considered by the trial court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Defendant challenges the trial court's findings under factors (b), (c), (d), (e), (h), and (k).

1. LOVE, AFFECTION, AND GUIDANCE

With respect to factor (b), love, affection, and guidance, the trial court determined this factor weighed in favor of plaintiff. The court noted that both parties show love and affection to the children but that plaintiff was willing to provide the children guidance through counseling when defendant refused to do so. The record indicates defendant referred to therapy as "a joke," and her refusal to take the children to counseling went against the advice of the children's doctor. The trial court's finding under this factor is not against the great weight of the evidence.

2. FOOD, CLOTHING, AND MEDICAL CARE

The trial court determined factor (c), food, clothing, and medical care, weighed in favor of plaintiff. The court found that plaintiff's testimony about his new job was credible and that he has secure employment that will enable him to meet the children's financial needs. The record shows plaintiff's new job pays \$100,000 a year. The court did not believe defendant's and Briggs's testimonies that they are financially capable of meeting the children's needs. The court noted that the children have been without health insurance at times, defendant has driven them around in an uninsured car, defendant has not paid child support, and defendant has not complied with the court's order to obtain employment. Evidence shows that defendant and Briggs's annual income is about \$30,000, but they have regular expenses of about \$2,333 a month (\$27,996 a year), which includes insurance, utilities, taxes, and Briggs's support obligations but does not appear to include food or clothing. It also does not include at least \$14,000 in anticipated attorney fees and \$2,800 for a new egress window required for one of the children's bedrooms in the basement. The trial court's finding under this factor is not against the great weight of the evidence.

3. STABLE ENVIRONMENT AND CONTINUITY

The trial court found factor (d), stable environment and continuity, favors plaintiff. The court noted plaintiff lost the marital home through foreclosure and that defendant could have assisted plaintiff in preventing that loss but was unwilling to do so. The record shows defendant could have likely prevented the loss of the home by signing a loan-modification document, which would not have cost her any money. This indicates unwillingness on defendant's part to help maintain continuity for the children. The trial court's finding under this factor is not against the great weight of the evidence.

4. PERMANENCE OF CUSTODIAL HOME

The trial court found factor (e), permanence of custodial home, did not favor either party, pointing to the analysis under factor (d), which indicated the marital home was lost. The marital

home is where plaintiff resided with sole physical custody of the children. Defendant argues that the children have a stable custodial environment at her and Briggs's home and, therefore, this factor should weigh in her favor. However, the children have been permitted to stay there only since a new parenting-time order was entered on June 24, 2010. The children essentially have no long-term, stable custodial home at present. The trial court's finding under this factor is not against the great weight of the evidence.

5. HOME, SCHOOL, AND COMMUNITY RECORD

The trial court found factor (h), home, school, and community record, did not favor either party. The court noted the children will have to change schools no matter what. Defendant argues this factor should favor her since she has been able to both volunteer at the children's school and be very involved with their education. However, this argument focuses improperly on *defendant's* actions rather than on the children's record. The statute clearly states that consideration must be of "[t]he home, school, and community record of the *child*." MCL 722.23 (emphasis added). The trial court's findings under this factor are not against the great weight of the evidence.

6. DOMESTIC VIOLENCE

The trial court found that factor (k), domestic violence, favored plaintiff, using the same analysis as it did for the domestic-violence factor under MCL 722.31(4)(e) for change of domicile. We again note that this issue is waived because defendant introduced this evidence at the hearing; therefore, we will not review it on appeal.

7. CONSIDERATION OF STAHL'S REPORT

Defendant also argues that the trial court erred by not considering Stahl's report when evaluating the best-interest factors. It is the responsibility of the factfinder to determine the credibility and weight of trial testimony. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008), citing *Zeeland Farm Servs, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). "[A]n appellate court should not conduct an independent review of credibility determinations, disregard findings of fact, or create new findings of fact." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 113; 793 NW2d 533 (2010), citing *Locricchio v Evening News Ass'n*, 438 Mich 84, 112 n 17; 476 NW2d 112 (1991).

Here, the trial court heard all of the evidentiary-hearing testimony and reviewed the numerous exhibits. The court specifically ordered that Stahl's report be admitted when it quashed her subpoena to testify. Defendant argues that, while the court was free to gauge the credibility of the witnesses, it had no authority to "erase" Stahl's observations. However, defendant cites no authority for this position. We will not second-guess the weight the trial court gave Stahl's report.

To summarize, we conclude that the trial court's findings under factors (b), (c), (d), (e), (h), and (k) do not go against the great weight of the evidence. The trial court's findings and conclusions under the remaining factors are not challenged. In total, five factors favor plaintiff and six favor neither party. Zero factors favor defendant. Accordingly, we conclude the trial

court's ultimate decision to grant plaintiff's motion for change of domicile was not an abuse of discretion.

III. ATTORNEY FEES

Defendant next argues on appeal that the trial court abused its discretion when it awarded attorney fees to plaintiff in the amount of \$7,500. We disagree.

This Court reviews a trial court's award of attorney fees for an abuse of discretion. *Reed*, 265 Mich App at 164, citing *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). Underlying factual findings are reviewed for clear error. *Id.*, citing *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 381; 652 NW2d 474 (2002). Questions of law are reviewed de novo. *Id.*, citing *HA Smith Lumber & Hardware Co v Decina*, 258 Mich App 419, 429; 670 NW2d 729 (2003), rev'd in part on other grounds 471 Mich 925 (2004).

"Under the 'American rule,' attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract." *Id.*, citing *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004). A common-law exception to the American rule provides "that an award of legal fees is authorized where the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Id.* at 164-165 (quotation omitted). A causal connection must be shown between the misconduct and the fees incurred. *Id.* at 165.

Here, the trial court appeared to rely on this exception when it made findings of fact regarding defendant's unreasonable conduct at the evidentiary hearing.⁴ The court stated:

The court is satisfied that the hearing took much longer than necessary based on Defendant's counsel's lack of preparedness, redundant questions, his inability to follow the Michigan Rules of Evidence and the Michigan Court Rules and his attempts to introduce evidence well beyond the time allotted pursuant to the court's Scheduling Order. Further, the court finds that Defendant's untruthfulness on many occasions during the trial was responsible for many of the delays.

This finding establishes that defendant acted unreasonably and that the unreasonable conduct lengthened the hearing considerably, thereby increasing plaintiff's attorney fees. On review of the entire record, we conclude that this finding is not clearly erroneous. The transcript of the hearing is filled with examples of defendant's counsel being reprimanded by the trial court for his repeated failures to follow evidentiary and court rules and for dragging out the proceedings. The court even reminded defendant's attorney at one point, after multiple instances of this behavior, that plaintiff had requested attorney fees. The record also shows several instances in which the court had to reprimand defendant for her outbursts. Under these circumstances, the

⁴ The trial court did not cite to a specific statute, court rule, or contract under which attorney fees would be authorized, further indicating the trial court relied on the common-law exception.

trial court's award of attorney fees to plaintiff in the amount of \$7,500 was not an abuse of discretion.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ William C. Whitbeck

/s/ Jane M. Beckering