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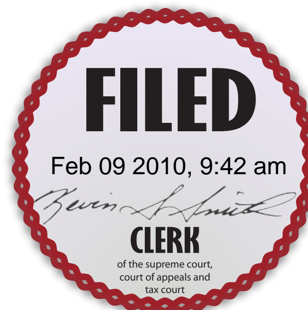

ATTORNEYS FOR APPELLANT:

RODNEY T. SARKOVICS
WILLIAM E. WENDLING, JR.
Campbell Kyle Proffitt LLP
Carmel, Indiana

ATTORNEYS FOR APPELLEE:

MARK K. SULLIVAN
ANDREA L. COHEN
Mark K. Sullivan & Associates, P.C.
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

MICHAEL J. BROWN,
Individually and in his capacity as Trustee for
MICHAEL J. BROWN REVOCABLE TRUST,
Appellant,

vs.

DEBRA WYANDT,
Individually and in her capacity as Trustee
For DEBRA J. WYANDT REVOCABLE TRUST,
Appellee.

No. 29A02-0906-CV-571

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0907-PL-00947

February 9, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Debra Wyandt, individually and in her capacity as trustee of the Debra Wyandt Revocable Trust (collectively "Wyandt"), brought suit in Hamilton Superior Court against Michael J. Brown, individually and in his capacity as trustee of the Michael J. Brown Revocable Trust (collectively "Brown"). The parties eventually entered into an agreed order (the "Agreed Order") pending final resolution of the litigation between them. The trial court subsequently granted Wyandt's request for partial distribution pursuant to the Agreed Order. Brown appeals and argues that the trial court erred in granting Wyandt's request. We affirm.

Facts and Procedural History

Wyandt and Brown are stockholders, members, and officers of several corporations.[1] Wyandt was the secretary and treasurer of the corporations and was an authorized signatory on the corporate bank accounts. At some point, Wyandt and Brown's business relationship soured, and on April 17, 2009, Wyandt filed a complaint against Brown and sought a temporary restraining order wherein she alleged that Brown had removed her as a signatory on the corporate bank accounts. Wyandt also alleged that Brown had impeded her ability to oversee the corporate accounts by forwarding the various corporations' mail from their headquarters to Brown's personal post office box. Wyandt's complaint expressed concern that, with Brown as the sole signatory, there was a risk that he would use corporate funds for personal expenses.

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[1] Given the interlocutory nature of the present appeal, the record is not fully developed, and much of the facts have been gleaned from the parties' various pleadings and motions.

On April 28, 2009, the trial court approved an Agreed Order entered into between Wyandt and Brown, which states in relevant part:

> IT IS THEREFORE . . . ORDERED ADJUDGED AND DECREED that any request for disbursements for reasonable and necessary business expenses related to the operation of [the corporations] shall be submitted in writing to [Wyandt], accompanied by appropriate documentation supporting the request; and it is further,
>
> ORDERED ADJUDGED AND DECREED that [Wyandt], within five (5) days of receipt of any request for disbursements for reasonable and necessary business expenses related to the operation of [the corporations] shall object to such disbursements in writing; and it is further,
>
> ORDERED ADJUDGED AND DECREED that any other funds disbursed from any bank account holding funds belonging to [the corporations] which are not reasonable and necessary business expenses, made directly or indirectly for the use or benefit of [Wyandt] or [Brown], shall be made simultaneously in equally [sic] amounts to [Wyandt] and [Brown]; and it is further
>
> ORDERED ADJUDGED AND DECREED that within Twenty-one (21) days of entry of this Agreed Order, [Brown] shall submit a written accounting, with supporting documentation, of all funds belonging to [the corporations], from December 1, 2008 to date . . . .

Appellant's App. pp. 38-39.

Pursuant to the terms of the Agreed Order, Brown gave notice to Wyandt of certain claimed corporate expenses on May 7, 2009. Of these claimed expenses, Wyandt disputed four items which totaled $4,395.18, which she claimed should be considered as Brown's personal expenses.

On May 14, 2009, Wyandt filed a "Request for Partial Distribution or, in the Alternative, Set Matter for Hearing," ("the Request"), claiming that she was entitled to monetary distribution pursuant to the Agreed Order. Appellant's App. p. 40. Brown responded to Wyandt's Request on May 22, 2009, by filing a Response to the Request for

Partial Distribution ("the Response"). In his Response, Brown argued that there was no authority for awarding monetary distributions to Wyandt or her attorneys, that the requested distributions were premature because discovery had not yet begun, and that Brown himself, not the corporations, had paid the disputed $4,395.18 in expenditures. Attached to the Response, Brown also included copies of certain documents which he claimed showed that he personally paid for the disputed expense. Brown's Response concluded by asking the trial court to "summarily deny Wyandt's Request . . . , not set the matter for a hearing, and for all other relief just and proper in the premises." Appellant's App. p. 49.

On May 26, 2009, the trial court entered an order granting Wyandt's Request, ordering partial distribution of corporate funds to Wyandt in the amount of $4,395.18 and granting distribution of funds to Wyandt's attorneys in the amount of $10,000, all pursuant to the Agreed Order. It is from this interlocutory order that Brown now appeals.

Discussion and Decision

On appeal, Brown spends much of his appellant's brief discussing the appropriate standard of review. Specifically, Brown claims that our standard of review depends upon how we interpret Wyandt's Request. Brown goes through the various standards of review for an award of damages, summary judgment, and contempt of court. We, however, note that the trial court's order is an interlocutory order for the distribution of money pursuant to the Agreed Order. Indeed, Brown admits that the trial court's order was an interlocutory order for the payment of money appealable as of right pursuant to Indiana Appellate Rule 14(A)(1). As such, we review the trial court's interlocutory order

for an abuse of discretion. See In re Paternity of Duran, 900 N.E.2d 454, 462 (Ind. Ct. App. 2009).[2] An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law. Id. This is a very deferential standard of review.

Brown claims that the trial court erred in awarding $4,395.18 to Wyandt because the court did so without any evidence. Specifically, Brown claims that the trial court's award was based solely upon the unsworn statements of Wyandt's counsel contained in the Request itself. However, as Wyandt notes, Brown did not make this argument to the trial court, and he may not present this argument for the first time on appeal. GKC Ind. Theatres, Inc., v. Elk Retail Investors, LLC, 764 N.E.2d 647, 652 (Ind. Ct. App. 2002) (noting general rule that a party generally waives appellate review of an issue or argument unless that party presented that issue or argument before the trial court).

Brown's Response did not argue that Wyandt's Request was deficient because it was not supported by sufficient documentary evidence or testimony. In fact, Brown specifically asked the trial court to deny Wyandt's Request without a hearing, at which evidence might have been presented. Therefore we also reject Brown's claim that the trial court's order denied him due process because it ruled on the Request without holding a hearing and deem it as an invited error, if error at all.[3]

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[2] Although Appellate Rule 14(A)(1) permits appeals as of right from interlocutory orders for the payment of money, we note that the interlocutory nature of the current appeal leaves us with a rather sparse record. In fact, Brown notes that, at the time of the order currently on appeal, discovery was not yet complete. This status supports the abuse of discretion standard of review noted above.

[3] Brown's due process arguments are also based on his erroneous presumption that the trial court's order is equivalent to a contempt order. As noted above, the trial court's order is not a contempt order but simply an order enforcing the terms of the Agreed Order voluntarily entered into by both parties.

Brown next claims that the trial court erred in ordering distribution of funds to Wyandt because he submitted evidence which he claims shows that he personally, not the corporations, paid for the expenses in question. Even if we ignore any evidentiary issues with Brown's unauthenticated documents, the trial court was the fact finder as to Brown's evidence and fully competent to weigh that evidence. In other words, Brown is simply asking us to reweigh the evidence, which we will not do. See Marks v. Tolliver, 839 N.E.2d 703, 707 (Ind. Ct. App. 2005) (noting that when we review for an abuse of discretion, we do not reweigh the evidence).

Brown also claims that the trial court erred in awarding what he refers to as "attorneys fees" to Wyandt. Brown notes that Indiana follows the "American Rule" when it comes to the payment of attorneys fees. See Town of Georgetown v. Edwards Cmty, Inc., 885 N.E.2d 722, 726 (Ind. Ct. App. 2008). Under the American Rule, "parties are required to pay their own attorney fees absent an agreement between the parties, statutory authority, or other rule to the contrary." Id.

Wyandt readily acknowledges that Indiana follows the American Rule. But she claims, and we agree, that the trial court's order did not order Brown to pay for Wyandt's legal fees and shift the cost of litigation for one party to the other. Instead, in her Request, Wyandt sought enforcement of the equal, simultaneous-distribution provisions of the Agreed Order. In his Response to Wyandt's Request, Brown did not dispute that he had used corporate funds to pay for his personal legal expenses. Under these facts and circumstances, we cannot say that the trial court abused its discretion in ordering

distribution of funds to pay for Wyandt's attorney fees pursuant to the simultaneous-distribution provisions of the Agreed Order.[4]

As noted above, the trial court's order is appealable as of right as an interlocutory order for the payment of money, and this presents us with a sparse record. But the interlocutory nature of the trial court's order also means that it is *not* a final judgment. If, as the litigation between these parties proceeds, the trial court is presented with evidence demonstrating that its distribution order should be revisited, the trial court can, at that time, make any adjustment necessary. See Stephens v. Irvin, 734 N.E.2d 1133, 1134 (Ind. Ct. App. 2000) (observing that a trial court has inherent power to reconsider any of its previous rulings so long as the action remains *in fieri*), trans. denied.

Affirmed.

BARNES, J., and BROWN, J., concur

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[4] The trial court's distribution of funds directly to Wyandt's attorneys simply reflects the fact that the funds it ordered distributed were for the payment of attorney fees incurred by Wyandt.