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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 1444

IN RE: INTERDICTION
OF
TIMOTHY R. MASHBURN

Judgment Rendered: APR 30 2013

Appealed from the
21st Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 2010-0001452

Honorable W. Ray Chutz, Judge

L. Kevin Coleman
Mandeville, LA

Attorney for Appellants
Joseph Patton "Pat"
Mashburn and Richard Anthony
Mashburn, in their capacities as the
Co-Trustees of the Mashburn Family
Trust, and Joseph P. Mashburn and
Don Mashburn, in their capacities as
Co-Trustees and Managing Trustees
of the Jack and Sadie Pugh Mashburn
Marital Trust

Walter Antin, Jr.
Hammond, LA

Attorney for Appellee
Timothy R. Mashburn

BEFORE: PARRO, WELCH, AND KLINE,¹ JJ.

¹ Hon. William F. Kline, Jr., retired, is serving as judge *ad hoc* by special appointment of the Louisiana Supreme Court.

WELCH, J.

In this interdiction proceeding, the appellants, Joseph Patton (“Pat”) Mashburn and Donald J. (“Don”) Mashburn, in their capacities as the co-trustees and managing trustees of the Jack and Sadie Pugh Mashburn Marital Trust (“marital trust”), and Pat Mashburn and Richard A. Mashburn, in their capacities as the co-trustees of the Mashburn Family Trust (“family trust”), appeal a trial court judgment awarding the defendant, Timothy (“Tim”) R. Mashburn, a beneficiary of both the marital and family trusts, the costs and attorney fees that he incurred in defending this action. Also before this court is an answer to the appeal filed by Tim Mashburn. We affirm the judgment of the trial court, deny the answer to appeal, and issue this memorandum opinion in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

In separate but related proceedings, the marital and family trusts have been the subject of extensive, contentious litigation in both the district court and in this court.² Most of this litigation has involved suits by Tim Mashburn against the appellants (*i.e.*, the managing co-trustees of the marital trust or the co-trustees of the family trust, or both), and although the appellants and Tim Mashburn are siblings, it is evident that their relationship is acrimonious. On April 8, 2010, the

² See **In Re Mashburn Marital Trust**, 2004-1678 (La. App. 1st Cir. 12/29/05), 924 So.2d 242, writ denied, 2006-1034 (La. 9/22/06), 937 So.2d 384 (“**Mashburn Marital Trust (I)**”); **In Re Mashburn Marital Trusts**, 2006-0741, 2006-0742, 2005-0887 (La. App. 1st Cir. 12/28/06), 951 So.2d 1136, writs denied, 2007-0403, 2007-0446 (La. 4/20/07), 954 So.2d 164, 167 (“**Mashburn Marital Trust (II)**”); **In Re Mashburn Marital Trust**, 2006-1753, 2006-1754, 2005-0887 (La. App. 1st Cir. 12/28/06), 947 So.2d 852 (*unpublished opinion*), writs denied, 2007-0403 and 2007-0446 (La. 4/20/07), 954 So.2d 164 and 167 (“**Mashburn Marital Trust (III)**”); **In Re Mashburn Marital Trusts**, 2008-0450 (La. App. 1st Cir. 10/31/08), 994 So.2d 157 (*unpublished opinion*) (“**Mashburn Marital Trust (IV)**”); **In Re Mashburn Marital Trust**, 2010-0278 (La. App. 1st Cir. 12/22/10), 52 So.3d 1136, writ denied, 2011-0177 (La. 5/20/11), 63 So.3d 978 (“**Mashburn Marital Trust (V)**”); **In Re Mashburn Marital Trust**, 2010-1104 (La. App. 1st Cir. 12/22/10), 52 So.3d 1127, writs denied, 2011-0474, 2011-0490 (La. 5/20/11), 63 So.3d 981 (“**Mashburn Marital Trust (VI)**”); **In Re Mashburn Marital Trusts**, 2010-1819 (La. App. 1st Cir. 3/25/11), 58 So.3d 1154 (*unpublished opinion*), writ denied, 2011-0818 (La. 5/20/11), 63 So.3d 988 (“**Mashburn Marital Trust (VII)**”); **In Re Mashburn Marital Trust**, 2012-1382 (La. App. 1st Cir. 4/24/13), ___ So.3d ___ (*unpublished opinion*) (“**Mashburn Marital Trust (VIII)**”); **In Re Mashburn Marital Trusts**, 2012-1773 (La. App. 1st Cir. 4/30/13), ___ So.3d ___ (“**Mashburn Marital Trust (IX)**”); and **In Re Mashburn Marital Trust**, 2012-1774 (La. App. 1st Cir. 4/30/13), ___ So.3d ___ (*unpublished opinion*) (“**Mashburn Marital Trust (X)**”).

appellants commenced this action, seeking to interdict Tim Mashburn based on behavior that he had been exhibiting in both his dealings with his siblings and others and his continuing pursuit of litigation involving the trusts.³

A psychiatrist was eventually appointed by the trial court to conduct a psychiatric evaluation of Tim Mashburn. In a report dated March 29, 2011, the psychiatrist determined that, although Tim Mashburn had a mental illness,⁴ “a limited interdiction ... [was] not appropriate at [that] time[,]” because his infirmity did “not render him incapable of making reasonable decisions regarding his property.” Ultimately, the appellants, with the agreement of Tim Mashburn, filed a motion to dismiss the interdiction proceeding without prejudice, which was granted by the trial court.

Thereafter, in accordance with La. C.C.P. art. 4550, Tim Mashburn filed a motion seeking an award of attorney fees and costs he incurred in defending this action. This motion sought attorney fees for Tim Mashburn’s initial attorney in this proceeding, Walter Antin, Jr. (who is also Tim Mashburn’s attorney in the trust litigation). Tim Mashburn’s subsequent court appointed attorney, Jessica

³ Louisiana Code of Civil Procedure article 4541(A) provides that “[a]ny person may petition for the interdiction of a natural person of the age of majority or an emancipated minor.” In this case, Pat Mashburn, Don Mashburn, and Richard Mashburn did not institute this action individually, but rather, “in their [capacities] as co-trustees” of the family trust and/or “as co-trustees and managing trustees” of the marital trust. Louisiana Revised Statutes 9:2091 provides that “[a] trustee is under a duty to a beneficiary to take reasonable steps to take, keep control of, and preserve the trust property.” Based on the specific allegations of the petition and supporting documentation attached to the petition, relative to the behavior of Tim Mashburn with regard to his trust and his litigation with regard to the trust, it is apparent that this action was brought and maintained in order to protect the marital and family trusts and the property of those trusts. Accordingly, Pat Mashburn, Don Mashburn, and Richard Mashburn, in their capacities as co-trustees and/or managing trustees of the marital and family trusts, had a sufficient interest to bring suit in that capacity. See generally **Interdiction of Giacona**, 158 La. 148, 103 So. 721 (1925).

⁴ The mental illness diagnosed by the psychiatrist was “Personality Disorder, Not Otherwise Specified.” The psychiatrist also noted that Tim Mashburn had “expressed paranoid beliefs, obsessive and ruminative thoughts, and a general belief that others [were] not acting in his best interest[,]” that those thoughts and beliefs had “hindered [his] ability to work productively and hurt his personal relationships[,]” and that a “trial of psychotropic medication [was] warranted.”

Westmoreland, was previously awarded costs and attorney fees incurred in this action by order of the trial court on September 14, 2011.⁵

On June 11, 2012, the trial court rendered and signed a judgment in Tim Mashburn's favor and against the petitioners in the amount of \$3,446.51, for costs and attorney fees, plus legal interest from the date of judicial demand, until paid. From this judgment, the appellants appeal, essentially arguing that the trial court erred in assessing attorney fees against them, because there was no showing that they instituted the interdiction proceeding in bad faith and because the trial court had already awarded attorney fees to Tim Mashburn's court appointed attorney. Tim Mashburn has answered the appeal, seeking modification of the judgment to clarify that the appellants personally (and not the trusts) are liable for the payment of the monies awarded by the judgment and also seeking an award of attorney fees, costs, and damages for frivolous appeal against them.

In an interdiction proceeding, "[t]he court may render judgment for costs and attorney fees, or any part thereof, against any party, as the court may consider fair. However, no attorney fees shall be awarded to a petitioner when judgment is granted against the petitioner or the petition is dismissed on the merits." La. C.C.P. art. 4550. This court has interpreted the term "fair" as used in La. C.C.P. art. 4550 as synonymous with "reasonable," the usual standard employed by our courts in considering an award of attorney fees. **In re Interdiction of DeMarco**, 2009-1791 (La. App. 1st Cir. 4/7/10), 38 So.3d 417, 426. In making an award of attorney fees, the trial court is vested with considerable discretion, and the award will not be disturbed in the absence of a clear abuse of that discretion. **Capital City Press v. The Board of Supervisors of Louisiana State University**, 2001-1692 (La. App. 1st Cir. 6/21/02), 822 So.2d 728, 731.

⁵ The September 14, 2011 award of attorney fees and costs to Jessica Westmoreland has not been challenged by the appellants.

Although La. C.C.P. art. 4550 itself does not require a showing of bad faith in order to assess one party with another party's attorney fees, the appellants argue that the jurisprudence does require such a showing, and since the record established that the appellants were not in bad faith in instituting this interdiction proceeding, the trial court erred in assessing them with Tim Mashburn's attorney fees. In support of this argument, the appellants cite **In the Matter of Fabre**, 371 So.2d 1322, 1327 (La. 1979); **In Re Interdiction of Cade**, 2004-1619 (La. App. 3rd Cir. 4/6/05), 899 So.2d 844, 848, writ denied, 2005-1104 (La. 6/17/05), 904 So.2d 697; and **In Re Interdiction of Stephens**, 40,965 (La. App. 2nd Cir. 6/2/06), 930 So.2d 1222, 1228, writ denied, 2006-1686 (La. 7/12/06), 933 So.2d 796.

While we agree with the appellants that the record establishes that they were not in bad faith in instituting this action,⁶ we have reviewed the cited jurisprudence and disagree that such a showing is necessary for the assessment of another party's attorney fees. Rather, in our view, the good or bad faith of a litigant in an interdiction proceeding is simply a factor to be considered by the trial court when considering what is "fair" or "an equitable solution" regarding the allocation of costs and attorney fees. See Fabre, 371 So.2d at 1326-1327.⁷ In this case, after a hearing, the trial court considered it "fair" or "reasonable" to assess costs and attorney fees in the amount of \$3,446.51 against the appellants. This award was based on the actual work performed by Mr. Mashburn's attorney, as evidenced by the attorney's billing statements. Based on our review of the record, we cannot say that the trial court abused its discretion. Furthermore, to the extent that Tim

⁶ See footnote 4.

⁷ We recognize that **Fabre** was decided under former La. C.C.P. art. 4551, which provided that the cost of an interdiction proceeding should be paid from the estate of the defendant if a judgment of interdiction was rendered; however, the former article also provided that, if judgment was rendered in favor of the defendant, the court in its discretion could tax the costs, or any part thereof, against any party.

Mashburn's court appointed attorney had already been awarded attorney fees and costs, we note that that award related solely to the work that Ms. Westmoreland performed in the case, as detailed in her *proces verbal*. We see no reason why the attorney fees for work performed by Tim Mashburn's previous counsel, Mr. Antin, should not likewise be awarded under La. C.C.P. art. 4550.

With regard to Tim Mashburn's answer to the appeal relative to liability for the award of attorney fees, in **In Re Mashburn Marital Trust**, 2010-0278 (La. App. 1st Cir. 12/22/10), 52 So.3d 1136, 1143-1145, writ denied, 2011-0177 (La. 5/20/11), 63 So.3d 978 ("**Mashburn Marital Trust (V)**"), we determined that, despite the self-serving nature of the litigation pursued by Tim Mashburn and Helen Mashburn Penton, the litigation expenses incurred by the co-trustees of the family trust and the managing co-trustees of the marital trust would be assessed pro rata from the income (and if necessary from the principal) of all nine individual marital trusts and all nine individual family trusts, because the litigation was necessary to protect the trusts or trust property. Because the record reveals that the current proceeding was also brought and maintained by the appellants in order to protect the marital and family trusts and the property of those trusts,⁸ and for the reasons expressed in **Mashburn Marital Trust (V)**, 52 So.3d at 1143-1145, we conclude that the trial court properly assessed the litigation expenses incurred by the co-trustees of the family trust and the managing co-trustees of the marital trust pro rata from the income (and if necessary from the principal) of all nine individual marital trusts and all nine individual family trusts.

Lastly, with regard to Tim Mashburn's request for an award of attorney fees, costs, and damages for frivolous appeal, in order to assess damages for frivolous appeal, it must appear that the appeal is taken solely for the purpose of delay or that counsel does not seriously believe the view of the law that he advocates.

⁸ See footnote 3.

Mashburn Marital Trust (V), 52 So.3d at 1148. Although we ultimately disagree with the appellants' arguments on appeal, we cannot say that this appeal was taken solely for the purpose of delay or harassment or that counsel for appellants did not seriously believe the position he advocated. Thus, Tim Mashburn's request for damages for frivolous appeal is denied.

For all of the above and foregoing reasons, the June 11, 2012 judgment of the trial court is affirmed, and Tim Mashburn's answer to the appeal is denied. All costs of this appeal are assessed to the appellants, Joseph Patton Mashburn and Donald J. Mashburn, in their capacities as the co-trustees and managing trustees of the Jack and Sadie Pugh Mashburn Marital Trust, and Pat Mashburn and Richard A. Mashburn, in their capacities as the co-trustees of the Mashburn Family Trust.

AFFIRMED; ANSWER TO APPEAL DENIED.