NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CU 2170

MARK WILLIAM BOURNE

VERSUS

LINDA BOMBARDIER BOURNE

DATE OF JUDGMENT: JUN 18 2014

ON APPEAL FROM TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 98-14678, DIV. L, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE DAWN AMACKER, JUDGE

* * * * * *

Bennett Wolff Metairie, Louisiana	Counsel for Plaintiff-Appellant Mark William Bourne
William J. Larzelere, III Covington, Louisiana	Counsel for Defendant-Appellee Linda Ann Bombardier Bourne

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: AFFIRMED.

KUHN, J.

Plaintiff/appellant, Mark William Bourne (Mr. Bourne), appeals the trial court judgment finding him in contempt for denying defendant/appellee, Linda Bombardier Bourne (Ms. Bombardier), visitation with her child pursuant to a court order. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Mr. Bourne and Ms. Bombardier were divorced on October 12, 1999. They had three sons: Morgan (born June 22, 1993), Bryce (born November 20, 1995), and Ross (born March 18, 1997). Pursuant to a consent judgment entered into on May 22, 2011, sole custody was awarded to Mr. Bourne subject to the visitation privileges of Ms. Bombardier, which were described in the judgment signed on June 11, 2012 as follows: "Visitation will occur as agreed between [Ms. Bombardier] and the minor children." The judgment also stated, "Under no circumstances will the minor children be forced to visit with their mother or to engage in reconciliation counseling or therapy, if they do not wish to do so, nor shall any visit interfere with their school or extracurricular activities...." Dr. Stephen W. Thompson was to continue as the court-appointed child custody evaluator, and upon the request of Ms. Bombardier and at her expense could be used "for the narrow purpose of verifying with the minor children their wishes regarding visitation with their mother." The judgment also contained several provisions to monitor Ms. Bombardier for any drug and/or alcohol use.[1] Previously, based on a February 22, 2011 consent judgment, the parties shared joint custody with Mr. Bourne designated as the domiciliary parent. The children

[1] During visitation, Ms. Bombardier was not to use or be under the influence of alcohol and/or drugs and all drugs prescribed by a physician were to be within the therapeutic range. The breathalyzer device required by a previous judgment was to remain installed in the vehicle used by her to drive the minor children during visitation until February 28, 2013. From June 1, 2012 through June 1, 2013, Ms. Bombardier was subject to random drug and alcohol screens on Mr. Bourne's request up to twelve times, and from June 12, 2013 through June 12, 2015, she was subject to drug and alcohol screens six times per year at his request. Any positive drug test would result in the automatic suspension of her visitation pending the parties's written agreement or orders of the court. Should Ms. Bombardier take the children out of town with her, Mr. Bourne could require her to submit to drug and alcohol screens before, after, or during the trip.

primarily resided with Mr. Bourne subject to Ms. Bombardier's custody every other weekend, every Wednesday after school until Thursday morning, an equal division of school holidays, and alternating weeks between the parents in the summer.

On June 15, 2012, Ms. Bombardier filed a motion for contempt, alleging that Mr. Bourne had denied her visitation on the weekend beginning Friday, June 1, 2012.[2] She also sought court costs and attorney's fees. At the time of the visitation at issue, Morgan was no longer a minor and Bryce did not visit with Ms. Bombardier, so the visitation involved Ross, who was then fifteen. The matter was heard before a hearing officer, who found Mr. Bourne in contempt. Mr. Bourne timely objected to the hearing officer's ruling and the matter was then heard by the trial court on May 16, 2013. The trial court rendered judgment at the hearing and then signed a judgment on August 1, 2013. The trial court found that Ms. Bombardier was denied visitation "arbitrarily and capriciously," that Mr. Bourne violated the June 11, 2012 court order, and that he was in contempt of court. The trial court sentenced him to three days in St. Tammany Parish Jail without benefit of probation, parole, and suspension of sentence, "Code 6," work release, or "8 to 4." The trial court suspended the sentence and placed Mr. Bourne on unsupervised probation for one year with the following conditions: he must obey the court orders as to the children's visitation with Ms. Bombardier, who is "to have unfettered access to the children if the children agree;" must pay Dr. Thompson's costs that Ms. Bombardier incurred in having to speak with him about this matter; and must pay attorney's fees of $7,825.00 and costs attributable to the contempt rule. The court again ordered Mr. Bourne to allow the minor children "unfettered access with their mother in accordance with the terms of the

[2] In the motion, Ms. Bombardier also opposed a temporary restraining order, which she received a copy of and which was to be filed by Mr. Bourne on June 15, 2012. Mr. Bourne alleged that Ms. Bombardier drank alcohol the weekend of June 10, 2012, and he sought to prevent her from having any additional unsupervised visitation.

judgment." From this judgment, Mr. Bourne appeals, urging that the trial court erred in finding him in contempt and that the attorney's fee award was excessive.[3]

DISCUSSION

In his first assignment of error, Mr. Bourne contends the trial court erred in finding him in contempt of court because he did not intentionally, willfully, and without justifiable excuse disobey the court order. He initially argues that the contempt proceeding was criminal because the judgment's purpose was to punish him in that he was required to pay Ms. Bombardier's attorney's fees and the costs she incurred with Dr. Thompson.

If a contempt proceeding is incidental to a civil action, it is a civil matter if its purpose is to force compliance with a court order or the punishment imposed is remedial or coercive. ***Rogers v. Dickens***, 2006-0898 (La. App. 1st Cir. 2/9/07), 959 So.2d 940, 947. However, if the purpose of the contempt proceeding is to punish disobedience of a court order or the punishment imposed is punitive and intended to vindicate the authority of the court, it is a criminal matter and the elements of contempt must be proved beyond a reasonable doubt. ***Rogers***, 959 So.2d at 947. If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs the affirmative act required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." ***Gompers v. Buck's Stove & Range Co.***, 221 U.S. 418, 442, 31 S.Ct. 492, 498, 55 L.Ed. 797 (1911). If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order. ***de Baroncelli v. de Baroncelli***, 2011-0271 (La. App. 1st Cir.

[3] Mr. Bourne initially filed a writ with this Court, ***Bourne v. Bourne***, 2013CW1719, which was denied on January 8, 2014 because the judgment was an appealable judgment.

6/10/11) 2011WL 3558187 (unpublished opinion). Additionally, La. R.S. 13:4611(e) provides that when a parent has violated a visitation order, the court may require that parent to pay all court costs and reasonable attorney's fees of the other party. In this case, the trial court's judgment finding Mr. Bourne in contempt of court suspended the jail sentence and placed him on unsupervised probation for one year under the conditions that he obey the court's orders on visitation and that he pay Dr. Thompson's costs, court costs, and Ms. Bombardier's attorney's fees. Because the penalty is conditional and because he was to pay Ms. Bombardier her attorney's fees and the costs she incurred with Dr. Thompson, this contempt is civil.

The motion for contempt must set forth the facts alleged to constitute the contempt correctly, precisely, and explicitly to enable the person charged to properly make his defense. See La. C.C.P. art. 225(A); ***Lang v. Asten, Inc.***, 2005-1119 (La. 1/13/06), 918 So.2d 453, 454-455; ***Estate of Graham v. Levy***, 93-0636R, 93-0134 (La. App. 1st Cir. 4/8/94), 636 So.2d 287, 293, writ denied, 94-1202 (7/1/94) 639 So.2d 1167. Mr. Bourne contends that Ms. Bombardier's motion for contempt was insufficient. While it alleged that he did not allow visitation on the weekend of June 2, 2012 with Ross, he complains that it also alleged once that she was also trying to exercise visitation with Morgan, it referred to the older visitation judgment, and it referred to a motion for temporary restraining order which Mr. Bourne had forwarded to her which he wanted to file to prevent her from having any additional unsupervised visitation. However, at the beginning of the hearing on Ms. Bombardier's motion for contempt, the trial court and the parties's counsel agreed that the only issue was the denial of visitation on June 1, 2012. While Mr. Bourne is correct that the motion did contain the references he mentions, we believe the motion sufficiently apprised him of the facts which were the basis for contempt and his contention has no merit.

A constructive civil contempt of court includes the "[w]illful disobedience of any lawful judgment, order, mandate, writ, or process of the court." La. C.C.P. art. 224(2). A finding that a person willfully disobeyed a court order in violation of article 224(2) must be based on a finding that the person violated an order of the court intentionally, knowingly, and purposefully, without justifiable excuse. ***Carollo v. Carollo,*** 2013-0010 (La. App. 1st Cir. 5/31/13), 118 So.3d 53, 64. Proceedings for contempt must be strictly construed, and the policy of our law does not favor extending their scope. ***Estate of Graham***, 636 So.2d at 290. The burden of proving that the accused violated the court order intentionally, knowingly, and purposely without justiciable excuse is on the moving party. See ***Rogers***, 959 So.2d at 947. The burden of proof in a civil contempt case is by a preponderance of the evidence. ***Acadian Cypress & Hardwoods, Inc. v. Stewart***, 2012-2002 (La. App. 1st Cir. 9/3/13) 2013 WL 4746957 (unpublished opinion); ***Meek v. Meek***, 36,467 (La. App. 2d Cir. 9/18/02), 827 So.2d 1191, 1194. The trial court is vested with great discretion in determining whether a party should be held in contempt for disobeying a court order, and the court's decision should be reversed only when the appellate court discerns an abuse of that discretion. ***Boyd v. Boyd***, 2010-1369 (La. App. 1st Cir. 2/11/11), 57 So.3d 1169, 1178. However, the trial court's predicate factual determinations are reviewed under the manifest error standard of review. ***Boyd***, 2010-1369 at p.15, 57 So.3d at 1178.

At the contempt hearing, Ms. Bombardier testified that under the May 22, 2012 consent judgment, she thought they would base visitation on their older schedule, but that Bryce and Ross would ultimately decide on visitation. According to Ms. Bombardier, she had a phone conversation with Ross about the previous custody rotation and alternating weeks over the summer. She testified that Ross told her he would like to stay with her Thursday through Sunday. On Tuesday, May 29, 2012, before Ross indicated he did not want to stay at her house

alone all week while she worked, Ms. Bombardier sent an email to Mr. Bourne stating that she wanted to have visitation Thursday through Thursday, alternating weeks, as they did the previous summer. Mr. Bourne did not respond, so she texted him, called him, and left messages on Tuesday and Wednesday. He did not respond, so she called her attorney on Wednesday. On Thursday, May 31, 2012, Ms. Bombardier sent another email stating that she realized summer custody was from Saturday to Saturday, so she would plan on picking up Ross and hopefully Bryce Saturday at noon. Mr. Bourne emailed her that she had "NO custody rights," that the purpose of the last court proceeding was that she "could not create any more turmoil," that she was in contempt of court, and that she should send him $250.00 in attorney's fees for her failure to abide by the most recent judgment, resulting in counsel becoming involved. Ms. Bombardier then emailed that she misspoke about summer custody and meant her regular summer visitation. In the email, she asked if she could pick up Ross and possibly Bryce Saturday afternoon for her week's visitation. According to Ms. Bombardier, she had spoken to Ross daily but she said that their agreement for visitation kept changing. She testified that they agreed that he would visit on the weekend and she would pick him up Friday. Ms. Bombardier stated that on Friday, she called Ross before 6:00 p.m. to tell him that she would be picking him up and asked him if he was packed and ready. She told him to make sure Mr. Bourne knew he was leaving.

Ms. Bombardier then began getting text messages from Mr. Bourne, the first at 6:11 p.m., which said:

> There are numerous issues that need to be worked out before any more liberal visitation schedule can be arranged. For now, we're [sic] going to stay as we have been doing the past several months until we can work things out. I will send a letter no later than Wednesday. Am till 8:30pm and ad hoc dinners, like tonight. Do not, "work" Ross like it appears you are doing. This is a really bad start. Dont [sic] make it worse. I m really pissed u r creating problems.

She then called Mr. Bourne and she claimed he screamed at her that she did not have custody and "You are not going to ... have any f-ing visitation until we go back to court and get all of your issues addressed. You need to go back in to rehab. You need a breathalyzer. You've never gotten help. You are still sick." He sent her another text at 6:25 p.m., which read, "No visitation until this is addressed with the court." Ms. Bombardier received another text at 6:31 p.m. which said, "I spoke to Ross... do not put him in the middle of this. I told him we would work this out for next weekend." She said she called Ross after two more phone calls with Mr. Bourne which she described as "loud and degrading" and apologized and told him that she and his father would have to work some things out. Ms. Bombardier did not have visitation with Ross that weekend.

When Mr. Bourne's counsel asked Ms. Bombardier what custody agreement she was relying on, she testified she was relying on what was said among herself, Mr. Bourne, and their attorneys in court when they discussed reverting "back as a basis to the previous summer's visitation schedule." She testified that when emailing Mr. Bourne, she might have looked at the wrong consent judgment. She admitted that she did not communicate by email to Mr. Bourne that she and Ross had agreed upon visitation, but she did state that she had communicated that information via cell phone conversations many times. When asked by the trial judge if there were any emails in which Mr. Bourne stated that Ross did not want to exercise the visitation Ms. Bombardier testified they had agreed upon, she said there were none. Ms. Bombardier also testified that Mr. Bourne did not indicate such in phone conversations.

Ross, who was sixteen at the time of the hearing, testified that he did not remember his mother trying to arrange visitation with him for the weekend at issue. However, he then stated that he did remember having conversations with her about when he might visit her. When asked by the trial court, he testified he

could not remember refusing his mother's offer of a visit. He answered, "I mean, there was never any point when I couldn't see her." Ross could not recall a time when he was packed up and ready to go to his mother's and the visitation was cancelled. The trial judge then commented, "[I]t's obvious to me that this child is under tremendous pressure from somebody. And I don't know who it is exactly, which parent or both parents. . . . But I can tell you, from the bench, just looking at his response and who he looks at before he answers any questions, it's obvious to me that this child feels understood [sic] pressure." When questioned by Mr. Bourne's counsel as to whether Mr. Bourne had ever restricted his visitation with his mother, Ross answered that his father had never said he could not visit her.

Dr. Thompson, a licensed professional counselor, marriage and family therapist, accepted by the court as an expert, prefaced his testimony by stating that he was not notified until shortly before his testimony that he would be appearing in court and that the only preparation he did was to reread a letter he had forwarded to the trial court regarding Ms. Bombardier's issues with visitation. He did not have the letter with him. Dr. Thompson testified that he met with Ross on June 27, 2012 at the instruction of the trial court after the most recent judgment was signed to inform him of the visitation arrangement, so that Ross would be actively involved in setting up visitation. Dr. Thompson was aware there were allegations that the June visitation was impeded, and he had a second meeting with Ross on August 10, 2012 to determine whether Ross was free to negotiate his visitation with Ms. Bombardier or whether Mr. Bourne was limiting the visitation. According to Dr. Thompson, Ross indicated that he "was not being encumbered by his father. He was free to make a choice, relative to his contact with his mother." Dr. Thompson testified that based on his contact with Ross over the years, he believed Ross was "being very candid and honest" with him. Dr. Thompson also stated that Ross was setting up his visitation with his mother on his own and was seeing her regularly.

Dr. Thompson testified that there were no indications that Mr. Bourne had interfered in Ross's visitation with his mother and that Ross had "been free to make that choice relative to visitation." According to Dr. Thompson, Ross told him Mr. Bourne had facilitated the visitation.

Mr. Bourne testified that when he received Ms. Bombardier's emails about visitation, he did not understand why she was asking for visitation based on a previous judgment because he thought she was supposed to make arrangements with Ross for visitation. He stated that he was simply upset when he emailed Ms. Bombardier that there would be no visitation because she was referring to the earlier judgment. He denied using profanity when he spoke to Ms. Bombardier about the visitation at issue. Mr. Bourne also testified that he had not impaired Ross's visitation with his mother and that he did not impede the visitation over the weekend of June 1st. According to Mr. Bourne, he asked Ross if he had any plans with his mother the weekend of June 1st and Ross said "no." When questioned by Ms. Bombardier's counsel regarding his email response indicating there would be no visitation, Ms. Bombardier's counsel introduced a letter in evidence written to him by Mr. Bourne dated June 6, 2012. In the letter, Mr. Bourne stated that Ms. Bombardier was to consult with Dr. Thompson if there were issues with visitation scheduling, not counsel, and noted that her emails were based on the prior custody judgments. He then set forth several concerns, including whether Ms. Bombardier's driver's license was suspended, her use of her cell phone when driving, her use of prescription drugs, and family violence. Mr. Bourne concluded the letter with a paragraph on visitation, stating:

> Ross is fine with every other weekend and ad-hoc weekday dinners which is almost exactly what we have been doing for the past 4 years. We can certainly be flexible if Ms. Bombardier's schedule is more or less favorable on certain days or weekends. If Ms. Bombardier does not have a valid driver's license, I will make arrangements to get Ross to and from her house. There is already evidence that that Ms. Bombardier is attempting to manipulate Ross regarding visitation.

> This is very bad and Ross is already upset that he feels like he is put in the middle. I have repeatedly offered to help facilitate relationship building between Ms. Bombardier and her children however her behavior will not allow this to even begin. Too often I am making excuses to her children, for her own bad behavior and now the children are tired of hearing me making excuses.

In finding that Mr. Bourne violated the court's orders intentionally, knowingly, purposely, and without justifiable excuse, the trial court stated in its oral reasons for judgment:

> And after having heard the testimony today, there is no way that I can possibly interpret, particularly the e-mails and transmissions between these parties, and the testimony of Mr. Bourne and Ms. Bombardier today, and their son, any other way but to determine that absolutely she was denied visitation arbitrarily, capriciously, willfully by Mr. Bourne.
>
> Mr. Bourne continues a pattern of being patronizing to her, being controlling, placing what he decides are limitations and conditions on court orders rather than come in and ask the Court to place limitations and conditions on court orders.
>
> A mere 10 days or less, after what allegedly was done in good faith, in a consent judgment, in front of this Court in reaching a consent in which she would have unfettered visitation as she and her son or children agreed, he again decides to place his conditions and restrictions and his judgment in to place in denying her visitation.
>
> If, as he states, the son Ross did not make arrangements with his mother, he certainly didn't put that in any of his texts or communications to her, if that was his reason that he denied it.
>
> If his reason is that he denied because she was insisting on the same custody pattern that they had had established when they had joint custody, that is not a valid reason. Because there's nothing that sets a limitation on what visitation she was to have. It was simply as what she and the children agreed.
>
> I am convinced he uses and continues to use offensive language. Her testimony is credible, just based on past experience that I had in this case with the parties, that these patterns continue. And that he does use offensive language to her. I don't find his testimony credible today.
>
> The son, it's obvious before he replies to any question that is asked by counsel, hesitates. Was extremely uncomfortable and looks at his father before he answers. I stated before that it's shameful to put Ross in that position. I will say it again.

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate

court may feel that its own evaluations and inferences are as reasonable. ***Rosell v. ESCO***, 549 So.2d 840, 844 (La. 1989). The appellate review of fact is not completed by reading only so much of the record as will reveal a reasonable factual basis for the finding in the trial court, but if the trial court or jury findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. ***Id.*** Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. ***Id.***

When findings are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. ***Rosell***, 549 So.2d at 844. Where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness's story, the court of appeal may well find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. ***Rosell***, 549 So.2d at 844-845. But where such factors are not present, and a factfinder's finding is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous or clearly wrong. ***Rosell***, 549 So.2d at 845.

On appeal, Mr. Bourne argues that Ms. Bombardier violated the judgment because she attempted to schedule the visitation with him instead of the children, as ordered by the court, and she based the visitation on a prior judgment which was no longer effective. He contends that he did not deliberately or willfully deny Ms. Bombardier visitation because she caused the confusion and miscommunication

caused resulting in the visitation not taking place. Mr. Bourne contends that Ross testified he never impaired or interfered with Ross's visitation with Ms. Bombardier, which was corroborated by Dr. Thompson, who testified that Mr. Bourne facilitated Ross's access to his mother.

After reviewing the record, we cannot say that the trial court erred in crediting Ms. Bombardier's testimony and discounting that of Mr. Bourne and Ross. Ms. Bombardier's testimony was consistent and supported by the email and cell phone text messages and the letter Mr. Bourne sent to her counsel. The trial court also did not err in concluding that although Ms. Bombardier initially was basing the visitation on the schedule they used under a previous judgment, she was still entitled to visitation if she and Ross agreed upon it, such that Mr. Bourne's alleged refusal on this basis was inappropriate. While Dr. Thompson testified that he believed Ross was being honest in his statements that Mr. Bourne did not impede his visitation with his mother, he admittedly had little time to prepare to testify. Moreover, the trial court was entitled to reject his opinion after viewing Ross's live testimony in court, which the court thought was unduly influenced. While Mr. Bourne asserts that the trial court erred in finding him in contempt because only one weekend of missed visitation was involved and the remainder of the visitation was proceeding, the court was troubled in part by the fact that the missed visitation occurred only ten days or less from when the parties entered into the consent judgment allowing Ms. Bombardier and Ross to agree to the visitation Ross wanted. We find that the trial court did not abuse its discretion in finding Mr. Bourne in contempt and his assignment of error has no merit.

In his second assignment of error, Mr. Bourne contends that the trial court's award of attorney's fees is excessive. He asserts that the $7,825.00 fee of Mr. William J. Larzelere, III, representing 31.30 hours of work on a single motion for contempt involving the denial of visitation once, is excessive. Mr. Bourne alleges

that Mr. Larzelere included fees for visitation issues not related to the contempt motion. In particular, he argues that the deposition of Dr. Thompson, for which Mr. Larzelere billed a half hour for review, addressed many issues other than the contempt motion.

The trial court has much discretion in fixing an award of attorney's fees and its award will not be modified on appeal absent an abuse of discretion. ***Anglin v. Anglin***, 2009-0844 (La. App. 1st Cir. 12/16/09), 30 So.3d 746, 752. Factors to be taken into consideration in determining the reasonableness of attorney's fees include: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances made; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's own knowledge. See Rule 1.5(a) of the Rules of Professional Conduct; ***Anglin,*** 30 So.3d at 752.

Mr. Larzelere's detailed affidavit submitted to the trial court explained the itemized billing statement. He stated that he took the original billing statement provided to Ms. Bombardier and deducted all the charges unrelated to the contempt motion. He also reduced some charged time to more accurately reflect the time spent on the contempt rule; for example, his preparation and attendance at Ms. Bombardier's deposition included other issues, so he reduced the time for preparing and attending her deposition, which lasted over three hours, to two hours. Mr. Larzelere did not attend Dr. Thompson's deposition and instead reviewed the transcript. We have thoroughly reviewed the affidavit and the attachments showing Mr. Larzelere's charges and do not find the court abused its discretion in its award of attorney's fees. Mr. Larzelere's fees were related to the contempt motion, which required an appearance before a hearing officer and three

court appearances because the motion was reset three times partly due to a motion to recuse filed by Mr. Bourne. Mr. Bourne's second assignment of error has no merit.

Ms. Bombardier asserted a claim for attorney's fees associated with this appeal, but she did not file an independent appeal or answer Mr. Bourne's appeal. Thus, her request in her brief for attorney's fees is not properly before this Court and is accordingly denied. See La. C.C.P. art. 2133; ***Starr v. Boudreaux***, 2007-0652 (La. App. 1st Cir. 12/21/07), 978 So.2d 384, 392.

CONCLUSION

For the reasons assigned, we affirm the decision of the trial court finding Mark William Bourne in contempt and ordering him to pay attorney's fees of $$7,825.00. Mr. Bourne is also cast with costs of this appeal.

AFFIRMED.