

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA LYNN MOFFAT,

Plaintiff-Appellee,

v

PETER SCOTT MOFFAT,

Defendant-Appellant,

and

JOHN B. OWDZIEJ,

Appellant.

UNPUBLISHED

March 28, 2000

No. 209336

Oakland Circuit Court

LC No. 92-432479-DM

Before: Hoekstra, P.J., and McDonald and Meter, JJ.

PER CURIAM.

Defendant and his attorney appeal by leave granted the trial court's post-divorce-judgment order assessing attorney fees. Defendant also appeals the trial court's order assessing plaintiff's attorney fees and travel expenses incurred as the result of attending defendant's motion hearing. We affirm in part and reverse in part.

Defendant's attorney first argues the trial court abused its discretion in making him jointly and severally liable for the award of \$4,500 of attorney fees to plaintiff. We agree. Contrary to plaintiff's argument, it appears that the trial court awarded this portion of the attorney fee award under MCL 552.13(1); MSA 25.93(1) and MCR 3.206(C). The transcript of the hearing at which the trial court awarded attorney's fees is unclear regarding the basis for the award. However, it is well-settled that a court speaks only through its judgments and decrees, not its oral statements. *Tiedman v Tiedman*, 400 Mich 571, 576-577; 255 NW2d 632 (1977). Although it does not cite the statute or court rule, the trial court's written order states that this portion of the attorney fee award was awarded "due to [p]laintiff's inability to defend." Because the statute and the court rule both only refer to the liability of a "party" to pay attorney fees and expenses incurred by the other party, the trial court had no authority to

make defendant's attorney jointly and severally liable for this portion of the award. *Lockhart v Lockhart*, 149 Mich App 10, 14; 385 NW2d 709 (1986).

Next, defendant argues the trial court abused its discretion in awarding plaintiff \$4,500 without making any findings of fact that plaintiff was unable to pay for her own attorney fees or that defendant was able to pay them. We agree. Attorney fees in divorce actions are not recoverable as of right. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). Instead, under the statute and the court rule, the trial court may order a party to pay the other party's reasonable attorney fees if the record supports a finding that such financial assistance is necessary because the other party is unable to bear the expense of the action. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993); *Stackhouse, supra* at 445. The trial court abused its discretion in this case by awarding attorney fees on this basis without making such a finding. See *id.*

Defendant also challenges the trial court's award of \$500.00 in attorney fees to plaintiff for "defense counsel's failure to appear at [c]ourt ... the date oral arguments were heard." Moreover, defendant challenges the trial court's award of \$584.00 in costs to plaintiff, the cost of her airline ticket to attend the hearing. We find the trial court properly assessed these attorney fees and costs under MCR 2.119(E)(4). The trial court did not clearly err in determining that there was a contested motion before the court and that counsel failed to appear. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Although the trial court had erroneously entered defendant's proposed order, counsel was well aware that objections had been made and should have contacted the court or opposing counsel to clarify whether the hearing would be held.

Affirmed in part and reversed in part.

/s/ Joel P. Hoekstra
/s/ Gary R. McDonald
/s/ Patrick M. Meter