

STATE OF MICHIGAN
COURT OF APPEALS

RANDALL ANTHONY SCOTTI,

Plaintiff/Counter-Defendant-
Appellant,

v

JOY ELLEN SCOTTI,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
November 18, 2008

No. 279672
Oakland Circuit Court
LC No. 2004-695786-DM

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, appeals as of right from an order finding him in contempt of court for failure to pay child and spousal support¹ and ordering him incarcerated for 60 days. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to issue an order of contempt for an abuse of discretion. *Brandt v Brandt*, 250 Mich App 68, 73; 645 NW2d 327 (2002).

First, plaintiff argues that the trial court erred in not appointing counsel at the show cause hearing after plaintiff requested the appointment of counsel. The transcript of the proceeding does not reflect that any such request was made, even after the trial court informed plaintiff that he had a right to be represented by counsel.² Plaintiff maintains that the request is evident on a DVD allegedly of the hearing that he appended to his brief on appeal. However, plaintiff never

¹ This Court affirmed the parties' judgment of divorce, and in particular, the computation of plaintiff's income for purposes of determining child support. *Scotti v Scotti*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2007 (Docket No. 266642).

² Plaintiff acknowledged that he had a right to an attorney, indicated that he did not have an attorney, and then thanked the court for letting him proceed. We note that plaintiff makes no argument that the court did not adequately advise him of his rights.

sought to correct the record in the lower court. See MCR 7.208(C). The lower court record does not support defendant's position.

Next, plaintiff argues that the trial court erred in awarding defendant attorney fees. He avers that the award was based on a magistrate's recommendation and that the DVD of the magistrate's hearing is corrupted because it does not bear a continuing time stamp. The referee's findings of fact indicate that this hearing pertained to plaintiff's motion to modify child and spousal support. No mention is made of attorney fees in these findings. Moreover, the award of attorney fees made in the order appealed was in response to a request in the motion to show cause, which post-dated the hearing before the referee. Thus, even if the referee had made a recommendation, it would be irrelevant in the context of this appeal.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski