

STATE OF MICHIGAN
COURT OF APPEALS

NADINE MAE CHAMBERS,

Plaintiff-Appellee,

v

MERLE K. CHAMBERS,

Defendant-Appellant.

UNPUBLISHED
May 21, 2009

No. 284900
Lapeer Circuit Court
LC No. 91-016435-DO

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

MEMORANDUM.

Defendant brought a motion to modify/terminate spousal support. While the motion was pending, the trial court granted plaintiff's motion for interim attorney fees, subject to modification, ordering defendant to contribute \$3,500 toward payment of plaintiff's fees. Defendant appeals as of right.¹ We affirm.

Plaintiff sought \$5,000 to defend against defendant's motion. She attested that she had monthly income of \$2,803 and monthly expenses of slightly over \$2,940, and that she did not have funds to defend the motion. At the hearing on her motion, plaintiff represented that she had sent interrogatories, apparently to substantiate her understanding that defendant had garnered approximately \$500,000 from the sale of his interest in a business. Defendant did not deny that he received this money. He represented that plaintiff was living in a gated golf community, and that he had also sent out interrogatories, apparently aimed at investigating plaintiff's financial situation. The trial court held that, based on what it saw at that point in time, plaintiff was entitled to a contribution of \$3,500 for attorney fees. However, the trial court stated that the matter was to be revisited at the termination of proceedings, after the relevant evidence was gathered, to see if an adjustment should be made.

MCR 3.206(C) authorizes awards of fees and expenses in domestic relations actions where the party seeking the award is "unable to bear the expense of the action," and "the other

¹ Plaintiff challenges whether this Court has jurisdiction to hear this appeal. We conclude that such jurisdiction exists. *Ponte v Ponte*, 480 Mich 1032; 743 NW2d 214 (2008).

party is able to pay.” We review such an award for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003); see also *Smith v Smith*, 278 Mich App 198, 207; 748 NW2d 258 (2008).

Defendant argues that plaintiff’s affidavit was insufficient, as no documents were submitted to support plaintiff’s assertion that her expenses exceeded her income or that she did not have other resources to pay for attorney fees. Further, defendant maintains that plaintiff did not establish his ability to pay.

The trial court did not grant attorney fees outright, but indicated an interim payment was required *subject to modification once evidence was acquired and presented*. Thus, to ultimately be entitled to the fees, the proofs would have to continue to show that plaintiff was “unable to bear the expense of the action,” and that defendant is “able to pay.” Since defendant did not dispute that he had recently been paid approximately \$500,000 for his interest in a business, it does not appear that he would be unable to temporarily provide \$3,500 until the proofs were available. Under these circumstances, we find no abuse of discretion.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro