

STATE OF MICHIGAN
COURT OF APPEALS

DRAYTON O. HARRIS,

Plaintiff-Appellant,

v

JESSICA L. HARRIS,

Defendant-Appellee.

UNPUBLISHED
September 3, 2009

No. 290168
Wayne Circuit Court
Family Division
LC No. 08-125066-DM

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that dismissed his complaint for divorce from defendant for lack of jurisdiction. On appeal, plaintiff argues that the trial court erred when it awarded defendant \$500 in attorney fees.¹ We agree and vacate the trial court's grant of attorney fees.

Plaintiff argues that the trial court erred when it awarded attorney fees on the basis of the fact that there was an existing divorce and custody proceeding in Texas. A trial court's decision regarding attorney fees is generally reviewed for an abuse of discretion. *In re Temple*, 278 Mich App 122, 128; 748 NW2d 265 (2008); *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 438; 695 NW2d 84 (2005). Underlying findings of fact are reviewed for clear error. *Temple, supra* at 128. Questions of law necessary to this determination are reviewed de novo. *Id.*

Defendant requested attorney fees under MCR 2.114(E) for misrepresentations made to the trial court in plaintiff's complaint. MCR 2.114(D) provides that an attorney or party certifies, with her signature on a filing or affidavit:

(1) he or she has read the document;

¹ Plaintiff originally appealed the trial court's grant of defendant's motion on the merits, but voluntarily withdrew his other issues from consideration by this Court.

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The trial court did not specify which section supported its award of attorney fees, but the court chastised plaintiff's attorney for failing to do the requisite "homework" to apprise herself of the Texas proceeding before filing plaintiff's divorce complaint and recognizing that a Michigan court could not properly assert jurisdiction in this matter.² Thus, we can conclude that the award was predicated on MCR 2.114(D)(2).

MCL 722.1201, in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, provides that a trial court has jurisdiction to make an initial child custody determination where:

(a) [Michigan] is "the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(b) A court of another state does not have jurisdiction under subdivision (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum . . .

* * *

(c) All courts having jurisdiction under subdivision (a) or (b) have declined to exercise jurisdiction on the grounds that a court of this state is the more appropriate forum to determine the custody of the child . . .

(d) No court of another state would have jurisdiction under subdivision (a), (b), or (c).

The trial court dismissed the child custody portion of plaintiff's divorce complaint on the grounds Texas had already acquired jurisdiction over the custody determination. Plaintiff argued

² Plaintiff's claim was dismissed for lack of jurisdiction on two bases: he failed to satisfy the residency requirement of MCL 552.9, and there was no basis for taking jurisdiction over the custody determination under MCL 722.1201. Based on the court's statement that plaintiff's attorney should have known about the proceedings in Texas (which precludes jurisdiction in Michigan), we conclude that the award of attorney fees was predicated solely on the custody portion of the divorce complaint rather than the residency requirement for filing the complaint. MCL 722.1201(b).

that jurisdiction would nevertheless be proper under the emergency exception of MCL 722.1204(1):

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

MCL 722.1201(1) expressly sanctions this temporary exception. Plaintiff contended that defendant's behavior was a danger to the children.

The trial court apparently awarded defendant attorney fees of \$500 on the basis that he should have known there was an existing Texas custody proceeding, if he and his attorney had done their "homework." At the trial court's hearing on the motion, plaintiff's attorney stated that plaintiff was under the impression that defendant was in agreement regarding Michigan jurisdiction when the complaint was filed. The trial court asked defendant's attorney if she contacted plaintiff's attorney before filing the motion to dismiss; defendant's attorney could not verify whether her office had done so. The trial court concluded, "Nonetheless, I think the homework should have been done here." No evidence—documentary or testimonial—of any of these interactions, or the filing in Texas, was ever introduced into the trial court record. Plaintiff's attorney offered to have plaintiff testify at the hearing; the court declined.

We conclude that the trial court clearly erred when it decided that plaintiff or plaintiff's attorney *knew or should have known* of a pending custody proceeding in Texas without any evidence to support the conclusion. *Temple, supra* at 128. Further, plaintiff argued in the alternative that jurisdiction would be appropriate under MCL 722.1204, *even if* it were not appropriate under MCL 722.1201. There was similarly no evidence presented on this issue. This *is* a valid exception to the residency requirements of MCL 722.1201(1).

Thus, we find that the trial court made an error of law to the extent that it ruled that plaintiff's claims were not warranted by existing law or based on plaintiff's reasonable belief. MCR 2.114(D)(2). Accordingly, the trial court abused its discretion by awarding defendant attorney fees in the absence of evidence upon which to conclude that plaintiff's claims were unfounded in fact or law.

Vacated in part, affirmed in part.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra