

STATE OF MICHIGAN
COURT OF APPEALS

SHELLY L. REYNOLDS,

Plaintiff-Appellee,

UNPUBLISHED
October 20, 2009

v

DAVID E. REYNOLDS,

Defendant-Appellant.

No. 288358
Genesee Circuit Court
LC No. 95-179699-DM

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

Defendant David Reynolds appeals as of right the trial court's September 16, 2008 award of attorney fees and costs to plaintiff Shelly Reynolds after the trial court found him in contempt for violating the trial court's previous parenting time and ex parte orders. We affirm.

I. Basic Facts And Procedural History

This appeal involves an underlying and ongoing custody dispute between the parties related to their 1999 divorce. On August 15, 2008, Shelly Reynolds petitioned ex parte for an order to show cause as to why David Reynolds should not be held in contempt of court for violating the parties' parenting time order by removing one of the parties' two minor children to his residence in Florida and failing to return her to Michigan. The trial court entered an order that same day, finding that the minor child was removed from Shelly Reynolds' home on August 4, 2008, without her knowledge, and in violation of the trial court's prior custody and parenting time order. The trial court ordered David Reynolds to immediately return the minor child to Shelly Reynolds in Michigan. The trial court further ordered David Reynolds to show cause as to why he should not be held in contempt and sanctioned for violating the trial court's prior custody, domicile, and parenting time orders when he removed the minor child to Florida. The trial court ordered David Reynolds to appear before the trial court on September 2, 2008. Further, the trial court ordered that the parties' minor children "shall not leave the state of Michigan until further order of this court."

David Reynolds thereafter failed to return the minor child to Shelly Reynolds in Michigan and failed appear in person at the September 2, 2008 hearing. Although he contacted the trial court by telephone, the trial court on September 16, 2008, issued an order holding him in contempt, assessing fines and attorney fees, and ordering that the parties' minor children were prohibited from leaving Michigan until further order of the court. David Reynolds thereafter

moved the trial court to reconsider, but the trial court denied his motion, and this appeal followed.

II. Custody, Child Support, And Parental Rights Issues

David Reynolds argues that the trial court abused its discretion in determining custody, child support, and parental rights issues. However, these issues are not properly before this Court because David Reynolds has only appealed the trial court's September 16, 2008 order that held him in contempt of court, assessed fines and attorney fees, and ordered that the parties' minor children were prohibited from leaving Michigan until further order of the court. An appellant must timely appeal the final order of the trial court.¹ "This Court 'has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court'"² Here, David Reynolds never filed a claim of appeal from any ruling by the trial court regarding custody, child support, and parental rights issues. We do not address issues that are first raised on appeal.³

III. Attorney Fees And Costs

A. Standard Of Review

David Reynolds argues that the trial court erred in awarding attorney costs and fees after finding him in contempt of court. We review the trial court's findings in a contempt proceeding for clear error, and we must affirm such findings where there is competent evidence to support them.⁴ "Clear error exists when this Court is left with the definite and firm conviction that a mistake was made."⁵ Whether to issue an order of contempt "rests in the sound discretion of the trial court and is reviewed only for an abuse of discretion."⁶ We also review for an abuse of discretion the trial court's decision regarding awarding attorney fees for defendant's contempt.⁷ Where the decision falls within the range of principled outcomes, there is no abuse of discretion.⁸

¹ MCR 7.203(A); MCR 7.204(A).

² *Surman v Surman*, 277 Mich App 287, 293-294; 745 NW2d 802 (2007), quoting MCR 7.203(A)(1).

³ *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

⁴ *In re Contempt of Henry*, 282 Mich App 656, 668; 765 NW2d 44 (2009).

⁵ *Id.*

⁶ *Id.* at 671.

⁷ *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007).

⁸ *In re Contempt of Henry*, *supra* at 671.

B. Legal Standards

The trial court cited MCL 600.1701 and MCL 600.1711 in fining David Reynolds for contempt. MCL 600.1701(g) provides that a circuit court has the power to punish “by fine or imprisonment, or both” a party to an action “for disobeying any lawful order, decree, or process of the court.” Further, MCL 600.1711(1) provides that “[w]here any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, imprisonment, or both.” Where the contempt “is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend.”⁹ The trial court may redress contemptuous behavior using the sanctions of criminal punishment, coercion to comply with a court’s order, or compensatory relief to the complainant.¹⁰ The trial court may also award attorney fees as part of the contempt finding.¹¹

C. Applying The Standards

Here, we conclude that the trial court’s finding of contempt and award of costs and fees were not clearly erroneous or an abuse of discretion.¹² Shelly Reynolds presented competent evidence supporting the finding through her affidavit and her testimony at the ex parte hearing indicating that David Reynolds refused to return their minor child to Shelly Reynolds in Michigan. This violated the December 22, 2005 parenting time order regarding summer vacation time. David Reynolds also directly violated the trial court’s August 15, 2008 ex parte order to return the minor child immediately and to appear at the September 2, 2008 hearing to show cause as to why he should not be held in contempt of court. David Reynolds committed contempt in the presence of the trial court by failing to appear¹³ and outside the presence of the trial court by failing to return the minor child to Shelly Reynolds in Michigan.¹⁴ The trial court was thus authorized to punish David Reynolds by fine or imprisonment, or both.¹⁵ (We note that David Reynolds engaged in the same behavior during the summer of 2007, forcing Shelly Reynolds to seek ex parte relief.) The record does not support that the imposition of a \$250 fine for each finding of contempt in 2008 was an abuse of discretion.

With respect to attorney fees, David Reynolds is correct that a person proceeding in propria persona may not directly collect attorney fees.¹⁶ However, the record reflects that Shelly

⁹ MCL 600.1711(2).

¹⁰ *In re Contempt of Dougherty*, 429 Mich 81, 98; 413 NW2d 392 (1987).

¹¹ MCL 600.1721; *Burnett v Burnett*, 152 Mich App 157, 161; 393 NW2d 562 (1986); *Plumbers & Pipefitters Local Union No 190 v Wolff*, 141 Mich App 815, 818; 369 NW2d 237 (1985).

¹² *In re Contempt of Henry*, *supra* at 668, 671.

¹³ MCL 600.1711(1).

¹⁴ MCL 600.1711(2).

¹⁵ MCL 600.1701(g); MCL 600.1711(1) and (2).

¹⁶ *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998).

Reynolds did not collect fees for the work that she performed in this case. Although Shelly Reynolds occasionally represented herself at various times in the trial court and worked for her attorney, Robert Crites, Crites also represented her in this instant case and was the attorney of record. He prepared the ex parte petition and other pleadings in this matter and appeared at the ex parte hearing and subsequent show cause hearings, on behalf of Shelly Reynolds. David Reynolds relies on *Omdahl v West Iron Co Bd of Ed*¹⁷ to argue that “there must be separate entities between the attorney and the client, and a person who represents himself or herself cannot recover actual attorney fees” However, separate identities clearly existed in the case because, unlike the situation in *Omdahl*, the client and the attorney are not the same individual. The record supports a finding that Crites was Shelly Reynolds’ attorney and agent because he “act[ed] in [her] stead,” and therefore it was possible for attorney fees to be incurred.¹⁸

Further, in *Macomb Co Taxpayers Ass’n v L’anse Creuse Pub Schools*,¹⁹ the Michigan Supreme Court held that the fact that the absence of an express payment agreement between client and attorney or the payment of a fee did not preclude establishing an attorney/client relationship or the award of attorney fees, because “an obligation to pay for legal services” was not the “sine qua non of an attorney-client relationship.” The Court held that “[t]he rendering of legal advice and legal services by the attorney and the client’s reliance on that advice or those services is the benchmark of an attorney-client relationship. The attorney’s right to be compensated for his advice and services arises from that relationship; it is not the definitional basis of that relationship.”²⁰ The Court noted:

Since it is the attorney’s right to receive compensation for legal advice and services rendered, it is also the attorney’s right to waive that right to receive compensation. In the absence of a binding legal agreement absolving a client of any responsibility to render compensation to the attorney, that attorney’s right to demand compensation remains viable and unfettered. Whether the attorney, for any reason, opts not to pursue compensation, has nothing to do with the fact that legal fees were incurred.^[21]

Therefore, whether Crites chose to collect fees from Shelly Reynolds does not change the fact that legal fees were incurred for the time he spent pursuing the ex parte order to return the minor child to plaintiff. Moreover, the record reflects that Crites informed the trial court that he performed approximately 4 hours of work on this instant matter and that a reasonable hourly rate was \$250. The trial court noted that the attorney fees must be actual, not punitive, and held that it would assess a fee of \$200 an hour for four hours, totaling \$800. Contrary to David Reynolds’ assertion on appeal, the trial court did, in fact, make a determination regarding the number of

¹⁷ *Omdahl v West Iron Co Bd of Ed*, 478 Mich 423, 432; 733 NW2d 380 (2007).

¹⁸ *FMB-First Mich Bank*, *supra* at 725-726.

¹⁹ *Macomb Co Taxpayers Ass’n v L’anse Creuse Pub Schools*, 455 Mich 1, 10; 564 NW2d 457 (1997).

²⁰ *Id.* at 11.

²¹ *Id.* at 12.

hours worked and the hourly rate. We do not find this determination unreasonable.²² Further, the trial court awarded attorney fees only for Crites's work on the case, not Shelly Reynolds' work.

D. Appearance By Telephone

David Reynolds also complains that he was not permitted to appear via telephone. After reviewing the record, we conclude that no error occurred. David Reynolds engaged in the same behavior during the summer of 2007, keeping the parties' minor children beyond the time allowed him under the parenting time order, and refusing to return them, forcing Shelly Reynolds to seek ex parte relief. The trial court required David Reynolds to personally appear for those proceedings and refused his request to appear by telephone. The August 15, 2008 ex parte order directed that David Reynolds "shall *appear* before this Honorable Court on September 2, 2008, at 1:30 p.m." to show cause. Although David Reynolds attempted to call the trial court on the telephone at that time, the trial court noted that "there's a previous Court order that stated that Mr. Reynolds would not have the ability to participate by telephone in Court proceedings and that order is still in effect. And, secondly, the order of August 15 requires his presence. So, I am going to state that he did contact the office in an attempt to participate by phone, but I'm not going to allow it for those reasons." We conclude that the trial court apprised David Reynolds of the fact that his personal appearance was required when he again violated the parenting time order during the summer of 2008, that Shelly Reynolds was again forced to move for relief ex parte, and the trial court again ordered David Reynolds to appear and show cause why he should not be held in contempt for violating the parenting time order and failing to return the children.

We further note that David Reynolds received proper notice of Shelly Reynolds' ex parte petition and the trial court's ex parte order, as the record reflects that these documents were served on David Reynolds via certified mail, return receipt requested, and he acknowledged receipt of the documents. His arguments to the contrary are not supported by the record and are without merit.

E. Rules Of Professional Conduct; Practice Of Law

Additionally, David Reynolds contends that Crites violated the Michigan Rules of Professional Conduct and that Shelly Reynolds was guilty of practicing law without a license. However, attorneys are permitted to assist a party proceeding in propria persona, and Crites was designated as Shelly Reynolds' co-counsel.²³ It was not necessary that Shelly Reynolds be "indigent" to receive any free legal services from Crites, and the record does not support a finding that Crites otherwise provided her with financial assistance.²⁴ Further, Shelly Reynolds

²² *Smith v Khouri*, 481 Mich 519, 528 n 12; 751 NW2d 472 (2008); *Wood v Detroit Auto Inter-Ins Exchange*, 413 Mich 573, 588; 321 NW2d 653 (1982).

²³ MRPC 5.5, comment.

²⁴ MRPC 1.8(e); MRPC 6.1.

was not engaged in the unauthorized practice of law by exercising her constitutional right to represent herself.²⁵

F. Judicial Bias

Lastly, David Reynolds contends that the trial court was biased against him. Although David Reynolds argued that the trial court was biased and requested that he remove himself from the case several times throughout the divorce proceedings, including in response to the trial court's September 16, 2008 order, he never cited MCR 2.003, the court rule applicable to judicial disqualifications, nor any other source of legal authority to support his argument in the trial court or on appeal. An appellant may not merely announce his position, then leave it to this Court to discover and rationalize the basis for his claims, or merely give cursory treatment to an issue and fail to provide supporting authority.²⁶ David Reynolds has therefore abandoned this issue on appeal.²⁷

Nonetheless, we have reviewed David Reynolds' claim and conclude that it is without merit. "A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption."²⁸ A defendant must show *actual* bias.²⁹ Here, David Reynolds alleges that the trial court was biased as demonstrated by its ex parte order and its refusal to allow him to appear by telephone. However, "[j]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible and overcomes a heavy presumption of judicial impartiality."³⁰

David Reynolds also argues that the trial court was biased because Crites's wife worked for the friend of the court and was assigned to the judge in this case. However, the record reflects that court policy dictated that Crites's wife had no contact with cases where Crites was the attorney, and the trial court indicated that he would not know who Crites's wife was even if she appeared in court. On the record, there is no evidence demonstrating actual bias by the trial court where Crites's wife was not assigned to this case and had no personal connection to the trial court judge.³¹

²⁵ Const 1963, art 1, § 13.

²⁶ *In re Application of Ind Mich Power Co*, 275 Mich App 369, 376; 738 NW2d 289 (2007).

²⁷ *Id.*

²⁸ *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006).

²⁹ *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996).

³⁰ *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003) (quotations and citations omitted).

³¹ MCR 2.003(B)(1); *Cain*, *supra* at 495-496.

G. Vexatious Appeal

Shelly Reynolds requests that this Court find David Reynolds' appeal vexatious and award damages.³² However, she did not move under MCR 7.211(C) for attorney fees and costs because of the appeal. Rather, her request is contained in her brief on appeal and does not constitute a proper motion for a vexatious appeal and sanctions.³³

Affirmed.

/s/ Alton T. Davis
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

³² MCR 7.216(1).

³³ MCR 7.211(C)(8); *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 78; 755 NW2d 563 (2008).