

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JAMIE S. ROUSH fka Jamie S. Brown, :
et al., :
 : CASE NO. CA2008-11-275
Plaintiffs-Appellants, :
 : OPINION
 : 5/26/2009
- vs - :
 :
RICHARD D. BROWN, :
 :
Defendant-Appellee. :
 :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR03-01-0031

Jamie S. Roush, 61 Fieldcrest Drive, Franklin, Ohio 45005, plaintiff, pro se

David M. Kirschsieper, Government Services Center, 315 High Street, 7th Floor, Hamilton, Ohio 45011, for plaintiff-appellant, Butler County Child Support Enforcement

Helen M. Kendrick, 8050 Beckett Center Drive, Suite 202, West Chester, Ohio 45069, for defendant-appellee

RINGLAND, J.

{¶1} Richard Brown and Jamie Roush were divorced in October 2003. Under the terms of their divorce decree, Brown was required to pay Roush, through BCCSEA, \$822.45 per month in child support for their two children. Beginning in July 2007, Brown began falling

behind on his child support payments, and as of February 29, 2009, he was \$3,032.92 in arrears on those payments.

{¶2} On March 11, 2008, BCCSEA filed a pleading in the Butler County Domestic Relations Court that contained several motions, including: (1) a "Motion to Show Cause," requesting that Brown be ordered to show cause as to why he should not be held in contempt for his failure to pay child support as previously ordered; (2) a "Motion to Add Party," requesting pursuant to Ohio Adm.Code 5101:12-50-50(C)(8) and Civ.R. 20(A) that the agency be added to the action as a "party plaintiff to allow full adjudication of all related matters"; and (3) a "Motion for Attorney Fees/Costs," requesting that Brown be ordered to pay the costs of the proceedings and any reasonable attorney fees.

{¶3} The matter was referred to a magistrate who held a hearing on BCCSEA's motions on June 17 and July 15 of 2008. On August 15, 2008, the magistrate issued a decision, finding Brown in contempt for his failure to pay child support and sentencing him to 30 days in jail, with the sentence stayed on the condition that he pay his child support obligation as previously ordered. The magistrate denied BCCSEA's motion for attorney fees on the ground that BCCSEA "was acting in its administrative capacity in bringing this action and its counsel did not act as an attorney for any party." The magistrate also stated that BCCSEA's motion to add itself as a party to the contempt action "[is] withdrawn."

{¶4} BCCSEA filed an objection to the magistrate's decision, arguing that the magistrate erred in denying its motion for attorney fees. On October 15, 2008, the trial court issued a decision denying BCCSEA's objection and affirming the magistrate's decision.

{¶5} BCCSEA now appeals from the trial court's decision and assigns the following as error:

{¶6} Assignment of Error No. 1:

{¶7} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING BCCSEA

WAS NOT A PARTY TO THE CHILD SUPPORT CONTEMPT ACTION."

{¶8} BCCSEA argues the trial court erred in finding that the agency was not a party to the child support contempt action, because a child support enforcement agency is a proper party to all judicial enforcement actions it initiates with respect to the collection of child support. We agree.

{¶9} R.C. 2705.031(B)(1) states:

{¶10} "Any party who has a legal claim to any support ordered for a child, spouse, or former spouse may initiate a contempt action for failure to pay the support. In Title IV-D cases, the contempt action for failure to pay support also may be initiated by an attorney retained by the party who has the legal claim, the prosecuting attorney, or an attorney of the department of job and family services or the child support enforcement agency."

{¶11} As used in R.C. 2705.031, "Title IV-D case" has the same meaning as in R.C. 3125.01, which defines the term to mean "any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the 'Social Security Act,' 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended."

{¶12} No one disputes that the instant case is a Title IV-D case for purposes of R.C. 2705.031. Thus, BCCSEA had the authority under R.C. 2705.031(B)(1) to initiate a contempt action against Brown for failure to pay child support. Moreover, BCCSEA implicitly had the authority under R.C. 2705.031(B)(1) to *prosecute* the contempt action against Brown, as the agency did in this case, and Brown has not contended otherwise. When BCCSEA instituted the contempt action against Brown, the agency became a *party* to the contempt action by virtue of that fact alone, and therefore, the agency did not need to be formally made a party to the action pursuant to Ohio Adm.Code 5101:12-50-50(C)(8) and Civ.R. 20(A).

{¶13} In *Collins v. Collins* (1998), 127 Ohio App.3d 281, 284, an obligor parent who had been found in contempt for failure to pay child support argued that the child support

enforcement agency that had brought the contempt action against him pursuant to R.C. 2705.031(B)(1) lacked the authority to do so because, among other things, the CSEA failed to file a motion to intervene. This court rejected that argument, finding that the CSEA had the authority to bring the contempt action against the obligor parent pursuant to R.C. 2705.031(B)(1) despite the agency's failure to file a motion to intervene in the action. *Collins* at 286.

{¶14} In light of *Collins*, we conclude that BCCSEA had the authority to bring a contempt action against Brown pursuant to R.C. 2705.031(B)(1), despite the fact that the agency was never formally added as a party to the contempt action, since BCCSEA became a party to the contempt action against Brown when the agency instituted the action.

{¶15} In light of the foregoing, BCCSEA's first assignment of error is sustained.

{¶16} Assignment of Error No. 2:

{¶17} "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED BCCSEA'S MOTION FOR ATTORNEY FEES AND COSTS AND FAILED TO AWARD BCCSEA, AS A PREVAILING PARTY IN A CHILD SUPPORT CONTEMPT PROCEEDING, REASONABLE ATTORNEY FEES AND COSTS PURSUANT TO O.R.C. 3109.05(C) AND LOCAL RULE OF COURT DR 31(C)(5)."

{¶18} BCCSEA argues that since it was a proper party to this action, the trial court erred in failing to award the agency \$500 in attorney fees and costs pursuant to R.C. 3109.05(C) and Loc.R. 31(C)(5) of the Butler County Domestic Relations Court.

{¶19} The trial court affirmed the magistrate's decision not to award attorney fees to BCCSEA as the prevailing party in the contempt action, finding that BCCSEA's motion to be added as a party was withdrawn, and the agency was acting in its "administrative capacity" and its counsel was not acting as an attorney for any party in the case. In support of its decision, the magistrate cited Opinion No. 90-10 (June 15, 1990) of the Ohio Supreme

Court's Board of Commissioners on Grievances and Discipline, which states:

{¶20} "The client of a Child Support Enforcement Agency (CSEA) is the state. The state, on behalf of the public, has a direct pecuniary interest in the CSEA work. This is true when the custodial parent receives Aid to Families With Dependent Children and when the parent does not receive AFDC. The custodial parent must be aware at the outset that the CSEA attorney only represents the interests of the state."

{¶21} For the reasons stated in our response to the first assignment of error, when BCCSEA initiated a contempt action against Brown for his failure to pay child support, the agency became a party to the contempt proceedings. BCCSEA's client in this case was not the obligee parent, i.e., Jamie Roush, but rather the state of Ohio, which, on behalf of the public, has "a direct pecuniary interest" in BCCSEA's work. *Id.*

{¶22} R.C. 3109.05(C) states:

{¶23} "If any person required to pay child support under an order made under division (A) of this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of *any adverse party*, as determined by the court, that arose in relation to the act of contempt and, on or after July 1, 1992, shall assess interest on any unpaid amount of child support pursuant to section 3123.17 of the Revised Code." (Emphasis added.)

{¶24} Because the trial court found that Brown was in contempt of court for failure to make child support payments as previously ordered, the trial court was required under R.C. 3109.05(C) to "assess all court costs arising out of the contempt proceeding" against Brown and require him "to pay any reasonable attorney's fees of *any adverse party*, as determined

by the court, that arose in relation to the act of contempt[.]" (Emphasis added.)

{¶25} R.C. 3109.05(C) does not define "adverse party," and therefore, the term must be given its plain and ordinary meaning. *State v. Cannell*, Butler App. No. CA2004-11-274, 2005-Ohio-5769, ¶ 10, citing *Ohio Assn. of Pub. School Emp. v. Twin Valley Local School Dist. Bd. Of Edn.* (1983), 6 Ohio St.3d 178, 181, and R.C. 1.42 (words and phrases must be read in context and construed according to the rules of grammar and common usage). An "adverse party" is commonly defined as "[a] party whose interests are opposed to the interests of another party to the action." Black's Law Dictionary (8th Ed.2004), 1154. See, also, *Allen v. Miller* (1860), 11 Ohio St. 374 (whether or not a party is an "adverse party" is determined by reference to the party's relation to the other parties in the case).

{¶26} Here, BCCSEA and Brown were adverse parties since their interests were clearly in opposition. Specifically, the agency's interest was in seeing that Brown pay his past due child support, and Brown's interest was in not having to pay it. Therefore, BCCSEA was an "adverse party" in relation to Brown in the contempt action for purposes of R.C. 3109.05(C) and was entitled to be awarded its reasonable attorney fees.

{¶27} BCCSEA also argues that its request for \$500 in attorney fees and costs was "de facto" reasonable pursuant to Loc.R. 31(C)(5) of the Butler County Domestic Relations Court, which states in pertinent part:

{¶28} "Upon a finding of contempt the Court may award attorney fees up to \$500.00 and Court costs. If a higher award is sought, the attorney must request fees as part of the motion and comply with [Local] Rule DR 30(E)(3)."

{¶29} BCCSEA acknowledges that Loc.R. 31(C)(5) states that the court "may award attorney fees," but contends that since R.C. 3109.05(C) applies in this case, the trial court *must* award \$500 in attorney fees and court costs. We disagree with this portion of BCCSEA's argument.

{¶30} Section 5(B), Article IV of the Ohio Constitution authorizes common pleas courts to adopt local rules governing practice and procedure. *Woloch v. Foster* (1994), 98 Ohio App.3d 806, 809. Local rules are created to promote the fair administration of justice, eliminate undue delay, and assist practicing attorneys by providing guidelines for the orderly administration of cases. *Cavalry Invests., L.L.C. v. Dzilinski*, Cuyahoga App. No. 88769, 2007-Ohio-3767, ¶16. However, local rules cannot establish or determine substantive rights. *Woloch* at 810, and *Packard v. Packard*, Cuyahoga App. No. 85189, 2005-Ohio-4392, ¶15, citing *Woloch* at 809.

{¶31} R.C. 3109.05(C) mandates that when a trial court finds a party in contempt for failure to pay child support, the court must require the contemnor "to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt." Under the plain language of R.C. 3109.05(C), it is the trial court's responsibility to determine whether the amount of attorney fees requested by a party is reasonable. See, e.g., *Sinnott v. Sinnott*, Franklin App. No. 02AP-1277, 2003-Ohio-4571, ¶7.¹ Therefore, on remand, the trial court will determine whether or not the amount of attorney fees that BCCSEA requests is reasonable.

{¶32} Accordingly, BCCSEA's second assignment of error is sustained to the extent indicated.

{¶33} The trial court's judgment is reversed, and this cause is remanded for further proceedings in accordance with this opinion and the law of this state.

BRESSLER, P.J., and HENDRICKSON, J., concur.

1. See, also, Sowald & Morganstern, *Ohio Domestic Relations Law* (2002) 380, Section 20:23.

[Cite as *Roush v. Brown*, 2009-Ohio-2446.]