

ARKANSAS COURT OF APPEALSDIVISION III
No. CV-13-300

BRIDGET WATKINS

APPELLANT

V.

TRAVIS WATKINS

APPELLEE

Opinion Delivered November 6, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
GREENWOOD DISTRICT
[NO. DR-2011-214-G (III)]HONORABLE JIM D. SPEARS,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

In this appeal from an order granting attorney's fees, appellant argues for reversal based on the timing and amount of the fee award. Because her arguments are not relevant to any error that may have occurred, we affirm.

Appellant Bridget Watkins and appellee Travis Watkins were divorced in Sebastian County Circuit Court on August 12, 2011, and they were awarded joint custody of their three children. On July 16, 2012, appellant filed a motion to modify the decree and for permission to remove the children from the circuit court's jurisdiction. She claimed that, based on a material change of circumstances, she should receive sole custody of the children and be allowed to relocate to Spiro, Oklahoma. Appellee responded with a general denial and affirmatively pled that there had been no material change in circumstances.

On December 20, 2012, an order of dismissal was filed. That order reflects that on December 10, 2012, appellant advised the circuit court that she was unable to attend the scheduled hearing and requested that the action be dismissed without prejudice pursuant to Arkansas Rule of Civil Procedure 41.

The circuit court also filed an order awarding attorney's fees on December 20, 2012, based on a motion filed by appellee on December 13, 2012. Appellee alleged in his motion that appellant did not show up for the custody hearing on December 10, 2012, because she was on vacation in Las Vegas. He alleged that she knew she would not be available for the hearing and was aware of the hearing date because she had requested the hearing. He claimed that appellant ultimately dismissed her motion, but that, nevertheless, he was required to hire an attorney, who propounded discovery, reviewed appellant's discovery responses, and prepared himself and appellee for the hearing. Appellee also claimed that he asked several witnesses to appear at the hearing. For these reasons, appellee sought \$1500 in attorney's fees. From the order granting fees, appellant filed a timely notice of appeal, and this appeal followed.

We discussed attorney's fees and our standard of review in *Tiner v. Tiner*, 2012 Ark. App. 483, at 15–16, ___ S.W.3d ___, at ___, as follows:

In domestic-relations proceedings, the circuit court has the inherent power to award attorney's fees, and whether the circuit court should award fees and the amount thereof are matters within the circuit court's discretion. *Miller v. Miller*, 70 Ark. App. 64, 14 S.W.3d 903 (2000). When addressing a circuit court's award of attorney's fees, our courts have often observed that there is no fixed formula in determining what is reasonable. *Swink v. Lasiter Constr., Inc.*, 94 Ark. App. 262, 229 S.W.3d 553 (2006). The *Stout* [*v. Stout*, 2011 Ark. App. 201, 378 S.W.3d 844] court recognized that “the circuit court may use its own experience as a guide and *can consider* the types of factors

set forth in *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).” *Stout*, 2011 Ark. App. 201, at 11, 378 S.W.3d at 850 (emphasis added). A court need not, however, conduct an exhaustive hearing on the amount of attorney’s fees because it has presided over the proceedings and gained familiarity with the case and the services rendered by the attorney. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983). Further, we have not strictly required documentation of time and expense in a divorce case where the trial court has had the opportunity to observe the parties, their level of cooperation, and their obedience to court orders. *Deaton v. Deaton*, 11 Ark. App. 165, 668 S.W.2d 49 (1984). Due to the trial judge’s intimate acquaintance with the record and the quality of service rendered, we usually recognize the superior perspective of the trial judge in assessing the applicable factors. *Chrisco, supra*. Accordingly, an award of attorney’s fees will not be set aside absent an abuse of discretion. *Id.* An abuse of discretion occurs when discretion is applied thoughtlessly, without due consideration, or improvidently. *Payne v. Donaldson*, 2011 Ark. App. 467, 385 S.W.3d 296.

I. *Arkansas Rule of Civil Procedure 41*

Appellant first argues that the trial court abused its discretion by granting appellee’s fee request subsequent to the Rule 41 dismissal order being filed. Rule 41 provides in part that

an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the jury, or to the court where the trial is by the court. Although such a dismissal is a matter of right, it is effective only upon entry of a court order dismissing the action.

Ark. R. Civ. P. 41(a)(1).

Appellant cites *White v. Perry*, 348 Ark. 675, 74 S.W.3d 628 (2002), for the proposition that a right to a nonsuit is absolute. Appellant also cites *Austin v. Austin*, 241 Ark. 634, 638, 409 S.W.2d 833, 835–36 (1966), wherein our supreme court quoted language from “27 C.J.S. under Dismissal and Nonsuits 39” stating,

[A] voluntary nonsuit, dismissal, or discontinuance is a final termination of the action, and there remains no cause pending in which a third person may be permitted to intervene, or in which defendant may thereafter file an answer or plea. . . . It carries

down with its previous proceedings and orders in the action, and all pleadings, both of plaintiff and of defendant, and all issues, with respect to plaintiff's claim.

Appellant contends here that, once the trial court granted the nonsuit, no further action could be taken relative to any issues connected with the proceedings initiated by her.

Appellee argues that, under Rule 41, the matter had been finally submitted to the court, giving the trial court discretion in granting the nonsuit. He cites *Coombs v. Hot Springs Village Property Owners Ass'n*, 75 Ark. App. 364, 57 S.W.3d 772 (2001), where this court held that if the voluntary nonsuit is requested after final submission of the case, it is within the trial court's discretion to grant or not grant it. We disagree with appellee's assertion that the matter had been finally submitted to the circuit court. In *Coombs*, we held that a case is not finally submitted until the argument is closed and the case is submitted to the jury or the court. *Coombs*, 75 Ark. App. at 367, 57 S.W.3d at 774. Accordingly, appellant was entitled to the nonsuit as a matter of right, not at the discretion of the circuit court.

Arkansas Rule of Civil Procedure 54(a) (2012) defines "judgment" to include a decree and any order from which an appeal lies. Rule 54(d)(1) provides that costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory. Rule 54(e)(1) requires that claims for attorney's fees be made by motion unless the substantive law governing the action provides that fees be proved as an element of damages. Under Rule 54(e)(2), a motion for attorney's fees must be filed and served no later than fourteen days after entry of judgment. Appellee contends that he prevailed at the hearing on appellant's motions and that he filed his motion for fees within the proper time

after he prevailed. Accordingly, he argues that the trial court's order was not thoughtless or given without due consideration; rather, the trial court acted within its discretion.

We agree that appellant had an absolute right to a nonsuit under Rule 41. However, appellant's argument fails, in her brief and in her reply, to address Rule 54 or the circuit court's inherent authority to grant attorney's fees in domestic-relations cases. Instead, appellant relies on her absolute right to a nonsuit as a basis for her contention that the circuit court erred in awarding attorney's fees. Appellate courts do not consider an argument, even a constitutional one, if the appellant makes no convincing argument or cites no authority to support it, and it is not apparent without further research that the appellant's argument is well taken. *Thompson v. Thompson*, 2012 Ark. App. 296.

II. *Amount of Fee Award*

Appellant argues that the trial court abused its discretion by awarding \$1500 in attorney's fees to appellee without any evidence of the time or costs spent by appellee's counsel. Appellant cites no law in support of her assertion. Accordingly, we rely on *Thompson, supra*, and do not consider appellant's argument.

Affirmed.

PITTMAN and WOOD, JJ., agree.

Gean, Gean & Gean, by: *Roy Gean, III*, for appellant.

Byars, Hickey & Hall, PLLC, by: *Kevin L. Hickey*, for appellee.