DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

GREGORY F. TOTH,

Appellant,

v.

STEPHANIE SPIELMAN MILLER,

Appellee.

Nos. 2D20-863, 2D20-1701
CONSOLIDATED

November 12, 2021

Appeal from the Circuit Court for Lee County; G. Keith Cary, Judge.

Robert L. Donald of Law Office of Robert L. Donald, Fort Myers, for Appellant.

Margaret H. White-Small, Longboat Key, and Stacy L. Haverfield of Stacy L. Haverfield, P.A., Cape Coral, for Appellee.

NORTHCUTT, Judge.

In these consolidated appeals—the fifth and sixth between these parties arising from a dissolution-of-marriage proceeding dating back to 2009—former husband Gregory Toth challenges four

different orders on sixteen bases. Finding merit in Issue I only, we reverse an order that granted former wife Stephanie Spielman Miller's motion for attorney's fees as a sanction for Toth's alleged inequitable conduct.

A trial court has inherent authority to assess fees based on the inequitable conduct of a party, but it must provide due process before doing so. *Moakley v. Smallwood*, 826 So. 2d 221, 226–27 (Fla. 2002). This includes "notice and an opportunity to be heard—including the opportunity to present witnesses and other evidence." *Id.*

The record here does not show that Toth received due process on this issue. The trial court entered an order declaring Miller's entitlement to fees as a sanction following the underlying dissolution trial in 2015. But it did not first hold a separate evidentiary hearing on the matter. Miller contends that the issue was heard in full as part of the trial, but the record refutes that assertion.

To the contrary, Miller's pretrial statement equivocated as to whether the parties would present evidence relevant to her sanctions motion during the trial or would do so at a later hearing.

Meanwhile, Toth's pretrial statement requested a separate hearing following the trial. Neither party on appeal has directed us to any pretrial ruling that clarified the matter one way or the other.

During trial, the parties' evidence focused on the dissolution issues and only tangentially touched on Miller's allegations of inequitable conduct. Then, at the conclusion of the trial, Miller referenced the sanctions motion and appeared to agree with Toth's pretrial request for a separate evidentiary hearing on the issue. Her counsel said:

> I saw, and I agree, in the pretrials, that we're going to be requesting that Your Honor reserve, and if Your Honor determines that there should be -- we're asking for a separate hearing on that. If that's the case, then I do not need to call myself and/or the other witnesses as it relates to that particular issue.

The trial court responded, "We will definitely reserve on that problem."

Thereafter, the trial court entered an order holding that Miller was entitled to the fees without first holding the evidentiary hearing it had promised. In so doing, it denied Toth due process. *See Moakley*, 826 So. 2d at 227. Consequently, we reverse the order on

fees as a sanction and remand for the trial court to hold an evidentiary hearing on the merits of Miller's motion.[1]

One other issue merits brief discussion. In Issue X, Toth challenges a final money judgment, claiming that it fails to expressly provide him with credit for approximately $239,000 Miller legally collected from him following entry of the first amended final judgment of dissolution entered in this case back in 2015.[2] The final money judgment at issue here was premised on provisions in the second amended final judgment of dissolution [3] that was

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[1] We leave to the trial court's sound discretion any evidentiary questions on remand, including whether or how to permit introduction of evidence or testimony from prior hearings. *See generally Hendry v. Zelaya*, 841 So. 2d 572, 575 (Fla. 3d DCA 2003) (recognizing the trial court's "broad discretion" on questions concerning the admissibility of evidence). This discretion extends not only to the underlying merits of the sanctions motion, but also to the amount to be awarded should the trial court once more find in favor of Miller.

[2] In 2018, this court affirmed only the part of the first amended dissolution judgment that dissolved the parties' marriage, reversing the rest for entry of a new judgment that reflected the trial court's "independent decision-making consistent with the evidence and applicable law." *Toth v. Miller*, 257 So. 3d 1166, 1167–68 (Fla. 2d DCA 2018).

[3] The second amended dissolution judgment was affirmed in *Toth v. Miller-Toth*, 313 So. 3d 92 (Fla. 2d DCA 2021) (table decision).

entered nunc pro tunc to a time preceding Miller's collection of the $239,000.

We find no reversible error here. Although neither the order on appeal nor the underlying second amended final judgment of dissolution expressly includes the credit, the record reflects the trial court's ruling that Toth is entitled to an offset for prior payments such as the $239,000 already collected. No order in the record contradicts this.

Meanwhile, Miller has made no attempt to double-collect on that amount. To the contrary, she has repeatedly acknowledged to this court and the trial court that Toth is entitled to an offset or credit for the $239,000 she has already received and she has excluded the $239,000 from her claimed postjudgment interest calculations from the date she collected that sum. So long as Toth receives de facto credit for amounts already paid, as the trial court has found and Miller has recognized, and in the absence of a contrary ruling, there is no basis for this court to intervene on this issue.

In sum, we reverse the order awarding fees to Miller as a sanction against Toth and remand for the trial court to conduct

further proceedings on Miller's motion for fees based on inequitable conduct as set forth above. We reject all other issues and affirm the other orders on appeal.

Affirmed in part, reversed in part, and remanded.

CASANUEVA and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.