

Third District Court of Appeal

State of Florida

Opinion filed March 31, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2270
Lower Tribunal No. 10-25061

Paul Brian Helinski,
Appellant,

vs.

Hadassa Helinski,
Appellee.

An Appeal from non-final orders from the Circuit Court for Miami-Dade County, Victoria del Pino, Judge.

Paul Brian Helinski, in proper person.

Shahady & Wurtenberger, P.A., and John J. Shahady (Fort Lauderdale); John M. Ross P.A., and John M. Ross (Fort Lauderdale), for appellee.

Scanziani & Associates Law, and Jessica Ramirez-Garcia, for Guardian ad Litem.

Before HENDON, MILLER and LOBREE, JJ.

PER CURIAM.

Paul Helinski appeals from the trial court's final judgment of fees rendered in favor of attorney Kira E. Willig, who served as the guardian ad litem ("guardian") for his children in the post-decretal marital dissolution proceedings below. We conclude that notwithstanding a voluntary dismissal, the trial court retained jurisdiction to award the guardian her fees and allocate the same between the parents. See e.g., Tobkin v. State, 777 So. 2d 1160, 1163 (Fla. 4th DCA 2001) (noting that "a voluntary dismissal does not divest the court of jurisdiction to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues"); Giuffre v. Edwards, 226 So. 3d 1034, 1037-38 (Fla. 4th DCA 2017) (finding trial court had jurisdiction to consider non-party's motions for sanctions based upon revelation of confidential settlement negotiations by attorney that were submitted before parties filed stipulation of dismissal).

However, we reverse because the trial court failed to address outstanding discovery issues before the fee hearing, thus depriving the father of due process. See Jackson v. Leon Cty. Elections Canvassing Bd., 204 So. 3d 571, 578-79 (Fla. 1st DCA 2016) (finding trial court abused discretion and thus violated petitioner's due process rights by entering final order prior to resolving unresolved discovery disputes and ruling on

outstanding motions). Upon remand, we note that the trial court is without authority to consider the attorney's fees for collection efforts that the guardian sought after dismissal.¹ Cf. O'Neill v. O'Neill, 812 So. 2d 448, 451-52 (Fla. 2d DCA 2002). Thus, we reverse the fee award and remand for further proceedings consistent with this opinion.

Reversed and remanded.

¹ There is no statute authorizing an award of attorney's fees to collect fees for the guardian, and the guardian and the parties did not enter into a contract authorizing payment of such. Although section 61.403, Florida Statutes (2018), sets forth activities that a guardian may undertake, acting through counsel, it does not provide that a guardian ad litem may seek payment for the guardian's "collection efforts." Similarly, the agreed order appointing the guardian merely provides that "[t]he guardian . . . shall have all of the powers, privileges, and responsibilities authorized in section 61.403 . . . to the extent necessary to advance the best interests of the minor child(ren)" and that [she] "is entitled, through counsel, to be present at any depositions, hearings, or other proceedings concerning the minor child(ren)."