

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002118-MR

ALICIA DIANNE BENNETT
FORMERLY GOLDSMITH

CROSS-APPELLANT

v. CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KEVIN L. GARVEY, JUDGE
ACTION NO. 98-FC-009319

MARTIN GLENN GOLDSMITH

CROSS-APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Alicia Dianne Bennett brings this cross-appeal from an August 15, 2001 order of the Jefferson Circuit Court. We affirm.

Alicia Bennett and Martin Goldsmith were married September 3, 1995. One child was born of the marriage, Zachary Bennett Goldsmith, on November 25, 1996. A domestic violence order (DVO) was entered against Goldsmith in 1997, restraining him from coming within 500 feet of Bennett. Goldsmith was arrested in 1998 for violating the DVO. Bennett and Goldsmith were divorced May 10, 1999, and Bennett was subsequently awarded

sole custody of Zachary. In August 1999, Goldsmith was again arrested for violating the DVO.

In late 1999 after Goldsmith returned Zachary following visitation, Bennett undressed Zachary for his bath and discovered Goldsmith had written messages in ink on the child's back and arm. Also in 1999, Goldsmith took Zachary to a speech therapist without Bennett's knowledge or consent.

Early in 2000, Goldsmith agreed to suspend his visitation rather than have it supervised. He was ordered by the court to refrain from harassing Zachary's daycare workers, medical providers and speech therapist. Goldsmith was ultimately allowed visitation on the condition it was supervised by Zachary's paternal grandparents. The grandparents were required to file a statement with the court indicating their willingness to supervise visitation based on an agreement between Bennett and Goldsmith.¹

Goldsmith was also ordered to undergo a psychiatric evaluation with one Dr. Edward Berla. Goldsmith did not visit the court ordered physician, but instead went to a doctor of his own choosing, one Dr. Paul Mann. Dr. Mann recommended that before Goldsmith be allowed unsupervised visitation that Goldsmith complete the court recommended psychiatric evaluation, comply with any treatment therefrom, and complete a parent education course. As of October 5, 2000, Goldsmith failed to comply with Dr. Mann's recommendations, and a request by

¹Zachary's grandparents never filed the required statement with the court.

Goldsmith to resume visitation was denied. Between January 2000 and October 2000, Goldsmith did not attempt to exercise the supervised visitation permitted by the court. In that period of time, Goldsmith was also arrested a third time for violation of the DVO. In mid-2000, Bennett and Zachary relocated to Tennessee. In October 2000, as a result of Goldsmith's repeated attempts to intimidate Bennett's counsel, a restraining order was entered against him prohibiting him from coming within 500 feet of Bennett's counsel.

Between November 28, 2000 and December 28, 2000, it appears Goldsmith filed some eighteen *pro se* motions. The motions included requests for production of a non-existent deposition, and that "anyone . . . caught lying in this case . . . serve one year in jail." Goldsmith also propounded numerous irrelevant interrogatories and made at least two apparently unfounded complaints to the bar association against Bennett's counsel.

In January 2001, the court ruled on several motions, ordering, *inter alia*, that Goldsmith pay Bennett \$6,000.00 in attorney's fees, and that Goldsmith be allowed telephonic visitation with Zachary, on condition the calls were recorded. The telephonic visitation was suspended because Goldsmith began harassing Zachary about Zachary's speech, told Zachary the speech was a result of Bennett's having abused alcohol during pregnancy, and, knowing the calls were recorded, addressed the circuit court judge personally. Goldsmith continued filing numerous *pro se* motions with the court.

Bennett moved the court for Ky. R. Civ. P. (CR) 11 sanctions and for attorney's fees. On August 15, 2001, the court entered an order sanctioning Goldsmith \$500.00 for CR 11 violations, and awarding Bennett \$1,000.00 in attorney's fees. Goldsmith appealed in Appeal No. 2001-CA-001853-MR. Bennett cross-appealed in Cross Appeal No. 2001-CA-002118-MR. Goldsmith failed to file a prehearing statement. This Court entered an order for Goldsmith to show cause why his appeal should not be dismissed for failure to file the prehearing statement. Goldsmith made no response and his appeal was dismissed. Thus, only Bennett's appeal is before us.²

Bennett contends the circuit court erred in sanctioning Goldsmith only \$500.00 under CR 11, which provides in pertinent part:

The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Our standard of review is whether the circuit court abused its discretion in determining the amount of sanctions imposed. Clark Equipment Company, Inc., v. Bowman, Ky. App., 762

²Goldsmith did not file a brief in this appeal and cross-appeal.

S.W.2d 417 (1988). Following a lengthy recitation of facts, the circuit court, in its order, writes:

[Goldsmith] has displayed absolute disregard of this Court, Its [sic] Orders, [Bennett], and, most disturbingly, his own child. [Goldsmith's] actions in this matter could never be construed as acting in the best interest of the child. He has an agenda, and he continues to play it out. However, the Court strongly admonishes [Goldsmith] to curb his obsession with harassing [Bennett], or stand prepared to face further sanctions by this Court.

Clearly, the circuit court considered Goldsmith's repugnant behavior and was aware of the reasons therefor. As such, we cannot say the circuit court abused its discretion in setting the CR 11 sanctions against Goldsmith in the amount of \$500.00. We recognize the egregiousness of Goldsmith's conduct, and note that, in the absence of Goldsmith's "curbing" his behavior, the circuit court indeed would be well within its discretion in ordering further sanctions against him.

Bennett maintains the circuit court erred by awarding her only \$1,000.00 in attorney's fees. Awarding of attorney's fees in domestic relation actions is governed by Kentucky Revised Statutes 403.220, which reads, in pertinent part:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees

The awarding of attorney's fees is entirely within the discretion of the court, and is not mandatory. Underwood v. Underwood, Ky. App., 836 S.W.2d 439 (1992), *overruled upon other grounds by* Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001).

In its opinion, the circuit court writes:

A review of the countless motions filed in this matter serve as the cornerstone for the Court's finding that [Goldsmith] has been on a mission to make life miserable for [Goldsmith] in light of the prior Court orders. Furthermore, [Goldsmith's] inappropriate conversation as noted earlier in this opinion regarding the engagement of counsel by his parents lends further support to the Court's belief that [Goldsmith] finds satisfaction in [Bennett] having to incur fees by employing counsel to defend against fruitless motions. [Goldsmith] all but admits to his son that he will do whatever it takes, particularly since someone is now footing the bills for him, to once again attack [Bennett] and put her on the defense.

For the reasons hereinabove stated, we conclude the circuit court did not abuse its discretion in determining the amount of attorney's fees awarded to Bennett.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR CROSS-APPELLANT:

Diana L. Skaggs
Sandra Ragland
Louisville, Kentucky

NO BRIEF FILED FOR CROSS-
APPELLEE.