

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000953-MR

DANIELLE DAFLER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DEANA C. MCDONALD, JUDGE
ACTION NO. 15-CI-500107

DAVID BUSTLE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: GOODWINE, LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Danielle Dafler¹ appeals from a judgment of the Jefferson Family Court ordering David Bustle to pay certain birth-related and medical expenses for their child. Dafler argues that the family court clearly erred by

¹ The pleadings in the matter below indicate that Dafler's last name is now Bornman. However, her notice of appeal and brief list her last name as Dafler. For purposes of this appeal, we will refer to her as Dafler.

rejecting the majority of the billing documents she submitted in support of her claim. We conclude that the family court's factual findings were supported by substantial evidence and should not be disturbed. Hence, we affirm.

Dafler and Bustle are the mother and father, respectively, of J.R.B., who was born in July 2011. On January 14, 2015, Dafler filed a verified petition against Bustle, seeking to establish paternity, and to determine custody, support and visitation. The current action was consolidated with a prior action filed in the Bullitt Family Court in which Dafler sought, among other things, reimbursement of medical expenses incurred at the time of J.R.B.'s birth to the date of trial. On July 10, 2015, the family court conducted a bench trial on all contested issues, including Dafler's reimbursement claim. Both parties testified at the hearing, and Dafler introduced evidence to support her claim that Bustle owed her \$13,843.45 for his half of the medical expenses she had incurred.

The family court entered its first order addressing the reimbursement claim on November 23, 2015. In pertinent part, the court issued a judgment ordering Bustle to reimburse Dafler \$1,485.65 for childbirth-related expenses and \$553.34 for medical expenses. Following a motion to alter, amend, or vacate, the family court amended its findings, directing Bustle to reimburse Dafler for \$1,674.76 in childbirth-related expenses, but otherwise did not modify its order in any manner relevant to this appeal.

Bustle filed a notice of appeal, but that appeal was dismissed on his motion. *Bustle v. Dafler*, No. 2016-CA-000562-ME (Order Dismissing Sept 8, 2016). Dafler also filed a notice of appeal. The panel in that case found that the family court rendered inadequate factual findings on Dafler’s claims for reimbursement of medical expenses. Specifically, the Court found that the family court failed to make any factual findings to support its conclusions regarding the amount of Dafler’s allowable medical expenses. Consequently, the Court remanded the matter for additional factual findings “solely as to calculation of child-related medical expenses[.]” *Dafler v. Bustle*, No. 2016-CA-000561-MR, 2017 WL 5508764, *2 (Ky. App. Nov. 17, 2017).

On remand, the parties submitted the matter to the family court based upon the evidence previously admitted. On May 15, 2018, the family court entered an opinion and order addressing the issue of reimbursable medical expenses. In pertinent part, the family court stated as follows:

This brings the Court to the actual medical bills and what it considered to have been sufficiently proven to be expenses incurred for the benefit of the child, thus rendering it a reimbursable expense to be shared between the parties. In the Order entered March 30, 2016, this Court specifically set forth the amount of the bills it identified to have been sufficiently proven to establish that they were incurred for the benefit of the minor child of the parties. The Court acknowledges that it did not specifically set forth identification of the bills for which it determined insufficient evidence was submitted to

support a finding that they were incurred for the parties' minor child.

The Court must reiterate that the Court of Appeals did not state that the Court erred in its conclusions, but, rather, erred in not providing sufficient findings upon which they were grounded. Petitioner [Dafler] asserts in her motion for an Order consistent with the Opinion and Order of the Court of Appeals that the appellate court indicated that this Court should award her \$13,843.45 for "his half of the medical expenses she had incurred." Notice-Motion-Order: Enter Post-Appellate Amended Judgment, pg. 1. This Court disagrees.

First, this Court was very clear in its Orders of November 23, 2015 and March 30, 2016 that the parties were to equally share in any costs determined to be divided by this Court pursuant to the Orders entered by the Bullitt County Court wherein the equal division of "future medical expenses" was ordered. Order, August 23, 2013. This Court also stated that, although the Bullitt County Court never specifically addressed the issue of division of birth related expenses, this Court found that the continued use of equal division between the parties of all monies expended for the child, that it was at least implied that any birthing expenses would be divided equally, as well. [sic] Order, pg. 4 (November 23, 2015). As the Court of Appeals did not disturb this conclusion of the Court, the statement by Petitioner as referenced above [] is incorrect on its face.

The Court also made note that it went through each bill and attempted to identify bills based on things such as date incurred, whether the item in question was "optional" and whether the bill appeared to be a duplicate. Id. at pg. 4. For instance, evidence was presented regarding a lawsuit filed by Norton against the parties for medical expenses in the amount of \$2,010.74. The claim itself outlines expenses incurred for both Petitioner and the minor child. However, there is no

evidence as to what these expenses were for. The complaint further indicated the amount stated also included sums for attorney's fees and costs for bringing the complaint. The Court stated in the original Order that without some indication as to the service for which a claimed expense was incurred the Court did not include it in the calculation.

Additionally, there is evidence of a letter outlining a settlement of same for a twenty (20%) percent discount, although there is no evidence that this proposed settlement was ultimately accepted by the parties. However, it is important to note at this point that, although a receipt for payment in the amount of \$2,905.00 referencing a "Norton debt" was included and assumed to be the amount paid in settlement of the above referenced claim, there was no breakdown as to what amount went to settlement of the claim, court costs, attorney fees, etc. The amount found by this Court to be reimbursable birthing expenses was very close to this amount paid by Petitioner in settlement of the lawsuit seeking payment of expenses associated with the birth of the child. The Court only points this out to indicate the Court did not disregard any evidence in its review and was successful in not including duplicative statements or bills which were excluded because of timing requirements as discussed earlier herein.

The Court has gone through each statement, bill, etc. which was included the original collection of exhibits submitted bound together at the hearing. The Court struggled with how to identify the bills which it did accept and include in its calculation of birthing expenses and extraordinary medical expenses which it has identified as meeting all criteria discussed herein to qualify as a reimbursable expense. The best way for the Court to identify those bills and avoid any confusion is to attach copies of those bills the Court **did** include in its calculations. Any bill not attached in appendix A was excluded, as it either did not fall within the prescribed

time frame, was determined to be duplicative in nature and/or it was not clear on the face of the bill what was actually due and owing.² Additionally, one statement was excluded because it specifically stated that it was [Dafler's] medical and prescription claim rather than those of the child.

The Court has checked the math again, and the number the Court found in the March 30, 2016 Order, which corrected a computational error in the November 25 [sic, 23] Order, remains the same with no changes. However, the Court found a slight mathematical error with regard to the additional qualifying reimbursable medical expenses. The total the Court finds adding the bills/statements attached hereto results in a total of said expenses in the amount of \$1,140.60, with the Respondent owing one-half, or \$570.30. Thus, for purposes of the limited scope of this Order, that being findings of fact specific only to the issue of medical expenses, the Court concludes that Respondent [Bustle] owes one-half of \$2,924.28, or \$1,674.76 plus \$570.30 for a total of \$2,245.06 representing one-half of the birth and reimbursable medical expenses incurred for the benefit of the parties' minor child.

Following entry of this order, Dafler filed motions pursuant to CR³ 52 and 59.05 for additional factual findings or to alter, amend, or vacate the order.

After considering the motion and the response, the family court granted the motion to provide the correct case number and to include the referenced appendix.

² It should be noted that in the Order entered March 30, 2016, although the Court did not "name" the specific bills used in its computation, the Court did individually list the amounts from the bills it considered to be sufficient evidence of actual birthing expenses incurred. Same bills are attached hereto. [Footnote in original.]

³ Kentucky Rules of Civil Procedure.

However, the family court otherwise denied the motion. On July 23, 2018, the family court entered an amended order restating its explanations for accepting certain bills while rejecting others. Dafler now appeals to this Court.

As an initial matter, we note that Bustle failed to file a brief in this appeal, as required by CR 76.12(1). Under CR 76.12(8), we may accept Dafler's statement of the facts and issues as correct, reverse the judgment if we believe her brief supports such a result, or treat the failure to file a brief as a confession of error and reverse the judgment without reaching the merits of the case. However, the rule does not mandate a particular penalty; it merely provides penalty options which an appellate court, in its discretion, may impose for failure to file a brief. *Kupper v. Kentucky Board of Pharmacy*, 666 S.W.2d 729, 730 (Ky. 1983).

Furthermore, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01. *See also Whicker v. Whicker*, 711 S.W.2d 857, 858-59 (Ky. App. 1986). A finding of fact is clearly erroneous if it is not supported by substantial evidence. *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003). “Substantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person.” *Id.* (citing *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998)). As the appellant, the burden is on

Dafler to show that the trial court's findings of fact were clearly erroneous. *Citizens Fid. Bank & Tr. Co. v. Leake*, 380 S.W.2d 264, 266 (Ky. 1964). Since the current appeal turns on the sufficiency of the evidence supporting those findings, we elect to decide this appeal on the merits of the issues presented in Dafler's brief.

Under KRS⁴ 406.011, Bustle is liable for the expenses related to J.R.B's birth "for the reasonable expense of the mother's pregnancy and confinement[.]" Similarly, KRS 403.211(9) authorizes a court to allocate a child's extraordinary medical expenses between the parties. In the prior appeal, this Court found that the family court's findings regarding expenses were inadequate. In this appeal, Dafler does not take issue with the sufficiency of the family court's findings on remand. Rather, Dafler only argues that those findings were clearly erroneous in light of the evidence presented.

In the prior appeal, this Court directed the family court to identify the specific bills which it found to be reimbursable. As set forth above, the family court identified the specific bills which it found to be reimbursable and generally explained its reasons for rejecting the remaining bills. Dafler takes issue with those findings, arguing that the excluded bills were within the relevant time period, were not duplicative of other charges, and identified the nature of the charge.

⁴ Kentucky Revised Statutes.

Dafler contends that the family court was obligated to accept **all** of her submitted documentation, and that she was entitled to a judgment based upon **all** of her submitted bills.

We have reviewed both sets of documents, and we find substantial evidence to support the family court's decision to exclude the bills at issue. The family court clearly conducted a thorough review of all the bills and documentation that Dafler submitted. The court held three hearings on this matter before the prior appeal, and at least two more following remand. As noted above, the court set out its reasons for accepting certain bills while rejecting others.

We recognize that the family court could have found the documentation on some of these bills to be sufficient. However, the family court's primary role in this case was to determine whether the submitted bills were sufficiently documented and reasonably related to the child's birth-related and medical expenses. Since Dafler has failed to show that the court's findings of fact were clearly erroneous, we are not in a position to disturb those findings.

Accordingly, we affirm the judgment of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

William D. Tingley
Louisville, Kentucky