

CAROLINE KOERNER

NO. 16-CA-487

VERSUS

FIFTH CIRCUIT

BRANDON MONJU

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 732-232, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

February 08, 2017

ROBERT A. CHAISSON
JUDGE

Panel composed of Susan M. Chehardy,
Marc E. Johnson, and Robert A. Chaisson

AMENDED

RAC

SMC

MEJ

COUNSEL FOR PLAINTIFF/APPELLANT,
CAROLINE KOERNER
David H. Williams

CHAISSON, J.

Caroline Koerner appeals that portion of the district court's judgment that assessed the costs of the proceedings against her in connection with the dismissal of her Petition for Protection from Abuse. For the reasons that follow, we amend the district court's judgment to vacate that portion of the judgment that assessed costs against Ms. Koerner.

FACTS AND PROCEDURAL HISTORY

Ms. Koerner filed a Petition for Protection from Abuse against a former dating partner, Brandon Monju. After a hearing, the Domestic Commissioner dismissed Ms. Koerner's petition after finding that there was "... just not enough evidence here for me to establish by a preponderance that a battery did occur - - an intentional battery did occur." Ms. Koerner filed an objection to the Domestic Commissioner's order and requested a hearing before the district court. After that hearing, the district court, without providing any reasons, denied Ms. Koerner's objection to the Domestic Commissioner's order. Upon request of Ms. Koerner, the district court provided written reasons for judgment stating that Ms. Koerner "... has not met her burden of proof that she is entitled to relief under R.S. 46:2151," without any further explanation.¹ The district court stated no findings of fact and assigned no reason as to why it was assessing the costs of the proceedings against Ms. Koerner.

DISCUSSION

La. R.S. 46:2134(F) provides that:

A petitioner shall not be required to prepay or be cast with court costs or costs of service or subpoena for the filing of the petition or the issuance of a temporary restraining order or protective order pursuant to this Part, and the clerk of court shall immediately file and process the petition and temporary restraining order issued pursuant to this Part, regardless of the ability of the petitioner to pay court costs.

¹ The district court additionally stated that it adopted the reasons orally assigned at the hearing; however, no reasons for the denial of Ms. Koerner's objection were assigned at the hearing.

La. C.C.P. art. 3603.1(C)(1) provides that:

A complainant seeking protection from domestic abuse, dating violence, stalking, or sexual assault shall not be required to prepay or be cast with court costs or costs of service of subpoena for the issuance or dissolution of a temporary restraining order, preliminary or permanent injunction, or protective order, or the dismissal of a petition for such, and the clerk of court shall immediately file and process the order issued regardless of the ability of the plaintiff to pay court costs.

And La. R.S. 46:2136.1(A) provides that:

All court costs, attorney fees, costs of enforcement and modifications proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in maintaining or defending any proceeding concerning domestic abuse assistance in accordance with the provisions of this Part shall be paid by the perpetrator of the domestic violence, including all costs of medical and psychological care for the abused adult, or for any of the children, necessitated by the domestic violence.

There is a limited exception to the non-payment of costs by the petitioner in domestic abuse proceedings where the district court makes a determination that the petition was frivolous. La. R.S. 46:2136.1(B) states that "...if the court determines the petition was frivolous, the court may order the nonprevailing party to pay all court costs and reasonable attorney fees of the other party." Absent a determination that a petition for protection for abuse is frivolous, a district court is not authorized to assess costs of the proceedings against the petitioner.

In this case, the district court made no determination that Ms. Koerner's petition was frivolous and gave no explanation as to why it was assessing costs against her. Consequently, the district court, absent that determination, was without authority to assess costs against Ms. Koerner. Accordingly, we amend the district court's judgment to vacate that portion of the judgment that assessed costs against Ms. Koerner.

AMENDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **FEBRUARY 8, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

16-CA-487

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)
VIRGINIA L. BAKER (APPELLANT)

MAILED

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