

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1500

SUCCESSION OF IRA CLIFTON SHARP

CONSOLIDATED WITH

NUMBER 2009 CA 1501

PRISCILLA S. SHARP

VERSUS

IRA C. SHARP

CONSOLIDATED WITH

NUMBER 2009 CA 1502

PRISCILLA SHARP, ON BEHALF OF RICHARD SHARP

VERSUS

ALMA KENNEDY

Judgment Rendered: June 11, 2010

Appealed from the
Twenty-second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Numbers 2004-30353, 92-11868, and 2004-12660

Honorable Donald M. Fendlason, Presiding

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Alma Kennedy and Ronnie Toney

g J P Pettigrew J. Concur

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Priscilla S. Sharp

* * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J.

In these consolidated proceedings, Alma Kennedy appeals from the November 18, 2008 trial court judgment, which appointed Priscilla Sharp administrator of the succession of Ira Clifton Sharp, determined privileged and non-privileged creditors of the succession, and ordered Priscilla Sharp to calculate the value of the marital portion and the total interest and costs due to her for past due spousal support. Priscilla Sharp answered the appeal, asking that the net quantum of the estate in the judgment be corrected to read \$73,616.60 and requesting attorney's fees, costs, and sanctions.

On November 12, 2009, this court issued a rule to show cause, asserting that the November 18, 2008 judgment appeared to be a partial final judgment without the required designation of finality. By order dated February 17, 2010, this court dismissed the appeal and the answer to the appeal in 2009 CA 1500, *Succession of Ira Clifton Sharp*, and 2009 CA 1502, *Priscilla Sharp, on behalf of Richard Sharp v. Kennedy*, because the November 18, 2008 judgment as to these two actions is a partial final judgment that does not contain the proper designation of finality. However, we maintained the appeal in 2009 CA 1501, *Priscilla Sharp v. Ira Clifton Sharp*, because the November 18, 2008 judgment was final with respect to that suit in that it determined the last remaining issue, costs. Accordingly, only the trial court's judgment as it relates to costs is before this court for review.¹

¹ We note that the parties also filed another consolidated appeal and answer with regard to a May 28, 2008 judgment, which awarded Priscilla Sharp attorney's fees for work performed in the divorce proceeding and in connection with the petition to annul judgment on the grounds of fraud and ill practices, removed Alma Kennedy as executrix, found Alma Kennedy in contempt of court, awarded Priscilla Sharp her marital portion of the decedent's estate, and other matters. This court issued a rule to show cause, and by order dated February 17, 2010, dismissed all three consolidated appeals. Particularly, with regard to the appeal in the divorce proceeding, this court noted that the May 28, 2008 judgment addressing the attorney's fees awarded for work performed in the divorce proceeding was a final judgment that was not timely appealed. Additionally, this court noted that under *Hoyt v. State Farm Mutual Automobile Insurance Company*, 623 So. 2d 651, 663-64 (La. App. 1 Cir.), writ denied, 629 So. 2d 1179 (La. 1993), when a motion and judgment for costs is rendered after the final judgment on the merits, the costs judgment is a separate, final appealable judgment.

Unfortunately, from our review of Ms. Kennedy's brief, she does not raise as error or otherwise brief any argument regarding the trial court's assessment of costs in the divorce proceeding. Therefore, in accordance with Uniform Court of Appeal Rule 2-12.4 and La. C.C.P. art. 2162, we consider Ms. Kennedy's appeal of the November 18, 2008 judgment to have been abandoned and dismiss the appeal.

Further, Ms. Sharp has requested attorney's fees and costs for work performed on appeal in her answer, asserting that the appeal filed by Ms. Kennedy is frivolous. However, as stated previously, Ms. Kennedy filed an appeal regarding three consolidated matters, which all came up for review and were presented in the same brief. Though ultimately we dismissed most of the appeal on jurisdictional grounds, and maintained it only with regard to the judgment on costs, we do not find that Ms. Kennedy was insincere in her arguments on appeal or that the appeal was urged for an improper motive. See Taylor v. Hanson North America, 08-2282, p. 10 (La. App. 1st Cir. 8/4/09), 21 So. 3d 963, 970. Therefore, we decline to award attorney's fees for work performed on appeal.

Finally, as to Ms. Sharp's request that this court sanction Ms. Kennedy for discourteous remarks made in her appellate brief, we find that because we are dismissing Ms. Kennedy's appeal, sanctioning her by striking the offending portions of her brief is not necessary.

Therefore, based on the foregoing, we dismiss the appeal and the answer to the appeal in accordance with Uniform Court of Appeal Rule 2-16.2A(2). All costs of this appeal are assessed to Alma Kennedy.

APPEAL DISMISSED.