

HENRY D. HOSFORD

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NO. 2002-C-1808

VERSUS

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COURT OF APPEAL

**KATHLEEN LANIER L.
HOSFORD**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-4705, DIVISION "DRS-1"
Honorable Piper Griffin, Judge

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones
and Judge David S. Gorbaty)

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COUNSEL FOR DEFENDANT-RELATOR

WRIT DENIED.

STATEMENT OF THE CASE

In this domestic relations case, defendant-relator Kathleen Lanier

Hosford seeks supervisory review of a trial court judgment granting a motion to quash the deposition of Craig B. Mitchell, appointed counsel for Wesley Hosford, Mrs. Hosford's minor child, and ordering that Wesley's attorney fees were part of the support owed him by his parents, effectively ruling that those fees could be withdrawn from the registry of the court.

On November 10, 1998, plaintiff Henry Hosford deposited into the registry of the court a check in the amount of \$80,267.95 to cover some \$50,000 in child support arrearages. Craig Mitchell was appointed by the trial court in June 2000 to represent the interests of the minor child Wesley Hosford, who was to be a senior in high school during the academic year 2002-2003, and who at the time of the hearing in the instant case was residing in New Orleans with the family of a friend.

On June 13, 2002, Craig Mitchell filed a motion and order to withdraw funds from the registry of the court to pay approximately \$5,000 in attorney fees due him. Mrs. Hosford opposed such action, and the matter was set for hearing on August 5, 2002. Mrs. Hosford noticed Mitchell's deposition for July 30, 2002. On July 26, 2002, Mitchell moved for a protective order quashing the subpoena, and the trial court stayed the deposition pending the August 5, 2002 hearing.

At the August 5, 2002 hearing, the trial court granted Mitchell's

motion for protective order, quashing the deposition, and effectively granted Mitchell's motion to withdraw funds totaling approximately \$10,000 from the registry of the court as attorney fees. The written judgment signed on August 13, 2002 decreed that reasonable attorney fees and costs advanced for and/or incurred by Wesley Hosford were deemed a part of the support obligation owed by his parents.

Mrs. Hosford filed a notice of intent and, on August 8, 2002, the trial court set a return date for August 18, 2002. On August 8, 2002 the trial court also granted Mrs. Hosford's request for a stay of its order permitting the withdrawal of the funds, pending disposition of her writ application in this court.

On August 16, 2002, Mrs. Hosford filed a motion for extension of time in which to file her writ application, and the trial court extended the return date to September 9, 2002. Mrs. Hosford timely filed her writ application on September 9, 2002.

FACTS

Defendant-relator Kathleen Lanier Hosford and plaintiff Henry Hosford entered into a consent judgment in April 1997 regarding child support for their four minor children. Mr. Hosford subsequently became delinquent in his child support obligation, and deposited a third-party check

in the amount of \$80,267.95 to purge himself of contempt and avoid incarceration for failure to pay child support arrearages that amounted to less than \$50,000. The transcript of the August 5, 2002 hearing at issue in this writ application reflects that Mrs. Hosford has declined to withdraw funds from the registry of the court, lest she be deemed to have admitted the amount owed to her.

The transcript of the August 5, 2002 hearing reflects that there was a court order issued in June 2000 stating that Craig Mitchell's fees were to be paid from the registry of the court. The trial court stated at the August 5, 2002 hearing that it had already been determined by a prior judge that Wesley Hosford had a special need—he apparently has some adjustment problems, and cannot reside with Mrs. Hosford. Wesley lived for a short period with his father in Alaska, but apparently did not like living there, and came back to New Orleans. The court further stated that in light of the significant litigation it had witnessed pertaining to Wesley, it believed that any continued support would have to include Wesley's representation by an attorney of his choice.

We note that on at least two occasions during the August 5, 2002 hearing, the trial court referred to Mitchell's motion to quash as moot, without any objection from counsel for Mrs. Hosford. Nevertheless, in its

written judgment, the trial court granted the motion in favor of Mitchell, therefore, we find that Mrs. Hosford can raise that issue on review.

DISCUSSION

Mrs. Hosford first attacks the trial court's granting of the protective order, quashing the deposition she sought to take of Craig Mitchell. Mrs. Hosford states that she simply desires to determine whether Mitchell's fees were earned. Mrs. Hosford cites La. C.C.P. art. 1422, stating the general rule that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending action." Mrs. Hosford's argument simply is that the right to take discovery of non-privileged matters is absolute, and the subject matter of Craig Mitchell's billings is not privileged.

Louisiana trial courts have broad discretion when regulating pre-trial discovery, which discretion will not be disturbed on appeal absent a clear showing of abuse. Moak v. Illinois Central R.R. Co., 93-0783, p. 9 (La. 1/14/94), 631 So. 2d 401, 406; Cacammo v. Liberty Mutual Fire Ins. Co., 99-1903, p. 4 (La. App. 4 Cir. 10/10/01), 798 So.2d 1210, 1214.

The trial court expressed a number of concerns. It was concerned about the attorney-client relationship, and whether privileged material might be revealed during a deposition of Craig Mitchell. The trial court also

indicated that it believed counsel for Mrs. Hosford would not obtain any useful information regarding Mitchell's billings by deposing him. We note that Mitchell's billing statements, which are contained in the writ application, are detailed and speak for themselves. The trial court further questioned Mrs. Hosford's right to inquire into such matters, suggesting that the matter was between Wesley Hosford and his attorney.

La. C.C.P. art. 1452(B) states that "[n]o attorney of record representing the plaintiff or the defendant shall be deposed except under extraordinary circumstances and then only by order of the district court after contradictory hearing." Mrs. Hosford does not address this provision of law. While Wesley is not a plaintiff or a defendant, he is a highly relevant party involved in the instant action and is represented by a counsel of record who has represented him since June 2000.

Nor does Ms. Hosford address La. C.E. art. 508(A), which provides that neither a subpoena or a court order shall be issued to a lawyer to testify in any pretrial discovery, where the purpose of the subpoena or order is to ask the lawyer to reveal information about a client obtained in the course of representing the client, unless the trial court determines that the information sought is not protected from disclosure by any applicable privilege or work product rule, "and all of the following:"

- (1) The information sought is essential to the successful

completion of an ongoing investigation, is essential to the case of a party seeking the information, and is not merely peripheral, cumulative, or speculative.

(2) The purpose of seeking the information is not to harass the attorney or his client.

* * *

(4) There is no practicable alternative means of obtaining the information.

Mrs. Hosford presented a letter from a social worker, Elizabeth Rayne, calling into question approximately one-half hour Mitchell allegedly represented that he talked to Ms. Rayne on the telephone. However, this discrepancy was not discovered by questioning Craig Mitchell, and Mrs. Hosford fails to show how deposing him will uncover any other discrepancies in his billings.

Mrs. Hosford does not address the notion that deposing an attorney in connection with litigation in which that attorney is representing a client is an extraordinary discovery mechanism, as evidenced by the protective measures in La. C.C.P. art. 1452(B) and La. C.E. art. 508(A). Even assuming these articles are not directly applicable to the situation in the instant case, the burden on Mrs. Hosford to show that she should be able to depose her son's attorney must be considered very high.

We cannot say that Mrs. Hosford has shown a clear abuse of the trial court's discretion in determining that she cannot depose Craig Mitchell.

Mrs. Hosford next argues that the trial court erred in ordering a parent

to pay the attorney fees for representation of an emancipated child. Ms. Hosford does not address La. R.S. 9:315.22. The general rule is that an award of child support terminates upon the child's attaining the age of majority, or upon emancipation relieving the child of the disabilities attached to minority. La. R.S. 9:315.22(A) & (B). However, the article also provides an exception. An award of child support continues with respect to a child who is emancipated as long as the child is a full-time student in good standing in a secondary school, has not attained the age of nineteen, and is dependent upon either parent. La. 9:315.22(C). All of the factors for application of the exception are present in the instant case.

We note that the August 13, 2002 judgment of the trial court at issue in this case ordered that Mr. and Mrs. Hosford pay \$500 per month for support of Wesley, to be paid to the family with whom he is living, that they pay \$160 total to Wesley directly as an allowance, and that Mrs. Hosford pay reasonable education expenses for Wesley at De La Salle which exceed \$5,760. Mrs. Hosford does not assign any error with regard to these aspects of the trial court judgment.

The August 5, 2002 judgment also decreed that Wesley's attorney fees were "deemed a part of and concurrent with the support obligation owed to Wesley Hosford by his parents." Mrs. Hosford does not even argue that the

trial court erred in deeming attorney fees a part of the support owed to Wesley pursuant to La. R.S. 9:315.22.

There is no merit to Mrs. Hosford's argument that Wesley's attorney fees cannot be deducted from the registry of the court simply because he is emancipated.

For the foregoing reasons, the relator's writ application is hereby denied on the ground of no abuse of discretion insofar as the trial court's granting of the motion for protective order and quashing of the deposition, and on the ground of no error insofar as the ruling that the attorney fees are a part of the support obligation, thus permitting them to be withdrawn from the funds on deposit in the registry of the court.

WRIT DENIED.