

STATE OF MICHIGAN
COURT OF APPEALS

JAMES JOHN SCHARF,

Plaintiff/Counter-Defendant-
Appellant,

v

HARUMI SCHARF,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
December 22, 2009

No. 288859
Oakland Circuit Court
LC No. 2003-682034-DM

Before: K. F. Kelly, and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order awarding attorney fees to defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced on December 11, 2003. During the marriage, they had two children, of whom they now share legal and physical custody. On July 9, 2008, after plaintiff refused to return the children when his scheduled parenting time was over, defendant filed a motion to show cause, for make up parenting time, and for sanctions. The trial court ruled in defendant's favor. Thereafter, over a two-month period, plaintiff filed several motions. The motions included a motion for change of parenting time. The trial court denied the motion, assessed plaintiff \$500 in costs and ordered the parties to attend the "After Divorce – Effective Parenting Together" (ADEPT) program. The order mandated that, for the duration of the ADEPT program, the parties were to refrain from instituting any new litigation.

Plaintiff, however, filed a motion to enforce parenting time one week later. At the motion hearing, defendant requested additional sanctions, not only because this was her fifth court appearance in two months, but also because plaintiff had failed to pay the previously ordered sanctions. The trial court granted plaintiff's request that the son be allowed to play football. But the court also referenced its previous order requiring the parties to attend the ADEPT program, and ordered plaintiff to pay additional sanctions of \$1,000. Plaintiff filed a motion for reconsideration, challenging the award of sanctions, which the trial court denied.

On appeal, plaintiff argues that the trial court abused its discretion when it ordered him to pay \$1,000 in attorney fees to defendant. We disagree. A trial court's decision to award attorney fees and its determination of the reasonableness of the fees are reviewed for an abuse of

discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). A trial court's findings of fact underlying the award of attorney fees are reviewed for clear error, *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007), while underlying questions of law are reviewed de novo, *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 438; 695 NW2d 84 (2005).

“As a general rule, attorney fees are not recoverable as an element of costs or damages absent an express legal exception.” *Fleet Business Credit, LLC v Krapohl Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). In domestic relations cases, attorney fees are authorized by statute, MCL 552.12, and court rule, MCR 3.206(C). An award of attorney fees is appropriate when the party requesting the fees was forced to incur them as a result of the other party's unreasonable conduct during the course of the litigation. *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992); *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). It is not an abuse of discretion to award attorney fees in an action if it is designed to prevent future litigation. *Milligan, supra* at 671.

In this case, plaintiff filed multiple parenting time motions during the summer of 2008. The trial court informed plaintiff that such motions had to stop. Pursuant to the September 3, 2008 order, plaintiff was to pay \$500 in costs and the parties were to enroll in the ADEPT program. The trial court expressly prohibited the parties from initiating any new litigation during the course of the ADEPT program. Plaintiff, however, ignored the court's order when he filed another motion less than two weeks later. While the trial court ordered that the son be allowed to play football, it denied plaintiff's request for make up parenting time and granted defendant's motion for additional sanctions in the amount of \$1,000. The court noted on the record that plaintiff had failed to pay the previously ordered sanctions and had violated the September 3, 2008 order. While the court did not articulate a precisely worded finding of unreasonable conduct or an intent to prevent future litigation, *Milligan, supra* at 671, a review of the entire record indicates this was the underlying basis of the court's decision. The trial court's decision to award attorney fees to defendant was not an abuse of discretion.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck