

STATE OF MICHIGAN
COURT OF APPEALS

JESSICA SZAFRANSKI, a/k/a JESSICA
MEAKEM,

UNPUBLISHED
February 23, 2012

Plaintiff/Counter-Defendant-
Appellee,

v

No. 302920
Lapeer Circuit Court
LC No. 07-038638-DM

ANDREW J. SZAFRANSKI,

Defendant/Counter-Plaintiff-
Appellant,

and

ROSE SZAFRANSKI and JEROME
SZAFRANSKI,

Third Party Intervenors-Appellants.

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right the order of the trial court granting attorney fees to plaintiff. Because we conclude that the trial court's decision to order the payment of the attorney fees was within the range of reasonable and principled outcomes, we affirm.

This Court reviews a trial court's ruling on a motion for attorney fees for an abuse of discretion. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001). A trial court abuses its discretion when it reaches a decision that falls outside the range of reasonable and principled outcomes. *Smith v Smith*, 278 Mich App 198, 207; 748 NW2d 258 (2008). This Court, however, reviews the factual findings supporting the decision to award attorney fees for clear error. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005).

A trial court may order the payment of attorney fees "when the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of litigation." *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992); see also *Reed*, 265 Mich App at 165.

Sometime following the entry of the divorce judgment, defendant moved for a change of custody and plaintiff moved for a change of domicile. The trial court denied defendant's motion and granted plaintiff's motion. Defendant then moved for reconsideration of the trial court's order. When filing the motion for reconsideration, defendant also filed a notice of hearing even though he was not entitled to a hearing. See MCR 2.119(F)(2) ("No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs."). In response to the notice of hearing, plaintiff filed an answer and brief. The lawyers for the parties communicated by telephone, and defendant's lawyer admitted that the notice was sent in error. However, after this conversation, defendant's lawyer sent another notice of hearing for a subsequent date. In the interim, the trial court issued its opinion denying defendant's motion for reconsideration, stating that defendant failed to show any palpable error.

Plaintiff's lawyer showed up for a hearing at the time stated in the second notice, but defendant's lawyer did not appear. Plaintiff's lawyer explained to the trial court that he received the trial court's decision on the motion for reconsideration and a day later received defendant's second notice of the hearing on the motion. He had not communicated with defendant's lawyer because he had been out of town for approximately 10 days and had just returned the day before. He asked for attorney fees in the amount of \$600, which he calculated at \$200 an hour for three hours' work on the motion for reconsideration. The trial court granted the request.

When plaintiff's lawyer attempted to enter the order regarding attorney's fees, defendant's lawyer objected on the grounds that plaintiff's lawyer was not entitled to attorney's fees because he could not respond to the motion for reconsideration under MCR 2.119(F)(2). The trial court addressed defendant's lawyer and told him that he was the one who filed the notices of hearing and that the order would be entered in accordance with its prior ruling.

On appeal, defendant argues that the trial court erred when it awarded attorney fees to plaintiff because the fees were for time spent responding to a motion for reconsideration and showing up for a hearing when plaintiff did not have the right to respond or to be heard under MCR 2.119(F).

The trial court did not abuse its discretion when it awarded attorney's fees to plaintiff. Defendant's lawyer plainly violated MCR 2.119(F)(2) by filing two notices of hearing on a motion for which he was not entitled to a hearing. Plaintiff's lawyer responded to the notices he received from defendant's lawyer by filing a three-page answer and three-page brief and appearing in court on the date indicated on the second hearing notice. The issues raised in the motion for reconsideration were significant in that they involved requests for changes in custody and domicile after a judgment of divorce had been entered. It was not, therefore, unreasonable for plaintiff's lawyer to take the actions that he did under the circumstances. Moreover, the amount of the fees is not unreasonable.

In his objection to the proposed order awarding attorney fees, defendant's lawyer alleged that the circuit court's clerk required him to set a hearing date in order to file the motion. On appeal, defendant reiterates that the trial court's clerk would not accept his motion without noticing a hearing date. If the trial court—through the circuit court staff—required defendant to file a notice of hearing along with his motion for reconsideration, notwithstanding the provisions of MCR 2.119(F)(2), then the trial court certainly could not fault him for doing so. Under such

circumstances, it would be an abuse of discretion for a trial court to sanction a party for complying with the clerk's requirements.¹ Nevertheless, defendant has not developed this argument on appeal. And, at a hearing held in February 2011, the trial court specifically asked defendant's lawyer why he noticed the hearing and he responded that he did so because he wanted the hearing: "Because we—we did want a hearing on it, but we're not entitled to it as—as the court rules are plainly clear on that, but we did want a hearing on that." Accordingly, on this record, we cannot conclude that the trial court's award of attorney fees fell outside the range of reasonable and principled outcomes. *Smith*, 278 Mich App at 207.

Affirmed. As the prevailing party, plaintiff may tax her costs. MCR 7.219(A).

/s/ Henry William Saad

/s/ Kirsten Frank Kelly

/s/ Michael J. Kelly

¹ MCR 2.119(F)(2) permits a trial court to otherwise direct that there be oral arguments on a motion for reconsideration. As such, where a trial court's staff directs a movant to notice a hearing on a motion for reconsideration, the movant cannot be faulted for treating this as direction from the trial court requiring the hearing. If the trial court does not want a hearing on every motion for reconsideration, it should be certain that the clerk is not requiring a notice of hearing on motions for reconsideration.