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NO. COA05-1062

NORTH CAROLINA COURT OF APPEALS

Filed: 01 August 2006

CHRISTOPHER C. FICKEL,

Plaintiff,

v.

Buncombe County  
No. 03 CVD 4357

SHARON ROSE FICKEL,

Defendant.

Appeal by plaintiff from order entered 11 March 2005 by Judge Marvin P. Pope in Buncombe County District Court. Heard in the Court of Appeals 28 March 2006.

*Mary Elizabeth Arrowood for plaintiff-appellant.*

*Thomas B. Kakassy for defendant-appellee.*

ELMORE, Judge.

This appeal arises from the district court's award of attorney fees in an alimony action to Sharon Fickel (wife), the dependent spouse, to be paid by Christopher Fickel (husband) as the supporting spouse. Husband contends on appeal that the order awarding the fees is unsupported by appropriate findings.

Notably, the district court entered a sixteen-page alimony order containing more than sixty findings of fact following a two-day hearing on alimony. In this 7 February 2005 order it found, in part, that wife had incurred attorney fees for prosecution of the

alimony action for which she does not have the means to pay. The district court also found that husband does have the means to pay these fees and expenses. Further, wife's attorney's affidavit submitted in support of an amount of fees was improper due to the fact that it "included all hourly charges and expenses for all aspects of this case. . . . An affidavit concerning legal expenses for the alimony issue only is necessary." Based in part on these findings, and the conclusion that wife is a dependant spouse and husband is a supporting spouse, the district court concluded that wife should be awarded fees for the alimony action. As such, within the alimony order entered 7 February 2005, the district court ordered:

That counsel for the Defendant-Wife is instructed to prepare an affidavit outlining time expended by him in the drafting, preparation for and/or trial of this alimony action only including but not limited to his legal expertise, hourly rate charged and itemized expenses for this alimony portion of this action within ten calendar days of this Order, exhibited the same to opposing counsel prior to submission to the Court.

Two days after this order, wife's counsel served on husband and filed with the court an affidavit outlining his experience, hourly rate, and an itemized list of time and expenses related only to the alimony action. Neither party appealed or otherwise found error in the 7 February 2005 alimony order of the district court. And after a month of having counsel's affidavit of fees, husband filed no exceptions or alerted the district court to any objections concerning the affidavit and itemized account of fees and expenses.

Then, just a month after its alimony order, the district court, pursuant to N.C. Gen. Stat. § 50-16.4, entered its 11 March 2005 order awarding \$5,141.00 in attorney fees to wife based on the affidavit submitted.

Our review of an order pursuant to N.C. Gen. Stat. § 50-16.4 (2005), which states that in an action for alimony "the court may . . . enter an order for reasonable counsel fees for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony," is two-fold. First, we review *de novo* the trial court's determination that "(1) the spouse is entitled to the relief demanded; (2) the spouse is a dependent spouse; and (3) the dependent spouse has not sufficient means whereon to subsist during the prosecution of the suit and to defray the necessary expenses thereof." *Hudson v. Hudson*, 299 N.C. 465, 473, 263 S.E.2d 719, 724 (1980). Second, if attorney fees are properly awarded, the district court's determination of the actual amount awarded is reviewed only for an abuse of discretion. *Walker v. Walker*, 143 N.C. App. 414, 424, 546 S.E.2d 625, 631 (2001) (quoting *Clark v. Clark*, 301 N.C. 123, 136, 271 S.E.2d 58, 67 (1980)). A district court's findings and conclusions supporting its determination regarding these statutory factors are critical to our review. See *Friend-Novorska v. Novorska*, 143 N.C. App. 387, 396-97, 545 S.E.2d 788, 795, *per curiam aff'd*, 354 N.C. 564, 556 S.E.2d 294 (2001); *Brown v. Brown*, 47 N.C. App. 323, 327-28, 267 S.E.2d 345, 348-49 (1980). Absent appropriate findings, the order is subject to reversal. See *id.*

Based on this standard of review, husband contends critical findings related to the three statutory factors are missing from the 11 March 2005 award order and it should be reversed. While perhaps true that these findings are missing from the 11 March 2005 order awarding a specified amount of fees, the alimony order more than adequately found, concluded, and ordered *the payment* of fees.

The later hearing and 11 March 2005 order covers only the reasonableness *of the amount*. This is essentially due to the fact that wife's counsel's previous affidavit covered more fees than assignable under the statute, and rather than violate the statute's mandates and enter an unsupported order for a specific amount, the district court ordered a new affidavit to be filed. We refuse to ignore the copious findings by the district court supporting the award of fees to wife in the 7 February 2005 alimony order and, as husband contends, reverse the 11 March 2005 order because it lacks all the necessary findings within its four corners. Indeed, most orders awarding fees that have been reviewed by our appellate courts are part of the alimony order itself.

As such, we hold there were sufficient findings supporting the necessary determination that wife was entitled to attorney fees. The award amount, reviewable for an abuse of discretion, is equally proper. The district found that "upon examination of the Affidavit, the charges appear to be in accordance with the fees normally charged in western North Carolina for domestic family court work and are consistent with the hours necessary to try an alimony action of this type." Further, the court found that

husband "has the financial ability to compensate the Defendant-Wife for the attorney fees incurred in the alimony action." Husband did not assign error to these findings and they are binding on us. See *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("Findings of fact to which a respondent did not object are conclusive on appeal.") (citing *In re Wilkerson*, 57 N.C. App. 63, 65, 291 S.E.2d 182, 183 (1982)). After reviewing the evidence before the district court, we cannot conclude it abused its discretion in awarding the amount of fees supported by counsel's affidavit.

Accordingly we affirm the district court's order and award of counsel fees in the amount of \$5,141.00.

Affirmed.

Judges WYNN and LEVINSON concur.

Report per Rule 30(e).