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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-539

No. COA20-640

Filed 5 October 2021

Wake County, No. 16 CVD 3067

JESSICA GAINEY, Plaintiff,

v.

GAIL OLSON, Defendant.

Appeal by defendant from orders entered 7 May 2018 and 25 November 2019 by Judge Anna E. Worley in Wake County District Court. Heard in the Court of Appeals 8 June 2021.

Jackson Family Law, by Jill Schnabel Jackson, for plaintiff-appellee.

Rik Lovett & Associates, by S. Thomas Currin II, for defendant-appellant.

DIETZ, Judge.

¶ 1

Defendant Gail Olson appeals several separate orders awarding attorneys' fees in this contentious family law proceeding. As explained below, the trial court's findings of fact concerning the reasonableness of those fees were supported by competent evidence in the record and those findings, in turn, supported the court's conclusions of law. Likewise, the trial court's ultimate determinations of the amount of attorneys' fees to award were reasoned ones and well within the court's sound

discretion. We therefore affirm the challenged orders.

Facts and Procedural History

¶ 2 Jessica Gainey and Gail Olson were married in 1989 and separated in 2015. Gainey commenced this action in March 2016 by filing a complaint for post-separation support, alimony, equitable distribution, and attorneys' fees. The net value of the marital estate was \$57,950.55.

¶ 3 The discovery phase of this proceeding involved significant motions practice that led the trial court to grant motions compelling Olson to respond to Gainey's discovery requests. The court ultimately sanctioned Olson for "willful obstruction and unreasonable delay of the discovery proceedings."

¶ 4 In May 2018, the trial court awarded Gainey attorneys' fees in the amount of \$2,000 for the first motion to compel and \$1,884 for the second motion to compel. The parties then proceeded to trial on the issues of equitable distribution, alimony, attorneys' fees, sanctions, and competing motions for contempt. The court held a trial on these matters over several days in June 2019 and a follow-up hearing later that month.

¶ 5 In November 2019, the trial court entered orders awarding Gainey \$50,000 in attorneys' fees for the pursuit of her alimony and post-separation support claims and \$30,000 in attorneys' fees as a sanction for discovery violations. Olson timely appealed the attorneys' fees orders.

Analysis

I. Challenge to attorneys' fees award in the May 2018 order

¶ 6

We begin with Olson's challenge to the May 2018 order awarding attorneys' fees on Gainey's two motions to compel during discovery. Olson first argues that the findings of fact in that order are not based on competent evidence because the trial court relied on affidavits handed up at the hearing and "neither affidavit was moved or admitted into evidence." We reject this argument.

¶ 7

Gainey served those affidavits on Olson's counsel before the hearing and then submitted the affidavits to the trial court at the hearing. Olson had the opportunity to dispute the affidavits at the hearing and did so, challenging certain time entries in the affidavits. Finally, the record indicates that the trial court reviewed the affidavits and relied on them to make its findings. Given these facts, we hold that the affidavits properly were before the trial court and the court was entitled to rely on them in ruling on the attorneys' fees issue. *See Hennessey v. Duckworth*, 231 N.C. App. 17, 24, 752 S.E.2d 194, 200 (2013).

¶ 8

Olson next argues that the trial court's finding that Gainey's counsel's fees were "reasonable and comparable, to the rates charged by lawyers similarly situated considering the skills required and the services rendered with respect to this case" is not supported by competent evidence. Again, we disagree. These findings are based on the sworn affidavits of Gainey's counsel, and the trial court was permitted to credit

that sworn testimony in assessing the reasonableness of fees. If Olson believed the testimony in those affidavits was not accurate, the appropriate course was to introduce counter-evidence or to challenge the averments in the affidavit through the adversarial process at the hearing.

¶ 9 Finally, Olson argues that the trial court's findings are insufficient to support its conclusions of law and corresponding award of fees. We likewise reject this argument. Unlike the findings in *Owensby v. Owensby*, 312 N.C. 473, 477, 322 S.E.2d 772, 774 (1984), on which Olson relies, the trial court's findings in this case explained that the fees were calculated using the hourly rates of counsel based on their time expended on the matter. The court made findings about counsel's training and skill and then found that counsel's rates were reasonable and comparable to rates of other similarly skilled attorneys in the community. These findings sufficiently detailed "the nature and scope of the legal services rendered, the skill and time required, the attorney's hourly rate, and its reasonableness in comparison with that of other lawyers." *Cobb v. Cobb*, 79 N.C. App. 592, 595, 339 S.E.2d 825, 828 (1986). Accordingly, we affirm the trial court's attorneys' fees award in the May 2018 order.

II. Challenge to attorneys' fees in the November 2019 orders

¶ 10 Olson next challenges the award of attorneys' fees in the trial court's November 2019 orders. The trial court considered six affidavits in awarding attorney fees in those orders. Gainey introduced four affidavits into evidence during the trial as

Plaintiff's Exhibits 65A (Heidi Bloom), 65B (Jennifer Bradley), 65C (Lindsay Willis), and 65D (Stephanie Kasten). Gainey submitted two amended fee affidavits to the trial court, from Bloom and Kasten, after the trial concluded. These two affidavits updated the previously submitted affidavits (Exhibits 65A and 65D).

¶ 11 As with the May 2018 order, Olson first argues that the findings of fact in the November 2019 orders are not based on competent evidence because the trial court relied on the two affidavits submitted after the trial concluded and thus “after an ability to cross-examine on the affidavits.” We reject this argument for the same reasons we rejected the similar arguments for the May 2018 order. Gainey served those supplemental affidavits on Olson’s counsel before submitting them to the trial court. The trial court held an additional hearing after receiving those amended affidavits and, although the parties concede there is no record of what occurred in that follow-up hearing, the record indicates that Olson had notice and an opportunity to be heard with respect to those amended affidavits. Finally, the record indicates that the trial court reviewed the affidavits and relied on them to make its findings. Given these facts, we hold that the affidavits were properly before the trial court and the court was entitled to rely on them in ruling on the attorneys’ fees issue. *See Hennessey*, 231 N.C. App. at 24, 752 S.E.2d at 200.

¶ 12 Olson next argues—again, as he did with the May 2018 order—that the trial court’s finding that Gainey’s counsel’s fees were “reasonable and comparable to the

rates charged by lawyers similarly situated considering the skills required and the services rendered with respect to this case” is not supported by competent evidence. But again, these findings are based on the sworn affidavits of Gainey’s counsel, and the trial court was permitted to credit that sworn testimony in assessing the reasonableness of the fees. Olson contends that Bradley’s affidavit does not contain an express statement that her fees were reasonable, but Bradley’s fees were roughly fifteen percent less than Bloom’s, and thus the trial court, given the court’s familiarity with the customary rates in the community, properly could find that Bradley’s rates, like Bloom’s, were reasonable and comparable to similarly situated counsel, given their respective skill and experience and the available evidence in the record. As with the May 2018 order, if Olson believed this evidence of reasonableness was inaccurate, the appropriate course was to introduce counter-evidence or to challenge the averments in the affidavit through the adversarial process at the trial and follow-up hearing.

¶ 13 Finally, Olson again argues that the trial court’s findings are insufficient to support its conclusions of law and corresponding award of fees. But again, as with the May 2018 order, the trial court made findings about counsel’s training and skill and then found that counsel’s rates were reasonable and comparable to rates of other similarly skilled attorneys in the community. These findings sufficiently detailed “the nature and scope of the legal services rendered, the skill and time required, the

attorney's hourly rate, and its reasonableness in comparison with that of other lawyers." *Cobb*, 79 N.C. App. at 595, 339 S.E.2d at 828.

III. Attorneys' fees award in excess of the net marital estate

¶ 14 Lastly, Olson argues that the trial court abused its discretion because the total attorneys' fees of \$83,884 awarded to Gainey exceeded the \$57,950.55 value of the parties' net marital estate subject to equitable distribution.

¶ 15 "The decision regarding whether to award attorney's fees lies solely within the discretion of the trial judge, and that such allowance is reviewable only upon a showing of an abuse of the judge's discretion." *Slaughter v. Slaughter*, 254 N.C. App. 430, 439–40, 803 S.E.2d 419, 425–26 (2017). "As such, the trial court's order will not be disturbed absent a showing that the order was manifestly unsupported by reason or that it was so arbitrary that it could not have been the result of a reasoned decision." *Crist v. Crist*, 145 N.C. App. 418, 424, 550 S.E.2d 260, 265 (2001).

¶ 16 Here, the trial court made unchallenged findings that Olson's separate assets, not subject to equitable distribution between the parties, were valued at more than \$1,300,000. Olson had gross income of \$7,099 per month. Simply put, this was a contentious and lengthy family law proceeding and, although the value of the marital estate was relatively small, the trial court's decision to award attorneys' fees in excess of the value of the marital estate was a reasoned one, and certainly not arbitrary, given the extent of the litigation and the court's findings of the reasonable fees

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incurred by Gainey. We thus hold that the trial court did not abuse its discretion in awarding these attorneys' fees.

Conclusion

¶ 17

We affirm the trial court's orders.

AFFIRMED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).