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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-38

Filed 19 September 2023

Iredell County, No. 18 CVD 3017

JAMES MARECIC, Plaintiff,

v.

JOANNA BAKER, Defendant.

Appeal by plaintiff from order entered 26 August 2022 by Judge Thomas R. Young in Iredell County District Court. Heard in the Court of Appeals 22 August 2023.

*Patricia L. Riddick, PLLC, by Patricia L. Riddick, for plaintiff-appellant.*

*Arnold & Smith, PLLC, by Ashley A. Crowder, for defendant-appellee.*

ARROWOOD, Judge.

James Marecic (“plaintiff”) appeals from the trial court’s award of attorney’s fees to Joanna Baker (“defendant”) following child custody and child support proceedings. For the following reasons, we affirm.

I. Background

MARECIC V. BAKER

*Opinion of the Court*

Plaintiff and defendant (collectively, “the parties”) are the biological parents to one minor child (“R.J.M.”) born on 14 February 2012. Defendant has two older children from a prior marriage. Although the parties never married, they purchased real estate together in North Carolina and Florida. During the course of their relationship, defendant lived and worked in Pennsylvania until moving to North Carolina full-time in 2015. For a period of time between 2012 and 2017, the parties and the children resided together at their property located on Queen’s Cove Road in Mooresville, North Carolina.

Subsequent to the end of the parties’ relationship in January 2017, defendant and her two children moved into an apartment while plaintiff continued living in the Queen’s Cove residence. Throughout their separation, the parties shared custody of R.J.M. Plaintiff also “continued to pay for all or substantially all of” defendant’s living expenses including the expenses associated with R.J.M. and defendant’s two children.

Plaintiff filed a complaint for child custody, child support, attorney’s fees, and a motion for alternative dispute resolution on 5 December 2018. On 6 December 2018, defendant filed a complaint for conversion and replevin of personal property, child custody, child support, attorney’s fees, and a motion for a child custody evaluation. The actions were consolidated by consent of the parties into file number 18 CVD 3017 on 28 January 2019. On 14 February 2019, defendant filed an answer and counterclaims reasserting the allegations contained in her original complaint.

On 27 March 2019, the parties entered into a temporary child custody consent order. A second order for temporary child custody was entered on 12 July 2019. Following a hearing before the Honorable Bryan Corbett, an order for permanent child custody was entered on 20 May 2021. The parties were granted shared custody of R.J.M. “on a ‘2-2-3’ day rotating schedule.” On 9 May 2022, the trial court entered an order for child support.

On 22 June 2022, defendant’s counsel filed his affidavit for attorney’s fees indicating the legal expenses incurred totaled \$45,884.15. On 9 August 2022, defendant’s request for attorney’s fees was heard before Judge Young. On 26 August 2022, the trial court entered an order requiring plaintiff to pay defendant’s counsel the requested amount. Plaintiff entered notice of appeal on 21 September 2022.

## II. Discussion

Plaintiff contends the trial court erred and abused its discretion by awarding defendant attorney’s fees. Specifically, plaintiff argues the trial court: (1) erred by concluding defendant was entitled to seek attorney’s fees; (2) erred in finding and concluding that defendant was unable to defray the expenses of litigation; (3) erred by awarding attorney’s fees without delineating which expenses were for the child support and child custody dispute; and (4) abused its discretion by finding plaintiff refused to provide “an amount of support adequate under the circumstances when the suit was initiated.” We disagree.

“A party can recover attorney’s fees only if ‘such a recovery is expressly authorized by statute.’” *Burr v. Burr*, 153 N.C. App. 504, 506, 570 S.E.2d 222, 224 (2002) (citation omitted). Whether the statutory requirements have been satisfied for an award of attorney’s fees is a question of law, reviewable on appeal. *Hudson v. Hudson*, 299 N.C. 465, 472, 263 S.E.2d 719, 724 (1980) (citation and quotation marks omitted). In a custody and child support action, once the statutory requirements have been met, “the amount of attorney’s fees is within the sound discretion of the trial judge and is only reviewable for an abuse of discretion.” *Atwell v. Atwell*, 74 N.C. App. 231, 237-38, 328 S.E.2d 47, 51 (1985) (citation omitted).

N.C. Gen. Stat. § 50-13.6 governs the award of attorney’s fees in a custody and support action and expressly provides, in relevant part:

In an action or proceeding for the custody or support, or both, of a minor child, . . . the court may in its discretion order payment of reasonable attorney’s fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit. Before ordering payment of a fee in a support action, the court must find as a fact that the party ordered to furnish support has refused to provide support which is adequate under the circumstances existing at the time of the institution of the action or proceeding[.]

N.C. Gen. Stat. § 50-13.6 (2022). Pursuant to N.C. Gen. Stat. § 50-13.6, before ordering an award of attorney’s fees, the trial court is required to make specific findings of fact pertaining to whether: “(1) the interested party acted in good faith; (2) he or she had insufficient means to defray the expenses of the action; and (3) the

supporting party refused to provide adequate support under the circumstances existing at the time the action or proceeding commenced.” *Davignon v. Davignon*, 245 N.C. App. 358, 365, 782 S.E.2d 391, 396 (2016) (citation and internal quotation marks omitted). “A party has insufficient means to defray the expense of the suit when he or she is ‘unable to employ adequate counsel in order to proceed as litigant to meet the other [party] as litigant in the suit.’” *Taylor v. Taylor*, 343 N.C. 50, 54, 468 S.E.2d 33, 35 (citation omitted), *reh’g denied*, 343 N.C. 517, 472 S.E.2d 25 (Mem) (1996).

When determining whether a party has insufficient means to defray the expenses of litigation, our Supreme Court previously held:

[W]hile the trial court should focus on the disposable income and estate of [the party requesting attorney’s fees], it should not be placed in a straitjacket by prohibiting any comparison with [the other party’s] estate, for example, in determining whether any necessary depletion of [the party seeking attorney’s fees]’ estate by paying her own expenses would be reasonable or unreasonable.

*Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998). Thus, “the trial court is not *required* to consider the financial circumstances of the party ordered to pay attorney’s fees[;]” however, “the trial court is *allowed*, in its discretion, to consider the financial circumstances of the party ordered to pay and to compare the financial situations of the parties.” *Schneider v. Schneider*, 256 N.C. App. 228, 233, 807 S.E.2d 165, 168 (2017) (citation omitted) (emphasis in original). It would be at odds with “the intent of the legislature to require one seeking an award of attorney’s fees to

meet the expenses of litigation through the unreasonable depletion of her separate estate where her separate estate is smaller than that of the other party.” *Cobb v. Cobb*, 79 N.C. App. 592, 596-97, 339 S.E.2d 825, 828 (1986) (citation omitted).

Furthermore, under the express allocation of “*reasonable* attorney’s fees,” our case law has placed “additional requirement[s] concerning reasonableness onto the express statutory ones.” *Id.* at 595, 339 S.E.2d at 828 (citation omitted) (emphasis in original). “Namely, the record must contain additional findings of fact . . . regarding 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.” *Id.* (citations omitted).

Here, the trial court made sufficient factual findings regarding the statutory requirements of N.C. Gen. Stat. § 50-13.6. The trial court found defendant was an interested party acting in good faith, was unable to defray the expenses of the suit, and that plaintiff refused to provide adequate support under the circumstances existing at the institution of the proceeding. *Taylor*, 343 N.C. at 54, 468 S.E.2d at 35. Plaintiff’s assertion that the trial court awarded defendant attorney’s fees solely upon “the basis of her being the prevailing party” is misplaced.

Plaintiff also challenges the trial court’s findings and conclusions that defendant would be required to deplete assets from her estate, when defendant “had the means to pay her [legal expenses] from her monthly income.” As set forth below, the trial court’s findings indicate otherwise. Plaintiff further contends the trial court

erred by failing to “parse out which billing related to child support, as opposed to child custody, conversion, or partitioning.” This argument is similarly misplaced. The trial court considered this argument at trial and its award was supported by defendant counsel’s invoice and affidavit of attorney’s fees. Lastly, plaintiff asserts he did not “‘refuse[ ]’ to pay adequate support,” “[r]ather, [he] provided voluntary support based on his best assessment of the reasonable needs of the child[.]” We disagree.

When the trial court entered its child support order on 9 May 2022, it made substantial findings regarding plaintiff’s income and found plaintiff’s monthly net income exceeds \$30,000.00. During the hearing on defendant’s request for attorney’s fees, the trial court took judicial notice of these findings. Plaintiff does not dispute the large income disparity between the parties nor does he challenge the trial court’s findings regarding defendant’s disposable income.

In its order of attorney’s fees, the trial court found, in pertinent part:

5. The [p]laintiff initially provided significant financial assistance to the [d]efendant until November of 2018, amounting to approximately \$2500.00 a month. At that point, [plaintiff] reduced his support to \$1000.00 a month, contemporaneously with the [d]efendant undertaking a dating relationship with a third party.
6. As a result in the reduction of support to \$1000.00, the [d]efendant experienced financial difficulties adjusting from \$2500.00 to \$1000.00 per month. This was complicated by the fact that the [d]efendant was in the midst of a career change to becoming (sic) lateral entry teacher with the Iredell Statesville School System.

MARECIC V. BAKER

*Opinion of the Court*

7. The [d]efendant earned in 2018 an adjusted gross income of \$41,508.00. This amounts to \$3459.00 per month. The income received by the [d]efendant consisted of earnings from multiple sources including wage income, rental income, and investment income.
8. The [d]efendant also has certain properties which she owned in 2018 including a property in Florida with a value of approximately \$225,000; a rental commercial property in Pennsylvania valued at approximately \$260,000.00; and a residence in North Carolina valued at \$500,000.00[.]
9. In addition, the [d]efendant received social security benefits derived from a death benefit for the benefit of the [d]efendant as well as the minor children in 2018 who were the issue of the [d]efendant's deceased husband. This amount approximated \$2000.00 each month.
10. The [d]efendant's 2018 adjusted gross income of \$41,508.00 was supplemented by assets including a primary residence in North Carolina; a residential rental property in Pennsylvania in Florida; and rental income from a commercial lease in Pennsylvania. The aggregate value of these properties amount to a sum approaching \$500,000,000.00 (sic).
11. The [d]efendant's 2018 debts consisted of multiple mortgages for the rental properties and other expenses associated with the rental properties which amounted to \$17839.00 (sic), substantially offsetting the income of \$33,300.00 leaving a net disposable income of \$4217.00.

Furthermore, the trial court found that “the average cost of legal fees during the thirty months from November 2018 to May 2022 amounted to \$1529.47 each month. Subtracting such expenses from the [d]efendant's net disposable income



would reduce it to \$2687.53.” Regarding the reasonable depletion of defendant’s estate, the trial court found:

While the [d]efendant could have utilized all of her disposable income to offset legal fees, it would not have been unreasonable for her to have liquidated other assets of her estate to satisfy these expenses, especially given that the legal fees billed were not uniform from month to month. Accordingly, the Court does find that it was reasonable for the [d]efendant to have (sic) deplete her resources from her estate in paying attorney fees that have thus far accrued.

When considering whether plaintiff refused to provide adequate support under the circumstances existing at the time of the institution of the action, the trial court found:

Based upon the totality of the circumstances found in this Order, the Court finds that given the presumptive child support award was determined by the Court to be \$1923.09 and the actual reasonable needs of the minor child alone amounted to \$1534.00, the [plaintiff’s] mere payment of \$1000.00 per month was inadequate under the circumstances at the time of the institution of the child support action.

The trial court also made sufficient findings pertaining to the reasonableness of the attorney’s fees requested:

18. The Court has received the [d]efendant’s Affidavit of Attorney Fees and Costs. Based on the same, the Court makes the following special findings:
  - A. [Defendant’s attorney] is a highly skilled and experienced attorney with over seventeen years of practice experience, in the area of civil and domestic relations representation. His hourly rate for services rendered is \$350.00 an hour. Other

MARECIC V. BAKER

*Opinion of the Court*

attorneys in the firm who may have involvement with a given case bill at \$250.00 an hour, with paralegal rates of \$100.00 an hour. These rates are in line with the rates of equally skilled and experienced legal practitioners in the area of domestic relations as well as the fees charged for paralegal services in Iredell County.

- B. The Court has reviewed the hours billed by [defendant's attorney] and has noted the considerable challenge mounted by the [p]laintiff to a number of line items within the [d]efendant's billing documents. Considering the totality of the evidence before the Court, the Court is persuaded that the amount of billable hours reflected on the [d]efendant's Affidavit are correct. While the amount of attorney fees assessed against the [d]efendant, to wit, \$45884.15 (sic) is a tremendously large sum, the Court has considered the 314 separate actions taken by [defendant's attorney] on behalf of the [d]efendant from November 12, 2018 to May 11, 2022 as well as the complexity of the litigation, involving as it did the prosecution of an off-guidelines child support case, the Court finds the amount claimed to be reasonable as are the associated expenses.

Our precedent is clear, the purpose “of N.C. Gen. Stat. § 50-13.6 is to allow the trial court the discretion to ensure one parent in a custody action will not have an inequitable advantage over the other parent—based upon a parent’s inability to afford qualified counsel.” *Blanchard v. Blanchard*, 279 N.C. App. 269, 277, 865 S.E.2d 686, 692 (2021) (citation omitted). And once “the statutory requirements have been met, the amount of attorney’s fees to be awarded rests within the sound discretion of the

trial judge and is reviewable on appeal for abuse of discretion.” *Hudson*, 299 N.C. at 472, 263 S.E.2d at 724 (citations omitted) (emphasis omitted).

As set forth above, the record reveals substantial findings regarding the requirements of N.C. Gen. Stat. § 50-13.6 and these findings are adequately supported by the evidence presented at trial, found in the child support and attorney fee orders, and illustrated by defendant’s affidavit of attorney’s fees. The trial court’s findings also “contain additional findings of fact upon which a determination of the requisite reasonableness [of the attorney’s fees] can be based, such as findings regarding 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.” *Smith v. Barbour*, 195 N.C. App. 244, 255, 671 S.E.2d 578, 586 (citation and internal quotation marks omitted) (alterations in original), *disc. review denied*, 363 N.C. 375, 678 S.E.2d 670 (Mem) (2009). “[O]nly the trial may determine the credibility and weight of the evidence and what inferences to draw from the evidence.” *Id.* Plaintiff’s arguments to the contrary are overruled. Accordingly, the attorney’s fees award is affirmed.

### III. Conclusion

For the foregoing reasons, the trial court’s award of \$45,884.15 of attorney’s fees to defendant is affirmed.

AFFIRMED.

MARECIC V. BAKER

*Opinion of the Court*

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).