

IN THE UTAH COURT OF APPEALS

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Gary L. Gaudette,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20051079-CA	
v.)		
)		
Tina R. Gaudette nka Tina R.)	F I L E D	
Park,)	(February 16, 2006)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2006 UT App 55</td></tr></table>	2006 UT App 55
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Eighth District, Vernal Department, 044800001
The Honorable John R. Anderson

Attorneys: Gary L. Gaudette, Vernal, Appellant Pro Se
 Clark B. Allred, Vernal, for Appellee

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

Gary L. Gaudette (Husband) appeals an order of the trial court. This case is before the court on its own motion for summary disposition. See Utah R. App. P. 10(e).

The trial court issued an order to show cause why Husband should not be found in contempt for failing to make court-ordered alimony payments. Tina R. Gaudette (Wife) averred that Husband was in arrears. At the time of the hearing, Husband had nearly brought these payments current. For his efforts, the trial court ruled that Husband should not be found in contempt. However, the trial court ordered Husband to pay Wife's attorney fees incurred as a result of the order to show cause proceeding. On appeal, Husband challenges the trial court's order regarding attorney fees.

Utah law is clear: "In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense." Utah Code Ann. § 30-3-3(2) (Supp. 2005). "In an action to enforce the provisions of a divorce decree, an award of attorney fees is based solely upon

the trial court's discretion, regardless of the financial need of the moving party." Lyngle v. Lyngle, 831 P.2d 1027, 1030 (Utah Ct. App. 1992); see also Moon v. Moon, 1999 UT App 12, ¶33, 973 P.2d 431 (holding that trial court may award costs and attorney fees to party enforcing divorce decree upon determining that the party substantially prevailed upon the claim or defense).

The trial court based its award of attorney fees on Husband's failure to timely pay alimony and on the fact that this failure required Wife to take legal action. We see no abuse of discretion in the trial court's decision. In addition, because Wife was awarded attorney fees below for her efforts to enforce the decree through the order to show cause, and because she prevailed on appeal on this issue, we award attorney fees reasonably incurred on appeal to Wife. See Moon, 1999 UT App 12 at ¶33.

Accordingly, we affirm the award of attorney fees and "remand for entry of reasonable fees" incurred on appeal. Id.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge