

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lawrence E. Kellogg,
Appellant-Respondent,

v.

Mary C. Reynard,
Appellee-Petitioner.

July 17, 2023

Court of Appeals Case No.
22A-DN-2776

Appeal from the
Jay Circuit Court

The Honorable
Brian D. Hutchison, Judge

Trial Court Cause No.
38C01-1812-DN-88

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Lawrence E. Kellogg (“Kellogg”) appeals the trial court’s award of attorney’s fees following a failed appeal of the dissolution of his marriage to Mary C. Reynard (“Reynard”). Kellogg contends that the trial court failed to take into account his relative economic circumstances and erroneously awarded the fees despite an absence of evidence of misconduct on Kellogg’s part. We disagree. Accordingly, we affirm the trial court.

Facts and Procedural History

[2] Reynard filed for divorce from Kellogg in December of 2018. The trial court divided the marital estate equally, and Kellogg appealed the final decree of dissolution. We rejected his arguments and affirmed the trial court. *Kellogg v. Reynard*, 184 N.E.3d 677 (Ind. Ct. App. 2022) (mem.). Thereafter, Reynard filed three separate motions in the trial court, namely: Wife’s Verified Motion for Award of Attorney’s Fees, Motion for Rule to Show Cause, and Motion for Proceeding Supplemental.

[3] The trial court conducted a hearing on the motions on September 13, 2022. Reynard testified that she felt she needed to hire an attorney to litigate Kellogg’s first appeal and paid a flat fee of \$5,000, which she had to borrow from a friend. She explained that she is a home care aide earning twelve dollars and seventy cents an hour, but only worked part time as of the date of the hearing. Reynard then introduced an exhibit demonstrating that she had incurred an additional \$3,380 in post-appeal attorney’s fees “to prepare petitions and [] motions and to prepare [Reynard] and appear in today’s hearing[.]” Tr. Vol. II p. 9. Kellogg also testified, and the parties established that he receives between \$3,500 and

\$4,000 per month in disability benefits, as well as a small income from renting his property. He is not able to work, however, given his disability.

- [4] The trial court issued its order on September 14, 2022, concluding that: “Pursuant to Ind. Code § 31-15-10-1, after hearing and considering evidence of the parties’ financial circumstances, the court awards Petitioner, and orders Respondent to pay, \$3,000.00 for Petitioner’s appellate attorney’s fees and \$3,000.00 for her current trial court attorney’s fees[.]” Appellant’s App. Vol. II p. 15. The order did not include the trial court’s reasoning. The court also found Kellogg in contempt for failing to sign over title to a motorcycle (but issued no sanction) and that Reynard was entitled to post-judgment interest on the cash equalization payment. Kellogg appeals only the award of attorney’s fees.

Discussion and Decision

- [5] ““We review a trial court's award of attorney’s fees for an abuse of discretion.”” *Minser v. DeKalb Cnty. Plan Comm’n*, 170 N.E.3d 1093, 1102 (Ind. Ct. App. 2021) (quoting *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020)). ““An abuse of discretion occurs when the court’s decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law.”” *Id.* ““To make this determination, we review any findings of fact for clear error and any legal conclusions de novo.”” *Id.*

Generally, Indiana has consistently followed the American Rule in which both parties generally pay their own fees. In the absence of statutory authority or an agreement between the

parties to the contrary—or an equitable exception—a prevailing party has no right to recover attorney fees from the opposition.

Id. (quoting *BioConvergence, LLC v. Menefee*, 103 N.E.3d 1141, 1160 (Ind. Ct. App. 2018), *trans. denied*). Here, a statute “permit[s] a deviation from the American Rule: Indiana Code section 31-15-10-1 allows trial courts to award appellate attorney’s fees in dissolution proceedings” *Bousum v. Bousum*, 173 N.E.3d 289, 293 (Ind. Ct. App. 2021). The statute provides that:

The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney’s fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

Ind. Code § 31-15-10-1.

[6]

In determining whether to order a party to pay some or all of the other party’s attorney’s fees, the trial court may consider “the parties’ resources, economic condition, ability to engage in gainful employment and earn income, and other factors bearing on the reasonableness of the award.” *Ahls v. Ahls*, 52 N.E.3d 797, 803 (Ind. Ct. App. 2016) (citation omitted). In considering these factors, the court promotes “the legislative purpose for awarding attorney’s fees, that is, to insure that a party in a dissolution proceeding who could not otherwise afford an attorney is able to retain representation.” *Id.*

Israel v. Israel, 189 N.E.3d 170, 179 (Ind. Ct. App. 2022), *trans. denied*.

[7] We cannot say that the trial court's attorney's fee award was an abuse of its discretion. As we previously found:

As for the parties' earning abilities, both have significant setbacks. Husband is disabled and relies on disability income and income from renting the land, while Wife also suffered from several strokes during the marriage and was diagnosed with PTSD, affecting her ability to work. Wife recently got a job in home healthcare making \$11.20 an hour. There is no evidence in the record as to the amount of income Husband receives from disability and the land. But presumably it is more than or similar to Wife's, considering he was ordered to pay temporary spousal maintenance even after she was employed.

Kellogg, 184 N.E.3d at *3. Reynard testified that she lives below the poverty line and had to borrow \$5,000 from a friend in order to litigate Kellogg's appeal. She explained that, as of the September hearing, she had earned approximately seven thousand dollars. Kellogg, by contrast, receives between \$3,500 and \$4,000 per month in disability benefits. He also generates a small income by renting out his real estate to a farmer. Kellogg was questioned at length about his tangible assets, including several vehicles, farm equipment, and an unspecified number of kayaks. It is quite clear that Kellogg is in a superior financial position. Kellogg claims that the trial court failed to consider the requisite factors, but points to nothing in the record supporting that claim.

[8] We agree with Kellogg that the mere exercise of his right to appeal, with nothing more, does not constitute any misconduct on his part. We further find, however, that there is evidence in the record supporting a conclusion that

Kellogg committed misconduct—or at the very least was less than cooperative—which may support the trial court’s attorney’s fee award.

Reynard testified that Kellogg was ordered to pay her auto insurance until the divorce was final, but failed to do so for six months, resulting in expenses totaling \$302.52. And the trial court found that Kellogg was in contempt for failing to sign over the title of a vehicle in contravention of the dissolution decree.¹ It also appears that Kellogg failed to pay Reynard interest on an equalization payment, apparently based on the mistaken understanding that the interest would not accrue while the appeal was pending. Finally, Reynard attempted to resolve the outstanding decree issues informally—without court intervention—but Kellogg was nonresponsive. The record contains evidence that the attorney’s fees were incurred as a result of the additional litigation following Kellogg’s failed appeal.

[9] A trial court’s discretion in crafting an attorney’s fee award is necessarily broad. *Haggarty v. Haggarty*, 176 N.E.3d 234, 251 (Ind. Ct. App. 2021). Here, the trial court was best positioned to evaluate the circumstances of the parties, balance the equities, and ultimately conclude that an attorney’s fee order, albeit a smaller one than was requested, was appropriate. We find no reason to disturb that determination.

[10] Affirmed.

¹ The trial court imposed no sanction for contempt.

Vaidik, J., and Tavitas, J., concur.