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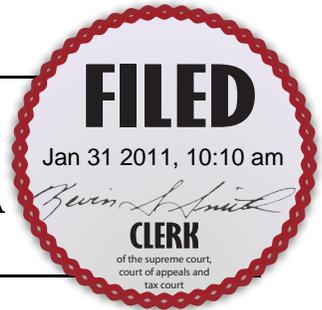
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE THE MARRIAGE OF:)
)
CHARLEEN (TURI) KING,)
)
Appellant-Petitioner,)
)
and) No. 82A01-1006-DR-267
)
KENNETH ROBERT TURI,)
)
Appellee-Respondent.)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable J. Douglas Knight, Judge
Cause No. 82D04-0510-DR-1125

January 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary and Issue

Appellant-Petitioner Charleen (Turi) King (“Charleen”) appeals the trial court’s denial of her motion to correct error following its ruling on her Information for Indirect Contempt, which ordered her ex-husband, Appellee-Respondent Kenneth Robert Turi (“Kenny”), to pay her \$2,286.25. Charleen raises several issues for our review which we consolidate and restate as whether the trial court abused its discretion in denying her motion to correct error. Concluding that the trial court did not abuse its discretion, and that Charleen has engaged in procedural bad faith on appeal, we affirm and remand for a hearing on appellate attorney fee damages.

Facts and Procedural History

Charleen and Kenny’s marriage was dissolved on January 23, 2006, pursuant to the Agreed Final Decree of Dissolution of Marriage. On September 11, 2009, Charleen filed an Information for Indirect Contempt alleging that Kenny had failed to comply with certain provisions of the dissolution decree. Specifically, Charleen alleged that Kenny had failed to pay for certain medical, educational, extracurricular, and vehicular maintenance expenses of their children, as well as credit card debt and a percentage of the parties’ credit union line of credit, all in violation of the dissolution decree. She also requested attorney’s fees connected with the Information for Contempt.

The trial court held a hearing and then issued a decision on January 27, 2010, ordering that Kenny pay Charleen \$2,286.25 at a rate of \$200 per month, beginning on February 15, 2010. Each party was held responsible for his own attorney fees and expenses.

Charleen, *pro se*, timely filed a motion to correct error, which the trial court denied on April 1, 2010. Then, through counsel, she filed a “Motion to Reinstate Motion to Correct Error and/or Motion to Reconsider Dismissal” on April 26, 2010. On May 12, 2010, the trial court granted counsel’s motion to reinstate the motion to correct error, and then denied the motion to correct error. On June 4, 2010, Charleen filed a notice of appeal, purporting to appeal the trial court’s January 27, 2010 order.

Discussion and Decision

Charleen appeals from the trial court’s denial of her Motion to Correct Error. We review such denials for an abuse of discretion. In re Marriage of Blanford, 937 N.E.2d 356, 360 (Ind. Ct. App. 2010). A trial court abuses its discretion when its decision is against the logic and effects of the facts and circumstances before it, together with inferences drawn from these. Id.

Charleen’s underlying asserted error is that the trial court erred in ruling on her Information for Indirect Contempt. Specifically, she maintains that the trial court erred in not awarding her full reimbursement for expenses she paid, not ordering Kenny to pay her half of his pension, 401(k), and G.E. Savings account, and not awarding her attorney’s fees for the hearing.

Indirect contempt is the “[w]illful disobedience of any lawfully entered court order of which the offender had notice.” Henderson v. Henderson, 919 N.E.2d 1207, 1210 (quoting Francies v. Francies, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), trans denied.); See also Ind. Code § 34-47-3-1. We review contempt orders for an abuse of discretion. Piercey v.

Piercey, 727 N.E.2d 26, 31 (Ind. Ct. App. 2000). Again, a court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court, or is contrary to law. Id. When reviewing a contempt order, we consider only the evidence and reasonable inferences drawn therefrom that support the trial court’s judgment. Id. Unless we have a “firm and definite belief” that the trial court made a mistake, the judgment will be affirmed. Id. at 31-32 (quoting In re Marriage of Glendenning, 684 N.E. 2d 1175, 1179 (Ind. Ct. App. 1997), trans. denied).

We note that Charleen did not request a transcript of the Information for Contempt hearing. In her brief, she maintains that “[a] lengthy transcript of ‘he said, she said’ cannot overcome the overwhelming evidence presented in the form of exhibits, receipts and documented unreimbursed expenses by [Charleen].” Appellant’s Br. p. 5. However, Indiana Appellate Rule 9(F)(4) provides that “[i]f the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of the evidence.” Our Supreme Court has also held that, “[a]though not fatal to an appeal, failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.” In re Walker, 665 N.E.2d 586, 588 (Ind. 1996) (quoting Campbell v. Criterion Group, 605 N.E.2d 150, 160 (Ind. 1992), and discussing prior appellate rules). While we may address issues on appeal that do not challenge the trial court’s findings of fact, any arguments that depend upon the evidence presented at trial are waived. Fields v. Conforti, 868 N.E.2d 507, 511 (Ind. Ct. App. 2007).

Here, Charleen argues that the trial court erred in not awarding her requested reimbursement of expenses and half of Kenny's pension, 401(k), and G.E. Savings account. Charleen essentially asks us to reweigh the evidence by considering only the exhibits she presented at trial, and not the testimony of the parties. Because her asserted error depends upon evidence presented at trial, we conclude that she has waived these arguments.

Charleen also contends that the trial court erred when it ordered that the parties were responsible for their own attorney fees, but does not base this argument on any testimony or evidence offered by the parties. Instead, Charleen argues that "an award against Kenny at the trial level makes it clear that he was in fact in breach of the Agreement, and under the terms of the Agreement, attorney fees should have been awarded to Charleen." Appellant's Br. p. 6. The dissolution decree states that "[i]n the event either party breaches this agreement, the breaching party shall be responsible for all of the other party's attorney's fees and costs incurred therein." App. 10. We are not willing to assume the trial court found Kenny in breach. Although the trial court orders Kenny to pay Charleen \$2,286.25, it made no finding as to breach of the dissolution decree. Accordingly, we are unwilling to conclude that the trial court abused its discretion in ordering each party to pay his and her own attorney fees.

Appellate Attorney Fees

Kenny urges us to remand this matter to the trial court for a hearing on an award of attorney's fees based on "both the frivolous appeal and the frivolous demand for unreimbursable expenses made by Charleen throughout this proceeding." Appellee's Br. p. 7. Indiana Appellate Rule 66(E) provides that "[t]he Court may assess damages if an

appeal...is frivolous or in bad faith. Damages shall be in the Court’s discretion and may include attorney’s fees.” Our discretion to award attorney’s fees is limited, however, to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. Thacker v. Wentzel, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). Moreover, while Indiana Appellate Rule 66(E) provides the Court with the discretion to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right of appeal. Id.

Indiana appellate courts have categorized claims for appellate attorney fees into “substantive” and “procedural” bad faith claims. Id. To prevail on a substantive bad faith claim, the appellant’s contentions must be utterly devoid of all plausibility. Id. Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates facts in the record, and files briefs written in a manner calculated to require maximum expenditure of time both by the opposing party and the reviewing court. Id. Even if the appellant’s conduct is not deliberate, procedural bad faith can still be found. Id.

By not requesting a transcript, when such was necessary for resolution of issues raised, Charleen failed to comply with Indiana Appellate Rule 9(F)(4). Nor was this a mere oversight—Charleen acknowledged the lack of transcript but argued in her brief that a transcript was not necessary for appellate review. Appellant’s Br. p. 5. As such, she has willfully disregarded our rules.

Additionally, her appendix does not conform to Indiana Appellate Rule 50 because

she did not include a chronological case summary from the trial court, did not include the appealed judgment or order, and did not include any pleadings necessary for resolution of the issues on appeal. While she included the trial court's order from January 27, 2010, she did not include her motion to correct error or "Motion to Reinstate Motion to Correct Error and/or Motion to Reconsider Dismissal" or any documentation from the trial court denying these motions.

Moreover, her brief contains several defects. Indiana Rule of Appellate Procedure 46(A)(2) requires page citations in the Table of Authorities, which Charleen's does not include. Her brief also does not include the appealed order in accordance with Appellate Rule 46(A)(10); instead, she recites the language of the January 27, 2010 order in the body of her brief under the heading "Appealed Order." Appellant's Br. p. 25.

Charleen's non-compliance with the Indiana Rules of Appellate Procedure was considerable, and, in the case of her missing transcript, willful. Rather than requesting a transcript, Charleen instead submitted a lengthy brief summarizing the exhibits presented at trial. While we are reluctant to exercise our discretion to award appellate attorney's fees, we find that Charleen's conduct in this case warrants such an award. Accordingly, we remand this case to the trial court for a hearing on the appropriate amount of attorney's fees Kenny is entitled to recover as a result of the instant appeal.

Affirmed and remanded.

NAJAM, J., and DARDEN, J., concur.