

STATE OF MICHIGAN
COURT OF APPEALS

SHELLY L. REYNOLDS,
Plaintiff-Appellee,

UNPUBLISHED
October 20, 2009

v

No. 284686
Genesee Circuit Court
LC No. 07-085746-CH

DAVID E. REYNOLDS,
Defendant-Appellant,
and

LAURA REYNOLDS,
Defendant.

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

Defendant David Reynolds appeals as of right the trial court's award of attorney fees and costs to plaintiff Shelly Reynolds after the trial court found that his defenses and counterclaims to Shelly Reynolds' quiet title action were frivolous pursuant to MCL 600.2591. We affirm.

I. Basic Facts And Procedural History

In February 2007, Shelly Reynolds filed an action to quiet title to her property, located at 5501 South Belsay Road, Grand Blanc, Michigan, against David Reynolds and his mother, defendant Laura Reynolds. This action was in response to liens that David and Laura Reynolds filed on the property in the amounts of \$40,000, \$10,000, and \$5,000, and claiming an ownership interest in the property. David and Laura Reynolds, proceeding in propria persona, filed an answer and counterclaims for "false liens, slander of title, perjury, and harassment." Shelly Reynolds answered the counterclaim and set forth the affirmative defenses that David and Laura Reynolds' claims were barred by the statute of limitations and statute of frauds; that they failed to state a claim upon which relief may be granted; that their claim, that the liens were justified because Shelly Reynolds was overpaid by David Reynolds, was previously litigated and decided during a prior divorce proceeding; and that David Reynolds was collaterally estopped from asserting that claim again.

In May 2007, Shelly Reynolds moved for summary disposition, requesting that the trial court quiet title to the property in her, dismiss David and Laura Reynolds' counterclaims with

prejudice, and award costs and attorney fees. David and Laura Reynolds responded, and after a hearing on the motion in July 2007, the trial court issued an opinion and order on July 31, 2007, in which it granted summary disposition for Shelly Reynolds's quiet title claim; dismissed David and Laura Reynolds' counterclaims of false liens, slander of title, perjury, and harassment; found David and Laura Reynolds' defenses and counterclaims frivolous; and awarded costs and attorney fees as sanctions against them, with the attorney fees to be determined in the future.

David and Laura Reynolds thereafter moved the trial court to reconsider, but the trial court subsequently denied their motion and awarded attorney fees of \$3,500 and costs of \$402.63 (this order was dated January 28, 2008, but was filed on January 31, 2008). David Reynolds also moved for reconsideration of this order, and after a hearing in February 2008, the trial court also denied this motion. David Reynolds appeals the award of attorney fees and costs. Laura Reynolds is not a party to this appeal.

II. Frivolous Litigation Sanctions

A. Standard Of Review

We review the amount of sanctions imposed for frivolous litigation for an abuse of discretion.¹ An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes.² We review questions of law, such as whether attorney fees and costs may be awarded to a pro se litigant, de novo.³ We review findings of fact regarding attorney fee awards for clear error.⁴ Clear error occurs when, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake was made.⁵

B. Legal Standards

Generally, an award of attorney fees is not permitted unless otherwise provided by statute or court rule.⁶ But MCL 600.2591 provides for attorney fees and costs where frivolous litigation is pursued. MCL 600.2591(1) provides that "if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney." In addition, the amount of the attorney fees and costs awarded "shall include all reasonable costs actually incurred by the

¹ *Powell Production, Inc v Jackhill Oil Co*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

² *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

³ *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998).

⁴ *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007).

⁵ *Tuttle v Dep't of State Hwys*, 397 Mich 44, 46; 243 NW2d 244 (1976).

⁶ *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004).

prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.⁷ Generally, the use of the word “shall” indicates mandatory action.⁸

C. Applying The Standards

We conclude that the trial court did not abuse its discretion in awarding attorney fees and costs for David Reynolds’ frivolous litigation. Although a person proceeding in propria persona may not collect attorney fees,⁹ the record here reflects that Shelly Reynolds did not collect fees for work she performed in this case. Shelly Reynolds represented herself at various times in the trial court as a party, not an attorney, and she worked for her attorney, Robert Crites. However, Crites also represented her in this instant case; Crites was the attorney of record and he appeared at hearings, prepared pleadings, performed legal research, and advised Shelly Reynolds.

David Reynolds relies on *Omdahl v West Iron Co Bd of Ed*¹⁰ to argue that attorney fees should not have been awarded because “there must be separate entities between the attorney and the client, and a person who represents himself or herself cannot recover actual attorney fees” David Reynolds claims that Shelly Reynolds represented herself. However, this argument ignores reality. Separate identities clearly existed in the case because, unlike the situation in *Omdahl*, the client and the attorney are not the same individual. The record also supports a finding that Crites was Shelly Reynolds’ attorney and agent, because he “act[ed] in [her] stead,” and therefore it was possible for attorney fees to be incurred.¹¹

In so ruling, we note that in *Macomb Co Taxpayers Ass’n v L’anse Creuse Pub Schools*,¹² the Michigan Supreme Court held that the absence of an express payment agreement between client and attorney or the payment of a fee did not preclude establishing an attorney/client relationship or the award of attorney fees, because “an obligation to pay for legal services” was not the “sine qua non of an attorney-client relationship.” The Court held that “[t]he rendering of legal advice and legal services by the attorney and the client’s reliance on that advice or those services is the benchmark of an attorney-client relationship. The attorney’s right to be compensated for his advice and services arises from that relationship; it is not the definitional basis of that relationship.”¹³ The Court noted:

Since it is the attorney’s right to receive compensation for legal advice and services rendered, it is also the attorney’s right to waive that right to receive

⁷ MCL 600.2591(2).

⁸ *Toaz v Dep’t of Treasury*, 280 Mich App 457, 462; 760 NW2d 325 (2008).

⁹ *FMB-First Mich Bank*, *supra* at 719.

¹⁰ *Omdahl v West Iron Co Bd of Ed*, 478 Mich 423, 432; 733 NW2d 380 (2007).

¹¹ *FMB-First Mich Bank*, *supra* at 725-726.

¹² *Macomb Co Taxpayers Ass’n v L’anse Creuse Pub Schools*, 455 Mich 1, 10-11; 564 NW2d 457 (1997).

¹³ *Id.* at 11.

compensation. In the absence of a binding legal agreement absolving a client of any responsibility to render compensation to the attorney, that attorney's right to demand compensation remains viable and unfettered. Whether the attorney, for any reason, opts not to pursue compensation, has nothing to do with the fact that legal fees were incurred.¹⁴

The fact that Crites may have chosen not to collect fees from Shelly Reynolds does not mean that legal fees were not incurred for the time he spent defending against the liens on Shelly Reynolds' property and their frivolous defenses and counterclaims. Moreover, Crites' revised statement for professional services rendered reflects work that *he* performed related to this case, including legal research, drafting pleadings, reviewing the pleadings, and appearing in court. The statement does not include work performed that Shelly Reynolds, a non-attorney, performed.

D. Rules Of Professional Conduct; Practice Of Law

David Reynolds also argues that Crites violated the Michigan Rules of Professional Conduct and that Shelly Reynolds engaged in the unauthorized practice of law. Shelly Reynolds was not engaged in the unauthorized practice of law by exercising her constitutional right to represent herself.¹⁵ Further, David Reynolds misreads the ethics rules. Crites was permitted to assist a litigant in representing herself, he did not charge for services that were not rendered by him, and he did not have a contingency fee arrangement in a domestic relations matter.

E. Amount Of Attorney Fees

David Reynolds also argues that the trial court erred in merely awarding an amount of attorney fees that was "fair." The record does not support this argument. An attorney fee award must be "reasonable."¹⁶ Factors to consider in assessing reasonable attorney fees include, but are not limited to: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; (6) the nature and length of the professional relationship with the client; (7) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (8) the time limitations imposed by the client or by the circumstances; and (9) whether the fee is fixed or contingent.¹⁷ "The award will be upheld unless it appears upon appellate review that the trial court's finding on the reasonableness issue was an abuse of discretion."¹⁸

Here, the trial court made adequate findings regarding the attorney fees. Crites submitted a detailed list of the various services he provided, the time it took him to complete the tasks, and

¹⁴ *Id.* at 12.

¹⁵ Const 1963, art 1, § 13.

¹⁶ *B&B Inv Group v Gitler*, 229 Mich App 1, 16; 581 NW2d 17 (1998).

¹⁷ *Smith v Khouri*, 481 Mich 519, 529-530; 751 NW2d 472 (2008).

¹⁸ *Wood v Detroit Auto Inter-Ins Exchange*, 413 Mich 573, 588; 321 NW2d 653 (1982).

the dates the services were rendered, totaling \$9,992.63 in fees and \$402.63 in costs. Crites averred that this bill was correct, and he actually rendered the services for Shelly Reynolds. The trial court held that based on its “knowledge of the litigation and the above considerations, the Court awards attorney fees of \$3,500. Costs incurred are \$402.63.” The record therefore supports a conclusion that the trial court did not merely award an amount of fees it believed was “fair.” The trial court’s findings were not unreasonable or an abuse of discretion.

F. Judicial Bias

David Reynolds also argues that the trial court was biased against him. This issue is not properly before this Court,¹⁹ because although David Reynolds argued in the trial court that it was biased against him because Crites’ wife worked for the friend of the court and David Reynolds moved for the trial judge to recuse himself, David Reynolds never appealed from the trial court’s decision to deny this motion and find that it was frivolous.

Nonetheless, after reviewing this claim, we find it has no merit. “A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption.”²⁰ A defendant must show *actual* bias.²¹

As plaintiff points out, the instant matter is a civil matter, not a domestic case. Crites’s wife works for the friend of the court, which was not involved in the instant case. Moreover, the trial judge stated that he would not recognize Crites’s wife if he saw her. The record does not support that the trial judge was actually biased against David Reynolds,²² and he has failed to overcome the strong presumption that he was not biased.²³

G. Appeal Sanctions

Shelly Reynolds requests that this Court find David Reynolds’ appeal vexatious and assess damages. Shelly Reynolds failed to properly move for sanctions pursuant to MCR 7.211(C)(8), and we decline to order them.

Affirmed.

/s/ Alton T. Davis
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

¹⁹ MCR 7.203(A); MCR 7.204(A); *Surman v Surman*, 277 Mich App 287, 293-294; 745 NW2d 802 (2007).

²⁰ *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006).

²¹ *Cain v Dep’t of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996).

²² *Id.*

²³ *Coble*, *supra* at 390.