

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

ZACHARY B. BURKONS, :
 :
 Plaintiff-Appellee, :
 : No. 107696
 v. :
 :
 STACY L. BEUGEN, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 6, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-14-353374

Appearances:

Kohrman Jackson & Krantz, L.L.P., and James L. Lane,
for appellee.

Stafford Law Co., L.P.A., Joseph G. Stafford, and Nicole A.
Cruz, *for appellant.*

PATRICIA ANN BLACKMON, J.:

{¶ 1} Stacy L. Beugen (“wife”) appeals from the judgment entry awarding her \$5,000 on her motion for attorney fees in her divorce from Zachary B. Burkons (“husband”). The wife assigns the following error for our review:

The Trial Court erred as a matter of law and abused its discretion in failing to award [wife] the full amount of her attorney fees and litigation expenses incurred in this matter.

{¶ 2} Having reviewed the record and the controlling case law, we affirm the decision of the trial court.

{¶ 3} The parties were married in 2001 and had three children. In 2014, the husband filed for divorce. The matter proceeded in an extremely contentious manner. In April 2018, the parties resolved most of their issues in an agreed judgment entry but did not resolve attorney fee claims that were submitted to the court on “affidavits and short briefs.”

{¶ 4} The husband filed a post-decree motion seeking \$5,135 attorney fees from the wife. The husband asserted that he incurred a total of \$202,608 in fees and costs and has an outstanding balance of \$119,179. He conceded that generally, each party should bear responsibility for their own fees, but he maintained that the wife’s failure to comply with discovery caused him to incur \$5,135 in additional fees.

{¶ 5} The wife filed a motion for attorney fees in which she asked the court to award her \$197,000, the total amount of fees she had incurred since the 2014 filing of the case. The wife outlined for the court that her present attorney has billed her \$142,475, and she has paid \$54,154 of this sum. She owes her previous attorney \$11,707, and owes her original attorney \$37,520. There is an outstanding balance of \$137,549. The wife maintained that the attorney fees were due to the husband’s improper discovery requests and refusal to resolve issues. She also cited the parties’

disparate incomes, noting that he earns \$152,000 per year, and she earns \$72,000 per year.

{¶ 6} On August 20, 2018, the trial court denied the husband's request for attorney fees and awarded the wife \$5,000 out of the total \$197,000 that she requested. In relevant part, the court reaffirmed the propositions that attorney fees are not "automatic," and that attorney fees are the responsibility of the party who retains the attorney. The court also noted that "[the wife] has the ability to pay her own attorney fees."

{¶ 7} We review a post-decree award of attorney fees for an abuse of discretion. *Wojanowski v. Wojanowski*, 8th Dist. Cuyahoga No. 103695, 2017-Ohio-11, ¶ 15, citing *Cutter v. Cutter*, 8th Dist. Cuyahoga No. 96375, 2012-Ohio-358, ¶ 26. An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Where there is some competent, credible evidence in the record to support the trial court's decision, there is no abuse of discretion. *Trolli v. Trolli*, 8th Dist. Cuyahoga No. 101980, 2015-Ohio-4487, ¶ 29, citing *Kapadia v. Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255, ¶ 24.

{¶ 8} Post-decree motions for attorney fees are governed by R.C. 3105.73, which provides in relevant part as follows:

(B) In any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part

of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets.

{¶ 9} This statute gives a trial court broad discretion to award attorney fees and litigation expenses if it finds the award equitable. *Wojanowski* at ¶ 15; *Cutter* at ¶ 26; *Phelps v. Saffian*, 8th Dist. Cuyahoga No. 106475, 2018-Ohio-4329, ¶ 45. The decision will not be overturned on appeal absent an abuse of that discretion. *O'Brien v. O'Brien*, 8th Dist. Cuyahoga No. 89615, 2008-Ohio-1098, ¶ 71; *Layne v. Layne*, 83 Ohio App.3d 559, 568, 615 N.E.2d 332 (2d Dist.1992).

{¶ 10} As noted by the trial court, attorney fees are primarily the responsibility of the party who retains the attorney. *Farley v. Farley*, 97 Ohio App.3d 351, 358, 646 N.E.2d 875, ¶ 58 (8th Dist.1994). *Accord Gourash v. Gourash*, 8th Dist. Cuyahoga Nos. 71882 and 73971, 1999 Ohio App. LEXIS 4074 (Sept. 2, 1999).

{¶ 11} Further, although "need" and "ability to pay" are not express statutory factors for a trial court to consider, the catchall provision in R.C. 3105.73 permits lower courts to consider these factors when determining whether attorney fees should be awarded. *Berger v. Berger*, 2015-Ohio-5519, 57 N.E.3d 166, ¶ 149 (11th Dist.).

{¶ 12} In this matter, the trial court noted:

[The wife] was permitted to use over \$98,000 of funds which she allegedly withdrew from a bank account from July 2013 to June 2014 for her attorney fees and litigation expenses. In light of this sizeable

award to [the wife] specifically for her attorney fees, the Court is not inclined to award [the wife] further fees to her previous lawyers.

{¶ 13} Additionally, the trial court made the following findings with regard to the award of attorney fees:

[The wife] does not seek a specific amount of fees; rather, she seeks a total award of all her fees from [the husband] over \$197,000 if you include what she has paid to date. [She] asserts that [the husband's] conduct, improper discovery requests, and refusal to resolve issues caused increased attorney fees. She points to [his] Motion to Disqualify Counsel and his deposition of her, though she provides no breakdown of the fees related to these incidents or further detail as to why these incidents, specifically, should entitle her to an award of attorney fees. [The wife] also asserts that the disparity in income and her responsibilities to the parties' three minor children support an award of attorney fees to her.

* * * [The wife has] been awarded significant assets in the division of property in this matter, as well as spousal support, both of which serve to even the playing field between the parties. Notably, [she] will receive \$1,000 per month in spousal support for the next twenty-four months, as well as \$3,250 per month in child support, for total of \$4,250 per month (\$51,000 per year) in support, in addition to her employment income of \$72,500. The parties also agreed, in their July 19, 2017 Agreed Judgment Entry resolving all division of property issues between them, that [the wife] is to receive payment of \$141,000 to equalize the division of property. The net effect of these support payments and the division of property is to put the parties on substantially equal footing, financially. [The wife's] persistent actions in pursuing better jobs providing her with more income during this litigation are to her credit. Therefore, the Court finds that [the wife] has the ability to pay her own attorney fees.

Nonetheless, there is compelling evidence of [the husband's] conduct in these proceedings to make an award of attorney fees to [the wife]. While both parties have taken an unreasonably aggressive path in this litigation, the scales are tipped against [the husband].

* * *

In reviewing all the evidence presented by the parties in support of their requests for attorney fees or in opposition to the other request, and

considering all the factors in R.C. 3105.73 including the parties assets, income, and conduct, and recognizing that the total fees in this case are beyond what either party can afford to pay, the Court finds it is equitable that [the husband] pay to [the wife] \$5,000 (10 hours [at the] rate of \$500/hour).

{¶ 14} After reviewing all of the foregoing, we find that the trial court did not abuse its discretion in awarding the wife \$5,000 for attorney fees. The court properly noted that there are “no automatic attorney fees in domestic relations court,” quoting *Packard v. Mayer-Packard*, 8th Dist. Cuyahoga No. 85189, 2005-Ohio-4392, ¶ 8. The court also considered the parties’ incomes, their conduct and each party’s actions in the litigation. Significantly, the trial court held that the parties are on “substantially equal footing, financially” in light of the parties’ incomes and the prior award of \$141,000 to the wife to equalize the division of property. The court also observed that the total fees in this case are “beyond what either party can afford to pay.” The court also reminded the parties that the wife retained “\$98,000 of funds that she allegedly withdrew from a bank account * * * ‘for her attorney fees and litigation expenses.’” Although the wife insists that this sum was for child support, the trial court’s order and a 2014 Agreed Judgment Entry clearly indicate that this sum was for the wife’s “attorney fees and litigation expenses.” Further, although the wife also complains that the husband’s conduct caused her to incur additional fees, the court weighed the husband’s conduct in denying his claim for fees. Reviewing the record in totality, we do not find the trial court’s award to be unreasonable, arbitrary, or unconscionable.

{¶ 15} Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

MARY J. BOYLE, P.J., and
SEAN C. GALLAGHER, J., CONCUR

