

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JAMIE S. ROUSH fka Jamie S.
Brown, et al.,

:

Plaintiffs-Appellants,

:

CASE NO. CA2009-09-225

:

OPINION

4/5/2010

- vs -

:

RICHARD D. BROWN,

:

:

Defendant-Appellee.

:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR03-01-0031

Robin N. Piper III, Butler County Prosecuting Attorney, David M. Kirschsieper, Government Services Center, 315 High Street, 7th Floor, Hamilton, Ohio 45011, for plaintiff-appellant, Butler County Child Support Enforcement Agency

Jamie S. Roush fka Brown, 61 Fieldcrest Drive, Franklin, Ohio 45005, plaintiff, pro se

Richard D. Brown, 1064-C Park Lane, Middletown, Ohio 45042, defendant-appellee, pro se

HENDRICKSON, J.

{¶1} Plaintiff-appellant, Butler County Child Support Enforcement Agency (BCCSEA), appeals the decision of the Butler County Court of Common Pleas, Domestic Relations Division, denying BCCSEA reasonable attorney fees in a judgment against

defendant-appellee, Richard D. Brown.¹

{¶2} Brown was charged in a contempt action for failure to pay child support. The trial court's previous decision was appealed to this court. See *Roush v. Brown*, Butler App. No. CA2008-11-275, 2009-Ohio-2446 ("*Roush I*"). The facts stated therein are as follows:

{¶3} "Richard Brown and Jamie Roush were divorced in October 2003. Under the terms of their divorce decree, Brown was required to pay Roush, through BCCSEA, \$822.45 per month in child support for their two children. Beginning in July 2007, Brown began falling behind on his child support payments, and as of February 29, 2009, he was \$3,032.92 in arrears on those payments.

{¶4} "On March 11, 2008, BCCSEA filed a pleading in the Butler County Domestic Relations Court that contained several motions, including: (1) a 'Motion to Show Cause,' requesting that Brown be ordered to show cause as to why he should not be held in contempt for his failure to pay child support as previously ordered; (2) a 'Motion to Add Party,' requesting pursuant to Ohio Adm.Code 5101:12-50-50(C)(8) and Civ.R. 20(A) that the agency be added to the action as a 'party plaintiff to allow full adjudication of all related matters'; and (3) a 'Motion for Attorney Fees/Costs,' requesting that Brown be ordered to pay the costs of the proceedings and any reasonable attorney fees.

{¶5} "The matter was referred to a magistrate who held a hearing on BCCSEA's motions on June 17 and July 15 of 2008. On August 15, 2008, the magistrate issued a decision, finding Brown in contempt for his failure to pay child support and sentencing him to 30 days in jail, with the sentence stayed on the condition that he pay his child support obligation as previously ordered. The magistrate denied BCCSEA's motion for attorney fees on the ground that BCCSEA 'was acting in its administrative capacity in bringing this action

1. Pursuant to Loc.R. 6(A), this case is hereby removed, sua sponte, from the accelerated calendar and placed on this court's regular calendar.

and its counsel did not act as an attorney for any party.' The magistrate also stated that BCCSEA's motion to add itself as a party to the contempt action '[is] withdrawn.'

{¶6} "BCCSEA filed an objection to the magistrate's decision, arguing that the magistrate erred in denying its motion for attorney fees. On October 15, 2008, the trial court issued a decision denying BCCSEA's objection and affirming the magistrate's decision." *Id.* at ¶1-4.

{¶7} In *Roush I*, BCCSEA appealed the trial court's decision, arguing that "since it was a proper party to this action, the trial court erred in failing to award the agency \$500 in attorney fees and costs pursuant to R.C. 3109.05(C) and Loc.R. 31(C)(5)[.]" *Roush I* at ¶18.

{¶8} This court found that (1) when BCCSEA initiated a contempt action against Brown for his failure to pay child support, the agency became a party to the contempt proceedings; (2) BCCSEA and Brown were "adverse parties" under R.C. 3109.05(C), within the plain and ordinary meaning of the term; and (3) because BCCSEA was an "adverse party" in relation to Brown in the contempt action, BCCSEA was "entitled to be awarded its reasonable attorney fees," pursuant to R.C. 3109.05(C), which states: "If any person required to pay child support under an order made under division (A) of this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt[.]" See, also, *Roush I* at ¶31.

{¶9} Based upon the foregoing, we reversed trial court's judgment and remanded the case, ordering the trial court to determine whether or not the amount of attorney fees BCCSEA requested was reasonable. *Id.*

{¶10} After a hearing on the issue, the trial court entered judgment declining to order Brown to pay BCCSEA's attorney fees. The court stated that pursuant to Loc.R. 31(C)(5) and R.C. 3105.73(B), the court "*may* award attorney fees," and that in this case, "a rule of equity" applied. The trial court continued, stating that because Brown was indigent and could not afford to pay for his *own* counsel, it "could not find [that] the law should require Mr. Brown to pay for the [BC]CSEA attorney who presented the case against him."

{¶11} BCCSEA filed a timely notice of appeal, raising one assignment of error:

{¶12} "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN, ON REMAND, IT FAILED TO CALCULATE AND AWARD TO BCCSEA REASONABLE ATTORNEY FEES PURSUANT TO R.C. 3109.05(C)."

{¶13} The essential question presented in this case is whether the trial court impermissibly exceeded the scope of its authority on remand when it declined to order Brown to pay BCCSEA's reasonable attorney fees.

{¶14} In its sole assignment of error, BCCSEA sets forth several arguments as to why the trial court erred, including the contention that the trial court erroneously deviated from the "law of the case" because it failed to follow this court's determination in *Roush I* that BCCSEA was entitled to reasonable attorney fees under R.C. 3109.05(C). Based upon the record before us, we agree.

{¶15} BCCSEA's argument requires a brief review of the doctrine of the "law of the case." The law of the case doctrine provides that decisions made by a reviewing court regarding legal questions remain the law of that case for all subsequent proceedings at both the trial and appellate levels. See *State v. Carpenter*, Butler App. No. CA2008-05-122, 2009-Ohio-1165, ¶28, citing *Nolan v. Nolan* (1984), 11 Ohio St.3d 1. Absent extraordinary circumstances, such as an intervening decision by the Ohio Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same

case. *Carpenter* at ¶28. See, also, *State v. Prom*, Butler App. No. CA2004-07-174, 2005-Ohio-2272. Moreover, a trial court lacks authority to extend or vary the mandate given. *Carpenter* at ¶28; *Nolan* at 3. "Thus, where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court's determination of the applicable law." *Nolan* at 3.

{¶16} In our previous decision, we held that BCCSEA was an "adverse party in relation to Brown in the contempt action for purposes of R.C. 3109.05(C) and was *entitled* to be awarded its reasonable attorney fees." *Roush I* at ¶26. (Emphasis added.) We further stated that R.C. 3109.05(C) "*mandates* that when a trial court finds a party in contempt for failure to pay child support, the court *must* require the contemnor 'to pay reasonable attorney fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.' Under the plain language of R.C. 3109.05(C), it is the trial court's responsibility to determine whether the amount of attorney fees requested by the party is reasonable." *Id.* at ¶31. (Emphasis added.) Thus, per our decision, it became the law of the case that BCCSEA was entitled to *some* amount of attorney fees, and it was the trial court's sole duty to determine the amount of fees *reasonable* to award BCCSEA.

{¶17} On remand, the trial court set forth four reasons for its decision not to order Brown to pay BCCSEA's attorney fees: (1) pursuant to Loc.R. 31(C)(5)² and, R.C. 3105.73(B)³, attorney fees were discretionary; (2) under R.C. 3105.73(B), the "rule of equity" precluded the trial court from requiring an indigent litigant to pay for the attorney who

2. Loc.R. 31(C)(5) states, in pertinent part: "Upon a finding of contempt the Court may award attorney fees up to \$500.00 and Court costs."

3. R.C. 3105.73(B) states, in pertinent part: "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." Cf. R.C. 3109.05(C), relating specifically to child support orders.

presented the case against him; (3) because BCCSEA planned to allocate Brown's payment according to an internal payment scheme, the funds "would not be a payment of attorney fees as attorney fees are defined in the law;"⁴ and (4) what the court found "[m]ost conflicting in this case * * * [was that] Mr. Brown has been unable to make his child support payments in the past for various reasons, part of which has included his hospitalization for treatment of mental health issues."

{¶18} A reviewing court will not reverse a trial court's decision regarding attorney fees absent an abuse of discretion. See, e.g., *Motorists Mut. Ins. Co. v. Brandenburg*, 72 Ohio St.3d 157, 160, 1995-Ohio-281; *Martin v. Lake Mohawk Property Owners Assoc.*, Carroll App. No. 06-CA-841, 2007-Ohio-6432, ¶70. "Abuse of discretion connotes more than an error of law; it implies that the trial court's judgment was unreasonable, arbitrary, or unconscionable." *Martin* at ¶64.

{¶19} Based on these statements, it is clear that the trial court abused its discretion in refusing to award BCCSEA reasonable attorney fees pursuant to R.C. 3109.05(C). As noted above, the trial court's decision was entirely inconsistent with this court's determination in *Roush I* that: (1) BCCSEA was a proper party to the contempt action; (2) BCCSEA was "adverse" to Brown in the proceedings; and (3) BCCSEA was entitled to reasonable attorney fees as a result of the contempt finding. See *Roush I*. Further, by relying on previously unmentioned statutes (i.e., R.C. 3105.73[B]) and various other extraneous rationale to support its decision, the trial court clearly disregarded this court's determination and interpretation of the law applicable to this case, namely R.C. 3109.05(C).

{¶20} The trial court's sole duty on remand was to determine the amount of attorney

4. Testimony from the trial court's hearing on attorney fees indicates that BCCSEA directed monies in child support cases according to an "allocation hierarchy," which was based on the priority of debt obligations. The record reflects that pursuant to this hierarchy, attorney fees were generally among the BCCSEA's last obligations to be paid.

fees reasonable to award BCCSEA. It was not the trial court's duty to decide whether it was "equitable" to award BCCSEA attorney fees *at all* – this court had previously resolved that issue in *Roush I* in determining that reasonable attorney fees were mandated by R.C. 3109.05(C) after Brown was found in contempt for failing to pay child support. See, e.g. *Norris v. Norris*, Cuyahoga App. No. 83547, 2004-Ohio-4072, ¶38; *Bergman v. Bergman*, Franklin App. No. 03AP-570, 2004-Ohio-584, ¶11 (citations omitted) ("upon the trial court's finding defendant in contempt for failure to pay child support, the trial court [is] required to order defendant, as the party in contempt, to pay plaintiff's attorney fees relating to the contempt proceedings * * * R.C. 3109.05(C) does not require the trial court to determine the offending party's 'ability to pay'"); *Sinnott v. Sinnott*, Franklin App. No. 02AP-1277, 2003-Ohio-4571.

{¶21} To permit the trial court to deviate so markedly from this court's mandate in *Roush I* would defeat the purposes of the doctrine of the law of the case, particularly that of consistency of result. See *Nolan*, 11 Ohio St.3d at 5. As we previously stated, "absent extraordinary circumstances, such as an intervening decision by [the Ohio Supreme Court], an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *Id.* at 1.

{¶22} Accordingly, BCCSEA's single assignment of error has merit as it relates to the law of the case doctrine. We need not address BCCSEA's additional arguments, as this argument is dispositive in resolving the issue at hand. Thus, the trial court's judgment denying attorney fees to BCCSEA is reversed. This matter is remanded with the unambiguous instruction that the trial court determine and award reasonable attorney fees to BCCSEA pursuant to R.C. 3109.05(C).

{¶23} Judgment reversed and cause remanded.

POWELL, J., concurs.

BRESSLER, P.J., concurs in judgment only.

