

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Anthony Gruber

Court of Appeals No. OT-10-003

Appellant

Trial Court No. 06-DR-111A

v.

Christie L. Gruber a/k/a
Christie Wright

DECISION AND JUDGMENT

Appellee

Decided: August 12, 2011

* * * * *

Matthew O. Hutchinson, for appellant.

Matthew N. Fech, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas, Domestic Relations Division, which ordered plaintiff-appellant, Anthony Gruber, to pay the reasonable attorney fees of defendant-appellee, Christie L. Gruber a/k/a

Christie Wright, in a contempt action. Appellant now challenges that judgment through a single assignment of error:

{¶ 2} "The trial court erred in arbitrarily awarding attorney's fees based on 7.5 hours of work and in awarding an amount of attorney's fees that was unreasonable."

{¶ 3} On October 6, 2006, a final judgment entry of divorce was entered by the court below. Subsequent post-divorce proceedings resulted in a decision and judgment entry dated July 31, 2009, which in relevant part determined that a change of circumstances had occurred between the parties, that it was in the best interest of the parties' children that the previously implemented shared parenting plan be terminated, that appellee be named the sole custodial and residential parent of the parties' children, and that appellant be awarded visitation and companionship with the children pursuant to the court schedule. The court further determined that appellant was in contempt of court for his failure to pay child support and sentenced him to 30 days incarceration, which term the court ordered suspended upon appellant's payment of 20 percent of the current support order until the arrearages were paid in full. The court also redetermined the child support order, ordered appellant to pay child support of \$781.94 per month and further ordered appellant to pay his share of the children's school, activities and clothing in the amount of \$647.74. Finally, the court ordered appellant to pay appellee \$5,411.25 for her attorney fees.

{¶ 4} On October 26, 2009, appellee filed a motion to show cause in which she alleged that appellant had failed to pay the child support, his share of the children's

school, activities and clothing, and her attorney fees, as ordered by the court in its July 31, 2009 entry. Appellee further requested an award of attorney fees and costs associated with her filing of the motion to show cause. Regarding that request, appellee attached to her motion a proposed attorney fee statement which reads as follows:

{¶ 5} " <u>Work</u>	<u>Time</u>
{¶ 6} "Conference with client at office	0.5
{¶ 7} "Preparation and filing of Motion to Show Cause	1.0
{¶ 8} "Anticipated Preparation for Hearing Date	2.0
{¶ 9} "Anticipated Travel Time	8.0
{¶ 10} "Anticipated attendance at pre-trial	3.0"

Appellee therefore requested attorney fees of 14.5 hours at \$175 per hour for a total of \$2,537.50.

{¶ 11} Following the filing of the motion to show cause, appellee's counsel requested permission from the court to attend the hearing on the motion, scheduled for November 13, 2009, telephonically. The reason was that counsel had moved to Griffith, Indiana. The court denied the motion. Accordingly, the case proceeded to the scheduled hearing with appellee's counsel present, having been required by the court to travel to Ottawa County for the hearing. On November 20, 2009, the lower court magistrate issued her decision on the motion to show cause. The court found appellant in contempt of court for failing to make the court ordered payments. The court then sentenced appellant to 30 days in the Ottawa County Detention Facility, but suspended the sentence

on the condition that appellant comply with several conditions which would purge the contempt finding. Finally, the court ordered appellant to pay the reasonable attorney fees of appellee in the amount of \$1,312.50, which the court noted was calculated at \$175 per hour for 7.5 hours. Appellant filed objections to the magistrate's decision and challenged the court's award of attorney fees. Upon review, the lower court found the objections not well-taken and adopted the magistrate's decision in its entirety. It is from that judgment that appellant now appeals.

{¶ 12} In his sole assignment of error, appellant challenges the trial court's award of attorney fees to appellee. Appellant contends that the amount of the award, \$1,312.50, was arbitrary and unreasonable.

{¶ 13} R.C. 3109.05(C) reads: "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 and, on or after July 1, 1992, shall assess interest on any unpaid amount of child support pursuant to section 3123.17 of the Revised Code."

{¶ 14} Accordingly, in a post-divorce contempt of court proceeding, an award of reasonable attorney fees to the party filing the successful contempt action is mandated.

Upon a review of the record, we find nothing unreasonable in the trial court's award of attorney fees below. The court awarded fees for 7.5 hours of work. That total appears to cover fees for counsel's conference with appellee (0.5 hours), counsel's preparation and filing of the motion to show cause (1.0 hours), counsel's preparation for the hearing (2.0 hours), and travel time (4.0 hours). Although the last two items in this list were initially stated as "anticipated" in the proposed fee statement, and appellee requested fees covering 8 hours for travel time, under certain circumstances, a domestic relations court may use its own knowledge and experience in reviewing a record to determine the reasonableness of attorney fees. *Gearig v. Gearig*, 6th Dist. No. L-92-150, citing *Goode v. Goode* (1990), 70 Ohio App.3d 125, 134. Given the lower court's knowledge of the history of this case, and that the court itself ordered appellee's counsel to attend the hearing on the motion to show cause thereby necessitating travel expenses, we cannot say that the lower court erred in awarding the fees as it did. It is further worth noting that there was no pre-trial in the proceedings below, so no fees could have been awarded based on that "anticipated" item in the fee statement.

{¶ 15} Absent a showing of an abuse of discretion, this court will not reverse a trial court's award of attorney fees in a post-divorce action. *Parzynski v. Parzynski* (1992), 85 Ohio App.3d 423, 439. Finding nothing unreasonable in the trial court's award of attorney fees in this case, the sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Ottawa County Court of Common

Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.