

[Cite as *In re J.C.*, 2006-Ohio-6446.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88199

IN RE: J.C., ET AL.

A Minor Child

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. CU-03108312, 03108313, 03108314

BEFORE: Kilbane, J., Dyke, A.J., and Gallagher, J.

RELEASED: December 7, 2006

JOURNALIZED:

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MARY EILEEN KILBANE, J.:

{¶ 1} J.C. (“Father”) appeals from the juvenile court’s award of fees to the guardian ad litem (“GAL”). Father argues that the fees awarded are extraordinary and in violation of local rules, that the hourly rate used by the GAL is more than triple the scheduled amount for court appointed GALs, and that the trial court failed to conduct a hearing before awarding the fees. For the following reasons, we reverse the decision of the trial court and remand for further proceedings.

{¶ 2} On January 14, 2004, the trial court appointed Suzanne Piccorelli (“Piccorelli”) to serve as GAL of the three minor children in a custody dispute between J.C. and his ex-wife in the Cuyahoga County Court of Common Pleas, Juvenile Division. During her tenure as the court appointed GAL, Piccorelli attended

two separate custody hearings, conducted several interviews with the minor children and their parents, and performed various other legal services for which she sought compensation. However, Piccorelli never reduced any of her work to a written report, nor did she prepare a trial brief or file any pleadings or motions on behalf of the minor children. Piccorelli also failed to file a brief in the instant case.

{¶ 3} On April 14, 2006, Piccorelli filed an application for GAL fees seeking \$10,645 for services rendered. Piccorelli based this amount on the hourly rates for service as a GAL set by the Court of Common Pleas, Domestic Relations Division. According to Piccorelli, the Domestic Relations Division set the hourly rates at \$100.00 per hour for out-of-court work and \$125.00 per hour for in-court service in child custody cases. In her application, Piccorelli relied on no specific rule of court that entitled her to the requested hourly rate; she merely stated that the rate is “reasonable” for the type of work performed. Additionally, Piccorelli stated that the hourly rate set by the Domestic Relations Division should apply because the work she performed in the present case was similar to work performed in the Domestic Relations Division.

{¶ 4} Piccorelli attached an invoice to her application detailing the services she provided and the amount of hours she worked. In her application Piccorelli provided a signed, unsworn statement that the invoice reflected a “very conservative” accounting of the amount of time she spent performing legal services

on behalf of the children. Finally, Piccorelli provided the trial court with a prepared order awarding her \$10,645 in GAL fees.

{¶ 5} Without conducting a hearing, the trial court signed the order, which read as follows:

“Upon the application of the Guardian ad Litem for the Minor Children and for good cause shown, the application for Guardian ad Litem fees is hereby granted, Guardian ad Litem fees in the reasonable amount of \$10,645 (Ten Thousand Six Hundred Forty-Five Dollars) are approved, and allocated *as and for child support* amongst the parties in an amount equal to the percentage of child support attributed to each party as determined by the Court Order allocating the responsibilities for support amongst the parties. The Court finds and approves the rate charged as reasonable for a guardian ad litem with such qualifications.”

{¶ 6} Father appeals, raising a single assignment of error:

“The trial court erred in awarding Appellee \$10,645.00 for serving as the Guardian ad Litem of the minor children as the Appellee failed to submit a motion for extraordinary fees which contained the appropriate affidavit, the trial court failed to conduct the mandatory hearing as required by local rule, the Administrative Judge failed to approve the award of extraordinary fees as required by local rule, and the Appellee inappropriately set her own hourly rate which was more than triple the amount scheduled for court-appointed GAL’s in contravention of the applicable legal rule.”

{¶ 7} When reviewing a trial court’s order regarding compensation to a GAL, an appellate court applies the abuse of discretion standard of review. *Beatley v. Beatley*, Delaware App. No. 03CA02010, 2003-Ohio-4375; *Robbins v. Ginese* (1994), 93 Ohio App.3d 370. “The term 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* (1983), 5 Ohio St.3d 217.

{¶ 8} Father initially argues that the trial court erred when it failed to conduct an evidentiary hearing on the issue of fees. We agree. The trial court has an obligation to provide an opportunity for parties to be heard on motions pending before the court, including motions and objections relating to the payment of fees or taxing said fees as costs. *Rendina v. Rendina* (Feb. 28, 1992), Lake App. No. 91-L-019.

{¶ 9} In the present case, the trial court did not conduct an evidentiary hearing, nor did it allow Father an opportunity to respond before granting Piccorelli's application for fees. See Juv.R.17(D)(2). In doing so, the trial court denied Father the opportunity to challenge the guardian's unsworn itemization as to the time spent and the necessity thereof, and the reasonableness of the hourly fee charged. The trial court's action deprived Father of a meaningful opportunity to be heard.

{¶ 10} Additionally, Piccorelli's claim that she is entitled to the hourly rate set by the Court of Common Pleas, Domestic Relations Division, is also a reasonable subject for inquiry. The Court of Common Pleas, Juvenile Division appointed Piccorelli as the GAL in the instant matter, not the Domestic Relations Division. Accordingly, the local rules of the Juvenile Division control.

{¶ 11} Pursuant to Juv.R. 17(D)(3), the maximum compensation to which a GAL is entitled, is \$250. Moreover, Juv.R. 17(D)(1) provides as follows: “Guardians

ad litem shall be compensated at the authorized rate for in-court and out-of-court time not to exceed the maximum fee total in effect at the time of acceptance of the assignment.” As of January 14, 2004, when the Juvenile Division of the Court of Common Pleas assigned Piccorelli, Juv.R.19(D)(1) provided compensation for a GAL at the rate of \$40 per hour for in-court time and \$30 per hour for out-of-court time.

{¶ 12} Nonetheless, Juv.R. 17(D)(5) provides a mechanism whereby a GAL can be compensated for “extraordinary fees,” if the GAL files a motion for extraordinary fees. If the trial court grants the motion for extraordinary fees, it must forward the motion to the administrative judge for final approval of payment. Juv.R.17(D)(5).

{¶ 13} In the present case, Piccorelli set her hourly rate at nearly triple the rate of compensation provided by the local rules without moving for extraordinary fees. See Juv.R. 17. Based on the above, the trial court’s approval of \$125 for in-court time and \$100 for out-of-court time is unreasonable.

{¶ 14} Accordingly, we find that the trial court abused its discretion when it granted Piccorelli’s application for fees in the amount of \$10,645, without first holding a hearing. Father’s first assignment of error is sustained.

{¶ 15} Judgment of the trial court is reversed and remanded for proceedings consistent with this opinion.

It is ordered that costs for this appeal are waived.

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.

MARY EILEEN KILBANE, JUDGE

ANN DYKE, A. J., and
SEAN C. GALLAGHER, J., CONCUR