

[Cite as *Kovacik v. Kovacic*, 2010-Ohio-667.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93097**

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**NANCY KOVACIC**

PLAINTIFF-APPELLANT

vs.

**THOMAS KOVACIC**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Domestic Relations Division  
Case No. D-239974

**BEFORE:** Cooney, J., McMonagle, P.J., and Stewart, J.

**RELEASED:** February 25, 2010

**JOURNALIZED:  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, Nancy Kovacic (“Nancy”), appeals the trial court’s judgment ordering her to pay half of the guardian ad litem (“GAL”) fees. Finding no merit to the appeal, we affirm.

{¶ 2} Nancy and defendant-appellee, Thomas Kovacic (“Thomas”), were divorced in 1999. Since then, Nancy and Thomas have filed numerous post-decree motions. In March 2009, the trial court issued a judgment entry after trial on Thomas’s motion to reallocate parental rights and the GAL’s motions for fees. As it relates to this appeal, the court granted the GAL’s motions for fees, finding that the fees were reasonable, appropriate, and necessary. The court then ordered that Nancy and Thomas each pay \$6,194 (half of the GAL’s total fees).

{¶ 3} It is from this order that Nancy appeals, raising one assignment of error, in which she argues that the trial court erred in equally allocating the guardian ad litem fees between her and Thomas.

{¶ 4} Generally, appellate courts review the trial court’s ruling relative to an award of GAL fees under an abuse of discretion standard of review. *Davis v. Davis* (1988), 55 Ohio App.3d 196, 200, 563 N.E.2d 320, citing Civ.R. 75(B)(2) and *Bishop v. Bishop* (May 2, 1987), Cuyahoga App. No. 51731.<sup>1</sup>

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<sup>1</sup>Civ.R. 75(B)(2) provides in pertinent part that: “[w]hen it is essential to protect

See, also, *In Re Kovacic*, Lake App. No. 2008-L-101, 2008-Ohio-6882, ¶15. “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, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 5} Nancy does not challenge the reasonableness of the GAL’s fees. Rather, she relies on *Davis*, as well as *Jarvis v. Witter*, Cuyahoga App. No. 84128, 2004-Ohio-6628, overruled on other grounds, and *Marsala v. Marsala* (July 6, 1995), Cuyahoga App. No. 67301, to support her argument that Thomas should pay the fees because he caused the need for the GAL to be appointed and he was unsuccessful in the litigation. She claims that there would have been no need for a GAL if Thomas had not filed his motion for a change of custody of their daughter. Nancy further claims that most of her involvement in litigating their divorce involved her defending against Thomas’s motions, attempting to get him to pay child support, or requesting that he produce discovery on motions that he filed.

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the interests of a child, the court may \* \* \* appoint a guardian ad litem \* \* \* for the child and tax the costs \* \* \*.”

{¶ 6} In *Davis*, this court held that the trial court has discretion over the amount of GAL fees, as well as the allocation to either or both of the parties. *Id.* at 200. We noted that fees *may* be allocated based on the parties’ litigation success and economic status. *Id.* (Emphasis added.) In *Jarvis*, this court also recognized that it may be proper to allocate the GAL’s fees based on which party caused the work of the GAL. *Id.* at ¶100, citing *Marsala*.

{¶ 7} In the instant case, a review of the record reveals that the trial court appointed the current GAL in January 2007. At no time subsequent to his appointment did Nancy or Thomas move to terminate the GAL’s services. In its March 2009 judgment entry, the trial court stated that, “[g]iven the history of unending litigiousness involving [the] children on a daily basis and its effect upon the health, safety, and welfare of [their daughter], it is essential for the court to finalize the \* \* \* motions for guardian ad litem fees.”

{¶ 8} The trial court found that “the award of guardian ad litem fees is reasonable, appropriate, and necessary. Both parties have demonstrated the financial ability to afford litigation that benefitted the individual financial interest of each, have litigated in numerous courts, including Federal Court and two Courts of Appeals. Both parties have filed numerous post decree motions. While each may claim a lack of significant income, that has not

diminished the parties’ capacities to litigate.” The court then ordered Nancy and Thomas to each pay \$6,194 for the GAL’s fees.

{¶ 9} Under these circumstances, there is nothing to indicate that the trial court’s decision to equally allocate the GAL’s fees between Nancy and Thomas was unreasonable, arbitrary, or unconscionable. Therefore, we find no abuse of discretion.

{¶ 10} Accordingly, the sole assignment of error is overruled.

Judgment is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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COLLEEN CONWAY COONEY, JUDGE

CHRISTINE T. McMONAGLE, P.J., and  
MELODY J. STEWART, J., CONCUR