

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PATRICIA BYERS
Plaintiff - Appellee

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. Patricia A. Delaney, J.
Hon. Craig R. Baldwin, J.

-vs-

FRANK BYERS III
Defendant - Appellant

Case No. 14-CA-79

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Domestic Relations Division,
Case No. 13-DR-00042

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT:

March 9, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

PHILIP PROCTOR
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Baldwin, J.

{¶1} Appellant Frank Byers, III appeals a judgment of the Licking County Common Pleas Court, Domestic Relations Division, awarding appellee Patricia Byers attorney fees and expenses in the amount of \$6,024.40 on a contempt of court action.

STATEMENT OF FACTS AND CASE

{¶2} On January 11, 2013, appellee filed an ex parte motion for a civil protection order (CPO) against appellant. On March 15, 2013, the court entered a CPO for one year. One of the conditions of the order was that appellant was not to interfere with appellee's internet sales operations or her sales of property through Garth Auctions.

{¶3} Appellee filed motions for contempt on March 15, March 19, and April 16, 2013. The motions proceeded to a hearing before a magistrate. The magistrate overruled the March 15 and March 19 motions for contempt because appellant was not served with the order until March 26, 2013. As to the April 16 motion, the magistrate found that appellant had interfered with the sale of appellee's items at Garth's Auction on April 5, 2013. The magistrate found that appellant threatened Amelia Jeffers, the owner of Garth's Auction, and caused her sufficient concern that she had law enforcement officers present for the sale. The magistrate found that appellee's version of the facts contained more drama and appeared to be somewhat exaggerated, and further noted that appellee engaged in bid rigging and was ultimately excluded from the auction by Amelia Jeffers. The magistrate recommended that appellant pay \$44.00 in expenses, but set the matter of attorney fees for further hearing. Appellee presented a fee statement of \$9,790.40, and the magistrate could not determine what professional

services were incurred in connection with the prosecution of the April 16, 2013 motion for contempt.

{¶4} A supplemental hearing on the issue of fees was held on January 14, 2014. Appellee also filed a motion to extend the CPO, which was heard on the same date. Appellee presented evidence that she had incurred attorney fees in the amount of \$5,980.40 in connection with the April 16, 2013 motion for contempt. Appellant presented expert testimony that the amount of time counsel claimed to have put into the contempt motion was excessive.

{¶5} The magistrate filed a decision on January 22, 2014. The magistrate overruled appellee's motion to extend the CPO. The magistrate found that upon review of the fee statements submitted by counsel, 5.30 hours were spent on the prosecution of the April 16, 2013 motion. The magistrate found counsel's hourly rate of \$150.00 to be reasonable, and recommended attorney fees in the amount of \$795.00 be awarded to appellee. The magistrate noted that determining what professional services were incurred on this motion was complicated by the fact that the three contempt motions were intertwined, and the fact that appellee through her own conduct had given rise to a contract dispute with Garth's Auction House. The magistrate noted that the operative facts related to the motion were not particularly complicated, as they were primarily addressed through the testimony of Amelia Jeffers.

{¶6} Appellee filed objections to the magistrate's decision. The judge stated that the magistrate's decision was "very detailed, covers all aspects of the matter, and contains an excellent breakdown of the evidence." Opinion, July 24, 2014. The court further stated, "The Court does not believe there is ample evidence in the hearing that

the attorney spent the hours he stated on this case.” However, the court then concluded, “The Court believes the hours her attorney spent on this matter has been proven and his fee per hour is reasonable.” The court ordered attorney fees in the amount of \$5,980.40 as requested by appellee, for a total of \$6,024.40 when added to the expenses previously awarded of \$44.00.

{¶7} Appellant assigns four errors:

{¶8} “I. THE TRIAL COURT ERRED WHEN IT OVERRULED THE MAGISTRATE’S DECISION WITHOUT ANY FACTUAL BASIS TO MODIFY THE FINDINGS IN THE MAGISTRATE’S DECISION.

{¶9} “II. THE TRIAL COURT IMPROPERLY SHIFTED THE BURDEN OF PROOF TO APPELLANT TO DISPROVE THE ATTORNEY FEE REQUEST RATHER THAN REQUIRE THE APPELLEE TO PROVE THE REASONABLENESS AND NECESSITY OF ATTORNEY FEES FOR THE CONTEMPT VIOLATION.

{¶10} “III. THE TRIAL COURT ABUSED ITS DISCRETION BASED UPON THE EVIDENCE SUBMITTED AND THE APPLICABLE LAW GOVERNING THE AWARD OF ATTORNEY FEES.

{¶11} “IV. THE TRIAL COURT’S JUDGMENT ENTRY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

I, III, IV

{¶12} In his first, third, and fourth assignments of error, appellant argues that the trial court abused its discretion in sustaining the objections to the magistrate’s report based on the evidence presented at the hearing on attorney fees.

{¶13} We set forth the standard of review of the trial court's decision to adopt or overrule a magistrate's decision in *Langley v. Langley*, 5th Dist. Coshocton No. 2103CA0015, 2014-Ohio-1651, ¶20:

When reviewing objections to a magistrate's decision, the trial court is not required to follow or accept the findings or recommendations of its magistrate. *In re Anderson*, 2d Dist. Montgomery No. 25367, 2013–Ohio–2012, ¶ 14. In accordance with Civ. R. 53, the trial court must conduct an independent review of the facts and conclusions contained in the magistrate's report and enter its own judgment. *Id.* Thus, the trial court engages a de novo standard of review, and should not adopt the magistrate's factual findings unless it agrees with them. *Crosby v. McWilliams*, 2d Dist. Montgomery No. 19856, 2003–Ohio–6063, at ¶ 33–34. The trial court has discretion to determine whether to sustain or overrule an objection to a magistrate's decision, and we will not reverse that determination absent an abuse of that discretion. *Wade v. Wade*, 113 Ohio App.3d 414, 419, 680 N.E.2d 1305 (1996). For this court to find an abuse of discretion, we must conclude that the trial court's determination was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶14} The transcript demonstrates that the fee statement presented at the supplemental hearing, detailing \$5,980.40 in attorney fees, reflects an intertwining of time spent on preparation and presentation of evidence on all three of the contempt motions filed by appellee. The issue involved in the April 16, 2013, motion was relatively simple, and involved the testimony of only one witness other than appellee herself. The allocation of fees allocated to this single contempt motion was further complicated by the fact that the court found that appellee contributed to the problems with the auction house by engaging in bid rigging. However, the magistrate carefully examined the evidence from both hearings and the fee statements and determined which hours appellee had proven were directly related to the attorney's time spent on the April 16, 2013 motion.

{¶15} The trial court noted that the magistrate's report was "very detailed, covers all aspects of the matter, and contains an excellent breakdown of the evidence." The court further stated, "The Court does not believe there is ample evidence in the hearing that the attorney spent the hours he stated on this case." The court then found that the attorney had in fact worked the hours stated and awarded the full amount of fees requested. The trial court's opinion is internally inconsistent, and not supported by the evidence presented at the hearing. Based on the facts and circumstances of the instant case, we find the trial court abused its discretion in sustaining the objections to the magistrate's report and awarding fees in the amount of \$5,980.40.

{¶16} The first, third and fourth assignments of error are sustained.

II

{¶17} The second assignment of error is rendered moot by our disposition of the first, third and fourth assignments of error.

The judgment of the Licking County Common Pleas Court, Domestic Relations Division, is reversed. This case is remanded to that court with instructions to enter judgment on attorney fees in accordance with the decision of the magistrate. Costs are assessed to appellee.

By: Baldwin, J.

Gwin, P.J. and

Delaney, J. concur.