2012 IL App (1st) 112845-U

No. 1-11-2845

SIXTH DIVISION
June 29, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUE PRIMER "I DO",	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
STEPHEN B. TOWNE,	)	No. 10 M1 183967
	)	
Defendant-Appellant	)	
	)	
(Carol Towne and Andrea Towne Sanger,	)	The Honorable
	)	Anthony L. Burrell,
Defendants).	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 HELD: Where the trial court found plaintiff wedding coordinator improperly named pro se defendant as a party to the underlying suit because the services at issue did not qualify as family expenses, defendant was entitled to costs and fees pursuant to the language of the statute.

¶ 2 Pro se defendant, Stephen Towne, appeals the trial court's order denying his motion for expenses following his dismissal from a claim brought by plaintiff, Sue Primer "I Do," under the Rights of Married Persons Act (Act), also known as the Family Expenses Statute (750 ILCS 65/15 (West 2008). Defendant contends he is entitled to the costs and expenses he incurred in defending the underlying action. Based on the following, we reverse and remand for further proceedings.

¶ 3 FACTS

¶ 4 Defendant and codefendant, Carol Towne, are the parents of codefendant, Andrea Towne Sanger. Defendant and Carol live in Dallas, Texas. On January 21, 2008, Carol entered into a contract with plaintiff for wedding planning services for Andrea's wedding, which was to be held in Chicago on November 8, 2008. The contract included a $3000 fee for plaintiff's services coordinating the wedding with half of the fee to be paid up front and the remaining half, along with "any additional costs and approved expenditures" to be paid within 30 days receipt of an itemized statement. Carol paid the upfront fee, but refused to pay the final bill because of disputed charges that were not preapproved or that represented overbillings. As a result, plaintiff filed suit on September 8, 2010, against Carol, defendant, and Andrea.

¶ 5 Defendant filed a motion to dismiss for lack of personal jurisdiction and because he was not a party to the contract. On November 22, 2010, defendant traveled from Dallas to Chicago to file his pro se appearance and attend the November 23, 2010, hearing on his motion to dismiss. Defendant's motion to dismiss was denied, but he was granted leave to refile by January 18, 2011. Defendant filed an amended motion to dismiss, realleging lack of personal jurisdiction and

that he was not a party to the contract. Defendant traveled from Dallas to Chicago for the scheduled January 18, 2011, status hearing. On that date, the trial court entered an order providing a June 23, 2011, hearing date for defendant's motion to dismiss. Plaintiff filed a response to defendant's motion to dismiss, arguing that defendant was liable under the contract pursuant to the Family Expenses statute because his wife entered the contract. Defendant filed a reply, arguing that marital expenses of a child having reached majority are not "family expenses" of the parents as required by the statute. Defendant again traveled from Dallas to Chicago on June 22, 2011, to attend the scheduled June 23, 2011, hearing. On that date, following the hearing, the trial court entered an order stating that the matter was taken under advisement and a "ruling by mailing" would be made within 14 days. On July 18, 2011, the trial court entered a written order granting defendant's motion to dismiss on the basis that "as a matter of law" wedding expenses could be of no substantial benefit to the family as required by section 15 of Act. Therefore, defendant could not be liable under a contract to which he was not a party.

¶ 6 On July 29, 2011, defendant filed a motion for expenses pursuant to the Act, arguing that plaintiff violated section 15(a) of the Act by naming defendant as a party in the underlying action. Defendant requested $2,609.20 for the "costs, expenses, and attorney's fees" to date, which included costs and expenses for his court appearance, filing his motions to dismiss, attorney consultation, three airplane tickets, cab rides from O'Hare airport and to the court house, parking at the Dallas airport, mileage, and per diem. On August 17, 2011, plaintiff filed a response contending defendant was not entitled to fees where her argument was made in good faith for an extension or modification to existing law.

¶ 7 Also, on August 17, 2011, plaintiff filed a motion to reconsider the trial court's July 18, 2011, order dismissing defendant from the case. Plaintiff alleged the trial court erred in its ruling where the question whether defendant was liable for services constituting family expenses contracted for by his wife was a question of fact not suitable for dismissal. The motion to reconsider was denied.

¶ 8 Defendant filed a supplemental motion for expenses, requesting an additional $933 for expenses incurred while defending plaintiff's motion to reconsider. On August 26, 2011, the trial court denied defendant's motion for costs and expenses without explanation. This appeal followed.

¶ 9 DECISION

¶ 10 Defendant contends the trial court erred in failing to award him the costs and fees he incurred while defending the underlying action. The question on appeal requires statutory interpretation. Our primary goal in interpreting a statute is to ascertain and give effect to the legislature's intent. *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184, 710 N.E.2d 399 (1999). "Where the language of a statute is clear and unambiguous, a court must give it effect as written, without 'reading into it exceptions, limitations or conditions that the legislature did not express.' " *Garza v. Navistar International Transportation Corp.*, 172 Ill. 2d 373, 378, 666 N.E.2d 1198 (1996) (quoting *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 83, 630 N.E.2d 820 (1994). We review the question before us *de novo*. *Davis*, 186 Ill. 2d at 184.

¶ 11 Section 15 (a)(1) of the Act provides: “[t]he expenses of the family and of the education of the children shall be chargeable upon the property of both husband and wife, or of either of them, in favor of creditors therefor, and in relation thereto they may be jointly or separately. 750 ILCS 65/15(a)(1) (West 2004). The statute, however, continues: “[a]ny creditor who maintains an action in violation of this subsection (a) for an expense other than a family expense against a spouse or former spouse other than the spouse or former spouse who incurred the expense, shall be liable to the other spouse or former spouse for his or her costs, expenses and attorney’s fees incurred in defending the action.” 750 ILCS 65/15(a)(3) (West 2004).

¶ 12 Here, the trial court concluded that plaintiff's wedding coordination services were not a family expense pursuant to the Act. The plain language of the statute provides that plaintiff "shall be liable" to defendant "for his *** costs, expenses and attorney's fees incurred in defending the action." 750 ILCS 65/15(a)(3) (West 2004). " 'Whether a statutory provision is mandatory or merely directory depends upon the intent of its drafters. *** Legislative use of the word "may" is generally regarded as indicating permissive or directory reading, whereas use of the word "shall" is generally considered to express a mandatory reading.' " *North Shore Community Bank & Trust Co. v. Kollar*, 304 Ill. App. 3d 838, 847, 710 N.E.2d 106 (1999) (quoting *People v. Reed*, 177 Ill. 2d 389, 393, 686 N.E.2d 584 (1997)). Because the legislature chose the word "shall" in the Family Expenses statute, this court has concluded that the attorney fees provision in section 15(a)(3) of the Act is mandatory. *Id*. at 847. We will not read into the statute any exceptions, limitations, or conditions not explicitly provided by the statutory language, as suggested by plaintiff by arguing that Supreme Court Rule 137 avoided the penalty

of section 15(a)(3) where plaintiff made a good faith effort to expand the terms of the Act. See *Garza*, 172 Ill. 2d at 378. We, therefore, find defendant is entitled to costs, expenses, and fees. See *Proctor Hospital v. Taylor*, 279 Ill. App. 3d 624, 629, 665 N.E.2d 872 (1996) ("[s]ince an emancipated child's medical expenses are not family expenses for purpose of the Expense Statute, [the creditor] is liable for [the former spouse's] attorney fees if [the child] was emancipated at the time she was treated by [the hospital]"). As a result, we reverse the trial court's denial of fees and remand the cause for a determination of the proper amount to be awarded.

¶ 13 CONCLUSION

¶ 14 We reverse the trial court's denial of fees defendant incurred in defending the underlying action and remand the cause for further proceedings.

¶ 15 Reversed; remanded.