2018 IL App (1st) 180184-U

FIRST DIVISION
December 24, 2018

No. 1-18-0184

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF LAURENCE ORLOFF,	)	Appeal from the
	)	Circuit Court of
Petitioner and Contemnor-Appellant,	)	Cook County,
	)	
and	)	
	)	No. 12 D 8987
CAROLINE ORLOFF n/k/a CAROLINE McCRORY,	)	
	)	
Respondent,	)	Honorable
	)	Karen Bowes,
(Howard P. Rosenberg, Guardian *Ad Litem*).	)	Judge Presiding.
	)	

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: The guardian *ad litem* in a dissolution of marriage case had standing to file a petition for indirect civil contempt against the petitioner for the petitioner's failure to pay his court-ordered fees.

¶ 2 This appeal stems from a finding of indirect civil contempt that arose out of a custody battle and divorce proceeding between Laurence Orloff and Caroline Orloff (now McCrory). Guardian *ad litem* Howard Rosenberg was appointed by the circuit court to act on behalf of the couple's minor child. Because Laurence failed to pay his portion of Mr. Rosenberg's fees, as

ordered by the court on multiple occasions, Mr. Rosenberg filed a petition for a rule to show cause as to why Laurence should not be held in contempt. Following a hearing, the court found Laurence to be in indirect civil contempt. Laurence appeals from that finding, arguing that Mr. Rosenberg lacked standing, under the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act or Act) (750 ILCS 5/101 *et seq.* (West 2014)), to file his petition, and that the circuit court erred in denying Laurence's motion to quash the petition on that basis. For the following reasons, we affirm the order finding Laurence in contempt.

¶ 3 I. BACKGROUND

¶ 4 The circuit court's order dissolving the marriage of Laurence and Caroline was entered on October 29, 2012, and incorporated a joint custody agreement for the couple's minor child, Yosefa. Over the next several years, Laurence and Caroline filed multiple motions with respect to the custody agreement. As Laurence acknowledges in his appellate brief, there was "extraordinary acrimony" between the parties.

¶ 5 On March 16, 2015, Laurence filed a petition for the appointment of a guardian *ad litem* (GAL) and to restrict Caroline's parenting time. And, on March 18, 2015, the circuit court, pursuant to section 506 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act or Act) (750 ILCS 5/506 (West 2014)), appointed Howard Rosenberg as the GAL to represent and preserve Yosefa's interests. That order further provided that the parties would pay the GAL's fees and, "for temporary prospective fees," Laurence was ordered to pay $1750.

¶ 6 On June 28, 2016, Mr. Rosenberg filed a disclosure of GAL fees and a request for approval, pursuant to section 506 of the Dissolution Act. In it, Mr. Rosenberg explained that the case had "been a very difficult case from the very beginning" and "extremely contentious," with "serious allegations made by each of the parties" that had "required investigation by the GAL in

order to properly discharge his obligation." Mr. Rosenberg also stated that, at that time, Laurence still owed him $5432.50.

¶ 7 On July 22, 2016, Laurence responded, arguing that Mr. Rosenberg had refused to comply with Laurence's service attempts for a subpoena *duces tecum* for deposition, records, and trial. Laurence argued that the GAL's function was "to investigate the facts of the case and to interview the child and the parties" and that because the GAL is an investigator and "is not in any capacity, acting as an attorney for the minor child," "[t]here is no confidentiality" to any of the requested records. Laurence requested a hearing for the purpose of contesting Mr. Rosenberg's fees.

¶ 8 At that hearing, held on August 8, 2016, Mr. Rosenberg asked the court to order Laurence to pay what was by now $15,000 in outstanding fees. In response, Laurence argued that Mr. Rosenberg's fees were not reasonable and some were not necessary, that he needed more time to review Mr. Rosenberg's records, and that, in any event, Mr. Rosenberg had not followed the dictates of the statute because he had failed to file itemized invoices every 90 days for approval by the court.

¶ 9 On August 10, 2016, the circuit court found, after carefully looking at Mr. Rosenberg's requested fees, that they were "very, very reasonable, and they were necessary." The court also entered a written order approving Mr. Rosenberg's request for $15,000 and setting a payment schedule requiring Laurence to pay $1500 within 7 days and $1000 per month thereafter until the full balance was paid.

¶ 10 On August 22, 2016, Laurence filed a motion to vacate the court's order. According to Laurence, Mr. Rosenberg failed to comply with the mandatory language of section 506(b) of the Act (735 ILCS 5/506(b) (West 2014)), which requires a GAL to "file with the court within 90

days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party." Laurence again alleged that the "awarding of fees without allowing [him] enforcement of pre hearing discovery, [duly] served and long delayed," was a "taking of [his] property without due process."

¶ 11 On some date that is unclear from the record, Mr. Rosenberg filed a "motion for immediate compliance with court order, or, in the alternative, for entry of money judgment," in which he asked the court to reduce the $15,000 "which was ordered by the Court to a money judgment, as an appropriate sanction, with leave to file a wage garnishment if [Laurence] does not become current with the Court's order."

¶ 12 On November 30, 2016, Mr. Rosenberg filed a second disclosure of GAL fees pursuant to section 506 of the Dissolution Act, indicating that he had provided the parties with invoices "each and every month" since his appointment to the case, and that his services were necessary and the charges were reasonable. Mr. Rosenberg stated that, for services rendered through November 10, 2016, Laurence now owed $21,112.60 in total. Mr. Rosenberg asked that the court review the itemized invoices attached to the disclosure and approve the fees as reasonable and just.

¶ 13 On April 5, 2017, the circuit court denied Laurence's motion to vacate its August 10, 2016, order. Noting that Laurence had paid nothing toward the $15,000 he was ordered to pay on August 10, the court entered judgment in favor of Mr. Rosenberg and against Laurence in that amount.

¶ 14 The following day, the court found that the services rendered by Mr. Rosenberg and described in his second disclosure were necessary and the charges for those services were

reasonable. The court entered an additional judgment in favor of Mr. Rosenberg and against Laurence in the sum of $7727.20, for a total of $22,727.70.

¶ 15 On June 20, 2017, Mr. Rosenberg moved for entry of a memorandum of judgment for the two judgments. On June 22, 2017, the circuit court granted this request, entering two separate memoranda of judgment in Mr. Rosenberg's favor—one in the amount of $15,000 and another in the amount of $7727.20. The court also entered a wage deduction/turnover order against Laurence in the amount of $15,000.

¶ 16 On September 15, 2017—noting that Laurence had only paid $752.42 of the $22,727.20 owed at that point—Mr. Rosenberg asked the court to order Laurence to pay the GAL $1000 per month until the amount owed was paid in full. On October 13, 2017, the circuit court entered such an order, finding that Laurence was entitled to credit for the garnishment payments received. The court also set a status date on the first two payments for November 29, 2017.

¶ 17 On December 6, 2017, Mr. Rosenberg filed a petition for indirect civil contempt against Laurence based on his failure to pay the $22,727.00 in attorney fees that he had been ordered to pay by the court. The court entered a rule to show cause against Laurence on December 13, 2017, based on his failure to pay Mr. Rosenberg, and set a hearing date for January 16, 2018.

¶ 18 On December 29, 2017, Laurence filed a motion, under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) to quash service or, in the alternative, to dismiss the petition because Mr. Rosenberg lacked standing to file a petition under section 511 of the Act (750 ILCS 5/511 (West 2016)).

¶ 19 On January 16, 2018, after a hearing, the circuit court denied the motion to quash, found that Laurence "had the ability to comply," and found him in indirect civil contempt of court. The court set a purge in the amount of $2668.93, and stayed incarceration as a sanction until January

23, 2018. This court then entered an order allowing Laurence to deposit 150% of the judgment amount owed to Mr. Rosenberg with the clerk of the circuit court and stayed incarceration pending resolution of this appeal.

¶ 20 II. JURISDICTION

¶ 21 Laurence timely filed his notice of appeal from the court's order of January 16, 2018, on January 23, 2018. This court has jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(5), governing appeals from orders of contempt. Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016).

¶ 22 III. ANALYSIS

¶ 23 Contempt proceedings are *sui generis*. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 48 (1990). "The purpose of civil contempt is to coerce compliance with the order of a court." *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 971 (2004). On appeal, Laurence argues that Mr. Rosenberg lacked standing to file a petition for contempt and that the circuit court therefore erred in denying his motion to quash the petition. No brief has been filed in response, but we have considered the instant appeal on Laurence's brief only, pursuant to the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (allowing consideration of an appeal based on the appellant's brief only when the record is simple and the errors can be considered without additional briefing). The issues in this appeal present questions of law, which we review *de novo*. *Malec v. City of Belleville*, 384 Ill. App. 3d 465, 468 (2008).

¶ 24 Laurence does not deny that the court ordered him to pay fees to Mr. Rosenberg, nor does he deny that he failed to pay those fees. Laurence instead challenges only the procedure by which Mr. Rosenberg attempted to collect his fees, arguing that Mr. Rosenberg should have initiated a separate collection action pursuant to section 2-1402 of the Code of Civil Procedure (735 ILCS 5/2-1402 (West 2014)). Although Laurence maintains that his counsel was "unable to

locate any specific case[ ]law on point," we have indeed upheld circuit court orders of contempt based on a party's failure to pay GAL fees. See *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 332-33 (2001) (concluding that the circuit court's orders holding the petitioner in contempt for failing to pay GAL fees and expert witness fees were not against the manifest weight of the evidence).

¶ 25 In support of his argument, Laurence focuses on section 511 of the Dissolution Act (750 ICLS 5/511 (West 2014)), which provides:

> "Procedure. A judgment of dissolution *** of marriage may be enforced or modified by order of court pursuant to petition.
>
> (a) Any judgment entered within this State may be enforced or modified in the judicial circuit wherein such judgment was entered or last modified by the filing of a petition ***. If *neither party* continues to reside in the county wherein such judgment was entered or last modified, the court on the motion of *either party* or on its own motion may transfer a post-judgment proceeding *** to another county or judicial circuit, as appropriate, where *either party* resides." (Emphases added.)

According to Laurence, this section's references to "neither party" and "either party" mean that enforcement under section 511 is available only to the parties to a dissolution proceeding and not to the GAL. Although we cannot say we disagree with Laurence's interpretation of section 511, it is unclear to us why Laurence relies on section 511 of the Act at all.

¶ 26 The relevant section is section 506 of the Act, which provides that in a proceeding involving the custody of a child, "the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities," including as a GAL. 750 ILCS

5/506(a)(2) (West 2014). That section of the statute also provides that the court that appoints a GAL has the authority to award fees and costs, stating that "[t]he provisions of Sections 501 and 508 of this Act shall apply to fees and costs for attorneys appointed under this Section." *Id.* 506(b) (West 2014).

¶ 27 Thus, Laurence is wrong in suggesting that Mr. Rosenberg approached the circuit court "solely as a judgment creditor." Mr. Rosenberg was appointed, pursuant to section 506 of the Dissolution Act, by the circuit court as the GAL in Laurence's divorce case. Indeed, Laurence was the one who sought that appointment. Laurence argues that section 506 of the Act "does not directly address enforcement of fees, only who or where said fees [a]re to be paid from." We disagree.

¶ 28 Section 508 of the Act, titled "Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs," provides that the court "may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees" and, additionally, "may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her name ***." *Id.* 5/508(a) (West 2014).

¶ 29 This court considered the application of section 508 in *In re Marriage of Baltzer*, 150 Ill. App. 3d 890 (1986), stating:

> "The purpose of section 508 is to promote judicial economy by eliminating the need for an attorney to bring a separate suit to collect fees from his client [citations]. A request for attorney's fees which is brought in a dissolution action is not independent of the overall proceedings [citation], and it is reasonable, and understandable, for the legislature to have provided that the same court which

> adjudicates matters of property, custody and support also determine fees disputes between attorney and client." *Baltzer*, 150 Ill. App. 3d at 894-95.

The *Baltzer* court in fact went on to state that, while a dissolution proceeding is still pending, "an application for attorney's fees and costs *must* be made" in that proceeding. *Id.* at 896. (Emphasis added.)

¶ 30 Laurence also argues that he could not be held in contempt because Mr. Rosenberg had been discharged. He stresses that the issue before us "is limited only [to] cases where the GAL has been discharged" and seeks fees "as any other judgment creditor would." But the fact that Mr. Rosenberg had been discharged at the time he filed his petition for indirect civil contempt did not deprive the circuit court of the authority to award him fees or to hold Laurence in contempt when he failed to pay them.

¶ 31 We made this clear in *Baltzer* where we held that an attorney who had been discharged still needed to seek fees in the dissolution proceeding, for as long as that proceeding was pending. 150 Ill. App. 3d at 893-896. Then, in *Heiden v. Ottinger*, 245 Ill. App. 3d 612, 616 (1993), we followed *Baltzer* and held that an attorney in a still-pending paternity suit who had been discharged had to pursue fees in the paternity action, since the award of attorney fees in paternity suits also follow the factors in section 508 of the Dissolution Act.

¶ 32 Pursuant to section 508 of the Act, the GAL had the right to pursue his fees directly in the ongoing dissolution proceeding. The circuit court ordered Laurence to pay his share of those fees and he failed to do so, even after the court made a finding that he was able to do so. Because a finding of indirect civil contempt is intended to compel compliance with court orders (*Nettleton*, 348 Ill. App. 3d at 971), the GAL's filing of a petition for indirect civil contempt against Laurence in this action was proper. The court properly denied Laurence's motion to quash that

petition based on a lack of standing.

¶ 33 IV. CONCLUSION

¶ 34 For these reasons, we affirm the judgment of the circuit court.

¶ 35 Affirmed.