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IN THE
COURT OF APPEALS OF INDIANA

ROSALIE JARVIS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0905-CV-401
	)	
HAROLD DREES	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Certo, Judge
Cause No. 49G21-0705-PO-19361

September 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Rosalie Jarvis appeals the trial court's failure to award her certain attorney fees in her action for obtaining an order of protection with respect to Harold Drees. Jarvis presents the following restated issue for review: Did the trial court order Drees to pay Jarvis's attorney fees in an amount less than the amount to which she was entitled?

We reverse and remand with instructions.

Many of the relevant facts in this case pertain to the chronology of this litigation. Jarvis and Drees's romantic relationship ended in acrimony and on May 10, 2007, Jarvis filed a petition for an ex parte protective order. The order was granted the same day. On November 20, 2007, Jarvis filed a Petition for Attorney Fees and Expenses. After Drees's original attorney withdrew and then a subsequent attorney withdrew, and following several continuances requested by Drees, a hearing on the matter was finally conducted on September 8, 2008. Following the hearing, the court granted Jarvis's petition for a protective order. In the CCS entry on that date, the court indicated, "COURT MAY ISSUE RELIEF FOR COUNSELING OR ATTORNEYS FEES AFTER 1ST CONTEMPT ALLEGATION IF SOUGHT." *Appellant's Appendix* at 5.[1] This entry alluded to criminal proceedings then pending against Drees. Apparently, on October 9, 2008, Jarvis filed a petition for attorney fees and expenses and a motion to correct error.[2] A hearing was held on November 13, 2008

[1] We note here that the appendix contains numerous photocopies that are of such poor quality that they are practically, and in some cases entirely, unintelligible. We encourage counsel to ensure that all materials submitted to this court for review are legible.

[2] We say "apparently" because the last entry in the CCS provided in the Appellant's Appendix is for September 8, 2008 – the date of the hearing on the protective order. Because there were oblique references to this motion at a subsequent hearing, we proceed on the assumption that this is correct.

for the purpose of addressing the matters of attorney fees and expenses. After the hearing, the court issued the following order with respect to attorney fees:

> The Petitioner has shown by clear and convincing evidence that the Respondent's actions indicate that he represents a credible threat to the safety of the Petitioner. The Petitioner also demonstrated that the Respondent's actions caused her to seek the Order for Protection after other attempts to negotiate with him failed. The Court finds that the Respondent is responsible for pecuniary losses to the Petitioner due to this litigation.
>
> Pursuant to Indiana Code 4-26-5-9 (c)(3), the Court orders the Respondent to reimburse the Petitioner for the following expenses incurred by her after the Court issued its initial Order for Protection on May 10, 2007:
>
>> Attorney fees in the amount of two thousand, one hundred three dollars and four cents ($2,103.40).
>> Counseling expenses in the amount of four hundred forty-four dollars and twenty-two cents ($444.22).
>> Private investigator fees and costs for court in the amount of two hundred eighty-five dollars and eighty cents ($285.80).
>>
>> Total due by Respondent to Petitioner: two thousand, eith [sic] hundred thirty-three dollars and forty-two cents[.]

Id. at 6.

On December 16, 2008, Jarvis filed a Motion to Correct Errors as to Order of Attorneys Fees. In it, Jarvis claimed the trial court overlooked a portion of the attorney fees that Jarvis had proven she incurred and to which she was entitled. The trial court denied that motion of February 17, 2009, and this appeal ensued. Further facts will be provided where relevant.

We note that Drees did not file an appellee's brief. When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to

establish reversible error. *Zoller v. Zoller*, 858 N.E.2d 124 (Ind. Ct. App. 2006). In such cases, we may reverse if the appellant establishes prima facie error, which is an error at first sight, on first appearance, or on the face of it. *Id*. Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf. *Id*.

A trial court's decision concerning the amount of attorney fees is reviewed under an abuse of discretion standard. *Daimler Chrysler Corp. v. Franklin*, 814 N.E.2d 281 (Ind. Ct. App. 2004). A court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it. *Id*.

Jarvis contends the trial court erred in calculating the award of attorney fees. During the hearing, Jarvis presented two exhibits pertaining to attorney fees incurred as a result of the protective-order litigation. Petitioner's Exhibit 12 contained an itemized list of services provided by Jarvis's counsel from June 28 to July 31, 2007. The total amount of fees incurred was listed as $2103.30. Exhibit 13 contained an itemized list of services provided by Jarvis's counsel from August 2, 2007 through September 8, 2008. The total amount of fees incurred during that period was listed as $13,425.00. As Jarvis notes, Drees did not dispute the amount of fees she claimed at the September 8, 2008 hearing. Yet, after concluding that Drees's actions had caused Jarvis to incur the fees necessitated by the need for a protective order, and after stating that it "would award attorney's fees after the date the order for protection was filed on May 10, 2007", the court ordered Drees to pay only the much smaller amount reflected on Exhibit 12, which covered legal services rendered only for the period from June 28 to July 31, 2007. *Transcript* at 49. In so doing, the court seems to

have disregarded the fees reflected on Exhibit 13, notwithstanding that all of the fees reflected on Exhibit 13, like those reflected on Exhibit 12, were incurred "after the date the order for protection was filed on May 10, 2007", the trial court's expressed criterion for payment. *Id*.

Why were the fees on Exhibit 13 not included in the attorney fees order? The scant record before us does not shed light on this pivotal question. Our review of Exhibits 12 and 13 reveals that the entries thereon are similar in the type of services rendered, and all services on both exhibits appear to have pertained to Jarvis's protective-order litigation. The services reflected on Exhibit 12 ended on July 31, 2007 and the services reflected on Exhibit 13 commenced two days later, on August 2. The line of demarcation between those two time periods appears to have been purely arbitrary. Perhaps it was nothing more than different billing cycles – we cannot tell. In any event, we can discern nothing that occurred between the end date of the services listed on Exhibit 12, inclusive, and the beginning date of the services listed on Exhibit 13, inclusive, that might have caused the trial court to conclude that fees incurred after July 31, 2007 should be regarded differently than those incurred up to that point in time.

In the final analysis, we are confronted with a situation in which the trial court's explanation of its award of attorney fees (i.e., "would award attorney's fees after the date the order for protection was filed on May 10, 2007", *Transcript* at 49) and the language of the resultant order ("the Court orders the Respondent to reimburse the Petitioner for the following expenses incurred by her after the Court issued its initial Order for Protection on

May 10, 2007", *id*. at 6) cannot be squared with the ultimate order to include only fees incurred from June 28 to July 31, 2007. The fees thereby excluded represented the lion's share of Jarvis's legal fees.

We are aware, of course, that a trial court is not compelled to award all of the fees a party incurs or requests, and that the size of an attorney fees award may be arrived at through consideration of the factors listed in Rule 1.5 of our Rules of Professional Conduct. When considering such factors, the trial court has the discretion to fashion an award that is less than the actual fees incurred and requested, grounded primarily upon its determination of the reasonableness of the attorney fees. *See Benaugh v. Garner*, 876 N.E.2d 344 (Ind. Ct. App. 2007), *trans. denied*. In this case, however, it does not appear that the trial court engaged in an evaluation of the reasonableness of Jarvis's fees, nor did Drees object to the claimed fees on that basis, or any other basis, for that matter. Rather, based upon the fact that the amount of the fees awarded was virtually identical to the amount reflected on Exhibit 12 ($2103.40 versus $2103.30, respectively), it appears that the trial court simply overlooked the information contained on Exhibit 13 in fashioning its order. If that is not the case, then the trial court rejected the fees reflected on Exhibit 13 on grounds not readily apparent to us.

We think the better interpretation of this seeming inconsistency between the explanation of the award and the award itself is that the trial court's failure to include the fees reflected on Exhibit 13 was a mere oversight. At the same time, however, we are mindful that the trial court denied Jarvis's December 16, 2008 motion to correct error, which placed this matter squarely before the court. Unfortunately, the trial court did not explain its ruling,

and the rationale, if there is one, remains unclear for drawing a line between July 31 and August 2, 2007, for purposes of recoverable attorney fees. With all of that said, and in light of the fact that a trial court has discretion to reduce the amount of fees requested based upon its determination of reasonableness, *see id*., we conclude that the best course is to reverse and remand with instructions to either (a) modify its order awarding attorney fees to include an amount for the fees reflected on Exhibit 13, or (b) explain its rationale for not including the fees set out therein.

Judgment reversed and remanded with instructions.

BAKER, C.J., and RILEY, J., concur.