

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001599-MR

WALTER E. BREEDEN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE TARA HAGERTY, JUDGE
ACTION NO. 11-CI-503106

ASHLEY M. STRIETELMEIER &
DAVID B. MOUR

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS, JOHNSON, AND D. LAMBERT, JUDGES.

JOHNSON, JUDGE: Walter Breedon, (“Walter”), appeals an order from the Jefferson Circuit Court, Family Court Division, granting attorney fees and costs to Ashley M. Strietelmeier (“Ashley”) and David B. Mour (“Mour”), Ashley’s attorney. After reviewing the record in conjunction with the applicable legal authorities, we REVERSE AND REMAND.

BACKGROUND

On September 8, 2011, Walter filed a motion with the court seeking custody and child support for the minor child born to Ashley and him. On July 27, 2012, the parties entered an agreed order setting forth the terms and conditions of their joint and shared custody with their minor child, including the parenting schedule.

In August 2014, Ashley's work hours changed and she notified Walter that she wanted to modify the parenting schedule for the child. Ashley and Walter attempted, but were unsuccessful at settling the matter amicably. On October 20, 2014, Ashley filed a motion with the court seeking to modify the parenting schedule and asking the court to grant her attorney fees and costs incurred as a result of the motion before the court. The parties were initially ordered to mediate, but that effort was also unsuccessful. On September 9, 2015, the court entered an order adjusting the parenting schedule that addressed the concerns of both Walter and Ashley, encouraged both parties to seek a resolution to any future concerns involving the minor child, and stated the following:

In her motion to modify the parties' parenting schedule, Ashley requested that Walter pay her attorney's fees associated with the motion. However, the Court did not hear testimony regarding Ashley's request for attorney's fees at the hearing on August 20, 2015. Mr. Mour may file an affidavit of attorney's fees within seven days of this Order, and the court will take the matter under submission.

On September 11, 2015, Mour filed the requested affidavit of attorney fees incurred, and on September 14, 2015, Walter filed his Response and Objection to Request for Attorney's Fees. On September 18, 2015, the court entered its order stating:

On motion of Respondent, and the Court being otherwise advised, IT IS ORDERED that Petitioner pay attorney fees and costs in the amount of \$2,390.00 direct to Respondent's counsel, David B. Mour, Esq., on or before thirty days from the date of this Order.

On October 19, 2015, Walter filed this appeal, to the September 18, 2015 court order that awarded Ashley attorney fees. By order of this Court on April 15, 2016, Walter amended his Notice of Appeal to include Mour.

STANDARD OF REVIEW

In a decision concerning the award of attorney's fee and court costs our review is based upon whether or not the court abused its discretion. *Miller v. McGinty*, 234 S.W.3d 371, 372 (Ky. App. 2007).

ANALYSIS

Because Walter's appeal is from the September 18th order, the only issue before us concerns whether the court abused its discretion when it awarded attorney fees to Ashley and Mour without addressing the requirements of Kentucky Revised Statutes (KRS) 403.220. We recognize that a trial court in a divorce action is not required to make specific findings when determining whether to award attorney fees. *Miller*, 234 S.W.3d at 374. However, we are also cognizant of the fact that the court is obligated to consider the financial resources of the

parties before ordering a party to pay reasonable fees or court costs of the other party. *Id.* (quoting *Hollingsworth v. Hollingsworth*, 798 S.W.2d 145, 148 (Ky. App. 1990)). Thus, the court is required to address the issue of the financial disparity, if any, between the parties, prior to granting attorney fees or costs. In this case, the court did not.

When we look to the court's order in this matter, the court noted that it had not taken any evidence regarding the financial matters of the parties before awarding Ashley and Mour fees. Because there is no evidence in the record, we are left to guess if the court considered any financial disparity as required by KRS 403.220. The court has broad discretion to grant attorney fees and court costs, but it is required to consider the disparity, if any, in the relative financial resources of the parties in favor of the payor. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 519 (Ky. 2001). Since there was no evidence submitted regarding the financial resources of the parties at the time the court entered its order, we find that the court abused its discretion in awarding fees to Ashley and Mour.

CONCLUSION

Based upon the foregoing, this Court REVERSES AND REMANDS this matter to the Jefferson Circuit Court, Family Court Division, for the taking of evidence and issuance of an opinion consistent with this order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hugh W. Barrow
Louisville, Kentucky

BRIEF FOR APPELLEE:

David B. Mour
Louisville, Kentucky