

Electronically Filed
Intermediate Court of Appeals
CAAP-15-0000526
15-JUN-2016
08:08 AM

NO. CAAP-15-0000526

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RNM, Petitioner-Appellee, v. JMKK, Respondent-Appellant, and
CHILD SUPPORT ENFORCEMENT AGENCY, STATE OF HAWAII,
Respondent-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-P NO. 13-1-6166)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Ginoza, JJ.)

In this paternity action brought by Petitioner-Appellee RNM (Father), Respondent-Appellant JMKK (Mother) appeals from the June 15, 2015 order awarding attorney's fees and costs, entered by the Family Court of the First Circuit (Family Court).¹ Mother argues that Father's affidavit in support of fees and costs was untimely and inadequate and the amount requested was unreasonable and excessive. We affirm.

I.

Relevant to this appeal,² a stipulation between the parties provided the following: Mother and Father shall have joint legal custody of the Child with sole physical custody to Mother, subject to Father's visitation; Mother shall have the Child on Mother's birthday, and Father shall have the Child on

¹ The Honorable Gale L.F. Ching presided.

² Mother's two appeals from orders denying her motions for leave to relocate to Oklahoma with Child were resolved in SCWC-14-0001051 and CAAP-15-0000418 and resulted in a remand to the Family Court for further proceedings.

Thanksgiving Day in even numbered years; and each party shall be allowed to travel with the Child with at least two (2) weeks advance notice to the other party, and shall provide the other party with specific travel itinerary for such travel.

On November 21, 2014,³ Father filed a "Motion for Relief After Judgment or Order" (Father's Motion for Relief) seeking (1) enforcement of Father's visits with the Child on a regular and consistent basis as intended by the parties in reaching their June 5, 2014 stipulation; (2) an order that Mother shall not be able to travel from November 22, 2014 until the end of the year and that future travel shall be approved by Father; (3) order that Father shall have his visit on Thanksgiving, November 27, 2014;⁴ and (4) order Mother to pay for Father's attorney's fees and costs for having to pursue this motion. The Family Court held a hearing on the motion on November 26, 2014.

On December 18, 2014, the Family Court entered its order granting in part and denying in part Father's Motion for Relief. The Family Court ordered (1) Father would have his normal visit with the Child on Thanksgiving; (2) Father was entitled to five makeup visits with the Child; (3) Mother's travel was not to interfere with Father's visitation time, Mother could only travel during a period affecting his visitation time if Father agreed in writing, and Mother was not prohibited from traveling through the end of 2014; and (4) Father's request for attorney's fees was taken under advisement and Father's attorney was to submit a Declaration for Fees for the Court's consideration by December 1, 2014.

On December 1, 2014, Father's counsel faxed an "Affidavit of Elsa F.M. McGehee Regarding Petitioner [Father's] Attorney's Fees and Costs" (December 1 Affidavit) to the Family Court. The December 1, Affidavit was delivered to court for filing on December 2, 2014 and listed the billable hours and

³ It appears that the motion was received by the Family Court on November 18, 2014, but was not filed until November 21, 2014.

⁴ Father and Mother could not agree who would have the Child on Thanksgiving, because Thanksgiving fell on the Mother's birthday in 2014.

hourly rates worked in connection with Father's Motion for Relief from November 10, 2014 to November 26, 2014.

On December 17, 2014, the Family Court issued a "Further Order Re: [Father's Motion for Relief] and Declaration Filed 11/21/14, Hearing Held on 11/26/14" (Further Order) instructing Father's counsel to submit a declaration detailing and itemizing the requested attorneys fees and costs by December 19, 2014. On December 16, 2014, in apparent response to Mother's December 5, 2014 objections to Father's request for attorney's fees and costs, Father's counsel submitted an "Affidavit of Elsa F.M. McGehee in Response and Opposition to [Mother's] Objections to [the December 1 Affidavit] Regarding [Father's] Attorney's Fees and Costs Filed December 5, 2014" (Rebuttal Affidavit) and attached an itemized summary of Father's attorney's fees for the relevant period.

On June 15, 2015, the Family Court entered an Order Awarding Father's Attorney's Fees and Costs in the amount of \$7,425.35, finding good cause to be shown that said fees and costs were reasonable and necessary. Mother filed her notice of appeal from this order on July 14, 2015. On August 14, 2015, the Family Court issued its Findings of Fact and Conclusions of Law in accordance with Hawai'i Family Court Rules Rule 52.

II.

Mother presents the following Points of Error:⁵

- A. Father's affidavit supporting fees and costs was untimely and inadequate.

Error 4: The Family Court erred in entering FOF 5, which stated, "On December 1, 2014, [Father's] counsel timely submitted an unfiled copy of the Affidavit of [Father's Attorney] Regarding [Father's] Attorney's Fees and Costs [] to the Court and [Mother's] counsel via fax transmittal."

⁵ Errors 2, 3, 8, and 9 are not supported by argument in Mother's opening brief and are therefore deemed waived. Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7). The remaining points of error will be addressed along with Mother's corresponding arguments.

Error 5: The Family Court erred in entering FOF 8, which stated, "As a result of attempting to enforce his court-ordered visitation, [Father] incurred a significant amount of attorney's fees and costs."

Error 6: The Family Court erred in entering FOFs 9-14, which lists the billable hours worked at various hourly rates for [Father's] counsel and corresponding legal assistan[ts] . . . without providing a complete, detailed, itemized billing statement that reflect[s] those exact amounts.

B. An award of attorney's fees must consider [Mother's] financial abilities.

Error 7: The Family Court erred in entering FOF 15, which stated, "In light of the fact that [Mother] could afford to hire two (2) separate attorneys[,] her claim she cannot afford to pay any attorney's fees and costs awarded to [Father] is not credible.

C. The amount of attorney's fees and costs requested is unreasonable and excessive.

Error 1: The Family Court erred in its June 15, 2015 Order, in the facts and as a matter of law, awarding [Father] Attorney's Fees and Costs on the basis of "finding good cause to be shown that said fees and costs are reasonable and necessary."

Error 10: the Family Court erred in entering COL 8, which stated, "The allowance or award of an attorney's fee does not always have to be predicated on evidence presented in its support."

Error 11: The Family Court erred in entering COL 9, which stated, "In light of [Mother's] ongoing and intentional failure to comply with the [visitation Stipulation], the compensation requested was reasonable and necessary in this proceeding."

Error 12: The Family Court erred in entering COL 10, which stated . . . "it is fair and reasonable for [Mother] to pay [Father's] attorney's fees and costs in the amount of \$7,425.35."

III.

A. Affidavit of fees and costs was timely and adequate.

Mother argues that Father's December 1 Affidavit was untimely because it was not submitted by December 1, 2014, as ordered by the Family Court. Mother further alleges that Father's counsel committed perjury when she stated that the December 1 Affidavit was timely submitted, because it was not filed until December 2, 2014.

At the November 26, 2014 hearing on Father's Motion for Relief, the Family Court instructed Father's counsel to submit a declaration indicating the amount of legal fees she was requesting by December 1, 2014. According to the affidavit submitted by Father's counsel, she submitted by fax an unfiled copy of the December 1 Affidavit on December 1, 2014. The Family Court was in the best position to assess whether Father's counsel's averment was true. Thus, the Family Court's FOF 5 that Father's December 1 Affidavit was timely as it was faxed to the Family Court on December 1, 2014 was supported in the record and was not clearly erroneous. Inoue v. Inoue, 118 Hawai'i 86, 92-93, 185 P.3d 834, 840-41 (App. 2005). Consequently, Father's counsel did not misrepresent the date of her submission, and Point of Error 4 is without merit.

Mother also argues that Father produced insufficient evidence to substantiate the amount of fees and costs he is seeking, because the December 1 Affidavit only provided the total number of hours spent by each attorney and paralegal assigned to the case and their hourly rates. Mother also alleges that Father never complied with the December 17, 2014 Further Order requiring him to submit a declaration detailing and itemizing the requested attorney's fees and costs.

While the Family Court did issue, on December 17, 2014, a Further Order requiring Father's counsel to submit a declaration detailing and itemizing the attorney's fees by December 19, 2014, Father's counsel had already complied when it submitted an itemized summary of Father's fees for the period from November 10, 2014 to November 26, 2014 attached to the Rebuttal Affidavit.

Mother further argues that the Rebuttal Affidavit does not include any itemization or details of time billed for fees or a breakdown of costs, as a majority of the information was redacted. However, as indicated in her Rebuttal Affidavit, Father's counsel indicated that information protected by attorney-client privilege was redacted and billable time that was unrelated to Father's Motion for Relief was not included. The information not redacted included a detailed listing of the date,

detailed descriptions, hours and rate, and total amount charged for each task. The itemized list provided by Father's counsel did provide the "detailed records demonstrating what legal work was performed solely with respect to the Motion to Enforce" that Mother requests. As this evidence supports FOF 8, that Father incurred a significant amount of attorney's fees and the amounts detailed in FOFs 9-14, these findings are not clearly erroneous and Points of Error 5 and 6 are without merit.

B. Mother's ability to pay.

Mother argues the Family Court should have denied Father's request for fees and costs because of her limited financial ability to pay. Mother points to authority involving divorce cases to support her argument.

"The family court is given broad discretion to award attorney's fees and costs under HRS § 584-16[(2006)⁶]. The court's award will not be disturbed on appeal if the record discloses adequate showing of reasonableness of the award." Jane Doe VI v. Richard Roe VI, 6 Haw. App. 629, 630, 736 P.2d 448, 450 (1987).

Mother presented no evidence to the Family Court that she was indigent, although she argued that her only source of income was the \$465 she received in child support from Father. The Family Court found her claim that she could not afford to pay Father's attorney's fees incredible in light of her apparent ability to hire two attorneys to represent her in this paternity case as well as an action for a restraining order.⁷ We will not invade the Family Court's credibility determination. "It is well-settled that an appellate court will not pass upon issues

⁶ HRS § 584-16 of the Uniform Parentage Act provides, as it did at all times relevant to these proceedings,

The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including genetic tests, subject to the provisions of section 584-11(f), to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the State, or such person as the court shall direct.

⁷ We note that Mother apparently lived with her family.

dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." In re Jane Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) (citation, internal quotation marks, ellipsis, and footnote omitted). Thus, Point of Error 7 is without merit.

C. Attorney's fees were reasonable

Mother argues that the amount of attorney's fees and costs Father seeks is absurd, excessive, and unreasonable on its face. She disputes the amount of time spent on various tasks, identifies tasks that she claims should not have been included in the attorney's hours, and disputes the inclusion of administrative tasks.⁸

"Generally, in order to justify a finding of a 'reasonable' attorney's fee, there must be evidence, or a proper showing made, in support of such finding." Sharp v. Hui Wahine, Inc., 49 Haw. 241, 250, 413 P.2d 242, 248 (1966) (citations omitted). This court has upheld an award of attorney's fees even where no hourly breakdown of services was provided:

With respect to the amount of attorney's fees assessed, the record indicates that the court was not provided with any details of the services rendered by counsel. An award of attorney's fees will not be disturbed upon appellate review absent an abuse of discretion, and the fact that a trial court was not provided with an hourly breakdown of services is not grounds for reversal. Smothers v. Renander, 2. Haw. App. 400, 633 P.2d 556 (1981).

Makani Dev. Co. v. Stahl, 4 Haw. App. 542, 548, 670 P.2d 1284, 1289 (1983).

In Makanani, this court found that fourteen hours claimed by the attorneys did not appear excessive in light of the seven motions filed by each side and nearly two hours spent in court on the matter. Id. There, despite a lack of details, "the court's handling of the matter clearly indicate[d] that the court carefully exercised its discretion." Id. Here, there was detailed evidence in support of Father's attorney's fees and costs with an hourly breakdown of services. Father's attorneys

⁸ The only legal authority to which Mother cites explains that messenger fees are to be excluded. See Kikuchi v. Brown, 110 Hawai'i 204, 130 P.3d 1069 (App. 2006). This authority is inapposite as messenger fees were not specified in the itemized list provided by Father's counsel.

filed two motions and spent four hours in court. In light of the detailed descriptions and hourly breakdown of services provided, the Family Court carefully exercised its discretion when it approved the attorney's fees. Thus, there is evidence the attorney's fees award was reasonable and Points of Error 1, 10, 11 and 12 are without merit.

1. Redacted entries were not included in fee request.

Mother further argues that the redacted entries in the itemized billing are unreasonable. She claims that forty-one redacted items make it impossible to assess the reasonableness of the time billed, but it appears that items that were completely redacted were not included in Father's request for fees and those that were partially redacted left enough information to ascertain the nature of the task. Finally, we note that Mother could have asked for an *in camera* review of these redacted items, but did not do so. Thus, this argument is unsupported by the record and is without merit.

2. Mother's remaining arguments lack legal authority.

Without citing to any legal authority to support her arguments, Mother asserts with broad, conclusory statements that (1) entries in the itemized billing for administrative work should not be awarded; (2) any award of Father's fees and costs is improper because he did not prevail on the issues raised in his Motion to Enforce; and (3) Mother acted in good faith to comply with the visitation order, so Father's request for attorney's fees should have been denied. These assertions should be disregarded because Mother fails to present any discernible argument in support as required by HRAP Rule 28(b)(7). See, e.g., Kaho'ohanohano v. Dep't of Human Servs., 117 Hawai'i 262, 297 n.37, 178 P.3d 538, 573 n.37 (2008) ("This court will 'disregard [a] particular contention' if the appellant 'makes no discernible argument in support of that position[.]'" (citation omitted); Taomae v. Lingle, 108 Hawai'i 245, 257, 118 P.3d 1188, 1200 (2005) (where a contention lacks "any reasoning, supported by citations to case law or authority to constitute a discernible

argument," the court should decline its consideration); Citicorp Mortg. Inc. v. Bartolome, 94 Hawai'i 422, 435, 16 P.3d 827, 840 (App. 2000) (no discernible argument presented where appellants "cite[d] no apposite authority and [made] no coherent argument on the issue from cognizable precedent").

IV.

For the foregoing reasons, the June 15, 2015 Order Awarding Petitioner RNM's Attorney's Fees and Costs, entered in the Family Court of the First Circuit, is affirmed.

DATED: Honolulu, Hawai'i, June 15, 2016.

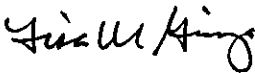
On the briefs:

JMKK,
Respondent-Appellant, *pro se*.


Presiding Judge

Elsa F.M. McGehee and
Amanda O. Jenssen,
for Petitioner-Appellee.


Associate Judge


Associate Judge