SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5310-15T3

N.M.,

Plaintiff-Appellant,

v.

A.S.,

Defendant-Respondent.

Submitted December 21, 2017 – Decided March 15, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FV-09-0428-16.

N.M., appellant pro se.

The Serruto Law Firm, PC, attorneys for respondent (Michael Wiseberg, on the brief).

PER CURIAM

At the time of the commencement of this action, plaintiff N.M. was married to her husband, defendant A.S. In August 2015, the parties filed cross-complaints under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Before

the completion of their trial, defendant withdrew his complaint. After conducting a seven-day trial, the Family Part judge entered a final restraining order (FRO) in favor of plaintiff.

Plaintiff later sought an award of counsel fees and costs totaling $46,240.25, but the trial judge awarded only $1566.25 after finding that plaintiff was not entitled to recover fees and costs incurred while defendant's complaint was pending and due to plaintiff's counsel's use of block billing instead of task billing. The judge also refused to award fees for time spent addressing parenting time issues or for plaintiff's counsel's preparation of a written summation, finding that they were not a direct result of defendant's domestic violence. On appeal from the January 26, 2016 order awarding her those fees and costs, plaintiff contends that the judge abused his discretion by improperly limiting her fee award in violation of the public policy established by the PDVA. We agree and accordingly vacate the award and remand for reconsideration.

The facts giving rise to the acts of domestic violence alleged by the parties as found by the trial judge are not material to our opinion and need not be repeated here. More significant is the procedural history, which we summarize as follows. The parties were married in August 2011 and have one daughter. On August 10, 2015, plaintiff obtained a temporary restraining order (TRO)

against defendant, temporary custody of the parties' daughter and possession of their residence. Three days later, defendant secured a TRO against plaintiff.

The final hearing commenced on August 20, 2015, and continued for seven non-consecutive days, concluding on December 10, 2015 when the judge placed his decision on the record. Before doing so, the judge considered the oral argument of counsel that "supplement[ed] the[ir earlier] written submissions[.]" After the trial judge placed his decision on the record, he instructed plaintiff's counsel to submit a certification of services and provided for the submission of opposition by defense counsel.

Plaintiff's counsel filed a detailed certification of services seeking payment for services that included addressing parenting time issues arising from the entry of the TRO, trial preparation, and the seven court appearances. Defendant opposed the application, and further filed a motion for reconsideration of the FRO. Plaintiff opposed that motion and her counsel filed another certification of services, seeking an additional $4200 for fees incurred post judgment, including opposing defendant's motion.

On January 26, 2016, the judge denied defendant's motion for reconsideration and awarded plaintiff $1041.25 out of the $46,240.25 in attorney fees she sought through trial, as well as

$525 out of the $4200 incurred in connection with opposing defendant's reconsideration motion. In his oral decision, the judge explained that the award was based on plaintiff prosecuting her request for an FRO and not "for any[ ]time spent in defending [defendant's] TRO." According to the judge, "prosecuting [plaintiff's] request for an FRO against [defendant] and defending his request against her was so intertwined that it[was] impossible to separate the two." The judge held that plaintiff could not recover for any attorney fees from August 13, 2015, when defendant requested a TRO, to October 20, 2015, when he dismissed his complaint. Further, he noted that plaintiff could not recover "fees under the frivolous litigation statute, [N.J.S.A. 2A:15-59.1(a),]" because "the [c]ourt never found [defendant's] application to be" frivolous.

The judge also refused to award fees for time "spent preparing the written summation[1] [or for] dealing with custody and parenting time." According to the judge, "the hours spent [for those

[1] According to defendant, the judge never instructed counsel to submit post-trial written summations, but plaintiff, nevertheless, made a submission. The record, however, indicates that after an extensive discussion about submissions, the judge allowed the parties to make written submissions and later amplify them through oral summations or present their summations entirely orally on the scheduled date.

services] are [also] not . . . directly attributable to [defendant's] act of domestic violence."

Finally, the judge determined the hours and fees that were reasonable and explained why he substantially reduced the amount sought by plaintiff. Relying on Rendine v. Pantzer, 141 N.J. 292, 335 (1995), he stated that when a court decides to award counsel fees "pursuant to a fee[-]shifting statute such as the [PDVA]," a court must "not accept passively the submissions of counsel to support the lodestar amount." He found that "this task has been made very difficult if not altogether impossible by plaintiff's counsel's use of . . . block billing rather than task billing[, which is when] an attorney bills a portion of an hour for each particular task." He also stated "[b]lock billing makes it impossible to tell how much time is spent on a given task and therefore [it] is also practically impossible for the [c]ourt to determine whether or not time extended is reasonable." For the same reason, the judge denied fees incurred for time spent in opposing defendant's motion for reconsideration, and for pursuing a cross motion for related attorney fees. The judge also disallowed fees for anticipated time spent in court for oral arguments on that day.

In February 2016, plaintiff filed a motion for reconsideration for the counsel fees and submitted her counsel's

certification of services for that motion. On July 6, 2016, the judge considered counsels' arguments and then denied plaintiff's motion. This appeal followed.

We begin by recognizing the limited nature of our review. In reviewing the grant or denial of a counsel fee award, we accord significant deference to the trial judge's determinations. McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007). A trial judge's "fee determinations . . . will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine, 141 N.J. at 317). However, where a trial judge's determination of fees was based on "irrelevant or inappropriate factors, or amounts to a clear error in judgment[,]" we must intervene. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005) (citing Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

A trial judge is specifically authorized by the PDVA to award as damages the reasonable counsel fees and costs incurred by a victim of domestic violence. Under the PDVA, a judge may enter an order "requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence[,]" which includes "reasonable attorney's fees [and] court costs[.]" N.J.S.A. 2C:25-29(b)(4). The award is

designed "to make the victim whole." Wine v. Quezada, 379 N.J. Super. 287, 292 (Ch. Div. 2005). Because fees and costs in a domestic violence action are awarded as damages, an award is "not subject to the traditional analysis" for an award of fees in family-type claims pursuant to N.J.S.A. 2A:34-23, and the court is not obliged to consider the parties' financial circumstances. McGowan, 391 N.J. Super. at 507 (quoting Schmidt v. Schmidt, 262 N.J. Super. 451, 453 (Ch. Div. 1992)); see also Wine, 379 N.J. Super. at 292. Accordingly, the only three requirements for an award of counsel fees under the PDVA are that the fees are the "direct result of . . . domestic violence," they are reasonable, and that they are presented by way of affidavit pursuant to Rule 4:42-9(b). McGowan, 391 N.J. Super. at 507 (quoting Schmidt, 262 N.J. Super. at 454); Wine, 379 N.J. Super. at 291.

Although the PDVA provides for an award of counsel fees and costs to a "victim" of domestic violence, it does not allow for the same award to successful defendants in order

> to avoid a chilling effect on the willingness of domestic violence victims to come forward with their complaints. To saddle a victim of domestic violence with the counsel fees of his or her adversary when the complaint was filed in good faith, but the evidence nevertheless fell short of persuading a judge that the [PDVA] was violated, would have just such a chilling effect.

> [M.W. v. R.L., 286 N.J. Super. 408, 411 (App. Div. 1995).]

The trial judge here, therefore, correctly determined that plaintiff could not recover fees incurred exclusively for her defense against defendant's withdrawn complaint. We part company with the judge, however, as to the manner in which he attempted to deal with the overlap between those fees incurred by plaintiff as a result of defendant's domestic violence and those incurred defending against defendant's cross-complaint. We disagree that, as the judge found, because the parties' complaints were so "intertwined[,]" plaintiff should have been deprived of an award of fees for the time period that defendant's cross-complaint was pending. Similarly, we do not agree that fees incurred for preparation of summations or addressing parenting time issues arising from the entry of the TRO or FRO are not compensable.

First, we discern no legal basis to exclude legal fees related to custody and parenting time orders in the context of actions filed under the PDVA. The PDVA expressly provides for a trial judge's entering of parenting time orders upon a finding of domestic violence. N.J.S.A. 2C:25-29(b)(3). Any fees incurred relative to such orders clearly are the "direct result" of the finding of domestic violence and the ensuing need to address to parenting time. N.J.S.A. 2C:25-29(b)(4).

Second, and similarly, fees incurred for an attorney's work on written summation are equally compensable under the PDVA as fees for trial preparation and post-judgment services, and everything in between. All of the necessary services rendered to a victim would have never been incurred but for a defendant's domestic violence.

Turning to the trial judge's rejection of the fees incurred by plaintiff's counsel while defendant's cross—complaint was pending, we conclude that the trial judge failed to consider the purposes of the PDVA when reaching his decision. "When fee-shifting is permitted, the public policy of the enabling statute is a relevant factor to be considered in conjunction with the [other required] factors[.]" Garmeaux v. DNV Concepts, Inc., 448 N.J. Super. 148, 161 (App. Div. 2016). We find totally inconsistent with the purposes of the PDVA the trial judge's conclusion that because there were services rendered to plaintiff during the period that defendant's cross-complaint was pending, they were so "intertwined" that they were not recoverable. By reaching that conclusion, the trial judge ignored "the interest to be vindicated in the context of the [PDVA's] objectives[.]" Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 366 (1995). To allow domestic violence defendants to eradicate or minimize a victim's entitlement to a counsel fee award by filing and

withdrawing a cross-complaint is antithetical to the PDVA's purpose to make the victim whole.

Opposing domestic violence complaints that share "a common core of operative facts and [are] bottomed on related legal theories" must be considered "overlapping claims[,]" Silva v. Autos of Amboy, Inc., 267 N.J. Super. 546, 559 (App. Div. 1993), "inextricably caught up with each other." Garmeaux, 448 N.J. Super. at 158 (quoting Benkoski v. Flood, 626 N.W.2d 851, 862 (Wis. Ct. App. 2001)). Despite the actions' relationship to each other, "[d]ismissal of [defendant's cross-complaint was] not a sufficient reason for a wholesale" refusal to award fees to plaintiff while it was pending. Silva, 267 N.J. Super. at 559 (citing Hensley v. Eckerhart, 461 U.S. 424, 435 (1983)). The correct analysis required the trial judge to identify, from the records of the time expanded by counsel during that period, which services would have had to be rendered to plaintiff regardless of defendant's filing of a cross-complaint and award that amount, subject to the proper calculation of the lodestar amount.[2] See ibid.

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[2] We recently explained the calculation as follows:

> When fee shifting is permissible, a court must ascertain the "lodestar"; that is, the "number of hours reasonably expended by the successful

party's counsel in the litigation, multiplied by a reasonable hourly rate." To compute the lodestar, the trial court must first determine the reasonableness of the hourly rates charged by the successful party's attorney in comparison to rates "for similar services by lawyers of reasonably comparable skill, experience and reputation" in the community. After evaluating the hourly rate, the trial court must then determine the reasonableness of the hours expended on the case. "Whether the hours the prevailing attorney devoted to any part of a case are excessive ultimately requires a consideration of what is reasonable under the circumstances" and should be informed by the degree of success achieved by the prevailing party. The award need not be proportionate to the damages recovered.

Rules of Professional Conduct (RPC) 1.5(a), requires that "[a] lawyer's fee shall be reasonable in all cases, not just fee-shifting cases[.]"

In determining reasonableness, RPC 1.5(a) requires courts to consider:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;

(continued)

Finally, we address the trial judge's wholesale rejection of plaintiff's counsel's "blocked billed" time entries. We recognize that a trial judge has the discretion to determine if billing charges by attorneys are vague or improper. See Rendine, 141 N.J. at 337. Indeed, billing entries should show how the hours were divided. However, "[i]t is not [always] necessary to know the exact number of minutes" devoted to each task, the precise details of an activity, or the achievements of each attorney working on

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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
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> (6) the nature and length of the professional relationship with the client;
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> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
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> (8) whether the fee is fixed or contingent.
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> In reviewing the trial court's methodology for an award of fees, we are guided by our Supreme Court's declaration that "there is no precise formula . . . [and that t]he ultimate goal is to approve a reasonable attorney's fee that is not excessive."
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> [Garmeaux, 448 N.J. Super. at 159-60 (alterations in original) (citations omitted).]

the matter. Ibid. (quoting Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973)). It is sufficient that a billing entry contains the hours spent on a general activity. Ibid. Specificity is only required to the extent necessary for the court "to determine if the hours claimed are unreasonable for the work performed." Rode v. Dellarciprete, 892 F.2d 1177, 1190 (3d Cir. 1990) (quoting Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983)).

Applying these guiding principles, we conclude the trial judge mistakenly applied his discretion by rejecting plaintiff's "blocked billed" time. "'Block billing' is 'the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.'" Welch v. Metro. Life Ins. Co., 480 F.3d 942, 945 n.2 (9th Cir. 2007) (quoting Harolds Stores, Inc. v. Dillard Dep't Stores, Inc., 82 F.3d 1533, 1554 n.15 (10th Cir. 1996)). It "is a common practice which itself saves time in that the attorney summarizes activities rather than detailing every task" and such billing should be upheld as reasonable if the listed activities reasonably correspond to the number of hours billed. U.S. ex rel. Doe v. Pa. Blue Shield, Xact Medicare Servs., 54 F. Supp. 2d 410, 415 (M.D. Pa. 1999). While a substantial number of vague entries may be a reason to exclude hours, it is not a reason

to exclude the entire entry. The more appropriate approach would be to look at the entire block, compare the listed activities and the time spent, and determine whether the hours reasonably correlate to all of the activities performed.

In sum, we conclude the fee award here was the result of a mistaken exercise of the trial judge's discretion. We are therefore constrained to vacate the fee award made to plaintiff and remand the matter to the trial judge to consider anew his determination as to the amount of counsel fees and costs to which plaintiff is entitled as a victim under the PDVA.

The order under appeal is vacated and the matter is remanded for further proceedings consistent with our opinion. We do not retain jurisdiction.