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NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

FEB 28 2003

JOHN D. ROTHMAN,

Plaintiff/Appellee,

vs.

NANCY T. ROTHMAN,

Defendant/Appellant.

MICHAEL S. RICHIE
CLERK

No. 97,229

APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY,
OKLAHOMA

HONORABLE RUSSELL P. HASS, JUDGE

AFFIRMED

Rec'd (date)	2-28-03
Posted	m
Mailed	m
Distrib	m
Publish	yes <input checked="" type="checkbox"/> no

Russell D. Carson,
RUSSELL D. CARSON, P.C.,
Tulsa, Oklahoma,

For Plaintiff/Appellee,

Sharon K. Schooley,
SCHOOLEY & ASSOCIATES,
Tulsa, Oklahoma,

For Defendant/Appellant.

Opinion by Kenneth L. Buettner, Judge:

¶1 The trial court ordered Nancy T. Rothman (Wife) to pay \$70,099 of John D. Rothman's (Husband's) attorney fees incurred during Husband's Motion to Modify custody of the parties' two minor children. We affirm.

¶2 Both parties are lawyers. Their children were born in 1988 and 1990. In their agreed divorce, Wife had custody of the children and Husband had visitation rights. Noncompliance with visitation and grave concerns for the children's mental welfare caused Husband to seek modification of the custody order. Post-decretal proceedings were lengthy and contentious. The evidence was amply presented that Wife and her friend were actively engaged in a process of alienating the children from their Father. It is unfortunate for the children that the process was successful. Among other acts of sabotage, Wife reported that Husband had sexually abused the younger child. This allegation was determined to be unfounded. The last straw was when Wife and her friend "hired" a man to spy on Husband and to find a female who would attach herself romantically to Husband, receive a key to his condo, and plant child pornography there.¹

¹ He testified that he agreed at first as a favor because Mrs. Rothman was helping him with his divorce. After he realized the criminal intent of the plan, he tape-recorded the next conversation, took it to Mr. Rothman who, with his attorney, gave the tape to the Tulsa Police Department the next day.

¶3 The hearing on the merits of the Motion to Modify was held over five days in May 2001. On July 18, 2001, the court entered its order changing custody to Husband and awarding Wife visitation determined by the Parenting Coordinator. It also found that Husband was not guilty of the two citations of contempt filed by Wife, but that Wife was guilty of six citations of contempt, which were purged by mootness.

¶4 On December 6, 2001, the trial court granted Husband's Application for Attorney Fees and Costs. It noted that \$70,099 of \$110,099 was unpaid and ordered Wife to pay that amount which was due, \$70,099. The Court specifically stated in paragraph 9 of its order:

The Court finds the following conduct by the Defendant was arbitrary and capricious, and exacerbated the litigation:

- a. Reporting false allegations of abuse to the Department of Human Services.
- b. Contemptuous and continuous denial of visitation even after numerous warnings from this Court.
- c. Contemptuous and deliberate efforts to alienate and negatively influence the minor children from their father.
- d. Attempts to injure and harm the Plaintiff's business, reputation, and his relationship with the minor children by attempting to "setup" the Plaintiff with illegal child pornography.
- e. Filing a frivolous emergency motion when this Court ordered a one week visitation.

¶5 On appeal, Wife states that the trial court abused its discretion in its fee award to Husband because Husband's income is greater than hers, that she acted in the children's best interests and that the findings were not supported by the evidence.

¶6 “The determination of whether and how to assess attorney fees in this kind of action is addressed to the sound discretion of the trial court. We will not modify its decision absent a showing of abuse of discretion....” *Sicking v. Sicking*, 2000 OK CIV APP 32, ¶ 25, 996 P.2d 471, 477.

¶7 Title 43 Supp. 1997 § 107.3 (D) provides the court options with respect to false or frivolous accusations against a parent in a custody proceeding:

During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;
2. Consider the false allegations in determining custody; and
3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

¶8 The overwhelming evidence supports a finding that Husband never abused or neglected his children but was falsely and intentionally accused. Wife’s behavior is reprehensible in a parent. The trial court did not abuse its discretion when it ordered Wife to pay \$70,099 of Husband’s attorney fees and costs.

¶9 When a parent is required to enforce his rights to visitation (or child support) a court may allow a prevailing party to recover costs and attorney fees spent in connection with enforcing those rights. 43 O.S. Supp. 1999 §111.1. This ground for

granting costs and fees was also sufficiently supported by evidence. The trial court did not abuse its discretion in its award.

¶10 Wife complains that the parties' incomes are disparate. They are. Wife makes ██████████ month and Husband makes ██████████ month. Disparate incomes, however, is not a ground for error. The laws in place are to deter parents from the bad actions witnessed in the case at bar. When the parent is not deterred, then the parent may be punished. These are not income-based laws. The wife's income and assets are sufficient to pay the judgment.

¶11 In general, the family court may "... require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances." 43 O.S. Supp. 1997 § 110(D).² As stated in *Finger v. Finger*, 1996 OK CIV APP 91, 923 P.2d 1195, factors a court may consider include:

- whether the subsequent action was brought because one of the parties had endangered or compromised the health, safety, or welfare of the child;
- whether one party's behavior demonstrated the most interest in the child's physical, material, moral, and spiritual welfare;
- whether one party's behavior demonstrated a priority of self-interest over the best interests of the child or children;
- whether either party unnecessarily complicated or delayed the proceedings, or made the subsequent litigation more vexatious than it needed to be; and

² This section also permits an award of appeal-related costs and attorney fees.

- consideration of the means and property of the parties.

¶12 With respect to these factors, the record supports findings that Wife's actions endangered the mental welfare of the children; that she demonstrated a high degree of self-interest to the point that hurting her children was a casualty of her main goal, and she created unnecessarily vexatious litigation. Although Husband has greater income, Wife's is sufficient to support herself and sufficient to pay for her bad acts.

¶13 The order of the trial court is AFFIRMED.

ADAMS, P.J., and JOPLIN, C.J., concur.