

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FELICIA LITTLE

Appellee

v.

FRANK LITTLE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 889 WDA 2013

Appeal from the Order of May 13, 2013
In the Court of Common Pleas of Allegheny County
Family Court at No.: FD 91-6924-006

BEFORE: FORD ELLIOTT, P.J.E., BOWES, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

FILED: March 24, 2014

Frank Little ("Father") appeals *pro se* from the trial court's May 13, 2013 order disposing of his exceptions to a March 20, 2013 hearing officer's recommendation. After review, we affirm.

A prior panel of this Court summarized the factual and procedural history as follows:

Father and Mother were married on June 20, 1987, separated on July 3, 1991 and divorced on February 17, 1994. They have one child [F.W. ("Child"), born in 1989]. An equitable distribution order was entered by [the Honorable Cynthia A. Baldwin] on October 8, 1999 whereby the parties were each awarded 50% of the marital property. All remaining marital assets were awarded to Mother, 'one-half in settlement of equitable distribution, and one-half from Father's equitable distribution in settlement of child support of \$111,939.91 as of April 30, 1999.' The order directed the parties to schedule a hearing to establish child support retroactive to October 8, 1999.

[* * *]

Mother is the sole, legal custodian of [Child]. Father has had no contact with the child since she was less than two years old. [Child] is an extremely talented and accomplished student, musician and dancer. She participates in music, dance and theater with the Pittsburgh Civic Light Opera and the Pittsburgh Ballet.

[* * *]

During the marriage, Father was employed as an attorney. He is now disbarred. Father was incarcerated in this jurisdiction from September 14, 1999 through August 2, 2001 for his conviction on charges of barratry and assault.

Little v. Little, 885 A.2d 593 (Pa. Super. 2005), unpublished memorandum at 2-3, *appeal denied*, 586 Pa. 771, 895 A.2d 1262 (2006).

The parties have spent more than a decade litigating child support retroactive to October of 1999, with several appeals and remands. This Court in the 2005 memorandum remanded for a hearing on five limited issues. *Id.* at 25. The remand hearing took place on July 27, 2007. After that hearing, both parties filed exceptions to the hearing officer's recommendations. The trial court dismissed all exceptions, and the parties once again appealed to this Court. In 2009, this Court affirmed the trial court's order in most respects. **Little v. Little**, 988 A.2d 739 (Pa. Super. 2009), unpublished memorandum at 20-21. We concluded that the trial court erred in assigning Father an earning capacity as a substitute teacher prior to the date on which Father earned his teaching certificate. *Id.* Also, we concluded that the trial court erred in failing to credit Father properly for Social Security disability benefits received by Child prior to October 27, 2000, the effective date of a change in the applicable law. *Id.* This Court's remand instructions to the trial court were as follows:

Accordingly, we vacate the part of the trial court's order that assigns Father an earning capacity as a teacher prior to his earning a teaching certificate. We also vacate the part of the trial court's order that calculated the parties' child support obligation for the period from October 8, 1999, through October 26, 2000, and remand to the trial court to recalculate the parties' child support obligation for

this period by awarding Father a credit for all Social Security disability benefits received by [Child] from October 8, 1999, through October 26, 2000, as indirect support payments instead of applying Rule 1910.16-2(b)(2) to determine the parties' support obligation and to make any corresponding adjustments to the parties' support obligations, arrearages and allocation of the additional expenses for [Child]. In all other respects, we affirm.

Id.

After the remand hearing, the hearing officer recommended that Father be credited for Social Security disability payments received by Child from October 8, 1999 through October 26, 2000. The hearing officer further recommended that no earning capacity as a teacher should be imputed to Father from December 1, 2001 to October 31, 2002, as Father did not earn his teaching certificate until October of 2002. The hearing officer recommended corresponding changes to Father's support obligations for those periods and adjusted his arrearages accordingly. Father and Mother filed exceptions, and the trial court dismissed Father's exceptions and granted Mother's exceptions. The trial court concluded that the hearing officer's recommendation included some mathematical errors and improperly relied on the 2005 support guidelines rather than the 1999 support guidelines.

Little v. Little, 657 WDA 2011, at 1-4 (Pa. Super. Dec. 1, 2011) (unpublished memorandum) (footnotes omitted). In that appeal, this Court affirmed the trial court's support order and, finding Father's appeal frivolous, remanded the case solely for the determination of a counsel fee award for Mother. ***Id.*** at 11-12.

The trial court summarized the subsequent procedural history as follows:

Father filed a Petition for Allowance of Appeal on December 9, 2011. The Petition was denied by the Supreme Court on April 30, 2012. Mother filed a Praecipe to Enter Judgment on support

arrears on May 9, 2012. Father filed a Petition to Correct Judgment (“Petition”). By Order dated January 25, 2013, a contempt hearing for Father’s failure to pay support arrears was scheduled for March 7, 2013. On February 14, 2013, Mother presented a Motion to Dismiss Father’s Petition as frivolous and sought additional counsel fees as sanctions. By Order dated February 14, 2013, the trial court consolidated Mother’s claim for counsel fees with the contempt hearing scheduled for March 7, 2013.

Following the hearing, the hearing officer recommended that Mother be awarded counsel fees of \$3,198.60 for the frivolous appeal[, as directed by this Court in its December 1, 2011 memorandum]. The hearing officer recommended that Mother be awarded counsel fees of \$615.75 for costs incurred responding to Father’s frivolous Petition. Father and Mother both filed exceptions. By Order dated May 13, 2103, the court dismissed Father’s exceptions and granted Mother’s exceptions in part. Father timely appealed, and in accordance with an Order issued pursuant to [Pa.R.A.P.] 1925(b), filed a Rule 1925(b) Statement

Trial Court Opinion (“T.C.O.”), 9/20/2013, at 3.

Father raises four issues for our review:

- I. Whether the lower court had jurisdiction for the proceedings that are the subject of this appeal?
- II. Whether the lower court erroneously mishandled and prematurely dismissed the Petition to Correct Judgment?
- III. Whether the lower court had any basis in law or fact for [an] award of counsel fees to [Mother’s] attorney pursuant to the Order of February 14, 2013 or May 13, 2013?
- IV. Whether the hearing officer and lower court denied due process to [Father] in the proceedings that are the subject of this appeal?

Father’s Brief at 4.

The order that Father has appealed requires him to pay Mother counsel fees. The fees were awarded pursuant to our earlier remand, as a result of a petition filed by Father that was deemed frivolous by the trial court, and as a result of Father's vexatious, dilatory, and obdurate conduct. "[A]ppellate review of an order of a tribunal awarding counsel fees to a litigant is limited solely to determining whether the tribunal palpably abused its discretion in making the fee award." ***Lucchino v. Commonwealth, Dept. of Environmental Protection***, 809 A.2d 264, 268-69 (Pa. 2002).

Father first contends that the trial court lacked jurisdiction because the Court of Common Pleas of Allegheny County had transferred the case to the Court of Common Pleas of Mercer County for enforcement. However, Father misapprehends the record. Allegheny County attempted to register the order in Mercer County for enforcement, which both Father and Mother contested. Following a hearing, the Court of Common Pleas of Mercer County sustained Mother and Father's objections, and did not register the order.

Despite prevailing on this issue, Father filed a notice of appeal from that order with this Court, claiming due process violations. We quashed the appeal upon Mother's motion. Because the order was never registered in Mercer County, jurisdiction remained in the Court of Common Pleas of Allegheny County. Even though the proceedings in the instant matter began before Father's appeal was quashed, the trial court is allowed to enforce its own order while an appeal is pending. **See** Pa.R.A.P. 1701(b)(2). The

instant hearing began as a contempt proceeding because Father was not paying his support as ordered. The court is also permitted to “take any action directed or authorized . . . by the appellate court.” Pa.R.A.P. 1702(b)(4). We had directed the trial court to make an award of attorney’s fees to Mother and the trial court was authorized to resolve that matter. Finally, a trial court is only precluded from proceeding on matters that are subject to a pending appeal. **See** Pa.R.A.P. 1701(c). The issues before the trial court were not implicated in Father’s appeal from the Mercer County order, which dealt solely with Father’s complaints of perceived due process violation in Mercer County. Therefore, the trial court had jurisdiction and Father’s claim is without merit.

Father next claims that the court improperly dismissed his Petition to Correct Judgment. However, the petition merely was an attempt by Father to re-litigate his arrears balance. That issue was the subject of our December 1, 2011 memorandum, in which we affirmed the trial court. Father filed a petition for allowance of appeal with the Supreme Court of Pennsylvania. His request was denied. Father’s arrears have been fully and finally litigated, and it was not error for the trial court to refuse to re-open a matter that has been decided by this Court. **See *Zane v. Friends Hosp.***, 836 A.2d 25, 29 n.6 (Pa. 2003) (“[U]pon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter”); ***Clark v. Troutman***, 502 A.2d 137, 139 (Pa. 1985) (“When an issue of law is actually litigated and determined

by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the same parties, whether on the same or a different claim.”).

Father asserts that there was no basis for the trial court’s award of counsel fees. We directed the entry of a counsel fee award in connection with Father’s frivolous appeal. On March 20, 2013, the hearing officer awarded Mother \$3,198.60 in attorney’s fees in connection with that appeal, an amount later affirmed by the trial court after both Mother and Father filed exceptions to the hearing officer’s report and recommendation. This amount was based upon Mother’s counsel’s testimony and exhibits. The hearing officer rejected a request for additional fees in connection with the petition for allowance of appeal. Our review of the record shows that the testimony and exhibits supported that fee award.

Father also disputes two additional awards of attorney’s fees. First, the hearing officer awarded an additional \$615.75. The basis for this award was Mother’s motion to dismiss Father’s Petition to Correct Judgment. Mother averred in that motion that the matter was frivolous and she sought counsel fees in connection with her response to the petition. By its February 14, 2013 order, the trial court consolidated that request for counsel fees with the contempt hearing. The issue was properly before the hearing officer, and the record supports the hearing officer’s decision to award the additional fees.

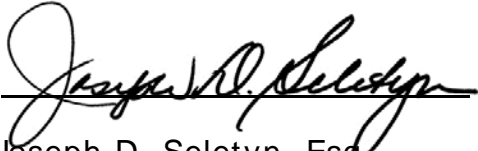
Father also disputes the trial court's granting in part Mother's cross-exceptions and subsequent order awarding an additional \$1,633 in counsel fees. Mother contended that Father continued to raise frivolous issues and sought counsel fees pursuant to 42 Pa.C.S.A. § 2503, which allows for the award of fees for obdurate, dilatory, or vexatious conduct. The trial court found Father's conduct to fall within this section, and awarded additional fees for the time involved in responding to Father's exceptions and the exceptions argument. Our review of the record shows that Father continued to attempt to litigate issues that have been resolved, thereby extending the length of the hearings as well as the litigation itself. Further, the awards were based upon testimony and billing records, and therefore, are supported by the record. The trial court did not err or abuse its discretion in awarding any of these attorney's fees.

Father's final argument alleges due process violations. Here, Father complains that he was prohibited from presenting evidence to the hearing officer and from cross-examining Mother's counsel regarding his fees. Our review of the record demonstrates that no such violation occurred. Father was permitted to testify. The hearing officer heard Father's testimony regarding why he was not paying on the order. She interrupted Father only when he attempted, more than once, to re-raise the issue of his arrears, which had already been decided by this Court. Notes of Testimony ("N.T."), 3/7/2013, at 37-38. After Mother's counsel introduced evidence of the fees, the hearing officer offered Father time to review the records when Father

indicated that he was unprepared. However, Father refused the continuance and questioned Mother's attorney. *Id.* at 26. The hearing officer cut off Father's cross-examination only when Father again attempted to raise the issue of his arrears. *Id.* at 29-30. Father's claim is without merit

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/24/2014