

Circuit Court for Carroll County
Case No.: 06-C-17-074106

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1089 and 1598

September Term, 2021
(Consolidated)

JULIE KENNEL

v.

WALTER KENNEL

Kehoe,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 15, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis, or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a judgment entered in a protracted and vociferously-litigated dispute between Julie Kennell and her former spouse, Walter Kennell, regarding a loose end from their previous divorce action. The Circuit Court for Carroll County, the Honorable Fred S. Hecker, presiding, entered a judgment in favor of Mr. Kennell and awarded him attorneys’ fees. Ms. Kennell challenges the fee award.¹

We will affirm the judgment of the circuit court.

BACKGROUND

The substantive issue in this case is whether Ms. Kennell violated the terms of the parties’ 2018 Separation and Property Settlement Agreement (“the marital settlement agreement”) and their 2020 Settlement Agreement and Consent Order (the “consent order”) by failing to execute a power of attorney prepared by Mr. Kennell’s counsel. The power of attorney was intended to facilitate the transfer of Ms. Kennell’s interest in jointly-owned property located in the Dominican Republic to Mr. Kennell. Each party filed a petition to hold the other in constructive contempt of the consent order together with prayers for other relief. When everything was said and done, the trial court (1) denied all relief to Ms. Kennell, (2) denied Mr. Kennell’s petition to hold Ms. Kennell in constructive contempt, and (3) granted various forms of substantive relief to Mr. Kennell including his petition for

¹ Ms. Kennell’s issue was worded as follows: “Whether the trial court abused its discretion when it awarded the entirety of requested attorneys’ fees to Defendant, despite Defendant’s and third parties’ unreasonable actions which increased the amount of fees incurred during the litigation?”

an award of attorneys' fees. The only aspect of the court's judgment that is at issue in this appeal is the fee award.

Between them, the parties' extract and appendix exceed 4,000 pages. The following summary is intended to give context to the parties' appellate contentions.

The parties were married for 28 years and, during that time, accumulated a substantial number of jointly-owned assets. They entered into a marital settlement agreement that was incorporated into the divorce decree on July 20, 2018. Section 15.C of the marital settlement agreement provided that each party released the other from any obligation to pay attorneys' fees "incurred or to be incurred . . . in connection with their separation and/or the dissolution of their marriage," with one significant exception:

[I]f either party institutes an action for breach of, or to enforce this Agreement, the "Prevailing Party" in such litigation (as determined by the Court in entirety or percentage) shall be entitled to reimbursement by the other (non-Prevailing Party) of all attorney's fees and litigation costs, including any expert witness fees (all in whole or in judicially determined percentage) incurred by the Prevailing Party in such action.

Subsequent disputes between the parties culminated in the consent order, which was entered by the trial court on March 9, 2020.

One of the provisions of the marital settlement agreement and the consent order required Mr. Kennell to pay Ms. Kennell \$167,500 for her 49% ownership interest in Kikan

Investment, S.R.L.,² a business entity organized under the laws of the Dominican Republic.

The relevant sections of these documents provided that:

(1) Steven M. Caplan, Esq., Mr. Kennell’s counsel, would deposit \$167,500 in an IOLTA escrow account of Mary R. Sanders, Esq., one of Ms. Kennell’s lawyers, on or before March 9, 2020.

(2) At the same time, Mr. Caplan would forward to Ms. Sanders a draft power of attorney from Ms. Kennell to Ms. Sanders. The power of attorney was to be “approved in form and substance” by Mr. Kennell’s Dominican counsel.

(3) Ms. Sanders was then to submit the proposed power of attorney to Ms. Kennell’s Dominican counsel for review and approval with the proviso that “approval [was] not to be unreasonably withheld by [Ms. Kennell’s] Dominican counsel or [by Ms.] Sanders.” Ms. Kennell would then execute an approved draft of the power of attorney by March 30, 2020.

(4) Ms. Sanders would also “execute all such documents on behalf of [Ms. Kennell] as may reasonably be necessary (as provided by [Mr. Kennell’s] Dominican counsel)” to complete the transaction, and

(5) Finally, Mr. Kennell agreed to indemnify and hold Ms. Kennell harmless “from any and all costs, expenses and/or liabilities in any manner associated with his ownership of Kikan and its assets and/or the ultimate disposition thereof.”

Subsequent events illustrate the melancholy truth that even “the best-laid schemes . . . Gang aft agley.”³ Mr. Caplan was a few days late in delivering the proposed power of attorney to Ms. Sanders. By that time, Ms. Sanders was in the process of ending her professional relationship with Ms. Kennell and was unwilling to act as her attorney-in-fact. Ms. Kennell’s lawyer in the Dominican Republic, Cindy Calle, Esq., decided it was

² An acronym for “Sociedad de Responsabilidad Limitada.” We gather from the record that SRL entities organized under the laws of the Dominican Republic are analogous to limited liability companies in the United States.

³ Robert Burns, “*To a Mouse, On Turning her up in her Nest, with the Plough.*” (1785).

necessary for her to review records relating not only to Kikan, but also to other Dominican Republic business entities in which Mr. Kennell had an interest. She asked for Mr. Caplan's assistance in obtaining access to the records and he declined to give it.

Each party filed a petition seeking to hold the other in constructive contempt of the consent order and asking for other relief. After extensive disputes over discovery and other matters, the case came to trial before the circuit court on August 16–20, 2021.

On August 31, the circuit court filed its Memorandum Opinion and Order of Court (the “Memorandum Opinion”) that disposed of the parties’ various requests for relief. Pertinent to the issues presented in this appeal, the court: (1) denied Ms. Kennell’s claims; (2) denied Mr. Kennell’s petition to hold Ms. Kennell in constructive contempt; (3) entered judgment in favor of Mr. Kennell as to other claims, including his request to enforce the provisions of the marital settlement agreement and the consent order against Ms. Kennell; (4) ordered Ms. Kennell to sign the Kikan power of attorney and deliver it to Mr. Kennell’s counsel; and (5) ordered Ms. Kennell to pay \$209,150 to Mr. Kennell “as reimbursement for counsel fees in this matter.” The court provided a detailed analysis of the relevant evidence and legal principles and its reasoning in granting the fee award to Mr. Kennell. *See* Memorandum Opinion pp. 5–14.

ANALYSIS

In her brief and as supplemented by her counsel at oral argument, Ms. Kennell presents several contentions as to why the trial court erred in granting all of the attorneys' fees requested by Mr. Kennell.

First, she contends that the trial court erred by failing to fully consider the testimony and actions of Ms. Calle, her counsel in the Dominican Republic. Ms. Kennell states:

The trial court found that [Ms. Kennell] lacked justification for declining to execute [Mr. Kennell's] Dominican Holdings Power of Attorney. However, the unrefuted evidence adduced at trial was that Julie was entitled to, and required to, have the Dominican Power of Attorney reviewed and approved by her counsel in the Dominican Republic before she signed.

We draw different conclusions from the record. The relevant provision of the marital settlement agreement provided that, although the power of attorney presented by Mr. Kennell's lawyers was subject to approval by Ms. Kennell's Dominican Republic counsel, the agreement also stated that such approval was not to be unreasonably withheld. In a pre-trial ruling resolving a discovery dispute, the trial court ordered that Ms. Calle was barred from testifying about the reasons for her refusal to approve the proposed power of attorney.⁴ Ms. Kennell asserts that "[a]lthough certain parts of Ms. Calle's testimony were stricken, Ms. Calle's statement that '[the] powers of attorney were invalid' remained part of the court record."

⁴ Ms. Kennell does not challenge the court's ruling on appeal.

We read the record differently—it is clear that the court did not consider Ms. Calle’s non-responsive statement to be evidence.⁵ The trial court concluded that “the evidence [properly before it] demonstrates clearly and unequivocally that Mr. Kennell complied with [the relevant provisions of the marital settlement agreement and the consent order] and Ms. Kennell did not.” Memorandum Opinion at 3. The court then identified the evidence that supported its conclusion. *Id.* at 3–5. We have no basis to conclude that the court’s findings in this regard were clearly erroneous.

Second, Ms. Kennell argues that the trial court “improperly shifted the burden onto [her] to prove a lack of breach instead of requiring [Mr. Kennell] to prove the breach.” We do not agree. As we have just explained, the court found that Mr. Kennell presented

⁵ The relevant exchanges between counsel, witness, and the court were (emphasis added):

[Ms. Kennell’s trial counsel]: When you were given the powers of attorney to review, what did you do?

[Ms. Calle]: I wrote an email to Ms. Kennell with my findings, which were that this [sic] powers of attorney were invalid.

Mr. Caplan: Objection.

The Court: Don’t tell me. Hold on, ma’am.

Mr. Caplan: Objection.

The Court: *Hold on. Don’t tell me what those findings were. The question didn’t ask you what your findings were, just what you did. Okay?*

[Ms. Calle]: *Okay. Sorry, Your Honor.*

The Court: So you wrote an email to Ms. Kennell, correct, with your findings?

[Ms. Calle]: Yes. I wrote an email to Ms. Kennell with my findings.

evidence that he had complied with the terms of the consent order and that Ms. Kennel did not. There was no burden-shifting, improper or otherwise.

Third, Ms. Kennell contends that, in making its fee award, the trial court did not give proper weight to her “discovery efforts and the need to postpone trial due to [Mr. Kennell’s] discovery failures.” She explains:

In considering the reasonableness of [Mr. Kennell’s] fees, the court acknowledged that the litigation was hard fought, yet it ignored that much of the hard-fought litigation was due to [Mr. Kennell’s] unreasonable non-compliance with discovery, requiring additional effort by Julie to obtain requested information. Predictably this increased the costs for both parties. . . . The trial court failed to consider the impact of [Mr. Kennell’s] initial discovery failures on the length of the proceedings and the increased costs of litigation. While it may have been reasonable to make an award of some fees to [Mr. Kennell], it was unreasonable and an abuse of the court’s discretion to award [him] the entirety of his requested fees considering [his] actions.

In response, Mr. Kennell asserts that this contention was not presented to the trial court. Ms. Kennell did not assert otherwise. We conclude that this contention is not preserved for appellate review. *See* Md. Rule 8-131(a).

Finally, Ms. Kennell argues that the trial court failed to take into account her good faith attempts “to perform her obligations under the settlement agreement and [the] consent order at the outset of the litigation.” She explains:

Notwithstanding that [Ms. Kennell] did not agree to sign the Dominican Holdings Power of Attorney as drafted by [Mr. Kennell’s counsel], the trial court failed to properly consider that she did not sign because she had a good-faith belief it was “not approved” by her counsel as required in the [consent order]. Notably, the trial court did not find [Ms. Kennell] in contempt.

We think that a more accurate characterization of the court’s analysis is that the court concluded that Ms. Kennell had no good faith basis to decline to sign the power of attorney Memorandum Opinion at 4.⁶

“[D]ecisions concerning the award of counsel fees rest solely in the discretion of the trial judge.” *Eastern Shore Title Co. v. Ochse*, 453 Md. 303, 333 (2017) (quoting *Petrini v. Petrini*, 336 Md. 453, 468 (1994)). For this reason, “[t]he trial court’s determination of the reasonableness of attorney’s fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous.” *Id.* (quoting *Myers v. Kayhoe*, 391 Md. 188, 207 (2006)).

It is clear that Judge Hecker carefully reviewed the relevant evidence in making the fee award. It is equally clear that he thoroughly and comprehensively addressed the standards for fee awards for cases of this nature that are set out in Md. Rules 2-705(f) and

⁶ Specifically, the court stated:

Ms. Kennell’s obligation under the [consent order] is plain. Upon receipt of the Power of Attorney, Ms. Kennell had the right to have it reviewed by her Dominican counsel and was required to execute an approved draft of the Power of Attorney by March 30, 2020. Neither party disputes, and the Court so finds that term “approved” meant approved by Ms. Kennell’s Dominican counsel or Ms. Sanders. The [consent order] further states that approval of the Power of Attorney was not to be unreasonably withheld by Ms. Kennell’s Dominican counsel or Ms. Sanders. There is no evidence in the record that either Ms. Kennell’s Dominican counsel or Ms. Sanders withheld their approval of the Power of Attorney. Moreover, the language of the [consent order] is clear that Ms. Kennell lacked the authority to unilaterally reject the Power of Attorney.

Memorandum opinion at 4.

2-703(f)(3). As this Court noted in *St. Cyr v. St. Cyr*, “[n]othing in this well-reasoned ruling can be described as anything remotely resembling an abuse of judicial discretion.” 228 Md. App. 163, 201 (2016). We affirm the judgment of the circuit court.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR CARROLL COUNTY IS
AFFIRMED. APPELLANT TO PAY
COSTS.**