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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

L.M.,

Appellant,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent.

E055463

(Super.Ct.No. RIA019240)

OPINION

APPEAL from the Superior Court of Riverside County. James A. Cox, Judge.

Affirmed.

L.M., in pro. per., for Appellant.

No appearance for Respondent.

This court has addressed disputes between the parties twice before. In 2009, we affirmed the trial court's decision to deny the mother's and stepfather's petition to terminate the biological father's parental rights to his son, A.M. (*Adoption of A.M.* (June 29, 2009, E043937) [nonpub. opn.].) In 2010, L.M. (Mother) again petitioned the

trial court to terminate M.M.'s (Father) parental rights to A.M. (Fam. Code, § 7822.)¹ In this second trial court case, the trial court granted the petition and terminated Father's parental rights. This court recently considered Father's appeal related to the second case, and reversed the trial court's ruling, concluding Mother's petition should have been denied because the finding that Father intended to abandon A.M. was not supported by substantial evidence. (*In re A.M.*, case No. E054898.)

Mother has filed the instant appeal related to the second case; however, her appeal concerns the trial court's order to pay attorneys' fees. After granting Mother's petition to terminate Father's parental rights, the trial court ordered Mother and her husband (B.B.) to reimburse the County of Riverside (the County) \$9,000 for Father's and A.M.'s court-appointed attorneys. Father was ordered to reimburse the County \$4,000.

Mother raises two contentions, which are similar to one another. First, Mother contends the trial court erred by applying an incorrect legal standard when determining her and B.B.'s ability to pay for court-appointed counsel. Second, Mother asserts the trial court added improper elements when determining how to apportion the attorneys' fees. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On August 31, 2010, Mother petitioned the trial court to terminate Father's parental rights to their 15-year-old son, A.M. At a hearing on January 7, 2011, Father

¹ All further statutory references will be to the Family Code unless indicated.

was self-represented. The trial court informed Father that he had the right to an attorney, and if he could not afford an attorney, then the court could appoint one for him. Father stated he could not afford an attorney. The trial court explained, “The family law code also permits the Court or allows the Court to distribute the court appointed attorney’s fees amongst other parties. [¶] For instance, [Mother], if it is found that—not necessarily as to fault, but you have money to pay for court appointed attorney’s fees even for an attorney appointed for your former husband, you could be ordered to pay those fees too. Particularly if you lose this case, do you understand that, ma’am?” Mother responded, “I understand that. We don’t have the financial ability, but I understand.”

The trial court explained to Mother that since A.M. was 15 years old, “[i]n three years he’ll be an adult. If you want to do an adoption, you can do an adult adoption.” Mother responded, in part, “I can litigate this as long as I’m assured that I’m going to be given the same respect as a lawyer. I have been through this before. I know what it’s like.”

The trial court informed Mother that it is “very difficult” to prevail on a petition to terminate a parent’s rights, because it is hard to prove an intent to abandon a child. The trial court again explained, “And since your son is now approaching adulthood, I’m wondering whether it’s worth the time and the expense for you to do it. It’s up to you I suppose. And there’s going to be a lot of expense involved particularly for counsel appointed. And the Court may find it necessary to appoint counsel for your son as well, which you could very well be responsible for paying as well.” Mother responded by

arguing Father intended to abandon A.M. The trial court appointed Aaron Garcia (Garcia) as Father's attorney.

Mother filed a motion for the court to appoint counsel for A.M. On April 19, 2011, the trial court considered the motion and the following exchange occurred:

“The Court: [Mother] filed a motion to appoint minor's counsel, and I'm inclined to grant that and appoint Barbara Knox [(Knox)], if she will agree to act [as] minor's counsel. Everybody understands though that at the conclusion of the trial, I will be required to make a determination of the ability of the parties to pay for those—

“[Mother]: We understand.

“The Court: —counsel fees.”

Trial began on August 15, 2011. Garcia was present representing Father. Knox was present representing A.M. Father and A.M. spoke prior to trial to see if they could “reach some sort of agreement,” but were unable to agree. At the beginning of trial, the trial court informed B.B. that his request for a waiver of court reporter fees was denied, and he would need to pay the fees during the court recess. The trial lasted for eight days.

At the end of the trial, the trial court granted Mother's petition to terminate Father's parental rights. The trial court found Father (1) had not paid child support since 2007; (2) had not communicated with A.M. since 2008; and (3) intended to abandon A.M. The trial court instructed the parties to submit financial declarations.

B.B.'s financial declaration reflected: (1) gross wages of \$4,556.23 per month; (2) monthly expenses of \$4,189.03; (3) \$908.70 for monthly debt payments; (4)

negative \$184,105 for home equity; (5) \$6,000 in automotive equity; and (5) a bank balance of \$1,427.02. Mother's financial declaration reflected no income, and the same expenses as B.B. Father's financial declaration reflected: (1) \$1 in monthly income, Father was a handyman and described the availability of work as "sketchy"; (2) monthly expenses of \$3,898; (3) \$300 for monthly debt payments; (4) negative \$252,000 for home equity; and (5) no automotive equity and no bank balances.

Knox submitted a bill reflecting work from June 1 to September 9, 2011. Knox charged \$150 per hour, and requested a total sum of \$4,846.50. Garcia submitted a declaration reflecting he charged \$150 per hour, and his paralegal's rate was \$90 per hour. Garcia worked on the case from January 7, 2011, through September 12, 2011. Garcia requested a total sum of \$15,359.06. Thus, the total amount of attorneys' fees was \$20,205.56.

During the hearing on attorneys' fees, Father stated he earned approximately \$4,000 per month, despite his declaration reflecting \$1 in income. The trial court explained its tentative decision. Mother and B.B. brought the petition. The trial court had suggested dismissing the petition and filing for an adult adoption when A.M. was 18 years old, in order to spare the parties and the County the expense of trial. Since Mother and B.B. brought the petition, the trial court believed "they should pay the larger percentage of the charges in this, [because] it's their lawsuit." The trial court said it was inclined to order Mother and B.B. to reimburse the County \$9,000, and Father to reimburse the County \$4,000.

Mother argued it was wrong for the trial court to consider gross income when determining her and B.B.'s ability to pay attorneys' fees. Mother argued she had many past due bills and no ability to pay \$9,000 in fees. Mother asserted Father "forced the trial" by not conceding to an "after adoption agreement."² Mother also argued Father lied during the trial.

The trial court informed Mother that it found her financial declaration "to be enhanced, so to speak." For example, the trial court found it "hard to believe" Mother was spending \$900 per month for food. Mother said she could prove the expenses with her bank statement. The trial court responded, "Well, you might have to eat a little bit less maybe because you must be eating awfully well to be spending that much per month. You also allege \$760 in other payments that are not specified." Mother explained she had a bill for her computer and her phone bill. Mother then reiterated that she filed her petition "in good faith," while Father was "found to be the liar." Mother reminded the court she prevailed on her petition. The trial court responded, "That doesn't have anything to do with the requirement to pay attorneys' fees."

Mother asserted it was unfair that she and B.B. should bear the majority of the attorneys' fees simply because they brought the petition. Mother argued the case could have ended sooner if Father told the court "the truth." The trial court stated Mother was motivated to bring the case by her pique, i.e. wounded pride, and that was a factor the

² Mother appears to be referencing section 8616.5, which provides that, at the time of the adoption decree, the court may grant postadoption contact privileges between the minor and birth relatives pursuant to an agreement between the parties.

court took into consideration when apportioning fees. The trial court concluded Mother's declared expenses were "excessive," and Mother should reimburse the County rather than funding her personal expenses.

Mother again argued she did not have the funds to pay \$150 per month in attorneys' fees. The trial court offered to expand the payment plan from 60 months to 72 months, in order to lower the monthly payment. Mother argued Father "should pay the majority of the balance." Mother asserted she had been paying to support A.M. since he was two years old, while Father did "nothing." The trial court ordered Mother to pay \$125 per month over 72 months, for a total of \$9,000. The court asked Father if he had any comments about the tentative ruling. Father responded, "[T]hat's fine. All right." The court ordered Father to pay \$111.11 per month for 36 months, for a total of \$4,000.

DISCUSSION

A. CALCULATIONS

Mother contends the trial court erred when determining her and B.B.'s ability to pay for court-appointed counsel. Specifically, Mother asserts the trial court erred by (1) using B.B.'s gross wages, rather than his net wages, when considering his and Mother's ability to reimburse the County; (2) considering Mother's and B.B.'s ability to make payments over a period of years, as opposed to their ability to pay at the time of the hearing; and (3) concluding Mother's and B.B.'s monthly expenses were "enhanced" when their expenses were similar to Father's expenses. We disagree.

At the outset, we clarify that Mother is faulting the trial court's use of the three factors listed *ante*. Mother has asserted the court used an "incorrect standard." Accordingly, we are not considering whether the trial court's findings related to these factors are incorrect; rather, we are only reviewing whether it was correct for the trial court to use (1) gross wages, (2) the ability to pay over a period of years, and (3) exaggerated monthly expenses when determining a just apportionment for the attorneys' fees.

We review the trial court's ruling to determine if it abused its discretion by applying incorrect legal standards. (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1507-1508; see also *People v. Knoller* (2007) 41 Cal.4th 139, 156.)

Section 7863 provides: "Private counsel appointed under this article shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount so determined shall be paid by the real parties in interest, other than the child, in proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county."

The issue we struggle with in deciding Mother's contention is that she has provided no case law or court rules explaining the factors a court should consider when apportioning fees. (Cal. Rules of Court, rule 8.204(a)(1)(B).) For example, the entirety of Mother's "gross versus net wages" argument is as follows: "First, the Trial Court applied the wrong standard when it considered [B.B.] and [Mother's] ability to pay based on [B.B.'s] gross pay instead of his net pay. The determining factor of a person's

ability to pay is based on his/her net pay, that is why they are required to list their monthly expenses.”

Mother’s argument is not persuasive because it lacks legal reasoning, and gross income is used to calculate child support payments. (§ 4058; *In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 641-642.) Thus, it is not an absolute rule that gross income cannot be used when calculating a parent’s ability to pay for an item such as attorney fees. Given that (1) Mother has not explained why it was legally incorrect for the trial court to rely on B.B.’s gross wages when determining Mother’s and B.B.’s ability to pay, and (2) the fact that gross wages are sometimes used in payment calculations, we conclude the trial court did not err.

Next, Mother asserts the trial court erred by considering her ability to pay over a period of years, as opposed to her ability to pay at the time of the hearing. Mother again does not cite legal authority to support her argument, but refers to a court form. Mother cites the following language from the “Financial Statement and Notice (Probate)” form (#RI-P30): “If an attorney is appointed to represent you, the court will, at the conclusion of the proceedings, after a hearing, make a determination of your ability to pay all or a portion of the cost of the attorney. If the court determines that you are *at that time* able to pay, the court will order you to pay all or part of such cost.” (Italics added.) Mother’s argument relies on the portion of the form that reads “at that time.”

Mother’s argument is not persuasive because she is relying on the language of a form, instead of the law. Through our own research, we have found cases going back over 50 years that have ordered attorney fees to be paid in installments, as opposed to

forthwith. (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 865-868 [trial court lowered husband's monthly attorney fee payment for wife's attorney from \$1,000 to \$500]; *Geller v. Geller* (1953) 115 Cal.App.2d 822, 826 [appellate court affirms order for husband to pay \$25 per month for attorney fees].) Accordingly, it appears installment payments are permitted. Mother does not provide a reasoned explanation for why the installment payments are legally improper. Thus, since installment payments appear to be permitted, we conclude the trial court did not err. (*Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 212 [the failure to provide a legal argument forfeits the issue on appeal]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [same].)

Third, Mother asserts the trial court erred by considering the fact that her claimed expenses were "enhanced," when her expenses were similar to Father's claimed expenses. Again, Mother is not disputing the finding that she "enhanced" her claimed expenses, rather, she is disputing the trial court's reliance on this "improper standard."

Mother's argument is not persuasive because in order to apportion fees, the court must determine the income and expenses of the parties. In this case, the court found Mother's claimed expenses were artificially inflated, which means the court was considering Mother's expenses. It appears Mother disagrees with the conclusion that she inflated her expenses; however, that is not the issue raised on appeal. The issue Mother raises is whether it was proper for the trial court to consider exaggerated expenses in apportioning fees. We conclude this is a proper consideration, because the court must have an understanding of the parties' true financial obligations. (*In re*

Marriage of Keech, supra, 75 Cal.App.4th at p. 867 [in awarding attorney fees the court can consider the factor of the parties' financial resources].) Thus, we conclude the trial court did not err.

B. APPORTIONING FEES

Mother asserts the trial court improperly apportioned the attorneys' fees because the court incorrectly relied on the facts that (1) Mother initiated the case, and (2) Mother did not wait until 2013, when A.M. will be 18 years old, for an adult adoption. Mother contends Father should have been required to pay a greater portion of the attorneys' fees because (1) Father's defense was brought in bad faith, (2) Father lied to the trial court, (3) Father did not settle the matter pretrial, and (4) Father prolonged the trial by failing to appear at scheduled court dates. We disagree.

We review the trial court's apportioning of the attorneys' fees for an abuse of discretion. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 152-153; see also *In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575 [family law fee proportions are reviewed for an abuse of discretion].) “An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] Thus standard of review affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law. We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]’ [Citation.]” (*Collins*, at p. 153.)

As explained *ante*, the trial court must apportion the attorneys' fees among the parties (other than the minor) in a manner it deems just. (§ 7863.) ““Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances” [citation].’ [Citation.]” (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406.) The trial court must consider what would be just in light of the parties' overall circumstances—not merely their financial situations.

As set forth *ante*, this court has reversed the trial court's order granting Mother's petition. Thus, Mother's argument that Father defended himself in bad faith is unavailing.

Mother argues the trial court erred because it improperly considered that she brought this second petition, rather than waiting until 2013 for an adult adoption. Ironically, Mother also faults the court for not giving Father a greater portion of the fees because he refused to settle pretrial. Mother is not appreciating her role in creating the trial. Father may have elected not to settle pretrial, but Mother initiated the case. Further, Mother faults Father for not settling pretrial and waiting for postadoption contact with A.M., while at the same time arguing it would have been improper for her to wait until 2013 for A.M. to have an adult adoption. In other words, Mother appears to be asserting the trial court erred because (1) Father should have waited for contact with A.M., and (2) Mother should not have been required to wait for an adult adoption. Mother's arguments are unreasonable, because she is asserting different rules, or different standards, should apply to the parties.

The trial court's decision was within reason because it considered Mother's finances, her role in initiating the case, her role in requesting court-appointed counsel for A.M., and her role in rejecting the option of waiting until 2013 for an adult adoption. Since Mother brought the case, the trial court could reasonably conclude she should be allotted a greater portion of the reimbursement costs because she was the one who created the need for the County to spend money on the case. In sum, the trial court's decision was within the bounds of reason, and therefore, we conclude the decision was not an abuse of discretion.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.