



ORIGINAL

NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

IN THE MARRIAGE OF:

GEORGE WILLIAM HOWARD,

Plaintiff/Appellant,

vs.

MEGAN MARIE THOMAS,

Defendant/Appellee.

Rec'd (date)	4-2-25
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Publish	yes <input checked="" type="checkbox"/> no

APR - 2 2025

JOHN D. HADDEN
CLERK

Case No. 121,737

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE CHARLES GASS, SPECIAL JUDGE

AFFIRMED

George William Howard
Oklahoma City, Oklahoma

Pro Se

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The appellant, George Howard, appeals the court's order granting fees in favor of Megan Thomas¹ for \$61,679.47. Upon review, we affirm the court's grant of fees.

¹ Appellant's petition in error identifies counsel for Ms. Thomas; however, no one has entered an appearance on behalf of Ms. Thomas, filed a response to the petition in error, or filed an appellate brief. Thus, it appears Ms. Thomas is not represented.

BACKGROUND

On July 27, 2021, Mr. Howard filed a petition to adjudicate parentage and establish custody, visitation, and support. After many months of motion practice, discovery, protective orders, and GAL appointment, the case proceeded to trial beginning on April 19, 2022. Trial was continued to July 7, 2022, at which point Mr. Howard rested. The case was again reset² to August 18, 2022, and the court found that Mr. Howard was the child's father, that Mr. Howard committed domestic violence against Ms. Thomas, that Ms. Thomas was to have sole legal and physical custody of the child, and that Mr. Howard was required to pay \$1,158.50 in child support each month. Mr. Howard was granted supervised visitation for two, eight-hour visits per week.

Ms. Thomas then filed a motion for attorney fees and costs and attached a certificate of mailing certifying that she mailed a copy of the motion to Mr. Howard. It appears that a notice of hearing on the attorney fees issue was filed on January 24, 2023, setting the hearing for May 11, 2023. A certificate of mailing certifying that Ms. Thomas's counsel sent a copy of the notice to Mr.

² The case had to be reset because Mr. Howard was held in direct contempt of court and sentenced to three days in the Canadian County jail.

Howard was also attached. Mr. Howard, however, did not attend the hearing.³ After hearing argument from Ms. Thomas, the court granted her motion for attorney's fees, ordering Mr. Howard to pay \$61,679.47.

STANDARD OF REVIEW

“Whether a party has a right to recover a statutory attorney’s fee is a legal question, and will be reviewed de novo by this Court.” *State ex rel. Dep’t of Transp. v. Cedars Grp., L.L.C.*, 2017 OK 12, ¶ 10, 393 P.3d 1095. To the extent Mr. Howard also challenges the reasonableness of the fee awarded, we note that what “constitutes a reasonable attorney fee is a matter addressed to the sound discretion of the trial court to be decided based on various factors and a judgment awarding attorney fees will not be reversed absent an abuse of discretion.” *Tibbetts v. Sight ‘n Sound Appliance Centers, Inc.*, 2003 OK 72, ¶ 3, 77 P.3d 1042, 1046. “As a general matter, an abuse of discretion review standard includes appellate examination of both fact and law issues ... and abuse occurs when the ruling being reviewed is based on an erroneous legal conclusion or there is no rational basis in the evidence for the decision.” *Id.*

³ Mr. Howard presented no evidence below and does not reference any evidence on appeal that he did not have actual notice of the fee hearing, which occurred in May 2023. We note that Mr. Howard did file a request to supplement the record with the Supreme Court in order to include a document that, according to Mr. Howard, shows he was not served with the motion for fees until January 2023. While the Court denied the request to add the requested exhibit to the record, we note that in his motion Mr. Howard alleges that he received an email in January 2023 notifying him of the May hearing. Mr. Howard argues that he was improperly served notice because the motion for fees was not mailed to him until January, despite a certificate of service stating that it was mailed on November 4, 2022. Regardless, it is clear that Mr. Howard was aware of the May hearing in January, at the latest.

ANALYSIS

Mr. Howard raises various propositions of error related to the court's award of attorney's fees.⁴ However, Mr. Howard did not file a response to Ms. Thomas's motion for fees and, as stated above, did not attend the attorney fee hearing. The index in this case reflects that Mr. Howard "did not appear" and "did not pay to [sic] the court reporter therefore no Transcript was Completed!"⁵ By not filing a response and failing to attend the hearing and provide a transcript for that hearing, Mr. Howard's arguments are all raised for the first time on appeal. Generally, issues not raised below will not be considered for the first time on appeal. *Jones v. Alpine Inv., Inc.*, 1987 OK 113, ¶ 11, 764 P.2d 513, 515.

Further, Oklahoma courts have consistently held that when an appellant presents no record of the arguments or evidence presented to the trial court at the fee hearing, the trial court's order awarding fees must be affirmed as long as one or more statutory provisions exist in support of the award. *McKiddy v.*

⁴ Mr. Howard's fourth proposition in error is that the court improperly granted Ms. Thomas's protective order. However, the protective order was a part of the judgment of paternity, which is not the order that Mr. Howard appealed in the present case. Thus, the issue will not be addressed. We also note that Mr. Howard attempted to appeal various aspects of the paternity decree in prior case 120,833. However, that appeal was dismissed on October 24, 2023. Mr. Howard then attempted to circumvent the dismissal by filing an amended petition which was also denied by the Court. In taking judicial notice of the prior appeal, we note that some of the issues raised in the dismissed petitions in error are substantially similar to those argued in Mr. Howard's brief in the present case. Nevertheless, only issues related to the order appealed here—the judgment granting fees in favor of Ms. Thomas—will be considered.

⁵ Normally, when there is not a court reporter present at a hearing and there is no transcript, a party can still provide a record of the hearing by way of preparing a narrative statement. Oklahoma Supreme Court Rule 1.30 provides that an appealing party "may prepare a statement of the evidence or proceedings in the narrative form from the best available means including the party's recollection for use in lieu of a stenographic transcript." However, because Mr. Howard failed to appear at the hearing it appears this remedy would have also been unavailable to him.

Alarkon, 2011 OK CIV APP 63, ¶ 17, 254 P.3d 141, 146 (citing *Hester v. Hester*, 1983 OK 50, ¶ 7, 663 P.2d 727, 729 (affirming an award of fees where “there is no transcript of the proceedings and, for that reason, we cannot determine if an abuse occurred”); *Weston v. Independent School District No. 35 of Cherokee County*, 2007 OK 61, 170 P.3d 539 (affirming an award of fees under prevailing party statute without a transcript in the appellate record); *Stroud Nat. Bank v. Owens*, 2006 OK CIV APP 37, ¶ 32, 134 P.3d 870, 879 (“Because no transcript of the attorney fee hearing appears in the instant record, we must presume the trial court's judgment was based upon sufficient evidence.”); *Galarza v. Galarza*, 2010 OK CIV APP 19, ¶ 11, 231 P.3d 694, 697–98 (declining to review an attorney fee award where the appellate record did not contain either the motion for fees or the transcript of the fee hearing)).

Here, at least two statutory bases exist on which the trial court could have awarded fees. Ms. Howard filed her motion for attorney’s fees based on 10 O.S. § 7700-636(C) and 43 O.S. § 112.6. Title 10 O.S. § 7700-636(C), related to paternity actions, provides that the court may assess “reasonable attorney fees” and “other reasonable expenses incurred in a proceeding.” It also provides that “the court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney’s own name.”⁶ *Id.* Additionally, 43 O.S. § 112.6 states that “[i]n a ... custody proceeding, a victim of domestic

⁶ Mr. Howard alleges that only the “prevailing party” in a paternity action is entitled to fees. Any language regarding a prevailing party is noticeably absent from this statute regarding attorney fees in paternity actions.

violence or stalking shall be entitled to reasonable attorney fees and costs” after proving that they were the victim of such domestic violence. *Id.* “The court shall order that the attorney fees and costs of the victimized party for the proceeding be substantially paid for by the abusing party prior to and after the entry of a final order.” *Id.* Here, Ms. Thomas was found by the court to be a victim of domestic violence in its journal entry and decree of paternity. On this record, we have no evidence to dispute Ms. Thomas’s fee calculations or arguments, or to contradict the trial court’s acceptance of the same. “Legal error may not be presumed in an appellate court from a silent record. The opposite is true. Absent a record showing otherwise, this court presumes that the trial court did not err.” *Hamid v. Sew Original*, 1982 OK 46, ¶ 6, 645 P.2d 496, 497. Thus, because Ms. Thomas had statutory authority to move for her attorney’s fees and costs and neither a response to that motion nor a transcript of the hearing appears in the instant record, “we must presume the trial court’s judgment was based upon sufficient evidence.” *McKiddy*, 2011 OK CIV APP 63, ¶ 20, 254 P.3d at 147.

Nevertheless, we have reviewed the motion and find it sufficient on its face to support an award of fees in this case. The motion for fees filed by counsel for Ms. Thomas contained an affidavit which provided an itemization of time and rates for different categories of services provided by the attorneys and paralegals, as well as an itemization of expenditures and costs in connection with Ms. Thomas’s representation. It appears this case was highly contentious, and counsel spent 198.5 hours working on the case and the firm’s paralegals spent 27.3 hours. The affidavit states that the hours and the total fee sought were

reasonable and necessary under the circumstances of the case. As Mr. Howard points us to no contrary evidence presented below, we must affirm.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

April 2, 2025