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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

THOMAS SHAWN DOLLAR,

Petitioner/Appellant,

vs.

DUSTY RAE SMITH,

Respondent/Appellee.

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AUG 20 2025

Case No. 122,464

APPEAL FROM THE DISTRICT COURT OF
COAL COUNTY, OKLAHOMA

HONORABLE D. CLAY MOWDY, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

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OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Thomas Shawn Dollar appeals a trial court order awarding attorney fees and

costs to Dusty Rae Smith. We conclude after review that the trial court's decision must be reversed. We remand for further proceedings consistent with this Opinion.

FACTS AND PROCEDURAL HISTORY

Dollar previously appealed a trial court order granting custody of the parties' minor children to Smith and dividing the marital estate. He additionally appealed the trial court's decision declining his request to recuse or disqualify from the case. In our Opinion in Case No. 121,768, this Court affirmed the trial court's orders on custody and recusal but reversed the trial court's property division award.

While the case was on appeal, Smith filed a motion seeking \$48,873.09 in attorney fees and costs pursuant to 43 O.S. § 110(D), 43 O.S. § 110(B)(2)(E), 43 O.S. § 112.6, and *Finger v. Finger*, 1996 OK CIV APP 91, 923 P.2d 1195. The exhibits attached to the motion attribute \$46,795 to attorney fees and \$2,078.09 to costs.

After a hearing, the trial court granted Smith's motion for attorney fees and costs finding it "is well founded in law and based on the equities of this case, and said motion should be granted." The court found Smith is the successful party. It further found Dollar filed numerous unwarranted child welfare complaints detrimental to the children, he tried to "weaponize Child Welfare in an attempt to gain custody," and he "unnecessarily complicated and delayed the proceedings and made litigation more vexatious than it needed to be." The court stated, for the

reasons listed “as well as the totality of circumstances leading up to the trial and the enforcement actions,” that it was granting the motion. The trial court stated that it “finds that a reasonable attorney’s fee of \$40,000 should be awarded to” Smith as well as reasonable costs of \$2,000.

Dollar appeals.

STANDARD OF REVIEW

“The rules that each litigant bears the cost of their legal representation and our courts are without authority to assess and award attorney fees in the absence of a specific statute or a specific contract between the parties are firmly established in this jurisdiction.” *Fleig v. Landmark Constr. Grp.*, 2024 OK 25, ¶ 13, 549 P.3d 1208. “When a question on appeal presents the issue of reasonableness of attorney fees awarded by the court, abuse of discretion of the trial judge is the standard of review.” *Id.* ¶ 13. “Under this standard, a trial court will not be reversed unless it made a clearly erroneous conclusion against reason and evidence.” *Id.*

ANALYSIS

Dollar challenges the attorney fee award as an abuse of discretion. “In Oklahoma, neither the nonprevailing party in a matrimonial case nor the principal spousal provider is under a duty to pay counsel fees. Rather, counsel-fee allowances are granted only to the litigant who qualifies for the benefit through the

process of a judicial balancing of the equities.” *King v. King*, 2005 OK 4, ¶ 30, 107 P.3d 570 (citing 43 O.S. § 110(D)).

Smith sought attorney fees pursuant 43 O.S.2021 § 110(D),¹ which provides, “Upon granting a decree of dissolution of marriage . . . the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.” She also sought fees pursuant to 43 O.S.2021 § 110(E),² which provides:

The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the dissolution of marriage action made for the benefit of either party or their respective attorneys.

She also cites 43 O.S. § 112.6 in support of her motion, which mandates attorney fee awards in cases involving domestic violence or stalking.³ She also cites *Finger v. Finger*, 1996 OK CIV APP 91, 923 P.2d 1195, as a basis for her motion.

¹ Title 43 O.S. § 110 was amended effective November 1, 2024, but Smith’s application for attorney fees and order granting fees and costs were both filed before that date.

² Smith misidentifies this subsection as 43 O.S. § 110(B)(2)(E).

³ Although Smith made allegations of domestic violence, her attorney stated at the hearing on attorney fees that no order in the case made a finding of domestic violence. Because the trial court failed to identify the specific statutory basis for the attorney fee award, it is unclear whether the trial court considered Smith’s asseverations of domestic violence in making its award. This should be clarified on remand.

The trial court did not specifically state the statutory basis for its award of attorney fees, but it clearly relied at least in part on the factors set out in *Finger*:

In considering what is just and proper under the circumstances, the court in the exercise of its discretion should consider the totality of circumstances leading up to, and including, the subsequent action for which expenses and fees are being sought. Such circumstances should include, but not be limited to: the outcome of the action for modification; whether the subsequent action was brought because one of the parties had endangered or compromised the health, safety, or welfare of the child or children; whether one party's behavior demonstrated the most interest in the child or children'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 finally, the means and property of the respective parties.

Id. ¶ 14.

The trial court awarded Smith \$40,000 in attorney fees without specifying how it computed that amount, making it nearly impossible to determine whether the award is reasonable. Although the trial court set out the factual reason for making the award, it made no findings about the amount of the award. We cannot determine how the trial court arrived at the \$40,000 amount and therefore cannot ascertain whether the amount awarded is reasonable. This is particularly

paramount in our review of this case because we reversed a portion of the trial court's order on property division and some fees may relate to this issue.⁴

This is an equitable proceeding, and unlike actions at law, the Supreme Court has not in equitable proceedings adopted the holdings in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659, or *Fleig v. Landmark Construction Group*, 2024 OK 25, 549 P.3d 1208, both requiring district courts to follow the requisite *Burk* criteria in setting attorney fees. “[C]onsideration of relevant *Burk* criteria to determine reasonableness of . . . attorney fees is discretionary” in equitable proceedings. *In re Adoption of Baby Boy A*, 2010 OK 39, n. 13, 236 P.3d 116. A district court's decision to award attorney fees in an equitable matter without considering the *Burk* criteria “would not, without more, constitute an abuse of discretion.” *Id.*

The Supreme Court's latest pronouncement on the issue in *Fleig*, like *Burk*, arose in an action at law and did not address its application to equitable proceedings. However, we view *Burk* and *Fleig* as providing helpful guidance in cases in equity when the question of setting reasonable attorney fees arises,

⁴ For example, one item in the attorney's time records was five hours for the attorney's “[t]ravel to and from Atoka Co. to execute Writ of Assistance for toolbox.” Included with the costs is \$621.78 related to U-Haul trailer, gas, supplies, and labor to retrieve that toolbox. The trial court may need to reconsider the attorney fee award in light of our reversal of the property division award.

guidance the district courts should follow in the absence of compelling counter-factors disclosed in the record.

We are persuaded that, whether in an action at law or a proceeding in equity, “A trial court order awarding attorney fees must set forth with specificity the facts and computation to support the award.” *Fleig*, 2024 OK 25, ¶ 23. We are also unable to ascertain the legal basis for the award of \$2000 in costs or the calculation giving rise to that amount rather than the \$2078 requested. Because the trial court failed to incorporate the basis for its awards or its computation of those awards in the order, we must reverse the order and remand for further proceedings.

CONCLUSION

The trial court’s order on attorney fees and costs is reversed for lack of sufficient findings as to the basis and the calculation of the amounts awarded, and we remand for further proceedings to make and place those findings of record.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

FISCHER, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

This Court, having already erred in vacating the final decree in part, compounds its error by vacating an award of attorney’s fees that is well-supported by the record and well-explained by the trial court. The trial court held a hearing,

including expert testimony, and fashioned a suitable award under the circumstances. It specifically found that its award was “based on the equities of this case,” that “the Respondent was the successful party,” that the petitioner “fil[ed] numerous unwarranted complaints to child welfare [that] subjected the minor children to unnecessary physical and emotional stress [and] adversely affected the minor children’s best interests,” that “it was obvious to the Court that Petitioner was attempting to weaponize Child Welfare in an attempt to gain custody of the minor children,” and that “the Petitioner unnecessarily complicated and delayed the proceedings.”¹ I find this explanation more than adequate to support an equitable award and the award to be well within the trial court’s discretion. I respectfully dissent.

August 20, 2025

¹ The trial court did not specifically address the means and property of the parties. In my view, the trial court’s accumulation of knowledge, gleaned from what was over four years of litigation at the time of the award, can leave no doubt that the trial court was well aware of the parties’ respective means and property at the time of its award. The trial court also made its award, as noted above, “based on the equities of this case,” which would necessarily include the parties’ means and needs. And importantly, Mr. Dollar elected not to put on any evidence regarding this, or any other factor. As such, I do not view this lack of specific finding as a sufficient basis to vacate the award.