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Court of Appeals
Division II
State of Washington
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No. 51273-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CARMELITA ESCARCEGA
(fka CARMELITA BARRETT),
Respondent,

v.

DANIEL J. BARRETT,
Appellant.

Appeal from the Superior Court for Pierce County
The Honorable Karena Kirkendoll

Brief of Respondent

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I. INTRODUCTION

Attorney's Fees. The Court's award of attorney fees was appropriate. Mr. Barrett's Motion to Lift the Permanent Restraining Order was brought pursuant to RCW 26.50. Attorney's fees are authorized by RCW 26.50.060(1)(g) which allows for reasonable attorney's fees. Ms. Escarcega filed under seal two (2) Declarations regarding attorney's fees incurred in support of her request for an award of attorney's fees. The Court had statutory authority to award attorney's fees in this case.

II. STATEMENT OF THE CASE

Judge Bryan Chushcoff entered a Permanent Restraining Order at trial in 2002 against Daniel Barrett on Ms. Escarcega's Petition to Modify the Parenting Plan relative to the parties' five (5) children. (CP 167.) At the conclusion of the trial, Mr. Barrett was awarded no visitation with any of the parties' five (5) children. (CP 167.) Prior to the trial, Mr. Barrett had shot Carmelita Escarcega's boyfriend in the stomach while in the presence of two (2) of the children. (CP 168.) Mr. Barrett was subsequently charged with first degree assault. (CP 168.)

Daniel Barrett filed a Motion on May 16, 2017 to lift the Permanent Protection Order that had been entered by Judge Bryan

Chushcoff. (CP 134-137.) Mr. Barrett cited RCW 26.50.130(1), (2), and (3) in support of his Motion. (CP 134-135.) Mr. Barrett did not file a sworn statement in support of his Motion, nor did he sign his Motion which was only signed by his attorney. (CP 137.) Mr. Barrett's attorney also filed a one (1) page statement entitled "Affidavit in Support of Motion to Lift Permanent Protection Order Pursuant to RCW 26.50.130" that attached copies of the Permanent Restraining Order entered by the Court on August 9, 2002, a copy of Judge Chushcoff's Verbatim Oral Ruling of the Court dated July 3, 2002, and a criminal history document for Daniel Barrett. (CP 138-165.) On May 26, 2017, Mr. Barrett filed a Motion to Lift Permanent Restraining Order. (CP 1.) In this second Motion Mr. Barrett cited RCW 26.09.050, .300, and RCW 26.50.130 in support of his Motion. (CP 1.) Again, the Motion was signed only by Mr. Barrett's attorney. (CP 4.)

Petitioner, Carmelita Escarcega, responded on June 26, 2017, by filing her Declaration, a Memorandum in Response to the Motions, (CP 167-184.) and a statement from the parties' daughter, Dawn Escarcega. (CP 185-186.)

At the initial hearing on June 30, 2017, before Judge Karena Kirkendoll, the Court denied without prejudice Mr.

Barrett's Motion to lift the Restraining Order. (CP 5-7.) The Court ordered that the Motion be heard at a later date and ordered that Mr. Barrett provide to the Court a sworn Declaration, treatment records, evaluations, and a current domestic violence evaluation. (CP 6.) The Court reserved the request of an award of attorney's fees to Carmelita Escarcega. (CP 6.) Mr. Barrett never did comply with this Court Order in regard to providing treatment records and evaluations. (CP 91.)

On August 9, 2017, Ms. Escarcega filed a Motion for her Attorney's Fees along with a Declaration in support of her Motion. (CP 11-55.) Ms. Escarcega advised the Court that Mr. Barrett had not disclosed to the Court that the Kittitas Superior Court, on May 15, 2006, entered a Permanent Restraining Order against Mr. Barrett after a custody trial under Cause No. 05-3-00148-4. (CP 11, 26.) The Kittitas County Court had ordered no contact between Mr. Barrett and the two (2) minor children until a full assessment of Mr. Barrett had been made by a clinical psychologist. (CP 12-13, 18.) The Court had found that prior to any visitation between Mr. Barrett and the children that Mr. Barrett complete a domestic violence perpetrator treatment by a licensed counselor. (CP 12-13, 18.) The Court had found that though Mr. Barrett had been

advised over the course of the past nine (9) years to engage in counseling and/or treatment for his abusive treatment of his children and to learn better parenting techniques, Mr. Barrett had not engaged in any counseling nor other treatment to correct and resolve the abuse of his children. (CP 12, 19.)

The Kittitas Court entered a Restraining Order that stated as follows:

Father shall have no contact whatsoever with the petitioners, the petitioner's family, or the two minor children who are the subject matter of this action, nor come within 500 feet of them, their residence, or any places which they may be; including but not limited to: places of employment of the petitioners, the schools of the minor children, and any other place they may frequent or visit at any time. (CP 13, 19, 25-26.)

The final Kittitas County Superior Court Decree included a Permanent Restraining Order against Daniel Barrett, Sr. (CP 13, 25-26.) The Permanent Restraining Order stated in part:

Daniel Barrett, Sr. shall have no contact, in writing, by phone, or personally, whatsoever with Daniel Barrett, Jr, Carrie Barrett, their children, and the minor children of Daniel Barrett, Sr. and Carmelita Barrett, BJB and BNB.

....

This restraining order does not expire and is permanent. (CP 13, 26.)

Mr. Barrett appealed the Kittitas County Superior Court Trial Court's ruling. (CP 13.) The Court of Appeals, Division III affirmed the rulings of the Trial Court regarding the Parenting Plan and the Restraining Orders. *In re the Custody of BJB and BNB*, 146 Wn. App. 1, 189 P.3d 800 (2008). (CP 13, 38-55.)

In summary, Mr. Barrett did not disclose to Judge Kirkendoll that a Superior Court in the State of Washington had entered a Permanent Restraining Order against him involving the Barrett family. (CP 1-4, 134-137.) Nor did Mr. Barrett provide proof of any domestic violence evaluation that was ordered by the Kittitas Superior Court. (CP 1-4, 134-137.) Nor did he comply with Judge Kirkendoll's June 30, 2017, Order. (CP 91, 128.)

Ms. Escarcega's Motion for Attorney's Fees was noted for September 1, 2017. (CP 10, 194.) On August 28, 2017 Mr. Barrett's counsel requested a continuance. (CP 194.) Ms. Escarcega agreed and the matter was renoted for September 29, 2017. (CP 59-60.) On September 27, 2017 Mr. Barrett's counsel filed another Motion to Continue. (CP 56-58, 109-111.) The Court, on September 29, 2017, denied the request for a continuance and entered an Order denying Mr. Barrett's request to lift the Restraining Order. (CP 56-58, 109-111.) The Court

awarded Ms. Escarcega her attorney's fees in the amount of \$3,972.71. (CP 56-58, 60, 109-111.) (CP under seal.) The award was based on the two (2) Declarations for attorney's fees filed by Ms. Escarcega's counsel prior to the hearing. (CP 13.) (CP under seal.) Mr. Barrett still had not filed a single Declaration in response to the Court's June 30, 2017 Order. (CP 128.)

Mr. Barrett then filed a Motion for Reconsideration on October 9, 2017. (CP 61-90.) His Motion for Reconsideration became the first sworn statement filed by Mr. Barrett in support of his Motion. (CP 61-69.) Though Mr. Barrett filed a nine (9) page Motion with attachments totaling twenty-one (21) pages, Mr. Barrett did not comply with Judge Kirkendoll's Order requiring disclosure of treatment records, evaluations, or a current domestic violence evaluation. (CP 61-90.) Nor did he comply with the requirements of RCW 26.50.130. (CP 61-90.)

Ms. Escarcega filed a short responsive Declaration pointing out that Mr. Barrett had never filed a sworn Declaration in support of his original Motion to Vacate the Protection Order and that he never provided the documentation as ordered by the Court on June 30, 2017. (CP 91-92.) Mr. Barrett's Strict Reply, filed on November 2, 2017, totaled nine (9) pages with seven (7) pages of

attachments, but, once again, did not comply with the Court's June 30, 2017 Order. (CP 93-108.)

The Court, on November 3, 2017, denied Mr. Barrett's Motion for Reconsideration. (CP 109-111.) The Court did correct the Order Denying Mr. Barrett's Motion to Lift the Restraining Order that had been entered on September 29, 2017, by entering an Order *Nunc Pro Tunc* that eliminated language that Mr. Barrett's Motion to Lift the Restraining Order was denied with prejudice. (CP 109-111.) The Court's denial of the Motion to Lift the Restraining Order was denied without prejudice. (CP 109-111.) In other words, Mr. Barrett's Motion was still pending before the Court.

Mr. Barrett subsequently filed this appeal.

III. ARGUMENT

Attorney's Fees. Mr. Barrett filed a Motion to Vacate a Permanent Order for Protection that was entered after trial before Judge Chushcoff in the year 2002. Mr. Barrett cited RCW 26.50.130 in support of his Motion, specifically RCW 26.50.130(1), (2), and (3).

RCW 26.50.060(1) states as follows:

Upon notice and after hearing, the Court may provide relief as follows:

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees.

The Court denied Mr. Barrett's Motion repeatedly. Mr. Barrett did not comply with the provisions of RCW 26.50.130(1). Mr. Barrett did not comply with the Court's Orders entered June 30, 2017. The Court properly awarded Ms. Escarcega her attorney fees as authorized by RCW 26.50.060(1).

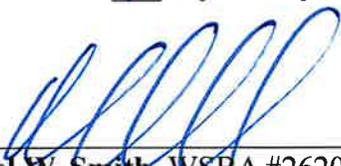
IV. ATTORNEY FEES

Carmelita Escarcega requests her reasonable attorney fees and expenses as authorized by RAP 18.1.

V. CONCLUSION

Judge Karena Kirkendoll's Order should be affirmed. The Court's award of attorney fees was appropriate.

Respectfully submitted this 1st day of May, 2018.



Daniel W. Smith, WSBA #26208
Attorney for Respondent

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DECLARATION OF SERVICE

I, **Kimberly E. Wailes**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed by **Campbell, Dille, Barnett & Smith, PLLC**, and that on today's date, May 1, 2018, I served in the manner indicated by directing delivery to the following individuals:

legal messenger

email

hand delivery

U.S. Mail

Daniel Barrett
P.O. Box 361
South Prairie, WA 98385
DanielJBarrett@outlook.com

Dated this 1st day of May, 2018.

By Kimberly E. Wailes
Kimberly E. Wailes

CAMPBELL, DILLE, BARNETT & SMITH, P.L.L.C.

May 01, 2018 - 9:19 AM

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