

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000539-MR

LICIA JOANN BARRETT

APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 97-FC-001233

DANIEL S. BARRETT

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, Licia Barrett (Licia), appeals the ruling of the Jefferson Family Court finding Licia in contempt of court and requiring payment from Appellant of \$4,117.00 as reimbursement of payment of health insurance premiums and attorney fees. We affirm the trial court's ruling.

Counsel for Appellee, Daniel S. Barrett (Daniel), withdrew during the pendency of the appeal and Daniel failed to file a brief before this Court, tendering an affidavit stating that he believed the judge's order was correct and that no

response is necessary. Licia Barrett filed a motion asking that this Court impose the penalties allowed by CR 76.12(8)(c) and accept the statements of Appellant regarding facts and issues on appeal as correct. This Court issued an order permitting counsel to withdraw, but informing Daniel that "failure to file an appellee's brief may result in the imposition of penalties pursuant to CR 76.12(8). The failure of a party on appeal to file a brief gives this Court the option of imposing penalties. Flag Drilling Co., Inc. v. Erco, Inc., 156 S.W.3d 762, 765 (Ky.App. 2005). We decry the failure of Daniel to provide argument in support of his position. In the present case, however, the record and the orders of the trial court support the trial court's rulings, and reversal would be improper.

The parties appeared before the family court on Daniel's request that Licia be ordered to reimburse him for payments made for health insurance for the parties' minor children. Licia asserts that the parties had an agreement that Daniel would pay those costs. No evidence in the record shows which party was charged with payment of those costs. The record does show, however, that Licia failed to object to Daniel's statement that she was required to pay those costs.

An initial motion regarding the reimbursement of health insurance premium payments was filed by Daniel on May 12, 2004. That motion requested reimbursement and asked that the

court find Licia in contempt for failing to make the payments. That motion was served on Licia. The court ordered the parties to attend mediation in an order dated May 19, 2004. That order was served on Licia. Licia did not make the payments ordered, and the parties did not attend mediation.

A hearing was scheduled for August 25, 2004, before the Jefferson Family Court. Daniel appeared with counsel. Licia was not present. Counsel for Daniel informed the court that the parties had resolved the issues and settled the conflict between them. Daniel's attorney informed the court that Licia did not wish to be present, and that she was "happy the matter was settled." Counsel for Daniel also told the court that Licia did not have an attorney, and was acting *pro se*. The court acknowledged that Licia's absence was due to her being misinformed by the judge's secretary that the hearing was cancelled. That absence was therefore excusable.

The family court directed Daniel to prepare an order, designating it as a "show cause" order, to place the case back on the docket. The court informed Daniel that he could make a claim against Licia for back child support, as she had failed to carry health insurance on the parties' children. Daniel requested health insurance as required by the decree of dissolution. Licia contended that the parties had a different oral agreement regarding the payment of health insurance

premiums. The record does not contain evidence supporting Licia's position.

The court indicated on August 25, 2004, that Daniel could be reimbursed for the expense of the childrens' insurance coverage. Licia argues that the discussion of reimbursement was improper as she was not before the court at that time. As no final action was taken on that date, Licia cannot show that the discussion of relevant facts improperly prejudiced her case.

Following the hearing, counsel for Daniel filed a motion requesting \$450 as payment for attorneys fees for motions and proceedings up to the date of the hearing. Without a hearing, the court issued an order requiring Licia to pay all past due medical expenses for one of the parties' minor children, to acquire a new pediatrician for one of the children, to obtain health insurance for the children and provide proof of insurance to Daniel, and to reimburse Daniel for money he paid for the insurance for the children in the sum of \$1,653.07. The court also directed Licia to pay the attorney fees in the sum of \$450. The order was entered on October 1, 2004. Licia objects to entry of the order because she had no opportunity to appear for a hearing or to present evidence before it was entered. Licia also contends that the order was not sent to her at the time it was filed and that she did not have timely notice of the order. She did not pay any of the sums ordered by the court.

On October 25, 2004, the court set the matter for a hearing, and mandated that the parties attend mediation. On November 15, 2004, Daniel moved to set aside the mediation order and asked that the court demand Licia show cause why she has not complied with the October 1, 2004 order.

A hearing was held on January 13, 2005. Licia did not appear at that hearing. At that time, the court ordered Licia to pay the original attorney fee of \$450, and an additional attorney fee of \$450 pursuant to Daniel's attorney's affidavit. The court also found Licia in contempt for failing to make the payments ordered earlier. The court set the case for a show cause hearing. Licia appeared at the January 31, 2005 show cause hearing. She claimed that she had not had notice of the earlier hearing of January 13, 2005, and argued that she had missed the hearing due to lack of notice. The court passed the matter in order to permit Licia to obtain counsel. The court did not rescind its order requiring payment of insurance premium reimbursement or attorney fees.

On February 21, 2005, the parties again appeared before the court. The court required that Licia go to jail if she did not pay the \$4,117.00 awarded in the prior orders. That sum represented all past due health insurance premium reimbursements, and all attorney fees claimed by Daniel's counsel. Licia made payment the next day.

Licia asserts that the trial court abused its discretion by entering an order finding her in contempt, and in forcing her to pay \$450 twice to Daniel's attorney. Licia asserts that this is palpable error, and should be reviewed on appeal pursuant to CR 61.02.

Licia contends that she was not present at the original August hearing because the judge's secretary gave her erroneous information. This claim is supported by the record. For this reason, that absence was excusable. Licia complains that on that date Daniel and his counsel discussed the case with the court, which eventually led to the orders requiring Licia to pay the sums ordered. Licia asserts that this was unfair and improper. As no ruling unsupported by documentary evidence in the record was made on that date, we find no reversible error.

Licia argues that she was improperly ordered to reimburse Daniel for health insurance premium payments he made on behalf of their children. The record does not contain any evidence filed by Licia supporting her contention that she should not have to reimburse Daniel for the insurance premiums he paid. The record does not contain any evidence showing that Licia should not have been ordered to pay the minor child's medical expenses. Licia has failed to show this Court why the award of those sums was improper in any way. For that reason,

the order requiring payment of insurance premiums and medical expenses is affirmed.

The October 1, 2004 order demanded Licia make immediate reimbursement of the health insurance payments and the \$450 attorney fee. Licia filed a motion for payment of back child support with a hearing date of October 25, 2004. That motion asked that the court order Daniel to carry health and dental insurance on the minor children at his own expense. The motion also requested that the court reverse the earlier order and find that Licia did not have to pay Daniel's attorney fee or reimburse Daniel for health insurance premiums. A hearing was set for January 13, 2005 on all motions. The record shows that notice of the hearing was sent to all parties.

The court ordered the parties to attend mediation. Daniel then filed a motion asking the court to set aside the mediation order, and hold Licia in contempt for failing to make the payments ordered. That motion does not show service on Licia. The court entered a new mediation order requiring Licia to bear the cost of mediation, but reserving the right to reallocate costs. That order demanded that mediation be completed before the January hearing. The order was dated November 15, 2004, and was served on all parties.

The court held the hearing on January 13, 2005. Licia was not present at the hearing which dealt with her motion to

amend or vacate the court's order and Daniel's motion regarding Licia's non-compliance with the court's October 1, 2004 order. The court entered an order finding Licia liable for the expenses claimed by Daniel. On January 18, 2005, the court entered another order. In that Order, the court stated:

The Petitioner Licia Barrett has willfully and intentionally disregarded this Court's Order of October 1, 2004. The Petitioner currently owes the sum of \$4,117.00 to the Respondent, Daniel S. Barrett, for those expenses as set out in the Order of October 1, 2004 and the Order of January 13, 2005.

The court therefore found Licia in contempt and ordered her to appear at a January 31, 2005 hearing.

Licia argues that Daniel's counsel was awarded a "double payment" of \$450. She contends that the court ordered her to pay this sum twice, when it should only have ordered one payment of \$450. The court's order of January 13, 2005 holds, in relevant part:

1. That Petitioner [Licia] shall immediately comply with this Court's Order entered October 1, 2004, making full payment of reimbursements to the Respondent in the total amount of \$2,103.07 . . .
2. Petitioner shall immediately reimburse Respondent for further expenses in providing health insurance for the parties' minor children since the entry of the Order of October 1, 2004, in the total amount of \$151.80;

3. The Petitioner shall immediately reimburse the Respondent in the amount of \$657.80, which is the contracted cost of health insurance for the parties' minor children for the year 2005;

. . .

5. That the Petitioner shall immediately pay Respondent's attorney's fees incurred due to the Respondent's attempts to enforce this court's Order of October 1, 2004 in the total amount of \$802.50 as well as the attorney fee previously awarded in the amount of \$450.00.

That order shows that it was served on all parties.

The affidavit filed by Daniel's attorney in September, 2004, listed charges for legal fees incurred from May 7, 2004, through September 22, 2004. The claimed fee was \$450.00. On January 7, 2005, counsel for Daniel filed another affidavit requesting attorneys fees in the sum of \$802.50. The affidavit shows that this fee reflects services from October 4, 2004 through January 13, 2005.

Licia has failed to show that counsel for Daniel did not provide such services as outlined in the affidavits. The trial court has discretion to award attorney fees where the circumstances so merit. Ford v. Blue, 106 S.W.3d 470,473 (Ky.App. 2003). The fees were necessitated by Licia's failure to comply with the trial court's orders regarding payment of insurance premiums, and Licia's failure to show up for at least one motion hour despite having received notice requiring such

appearance. Licia has failed to show any abuse of discretion in the trial court's award of the attorney fee payments. Under such circumstances, this Court must affirm the award.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard J. Head
Louisville, Kentucky

BRIEF FOR APPELLEE:

No brief for Appellee.