

Circuit Court for Charles County
Case No. C-08-FM-20-000679

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2335

September Term, 2022

MILOUSE GERMAIN

v.

YSAMAILLE CASTOR

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: January 9, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This matter arises from a child custody case in the Circuit Court for Charles County between Appellee, Ysamaille Castor (“Father”), and Appellant, Milouse Germain (“Mother”), and was previously before this Court.¹ The case was remanded to the circuit court on the issue of attorney’s fees, in order for the court to articulate its reasoning, applying the statutory factors under Family Law Article, § 12-103 (“FL § 12-103”). On February 22, 2023, the court held a hearing and following arguments of counsel, Mother’s request was denied. Mother timely appealed and presents one question for our review:

1. Whether the trial judge erred as a matter of law in failing to apply the [F]amily [L]aw [A]rticle, section 12-103 *et. seq.* to the facts and circumstances of this case and abused his discretion under the statute and case law.

BACKGROUND

Mother and Father were in a romantic relationship dating back to 2005, but never married. They share four children: T. (born in 2008), G. (born in 2010), I. (born in 2012), and A. (born in 2016). In July 2012, Father purchased a house in Waldorf which became the family home. In January 2014, Father won a million-dollar lottery, and later bought a house in White Plains. The parties moved to that house with their children. In June 2020,

¹ This Court in *Germain v. Castor*, No. 1891, Sept. Term, 2021, 2022 WL 3083017, at *1 (Md. Ct. Spec. App. Aug. 3, 2022), addressed the following questions:

1. Whether the trial court erred [as] a matter of law in failing to consider appellant’s request for attorney’s fees.
2. Whether the trial court erred as a matter of law in awarding sole legal and physical custody of the parties['] children to appellee-father.
3. Whether the trial court erred in calculating child support and child support arrears.

We affirmed the judgment as to issues two and three, and vacated only as to the court’s denial of Mother’s request for attorney’s fees.

Mother and Father separated. Mother moved to New Jersey and took T. and I. with her. Initially, Father was unaware of Mother’s new location until T. and I. contacted him. Father then brought T. and I. back to Maryland. On June 25, 2020, Father filed a Complaint for custody and visitation, and he obtained an Order of Default on January 24, 2021. Mother obtained counsel, who filed a Motion to Vacate the Order of Default, which was granted on March 1, 2021. A three-day hearing took place on June 2, 2021, July 16, 2021, and December 17, 2021.

At the conclusion of the hearing, the court awarded Father primary physical and sole legal custody of the parties’ four minor children. The court ordered Mother to pay child support and arrears dating back to July 2020, and ordered both parties to pay their own attorney’s fees.² Mother appealed the judgment. In an unreported opinion, this Court found:

The record contains no indication that the court considered the requisite statutory factors before denying Mother’s request for attorney’s fees. Father claims Mother did not meet her burden of proof under FL § 12-103(b). We observe, however, that the court did not state that Mother failed to meet her burden of proof, nor did the court make any comments or assessment regarding the factors. Thus, we remand on this issue to allow the court to apply the statutory factors under FL § 12-103 and explain the rationale for its decision.

Germain v. Castor, No. 1891, Sept. Term, 2021, 2022 WL 3083017, at *4 (Md. Ct. Spec. App. Aug. 3, 2022).

² *Germain v. Castor*, No. 1891, Sept. Term, 2021, 2022 WL 3083017, at *4 (Md. Ct. Spec. App. Aug. 3, 2022) (“[T]he [circuit] court’s opinion stated as follows: ‘Both sides are responsible for their own attorney’s fees.’ The court’s final order was similarly worded: ‘ORDERED, that neither party shall contribute to the legal fees incurred by the other[.]’”).

On February 22, 2023, the circuit court held a hearing to “consider the standards set forth under Family Law Article section 12-103 in regards to the award of costs and counsel fees.” Mother argued the statutory factors under FL § 12-103 were in her favor because the pleadings and summons were not issued to her correct address, and as a result, she never had proper notice of the proceedings. She asserted that her relationship with Father was built on dependency and that her role was to care for the children while Father was at work. She argued that she did not have the means to “fight against” Father in court. Additionally, Mother’s attorney noted that Mother testified in the July 16, 2021 hearing, that she had to receive financial assistance from her brother and that she had not been able to pay her attorney. Mother requested that Father pay her attorney’s fees in the amount of \$10,112.50.

Father argued that he did not have the correct address to issue the pleadings to Mother, but that, the order in favor of Father was quickly vacated and did not affect any of the proceedings. He asserted that there was substantial justification in bringing the proceeding under FL § 12-103(b)(3) because Mother took two of his children to New Jersey, he did not know where they were, and he had to bring them back to Maryland. He also argued that Mother presented insufficient evidence to support her request for attorney’s fees. Additionally, Father argued that Mother only introduced one paystub from May 14, 2021, and did not testify as to how much was in her checking account or as to any other financial assets she owns. Father contended that Mother failed to meet her burden of satisfying the requirements under FL § 12-103.

After hearing arguments from counsel and reviewing the evidence, the court ruled that there was substantial justification for bringing the matter to court and acknowledged the needs of Mother, such as her lack of funds and inability to pay her apartment lease on her own. The court, however, found that “[Mother] failed to meet the burden of proof regarding the financial status of the party.” The court denied the motion for attorney’s fees. Mother timely appealed.

STANDARD OF REVIEW

“When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c).

“We review the award of counsel fees under the abuse of discretion standard.” *Gillespie v. Gillespie*, 206 Md. App. 146, 176 (2012). “Decisions concerning the award of counsel fees rest solely in the discretion of the trial judge.” *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citing *Jackson v. Jackson*, 272 Md. 107, 111–12 (1974)). “The proper exercise of such discretion is determined by evaluating the judge’s application of the statutory criteria set forth above as well as the consideration of the facts of the particular case.” *Id.* “Consideration of the statutory criteria is mandatory in making the award and failure to do so constitutes legal error.” *Id.* (citing *Carroll County v. Edelmann*, 320 Md. 150, 177 (1990)).

DISCUSSION

I. The circuit court did not err in applying FL § 12-103, nor did the court abuse its discretion in denying the motion for attorney’s fees.

FL § 12-103(a) states the following: “[t]he court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person: (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or (2) files any form of proceeding” FL § 12-103(b) further states, “[b]efore a court may award costs and counsel fees under this section, the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.”

Mother argues the circuit court erred in failing to apply FL § 12-103 to the facts and circumstances of the case and abused its discretion in denying her motion. She contends the court failed to discuss the financial status of the respective parties and that Father has “serious wealth” while Mother is impecunious. Mother argues the decision should be vacated. Father did not submit a brief.

Mother points to *Henriquez v. Henriquez*, in support of her argument. 413 Md. 287 (2010). In *Henriquez*, the Supreme Court of Maryland examined “[w]hether an award of counsel fees directly to a non-profit legal services organization that represented a prevailing party, on a pro bono basis originally, in a child custody matter, is appropriate” under FL § 12-103. *Id.* at 292. The circuit court had awarded Mrs. Henriquez sole physical custody of her children and ordered the father, Mr. Henriquez, to pay child support. *Id.* at

292-93. The court also awarded attorney’s fees in the amount of \$5,000.00 to be paid by Mr. Henriquez to the House of Ruth Domestic Violence Legal Clinic for legal work on Mrs. Henriquez’s behalf. *Id.* at 293. The court explained its decision regarding the award of attorney’s fees:

The Court also believes that there should be some award of fees for representation given that essentially Mrs. Henriquez is wholly dependent and went to a community services organization for her representation. She’s virtually penniless as far as I can tell. Mr. Henriquez makes what he makes. Any payment to counsel obviously goes out of the family pocket and into, into counsel’s pocket. Mr. Henriquez has made a payment of \$5,000 to [his attorney]. I think that represents an exceptionally reasonable amount and I make an award of a similar amount to, for counsel fees.

Id.

The Supreme Court of Maryland affirmed the circuit court’s decision and held that the plain meaning of FL § 12-103 “permits an award of attorneys’ fees, consistent with consideration of the statutory factors, when the prevailing party receives pro bono legal representation from a non-profit legal services organization, and that the award may be made directly to the legal services organization.” *Id.* at 292.

We find *Henriquez* inapplicable to the case at bar. There, Mrs. Henriquez was represented pro bono by a non-profit legal service organization and the circuit court found that she had satisfied her burden of proving the statutory requirements under FL § 12-103. *Id.* at 291. The only issue before the Court was whether the award of attorney’s fees could be made to the legal services organization under the statute. *Id.* at 292. In contrast, here, the hearing court found that Mother, who was represented by private counsel, had not

satisfied her burden under FL § 12-103. The holding in *Henriquez* does not address the circumstances presented in this case.

At the February 22, 2023 hearing, the judge acknowledged this Court’s opinion, stating:

I’ve reviewed the Court’s opinion on this, I’ve reviewed my notes from the hearing, I’ve reviewed the exhibits, I’ve reviewed the request for attorney’s fees. Um, and the Court said I have to consider it said, even denying a request for attorney’s fees, it says before a court may award cost and counsel fees under this section, Family Law 12-103, the court shall consider the financial status of the party, the needs of each party and whether there was a substantial justification for bringing, maintaining or defending the action.

Regarding the factors set forth in FL § 12-103(b), the court held:

(1)[T]he financial status of each party;

(2)[T]he needs of each party; and ³

...the party seeking the attorney’s fees has the obligation to show the financial status of each party and the needs of each party. In this case, there’s a lot of differences and innuendo that Ms. Germain doesn’t have funds. She testified in this case that she was working at Amazon and she submitted a paystub from May 14th, 2021, which was never updated. She began work on August 2nd in Maryland, no new paystubs were provided, no copy of any - of a letter of transfer to Maryland. She is working at Hagerstown but no information was provided to the Plaintiff, to the BIA or to the court. She testified she was making 18 something, the question was 18.50. She says I believe so, I got a raise since New Jersey, overtime, time and a half. Then testified 1,900 a month on lease. Brother helps but there was no indication as to how much the brother contributes towards the lease. Um, she indicated there was a Wells Fargo bank account but she just uses any branch. So, there was a lot of information that was presented indicating that Ms. Germain may have no funds available, it maybe in the situation that she’s in but the evidence was based more on circumstantial evidence. The Defendant had the opportunity to present documents, present paystubs, present bank account information, present how much the brother was helping on the lease. Call the brother as a witness. There’s no indication any of these cases - I mean in this

³ Factors one and two have been combined, as the court addressed the factors together.

case as to Ms. Germain’s actual financial situation. There’s a lot of inferences. The Court took all those inferences into account but was required to make a child support order.

(3)[W]hether there was substantial justification for bringing, maintaining, or defending the proceeding.

And all cases involving children, as I told Mr. Mahone, there’s a substantial justification for a parent to want to spend time with their kids, try to get custody with their kids, not all, 98 percent. And I’ll never fault a parent for trying to do that.

The court then denied Mother’s request for attorney’s fees, stating:

. . . the burden is on the Defendant and I don’t think the Defendant made a proof of a case other than the testimony which did not indicate the actual income and the Defendant was in a position actually to provide that information and failed to do so. So the Court is going to find that the Defendant failed to meet the burden of proof regarding the financial status of the party, it’s going to deny the motion for attorney’s fees.

Based on this record, we hold that the court properly considered each of the statutory factors in making its decision and thus, the court did not err. At the conclusion of the hearing, the court emphasized that Mother had the burden of proof. The court found that both parties had a substantial justification for bringing and defending the proceeding because each parent wanted to spend time with their children or obtain custody of their children.⁴ The court then acknowledged Mother’s testimony regarding her needs and lack of funds and the court found that she failed to provide sufficient evidence to meet her burden of proof.

⁴ *Ruiz v. Kinoshita*, 239 Md. App. 395, 438 (2018) (“So long as the parties were substantially justified in bringing, maintaining, or defending the proceeding, the trial court has significant discretion in applying the factors set out in FL § 12-103(b) to ‘decid[e] whether to award counsel fees and, if so, in what amount.’”)

In reviewing whether the court abused its discretion in denying the request for attorney’s fees, we do not “substitute our judgment for that of the trial court.” *Murray v. TransCare Maryland, Inc.*, 203 Md. App. 172, 191 (2012). An abuse of discretion occurs only when the trial court’s decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Gillespie*, 206 Md. App. at 175 (citing *In re Yve S.*, *supra*, 373 Md. at 583–84). The court’s decision here was not “well removed” from that center mark. Accordingly, we affirm the court’s denial of Mother’s request for attorney’s fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**