

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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ERDAG GOKNAR, Ph.D.,

Appellant,

v.

ESIN GOKNAR and EREN GOKNAR,

Appellees.

No. 2D22-1407

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June 23, 2023

Appeal from the Circuit Court for Manatee County; Diana L. Moreland,  
Judge.

Michael Gulisano of Gulisano Law, PLLC, Boca Raton, for Appellant.

E. Blake Melhuish of E. Blake Melhuish, P.A., Bradenton, for Appellee  
Eren U. Goknar.

Esin I. Goknar, pro se.

MORRIS, Chief Judge.

Erdag Goknar appeals two orders awarding attorney's fees to his sisters, Eren Goknar and Esin Goknar. We affirm the majority of the fee orders but reverse the portions of the orders awarding "fees for fees."

I. Background

The parties were engaged in a dispute over a family trust, and the underlying proceeding was submitted to arbitration. An order was

entered in the arbitration proceedings on September 9, 2020, requiring Erdag and his siblings to each return \$100,000 to the trust immediately. On December 4, 2020, Erdag filed a motion to vacate that order, but it was denied by the trial court on March 24, 2021. Eren then filed a motion for contempt on April 1, 2021, alleging that Erdag had not complied with the arbitration order. Esin also filed a motion for contempt. Erdag filed a response.

On May 24, 2021, the trial court entered an order confirming and adopting the arbitrator's order. On May 24, 2021, the trial court also entered an order on the motions for contempt, reserving ruling but requiring Erdag to return the money to the trust within sixty days. On July 15, 2021, Erdag filed a motion for installment payments and for an extension of time. Erdag failed to return the money to the trust within the sixty-day time frame, and on August 2, 2021, the trial court entered an order to show cause, scheduling a hearing for September 1, 2021. Eren propounded a request for production to Erdag on August 17, 2021, requesting financial records relating to Erdag's ability to repay the trust. On August 18, 2021, Erdag returned the \$100,000 to the trust.

On August 23, 2021, Erdag responded to and objected to the request for documents. On August 24, 2021, the trial court denied Erdag's motion for an extension and to pay in installments. On August 30, 2021, the trial court entered an order requiring Erdag to produce the requested documents at the show cause hearing on September 1.

The show cause hearing occurred, after which the trial court entered an order on September 22, 2021, finding Erdag in contempt. In the order of contempt, the trial court found that Erdag testified as to why he should not be held in contempt of court but found his testimony "conflicting, incredible[,] and unpersuasive." The court found that Erdag

had been able to obtain a loan from his retirement account within three to four days of his request and that he did not establish why he had not done so within the time directed by the trial court. The trial court also found that Erdag failed to produce financial records and documents that he had been ordered to produce and that were relevant to the issue of his alleged inability to pay. The trial court found Erdag in contempt of court for failing to repay the money to the trust by July 24, 2021.

Regarding attorney's fees and costs, the trial court further found in the order of contempt that Eren and Esin

have incurred attorneys' fees and costs in filing and prosecution of their respective Motions for Contempt and in obtaining this Order from the Court. [Eren and Esin] are entitled to recover these attorneys' fees and costs from [Erdag], as reimbursement for their efforts in filing and prosecuting their respective Motions for Contempt and obtaining compliance by [Erdag] with this court's May 24, 2021, Order on Motion for Contempt [requiring payment by July 24, 2021].

Eren and Esin filed motions for fees, and two hearings were held in February and March 2022. The trial court entered two lengthy fee orders in April 2022, awarding Eren \$5,565 in attorney's fees and \$1,556.25 in expert fees and awarding Esin \$16,227 in attorney's fees and \$1,556.25 in expert fees.

## II. Analysis

Erdag argues on appeal that the trial court erred in awarding attorney's fees incurred litigating the amount of attorney's fees ("fees for fees") under the inequitable conduct doctrine where the language of the order of contempt did not provide for such recovery and no findings were made to justify those fees. Erdag contends that the vast majority of the fees requested by Eren's and Esin's attorneys were incurred after the

contempt order was entered and that he was not put on notice that "fees for fees" were being sought or awarded under the inequitable conduct doctrine.

"The inequitable conduct doctrine permits the award of attorney's fees where one party has exhibited egregious conduct or acted in bad faith." *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998). The doctrine "is rarely applicable. It is reserved for those extreme cases where a party acts 'in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Id.* (quoting *Foster v. Tourtellotte*, 704 F.2d 1109, 1111 (9th Cir. 1983)). "Before exercising its inherent authority to impose sanctions, a trial court must provide to the parties 'notice and an opportunity to be heard—including the opportunity to present witnesses and other evidence.'" *FCCI Com. Ins. v. Empire Indem. Ins.*, 250 So. 3d 858, 862 (Fla. 2d DCA 2018) (citing *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002)). Fees as sanctions "must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees." *Moakley*, 826 So. 2d at 227.<sup>1</sup> And "the amount of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct." *Id.* "We review the trial court's ruling on the imposition of sanctions for bad faith conduct for an abuse of discretion." *Diaz v. Kasinsky*, 306 So. 3d 1065,

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<sup>1</sup> "Although *Moakley* involved the imposition of fees against an attorney, the procedures described in the case are equally applicable to the assessment of fees against a party." *Bennett v. Berges*, 50 So. 3d 1154, 1159 (Fla. 4th DCA 2010) (quoting *T/F Sys., Inc. v. Malt*, 814 So. 2d 511, 513 (Fla. 4th DCA 2002)).

1067 (Fla. 3d DCA 2020) (quoting *Goldman v. Est. of Goldman*, 166 So. 3d 927, 929 (Fla. 3d DCA 2015)).

In the final fee orders, the trial court recognized that a sanction for contempt "may include the reasonable attorney's fees and costs incurred in determining the amount of attorney fees even absent statutory or contractual authority as part of 'the inequitable conduct doctrine' that permits the award of attorney fees where one party had exhibited egregious recalcitrant and/or callous attitude." As to whether "fees for fees" should be awarded in this case, the trial court found as follows:

In this case, [Erdag's] own [e]xpert acknowledge[d] "everyone" knew what was going to happen. Furthermore, [Erdag's] 23 August 2021 filing of a photograph of a check representing compliance with the Arbitrator's 9 September 2020 Provisional Order almost on the anniversary of said ruling, and only eight days prior to the Order to Show Cause, is illustrative of a party exhibiting an egregious, recalcitrant and/or callous attitude. Furthermore, the Court finds [Erdag's] egregious, recalcitrant and/or callous attitude persisted even after the Court's 22 September 2021 Order to a diminished degree.

The court then awarded "fees for fees," reducing the amount for certain unreasonable fees.

We find merit in Erdag's claim that he was not put on notice that "fees for fees" may be awarded under the inequitable conduct doctrine, such that he would be liable for fees incurred in litigating the reasonable amount of attorney's fees. Erdag was on notice that he would be generally liable for attorney's fees as a sanction for the contempt proceedings that resulted from his refusal to return money to the trust. Eren's and Esin's motions for contempt requested the court to impose sanctions and to award attorney's fees and costs incurred in bringing the motions for contempt and in obtaining the requested relief, and the order

of contempt found that Eren and Esin incurred fees and costs in the filing and prosecuting of their motions for contempt and that they are entitled to recover such fees and costs. However, Erdag was not put on notice that Eren and Esin were seeking fees for litigating the amount of fees. The motions for contempt and the order of contempt did not specifically mention "fees for fees," and the subsequently filed motions for attorney's fees did not specifically request "fees for fees."

The cases relied upon by the trial court and Esin and Eren hold that fees awarded as a sanction under the inequitable conduct doctrine may include fees incurred in determining the amount of fees to be awarded. *See Condren v. Bell*, 853 So. 2d 609, 609-10 (Fla. 4th DCA 2003) (holding that trial court did not err in including "those attorney's fees incurred in determining the amount of fees to be awarded" when the trial court awarded fees as a sanction for having to enforce a settlement agreement); *see also Cox v. Great Am. Ins.*, 88 So. 3d 1048, 1050 (Fla. 4th DCA 2012) (relying on *Condren* and concluding that attorney's fees incurred in litigating the amount of the fees award may be permitted under the "inequitable conduct doctrine"); *Bennett v. Berges*, 50 So. 3d 1154, 1161 (Fla. 4th DCA 2010) (citing *Condren* for the proposition that "this court has affirmed an award of attorney's fees, including fees incurred in determining the amount of fees to be awarded, where the award of attorney's fees was a sanction"). However, these cases generally supporting an award of "fees for fees" do not address or involve lack of notice, as this case does.

If "fees for fees" are imposed as a sanction under the inequitable conduct doctrine, the opposing party must be provided notice that such fees are being sought. *See Moakley*, 826 So. 2d at 227 (holding that attorney's fees as a sanction "is appropriate only after notice and an

opportunity to be heard"). This is especially true because fees as sanctions should be rarely imposed and only in extreme cases. See *Bitterman*, 714 So. 2d at 365.

In addition, when fees are awarded as a sanction, the trial court is required to support the fee award with detailed factual findings. See *Moakley*, 826 So. 3d at 227 ("[T]he trial court's exercise of the inherent authority to assess attorneys' fees against an attorney must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees. Thus, a finding of bad faith conduct must be predicated on a high degree of specificity in the factual findings. In addition, the amount of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney [or party]."). The trial court made sufficient findings to support fees as a sanction for Erdag's behavior leading up to the contempt proceedings, but the trial court did not make specific findings as to why Erdag should be further sanctioned by paying an award for litigating the amount of fees. In the order of contempt, the trial court did not make findings as to why "fees for fees" would be appropriate in this case. In the final fee orders, the trial court found that Erdag's "egregious, recalcitrant and/or callous attitude persisted even after" the court's contempt order "to a diminished degree," but the trial court did not elaborate. See *Mallas v. Mallas*, 326 So. 3d 704, 706 (Fla. 4th DCA 2021) ("And although the trial court also authorized fees as a sanction, the court's fee order does not contain the requisite factual findings to support a 'fees for fees' award under the inequitable conduct doctrine."); *Diaz*, 306 So. 3d at 1066-68 (affirming an order denying "fees

on fees" where trial court found that "it lacked discretion to impose 'fees on fees' solely based on the misconduct underlying the *Moakley* award itself"; holding that "*Moakley* does not provide an *automatic* entitlement to additional attorneys' fees incurred in securing an underlying sanctions award" (emphasis added)).

Because Erdag was not provided notice that "fees for fees" were being sought and the awards of "fees for fees" are not supported by highly specific factual findings, the trial court abused its discretion in awarding "fees for fees." Accordingly, we reverse the portions of the orders awarding "fees for fees" and remand for the trial court to omit those amounts from the fee awards.<sup>2</sup> We affirm the remainder of the fee orders without further comment.

Affirmed in part, reversed in part, and remanded.

NORTHCUTT and BLACK, JJ., Concur.

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Opinion subject to revision prior to official publication.

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<sup>2</sup> This includes the \$1,556.25 awarded to both Esin and Eren for their fee expert.