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Wine v. Quezada: Family Law – Attorneys’ Fees – Domestic Violence

Digested by Judith Nallin

N.J. Superior Court, Chancery Division FV-16-0764-04; Chancery Division, Family Part, Passaic County; opinion by Rothstadt, J.S.C.; decided March 29, 2005; approved for publication June 28, 2005. DDS No. 20-4-0825

A temporary restraining order was entered against defendant Francisco Davila, a.k.a. Rafael D. Quezada. He did not appear at the final hearing. The judge found that he had been properly served and that plaintiff Karen Wine met her burden of proof by establishing that Davila had committed acts of criminal mischief, terroristic threats and assault, and a final restraining order was entered.

Nine months later, Davila moved to vacate the final restraining order, alleging that he had not been properly served. That motion was listed for a date after the resolution of his municipal court charges arising from the same incident. After he pleaded guilty to two counts of harassment in municipal court, defendant withdrew his motion to vacate.

Plaintiff now moves for attorneys’ fees. She argues that, consistent with the intent of the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 et seq., she is entitled to such fees as compensatory damages. Defendant argues that to award attorneys’ fees the court must weigh the factors in Rule 5:3-5(c) for family matters, especially the financial circumstances of the parties and their ability to pay their own legal fees. He contends that if that analysis is followed, plaintiff is not entitled to any additional fees.

Held: Victims of domestic violence are entitled to an award of reasonable attorneys’ fees where the fees are the direct result of the domestic violence and they are submitted in an affidavit that satisfies the criteria of R. 4:42-9(b). The award of such fees is specifically authorized by the PDVA as part of the compensatory damages a court may award to a victim of domestic violence. Because the fees are treated as part of compensatory damages, they are not subject to traditional analysis for claims relating to family-type matters.

In passing the PDVA, the Legislature only made provisions for counsel fees for victims, not for prevailing parties. This was to avoid a chilling effect on the willingness of domestic-violence victims to come forward. The act’s intent was to provide such victims the maximum protection from abuse that the law could provide and to ensure full access to the protections of the legal system. Thus, a victim of domestic violence who files a complaint in good faith cannot be held accountable for a defendant’s

counsel fees, even if the complainant does not prevail. Where a complaint is filed in bad faith, a claim for fees may be made under the frivolous-litigation statute (2A:15-59.1), but not under the PDVA.

Since attorneys' fees are expressly included in the PDVA as compensatory damages, there is no prerequisite that the case be "appropriate" for compensatory damages, as with punitive damages. An award of fees, as compensatory damages, in a domestic-violence action is no different than an award of compensatory damages in a tort action. So long as the damages are the result of the complained of, and found, domestic violence, an award is warranted.

The considerations that apply to an award of counsel fees in matrimonial actions are therefore inapplicable here. Thus, the parties' financial circumstances have no relevance. To hold otherwise could create a chilling effect on claims made by bona fide victims who might have the ability to pay. Moreover, a defendant who committed an act of domestic violence would indirectly obtain an unintended benefit if an award of fees was not made because of a disparity between the parties' financial circumstances.

Since the PDVA specifically provides for an award of attorneys' fees, they are permitted by the court's rules. The only additional consideration is whether they are reasonable, which is determined by considering the factors in Rule 4:42-9(b). That rule incorporates the factors in RPC 1.5. If, after considering those factors, the court finds that the domestic-violence victim's attorneys' fees are reasonable, and they were incurred as a direct result of domestic violence, the court should award those fees.

After reviewing plaintiff's attorney's certification, this court is satisfied that the fees incurred by plaintiff were the result of defendant's domestic violence and that they are reasonable. Wine seeks fees and costs of \$6,858.71. Her attorney expended more than 21 hours on this case, precluding her from accepting other employment. She specializes in family law and has been practicing law for 20 years. She also serves as the Early Settlement Panel chair, has chaired the Ethics Committee in Bergen County and has taught domestic violence for the Bergen County Bar Association. She charges a fixed hourly rate of \$300, which is customarily charged for similar legal services in this county and this area of the law.

The fees incurred by plaintiff's counsel primarily related to her preparation of opposition to defendant's motion to vacate and her related appearances in court. Plaintiff would never have incurred these fees if defendant had not committed an act of domestic violence. Since she incurred attorneys' fees as a direct result of his act of domestic violence, the fees were reasonable, and the fees have been presented by affidavit, an award of attorneys' fees is warranted here. In calculating the award, only the fees incurred after the entry of the final restraining order are considered. They totaled \$6,858.71.

The court is not awarding Wine fees or costs associated with the municipal court hearing. There is no authority for an award of fees to a complaining witness in a municipal court action. Those fees totaled \$2,029.46.

Therefore, deducting \$2,029.46 from the total fees and costs of \$6,858.71, Davila is ordered to pay Wine attorneys' fees and costs of \$4,829.25.

[The slip opinion is 7 pages long.]

For plaintiff – Melinda L. Singer. For respondent – Joseph E. Collini (Emolo & Collini).

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