

Coward v. Biddle

210 A.D.3d 1083 (N.Y. App. Div. 2022) · 179 N.Y.S.3d 296 · 2022 N.Y. Slip Op. 6800
Decided Nov 30, 2022

2021-03286, 2022-00643 Docket Nos. V-15066-2016/2018E, 18J, 19M, 19N, 19O, 19P, 19Q, 20Y, 20V

11-30-2022

In the Matter of Lashonda COWARD, appellant, v. Anthony H. BIDDLE, respondent.

Law Offices of Eyal Talassazan, P.C., Garden City, NY, for appellant. The James Firm, PLLC, Hauppauge, NY (Brian A. Picarello of counsel), for respondent.

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Law Offices of Eyal Talassazan, P.C., Garden City, NY, for appellant.

The James Firm, PLLC, Hauppauge, NY (Brian A. Picarello of counsel), for respondent.

MARK C. DILLON, J.P., LINDA CHRISTOPHER, LARA J. GENOVESI, HELEN VOUTSINAS, JJ.

1083 DECISION & ORDER *1083 In related proceedings pursuant to Family Court Act article 6, the mother appeals from (1) an order of the Family Court, Suffolk County (James F. Quinn, J.), dated April 14, 2021, and (2) an order of the same court dated December 8, 2021. The order dated April 14, 2021, granted the father's application for an award of attorneys' fees to the extent of directing the mother to pay attorneys' fees in the sum of \$3,000 directly to the father's counsel. The order dated December 8, 2021, in 298 *298 effect, granted those branches of the father's

counsel's motion which were to hold the mother in civil contempt for her failure to comply with the order dated April 14, 2021, and for an award of additional attorneys' fees, to the extent of finding the mother in civil contempt and directing the mother to pay attorneys' fees totaling \$7,500, inclusive of the prior award of \$3,000, directly to the father's counsel.

ORDERED that the orders are affirmed, without costs or disbursements.

The parties have engaged in extensive litigation since 2016 regarding the custody of their child, who was born in 2010. In August 2021, the father's counsel moved, inter alia, to hold the mother in civil contempt for her failure to comply with a prior order of the Family Court dated April 14, 2021 (hereinafter the April 2021 order), which had directed the mother to pay attorneys' fees directly to the father's counsel in the sum of \$3,000. This Court denied the mother's application to stay enforcement of the April 2021 order. In an order dated December 8, 2021 (hereinafter the December 2021 order), the Family Court found the mother in civil contempt of the April 2021 order, and awarded the father's counsel additional attorneys' fees totaling \$4,500. The mother appeals from both orders.

" 'A motion to punish a party for civil contempt is addressed to the sound discretion of the court, and the movant bears the burden of proving the contempt by clear and convincing evidence' " (*Matter of Herbst v. Palange*, 193 A.D.3d 859, 860, 142 N.Y.S.3d 387, quoting *Matter of Hughes v. Kameneva*, 96 A.D.3d 845, 846, 946 N.Y.S.2d 211

1084 party *1084 in civil contempt, the movant is required to prove, by clear and convincing evidence, '(1) that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, (2) the appearance, with reasonable certainty, that the order was disobeyed, (3) that the party to be held in contempt had knowledge of the court's order, and (4) prejudice to the right of a party to the litigation' " (*Board of Mgrs. of Brightwater Towers Condominium v. M. Marin Restoration, Inc.*, 206 A.D.3d 605, 607, 169 N.Y.S.3d 136, quoting *Matter of Mendoza-Pautrat v. Razdan*, 160 A.D.3d 963, 964, 74 N.Y.S.3d 626). "The movant need not establish that the disobedience was deliberate or willful" (*Board of Mgrs. of Brightwater Towers Condominium v. M. Marin Restoration, Inc.*, 206 A.D.3d at 607, 169 N.Y.S.3d 136 [internal quotation marks omitted]). " 'Once the movant establishes a knowing failure to comply with a clear and unequivocal mandate, the burden shifts to the alleged contemnor to refute the movant's showing, or to offer evidence of a defense, such as an inability to comply with the order' " (*Board of Mgrs. of Brightwater Towers Condominium v. M. Marin Restoration, Inc.*, 206 A.D.3d at 608, 169 N.Y.S.3d 136, quoting *El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 17, 978 N.Y.S.2d 239, *aff'd* 26 N.Y.3d 19, 19 N.Y.S.3d 475, 41 N.E.3d 340). "Wilfulness is not an element of civil contempt, however, the party alleged to be in contempt may offer as a defense evidence of his or her inability to comply with the order or judgment" (*Bauman v. Bauman*, 208 A.D.3d 624, 626, 173 N.Y.S.3d 604).

Here, the Family Court had the authority to award attorneys' fees in the April 2021 order pursuant to [Domestic Relations Law § 237\(b\)](#) and [Family Court Act § 651\(b\)](#) (*see generally* *Matter of Ross v. Ross*, 96 A.D.3d 856, 858, 946 N.Y.S.2d 598 ; *Matter of Belle v. DeMilia*, 19 A.D.3d 691, 798 N.Y.S.2d 104). The court did not improvidently award the father's counsel attorneys' fees based

upon its determination, in effect, that the mother 299 had engaged *299 in frivolous conduct (*see* [22 NYCRR 130-1.1](#) [a]; *Matter of Lebron v. Lebron*, 101 A.D.3d 1009, 956 N.Y.S.2d 125 ; *Matter of Miller v. Miller*, 96 A.D.3d 943, 947 N.Y.S.2d 541). Despite the mother's contention to the contrary, a hearing with respect to the award of attorneys' fees was not necessary under the instant circumstances, since the father requested the imposition of attorneys' fees and sanctions in his motion papers (*see* *Rhodes v. Rhodes*, 169 A.D.3d 841, 844, 94 N.Y.S.3d 123 ; *Matter of Ruth S. [Sharon S.]*, 125 A.D.3d 978, 980, 5 N.Y.S.3d 135 ; *Dellaflora v. Dellaflora*, 172 A.D.2d 715, 569 N.Y.S.2d 103). Additionally, contrary to the mother's contention, the submissions made by the father's counsel evidenced substantial compliance with [22 NYCRR 1400.2](#) and [1400.3](#) with respect to her billing practices (*see* *Matter of Tarpey v. Tarpey*, 163 A.D.3d 687, 688-689, 81 N.Y.S.3d 426 ; *Gottlieb v. Gottlieb*, 101 A.D.3d 678, 679, 957 N.Y.S.2d 132 ; *Gahagan v. Gahagan*, 51 1085 A.D.3d 863, 864, 859 N.Y.S.2d 218). *1085 The evidence adduced by the mother failed to substantiate her claim that she is unable to comply with the April 2021 order or the December 2021 order due to an inability to pay (*see* *Lugo v. Torres*, 174 A.D.3d 595, 596-597, 101 N.Y.S.3d 891 ; *see also* *Nederlander v. Nederlander*, 102 A.D.3d 416, 417-418, 958 N.Y.S.2d 45). Indeed, as the Family Court, in effect, found, the mother appears to have significant financial resources from family members and her fiancé', who have paid for the mother's living expenses and various vacations (*see* *Matter of Weiss v. Rosenthal*, 195 A.D.3d 730, 732, 150 N.Y.S.3d 284 ; *Lugo v. Torres*, 174 A.D.3d at 596-597, 101 N.Y.S.3d 891).

Accordingly, we affirm both orders appealed from.

DILLON, J.P., CHRISTOPHER, GENOVESI and VOUTSINAS, JJ., concur.

