

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CU 2423

STEPHEN McDONALD JACOBSON

VERSUS

KRISTIN MICHELLE NEZAT

Judgment Rendered: May 2, 2008

On Appeal from the Family Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No.161,427

Honorable Luke Lavergne, Judge Presiding

Heidi M. Vessel
Zachary, Louisiana

Counsel for Plaintiff/Appellee
Stephen McDonald Jacobson

Nancy Sue Gregorie
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Kristin Michelle Nezat

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Plaintiff, Stephen McDonald Jacobson, filed suit to establish paternity, custody, and visitation. After a hearing, a judgment was rendered, and the trial court awarded Mr. Jacobson \$3600.00 in attorney's fees for the establishment of paternity. Defendant, Kristin Michelle Nezat, appealed the award of attorney's fees.¹ We reverse the part of the judgment awarding \$3600.00, and remand for a hearing on attorney's fees.

FACTS AND PROCEDURAL BACKGROUND

A hearing was held on July 10, 2007. Prior to the hearing, tests had been conducted to establish whether Mr. Jacobson was the father of the children, a fact that had been denied by the mother, Ms. Nezat. At the hearing, the trial court found that Mr. Jacobson was the father of the children, and also reviewed and ruled on the issues of custody and visitation. In addition, Ms. Nezat requested and was granted child support. At the end of the hearing, Mr. Jacobson's attorney asked for reimbursement of the cost of the paternity test, and informed the trial court that "Mr. Jacobson incurred attorney[']s fees of \$3600.00; as a result of having to get the paternity test and get to this point."

A final judgment was rendered on July 25, 2007. The judgment established paternity, and provided for custody, visitation, and support. The judgment awarded Mr. Jacobson the cost of the test and \$3600.00 in attorney's fees "incurred for the establishment of paternity"

¹ Ms. Nezat appealed the judgment rendered on July 25, 2007. However, any appeal of the issues of custody, visitation, and support, was found to be untimely by order of this court pursuant to a rule to show cause. See **Jacobson v. Nezat**, 2007CU2423 (La.App. 1 Cir. 1/18/08). As for Mr. Jacobson's request in his appellee brief for damages for frivolous appeal, we note that he neither appealed nor answered the appeal. Thus, we need not consider that request. See LSA-C.C.P. art. 2133; **Cheramic v. Vegas**, 413 So.2d 1343, 1345 (La.App. 1 Cir. 1982).

Ms. Nezat appealed and assigned error to the amount of the award. Specifically in her brief, she cites LSA-R.S. 9:398.1 as authority for granting fees in actions to establish paternity, and complains that the award included fees for legal services rendered in pursuing other issues, not just the question of paternity. She also argues that no evidence was provided to substantiate whether the sum of \$3600.00 was a reasonable amount of fees for the work done on the issue of paternity. If evidence had been presented, such as time sheets or testimony, Ms. Nezat notes that she would have had the opportunity to cross-examine and object. In response, Mr. Jacobson asserts that the trial court was aware of the proceedings involved and did not clearly err in awarding a sum the court must have considered to be reasonable.

APPLICABLE LEGAL PRECEPTS

Attorney's fees are not allowed except where authorized by statute or contract. **State, Department of Transportation and Development v. Williamson**, 597 So.2d 439, 441 (La.1992). In pertinent part, LSA-R.S. 9:398.1 provides for attorney's fees, as follows: "When the court renders judgment in favor of a party seeking to establish paternity, it shall, except for good cause shown, award attorney's fees costs [sic] to the prevailing party."

The Louisiana State Bar Association's Rules of Professional Conduct, Rule 1.5(a), provides a list of factors to be considered by an attorney to determine whether a fee is reasonable. As part of an inherent authority to regulate the practice of law, courts review attorney's fees for reasonableness using various factors derived from Rule 1.5(a). **Rivet v. State, Department of Transportation and Development**, 96-0145, p. 11 (La. 9/5/96), 680 So.2d 1154, 1161; **Williamson**, 597 So.2d at 441-42 & n.9. These factors include: (1) the result obtained; (2) the responsibility incurred by the attorney; (3) the importance of the litigation; (4) the amount of money at

issue; (5) the extent and character of the work performed; (6) the legal knowledge and skill attained by the attorneys; (7) the number of appearances involved; (8) the complexity of the facts and issues; (9) the diligence of counsel; and (10) the court's own knowledge. In addition, while a court is not bound by a fee agreement or contract, the court may consider the agreement of the parties in its determination. **Rivet**, 96-0145 at pp. 11-12, 680 So.2d at 1161-62 & n.8; **Williamson**, 597 So.2d at 442-43 & n.10.

ANALYSIS

No one disputes that under LSA-R.S. 9:398.1 only attorney's fees expended in the establishment of paternity are recoverable. Thus, we must determine what portion of the requested fees were allocated to the establishment of paternity.

In this regard, Mr. Jacobson's counsel stated that the requested attorney's fees were incurred to "get to this point." At that "point" in the hearing, the trial court had considered and ruled on much more than just the issue of paternity. Thus, it appears that the requested fees included services rendered in representing Mr. Jacobson on other issues including custody and visitation. Although we agree that the trial court's knowledge of the proceedings and services rendered for trial are considerations, the record contains no testimonial or documentary evidence for the trial court to use (1) in determining what portion of the services pertained only to the establishment of paternity or (2) in reviewing the reasonableness of the requested fee based on the jurisprudential guidelines. Therefore, we find that the trial court abused its discretion in awarding \$3600.00 without a sufficient factual basis. See **Rivet**, 96-0145 at pp. 12-13, 680 So.2d at 1162; **Williamson**, 597 So.2d at 442-43. Based on that finding, we remand the matter for an evidentiary hearing on the issue of attorney's fees consistent

with the principles enunciated in this opinion. See Rivet, 96-0145 at pp. 13-14, 680 So.2d at 1162-63.

For these reasons, we reverse the award of \$3600.00 in attorney fees, and remand to the trial court for a hearing. We affirm the judgment in all other respects. The costs of the appeal are assessed to plaintiff-appellee, Mr. Stephen McDonald Jacobson.

VACATED, IN PART, AND REMANDED.