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Aria Rebekah Card, Now Known as Aria Marshall, Petitioner/Appellee, vs. John Devin Card, Respondent/Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ARIA REBEKAH CARD, now known as Aria Marshall,	
Petitioner/appellee,	Appellate No. 20151001-CA
vs.	
JOHN DEVIN CARD,	
Respondent/appellant.	

BRIEF OF APPELLEE

On Appeal from Order
Entered in the Third Judicial District Court
of Salt Lake County, Utah
Judge Paul G. Maughan

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FILED
UTAH APPELLATE COURTS
MAY 16 2016

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JURISDICTION

The Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann., Sec. 78A-4-103(2)(h).

STATUTORY AND CONSTITUTIONAL PROVISIONS

A. Section 78B-7-115(1), Utah Code Ann.: A protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future abuse.

B. Section 78B-7-102, Utah Code Ann.: "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

C. Section 78B-7-115(3), Utah Code Ann.: The court shall enter sanctions against either party if the court determines that either party acted:

(a) in bad faith; or
(b) with intent to harass or intimidate either party.

STATEMENT OF ISSUES

1. Whether the trial court is required to dismiss a Protective Order after two years unless it finds that the petitioner harbors a reasonable fear of abuse.

2. Whether the trial court may accept recitals of facts from the Domestic Relations Commissioner.

3. Whether the trial court's findings adequately explain the court's justification for not dismissing the Protective Order.

4. Whether it was an abuse of discretion for the trial court to assess fees against Mr. Card after finding that Mr. Card had acted with the intent to harass or intimidate Ms. Marshall.

STATEMENT OF THE CASE

Mr. Card appeals the denial of his fifth motion to dismiss a protective order. Following the entry of a temporary protective order against him on April 2, 2012 (R. 11), Mr. Card filed motions to dismiss, or to vacate, on July 3, 2012 (R. 49), October 18, 2012 (R. 137), December 12, 2012 (R. 156), April 17, 2013 (R. 194), and April 10, 2015 (R. 233). Mr. Card is insisting that a protective order must be dismissed unless the court finds that the petitioner has a reasonable fear of future abuse.

Mr. Card is also challenging the court's imposition of sanctions against him.

ARGUMENT

1. Dismissal of a protective order is never mandatory. To obtain a protective order, "a petitioner must prove that he or she is (1) a cohabitant (2) who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence." Patole v. Marksberry, 329 P.3d 53 (Utah App. 2014) (quoting § 78B-7-102(5), Utah Code Ann.).

Once a protective order is entered, it remains in force indefinitely. The court has discretion, but not a mandate, to dismiss a protective order after two years, and broad latitude to consider "any factors the court considers relevant," including whether the protective order was violated and claims of harassment, abuse, or violence.

Mr. Card incorrectly asserts that the court must find that the petitioner harbors an objectively reasonable fear of future physical violence to leave a protective order in effect. He devotes nearly all of his brief to trying to disprove Ms. Marshall's claim that she fears Mr. Card. Essentially, Mr. Card is attempting to recast his motion to dismiss as Ms. Marshall's request that the protective order be extended. He is insisting that the discretionary "may dismiss" in the statute means "shall dismiss," and that the Court is required to dismiss the protective order unless Ms. Marshall persuades the court that a protective order continues to be necessary.

This is an incorrect recital of the law. The court's primary duty in interpreting legislation is to give effect to the intent of the legislature and, if possible, to every word in the statute. Provo City Corp. v. State, 795 P.2d 1120, 1123 (Utah 1990). Notably, § 78B-7-115 was amended by the 2016 Legislature to adopt Mr. Card's position in the case of protective orders between divorced parties that have been in effect for ten years--they automatically expire unless the petitioner demonstrates a reasonable fear of future abuse. This distinction underscores the fact that Mr. Card's position is legally incorrect.

2. There was no error in accepting recitals of fact from the Commissioner. In a Minute Entry dated June 10, 2015 (R. 273), Commissioner Luhn recited a number of factors that the court found relevant, including:

a. Mr. Card had been charged three times with violating the protective order;

b. Mr. Card was charged with custodial interference once and custodial interference with telephone harassment once;

c. Mr. Card had filed three requests for protective orders against Ms. Marshall;

d. Mr. Card had filed three civil tort actions against Ms. Marshall, her acquaintances, and her counsel;

e. Commissioner Arnett reported Mr. Card to the Salt Lake County Attorney to consider filing criminal charges against Mr. Card for extortion;

f. Mr. Card threatened Ms. Marshall with a Bar complaint unless counsel made a public statement disparaging Commissioner Arnett; and

g. Mr. Card called the police over thirty times for parent time disputes, resulting in the need to use ACAFS for parent time exchanges.

Judge Maughan noted these facts and several others, as well as commenting on Mr. Card's recent behavior and his demeanor at the hearing, in making the determination to leave the protective order in place. The trial court was well-acquainted with Mr. Card, having dealt with a multitude of pro se appearances from Mr. Card and having conducted the divorce trial between the parties.

All of this information had been discussed in prior hearings, all of it was readily ascertainable, and none of it was refuted by Mr. Card. The court committed no error by mentioning these facts.

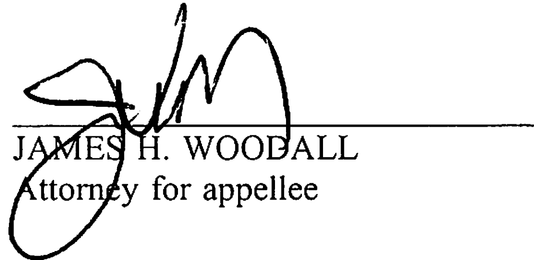
3. There was no error in assessing fees against Mr. Card as a sanction. Section 78B-7-115(3), Utah Code Ann. requires the court to enter sanctions against either party if the court determines that either party acted in bad faith; or with intent to harass or intimidate either party. After Judge Maughan found that Mr. Card had continued to engage in provocative actions with the intent to harass or intimidate Ms. Marshall, sanctions were automatic.

There was no error in making this determination; Judge Maughan had the benefit of nearly four years of interaction with Mr. Card. The "ferreting out" of Ms. Card's banking information and the hiring of a process server to physically serve Ms. Marshall with child support payments after being notified that Ms. Card had engaged the Office of Recovery Services were examples of Mr. Card's course of conduct over a period of years.

CONCLUSION

Mr. Card exhibited a long and disturbing pattern of abusive behavior that was directed at Ms. Marshall and others; there was ample justification for leaving the protective order in effect. The trial court's decision to keep the protective order in place, and to assess sanctions against Mr. Card, was a proper exercise of the court's discretion.

DATED this 11 day of May 2016.



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CERTIFICATE OF MAILING

I certify that I caused two copies of the foregoing **BRIEF OF APPELLEE** to be mailed to the following on May 11, 2016:

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