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No. 3--10--0232

Order filed May 25, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

KARINE E. CHRISTAKES,)
) Appeal from the Circuit Court
Plaintiff-Appellant,) of the 12th Judicial Circuit,
) Will County, Illinois,
)
v.) No. 05--D--1702
)
GERALD SCHUTZIUS,)
) Honorable
) Dinah L. Archambeault,
Defendant-Appellee.) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

Held: Where enforcement of attorney fees order solely benefitted guardian *ad litem*, father did not have standing to seek enforcement of award, and the trial court erred in denying mother's motion to dismiss his petition for rule to show cause.

Plaintiff Karine E. Christakes appeals from a finding of indirect civil contempt of court for refusing to pay guardian *ad litem* fees incurred in her child custody case. On appeal, she argues that the trial court erred in denying her motion to dismiss

defendant Gerald Schutzius's petition for rule to show cause because he lacked standing. We vacate the contempt order.

Christakes and Schutzius married in April of 2003 and had two children together, one born on August 12, 2003, and another born on December 1, 2004. Their marriage was dissolved in 2005, and Christakes was awarded sole custody of the children. In December 2007, Schutzius filed a petition to modify custody, alleging that Christakes refused to allow visitation. Angela Henderson was appointed guardian *ad litem* to represent the children. Allegations of sexual abuse by both parties added complexity to the custody issue. As a result, Henderson generated significant fees which were not fully paid by either party. She filed a petition, requesting \$40,000 for payment of services rendered and as a retainer for future services.

On September 22, 2009, the trial court entered an order requiring Christakes to pay Henderson \$15,000 as an interim award of guardian *ad litem* fees. Christakes paid Henderson \$500 but refused to pay the remaining \$14,500.

On October 26, 2009, Schutzius filed a petition for rule to show cause why Christakes should not be found in contempt of court for failing to pay the balance of Henderson's fee award. Christakes moved to dismiss Schutzius's petition based on lack of standing pursuant to section 619(a)(9) of the Code of Civil Procedure (735 ILCS 5/619(a)(9) (West 2008)). Three weeks later,

Henderson filed another rule to show cause, which contained the same allegations made in Schutzius's petition.

At the hearing on the motion to dismiss, the trial court found that Schutzius had standing to bring a petition for adjudication of indirect civil contempt and denied Christakes's motion. In a subsequent order, the court granted Henderson leave to withdraw her petition for rule to show cause against Christakes.

Christakes was the only witness to testify at the rule to show cause hearing. She claimed she had no liquid assets or income sufficient to pay more than the \$500 sum she paid to Henderson. She testified that she was unable to find employment and that a medical condition prevented her from doing office work. She stated that she had borrowed more than \$100,000 from her mother for attorney fees and had borrowed large sums of money from her mother to pay her daily living expenses.

The trial court found that the evidence was insufficient to support Christakes's claim that she was unable to work. The court also found that Christakes had assets she could utilize to generate income to pay the fees. It entered a finding of contempt and ordered plaintiff to pay Henderson \$14,500 on or before March 23, 2010.

ANALYSIS

Christakes claims the trial court erred in denying her motion to dismiss Schutzius's petition for rule to show cause why she

should not be held in contempt of court because Schutzius lacked standing to bring the petition.

Generally, civil contempt occurs when a party fails to do something ordered by the trial court, resulting in the loss of a benefit or advantage to the opposing party. *In re Marriage of Tatham*, 293 Ill. App. 3d 471 (1997). Contempt that occurs outside the presence of the trial court is considered indirect contempt. *Tatham*, 293 Ill. App. 3d at 480.

As with any other cause of action, the party bringing a petition for rule to show cause for indirect contempt of court must have standing to contest the specific act. See *Burnette v. Stroger*, 389 Ill. App. 3d 321 (2009). For a plaintiff to have standing, his or her claimed injury must be distinct and palpable and fairly traceable to the contemnor's actions. *Burnette*, 389 Ill. App. 3d at 331. This rule is "intended to assure that issues are raised only by those parties with a real interest in the outcome of the controversy." *Chicago Teachers Union v. Board of Education*, 189 Ill. 2d 200 (2000). That is to say, the party seeking relief must be interested in the cause of action. The word "interested" does not mean merely being curious about the outcome of the controversy. *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402 (2005). Instead, the party seeking relief "must possess a personal claim, status, or right which is capable of being affected." *Underground Contractors Ass'n v. City of Chicago*,

66 Ill. 2d 371, 376 (1977) (dispute must involve the legal relations of parties who stand in position adverse to each other).

Where standing is challenged through a motion to dismiss, the court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that can reasonably be drawn in the plaintiff's favor. *International Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Department of Employment Security*, 215 Ill. 2d 37 (2005). A court's disposition of a section 2--619 motion on lack of standing presents a question of law, which we review *de novo*. *International Union*, 215 Ill. 2d at 45.

Here, Schutzius does not possess a personal claim, status or right, which is capable of being affected by the relief requested. The September 23, 2009, order entered against Christakes directed her to pay Henderson's attorney fees pursuant to 750 ILCS 5/506(b). It did not direct Christakes to do anything to benefit Schutzius. Thus, Schutzius's petition for rule to show cause why Christakes should not be held in contempt for failing to pay fees awarded to Henderson asserted no legally cognizable interest belonging to him. Accordingly, Schutzius lacked standing to bring the petition, and the trial court erred in denying Christakes's motion to dismiss.

While Henderson would have standing to file a petition for rule to show cause, she requested the voluntary dismissal of her petition and the trial court granted that request. We therefore vacate the finding of indirect civil contempt and the purge order.

CONCLUSION

The contempt order of the circuit court of Will County is vacated.

Order vacated.