2013 IL App (5th) 120138-U

NO. 5-12-0138

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MICHAEL J. HANAGAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 09-MR-4
	)	
STEVEN F. HANAGAN,	)	Honorable
	)	Mark R. Stanley,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in finding the defendant in indirect civil contempt where the defendant agreed to a finding of contempt regarding one count of the plaintiff's rule to show cause in exchange for the plaintiff's agreement to dismiss other counts relating to other alleged violations of the circuit court's orders. The circuit court did not abuse its discretion in determining the amount of attorney fees that were reasonably related to the defendant's contempt.

¶ 2 The defendant, Steven F. Hanagan, appeals, pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010), from the November 15, 2010, order of the circuit court of Jefferson County, which found him to be in indirect civil contempt of court for failure to comply with its June 23, 2010, order regarding disclosure of information associated with the complaint for dissolution of partnership filed by the plaintiff, Michael J. Hanagan. In addition, Steven appeals from the February 9, 2012, order of the circuit court of Jefferson County, which awarded Michael J. Hanagan $11,178.75 in attorney fees which it found to be reasonably incurred by Steven's failure to comply with the June 23, 2010, order. On

appeal, Steven raises three issues: (1) whether the June 23, 2010, order was clear and unambiguous; (2) whether the circuit court erred in ordering him to produce information protected by the attorney-client privilege; and (3) whether the circuit court's attorney fee award was supported by sufficient evidence. For the reasons that follow, we affirm.

¶ 3 FACTS

¶ 4 On January 20, 2009, Michael filed a complaint for dissolution of partnership, requesting that the circuit court supervise the winding up of the partnership between himself and Steven for the operation of the law firm of Hanagan & Dousman and to partition the property where the law firm was located. On that same date, Michael filed a motion for a temporary restraining order restraining Steven from disposing of partnership property or assets, altering the partnership's relationship with its clients, or listing himself as the sole proprietor of any law practice conducted at the current partnership location. In addition, Michael requested that the court enter a preliminary injunction establishing an accounting process to facilitate the orderly winding up of the partnership. The circuit court granted the temporary restraining order on the day it was filed. The temporary restraining order prohibited Steven from disposing of partnership property or assets, and altering the partnership's relationship with its current clients, but was silent regarding Steven's ability to practice law as a sole proprietorship at the partnership location. Subsequently, the parties stipulated to a court-supervised accounting for a winding up of the partnership.

¶ 5 At an April 30, 2010, hearing on all pending matters, the parties made a statement on the record that they agreed to hire an outside bookkeeper. The parties agreed to make the following information available to the bookkeeper:

> "[The bookkeeper] will be provided with two separate lists. The first will be a list from both of the parties for any case that originated prior to January 12, 2009. The second will be for any case that originated between January 12, 2009, and April 12,

2010. Each of the parties shall provide to [the bookkeeper] the necessary information as to the–essentially the nature of the case. The list will be kept separate in the categories we have indicated. As to each of those cases, on a weekly basis each party will report any financial transaction that implicates either of those lists, and [the bookkeeper] will keep a record of that transaction, and that information will be provided to both parties as it is compiled. [The bookkeeper] will be the official record keeper until such time as this matter is resolved and it will be paid for by Hanagan and Dousman. As we indicated, Judge, any case taken in by Steven Hanagan under the name of Hanagan and McGovern after April 12, 2010, will not be included in this accounting. That's the termination date."

¶ 6 The parties agreed to provide the information within seven days. On the record, Steven specifically stated that he could provide both lists within that time frame, repeating back the two date ranges. The court specifically ordered the information be provided within seven days of the date of hearing, regardless of when the written order was to be submitted or signed.

¶ 7 It is clear from the transcript of the April 30, 2010, hearing that whether cases taken by the parties between January 12, 2009, and April 12, 2010, were assets of the firm was in dispute, as Steven's counsel explained on the record:

"I think lastly there is a disagreement between the parties as to what, if any, economic involvement they have after January 12 of 2009 up until April 12. We are going to continue to try to work toward that. If we can't, we would like to suggest to the Court a mini-trial on those issues alone. Hopefully, we got everything else resolved. But that is a large–could be a large impediment to the overall global settlement in the matter."

¶ 8 Following the April 30, 2010, hearing, counsel for Michael submitted a proposed

order reducing the agreement to writing. Paragraph 4 of the proposed order stated as follows:

> "Effective April 30, 2010, all bookkeeping related to any matter involving any client for whom an attorney/client relationship existed with either of the parties hereto prior to April 12, 2010, shall be done by [the bookkeeper]. In that regard, [the bookkeeper] will be provided with two separate lists. They are as follows:
>
> A. In the first list each party shall list any case for which an attorney/client relationship with the firm of Hanagan and Dousman or with either party originated prior to January 12, 2009.
>
> B. In the second list each party shall list any case in which any attorney/client relationship originated with either party in any manner or under any business name between January 12, 2009, and April 12, 2010."

¶ 9 In addition, paragraph 6 of the proposed order stated that "[a]ny case in which an attorney/client relationship between either party began after April 12, 2010, will be free and clear from any claim under this paragraph." Steven filed an objection to the proposed order. At a hearing on June 23, 2010, Jana Yocom and Terry Sharp were present as counsel for Steven, and Morris Lane Harvey was present for Michael. Ms. Yocom argued that the agreement on April 30, 2010, was not meant to encompass cases that Steven had taken in an individual capacity since he sent Michael the January 12, 2009, notice of dissolution. The court stated as follows:

> "Well, I am going to modify the language of this paragraph by striking 'either of the parties hereto' and inserting 'Hanagan and Dousman.' Now, that's probably going to raise additional issues gentlemen, and I understand that. There may be an issue now as to what was Hanagan and Dousman clients from time to time. We're going to have to–and that's going to be part of the problem."

¶ 10 Ms. Yocom asked for clarification on the court's ruling, with the following colloquy occurring:

"MS. YOCOM: If you take out cases involving other than Hanagan & Dousman in Paragraph 4, are we also taking those out with regard to A and B?

MR. HARVEY: Judge, we are not because the specific agreement that we made that day included those cases. Because if you recall, we made an agreement in this case that the insular issue is whether cases taken by either party between January 12, 2009 and April 12, 2010 were Hanagan & Dousman cases.

MR. SHARP: (Physical indication.)

MR. HARVEY: We made a specific agreement. It's in the transcript. I can refer you to the page and line and it's in the Order for that reason. That's why we have the separate accounting and the separate list.

MR. SHARP: (Physical indication.)

MR. HARVEY: –and the submission of that information to [the bookkeeper] so we can facilitate that–

MR. SHARP: If I may, your Honor, I think Mr. Harvey's argument is well taken.

Even though it may not be–I don't want to shoot down my associate, the information will be helpful in the overall things and we should move ahead on it.

MS. YOCOM: But–

COURT: That gets us to Paragraph 6."

¶ 11 The order entered on the same date modified the main body of paragraph 4 to limit the bookkeeping to Hanagan and Dousman clients, but subparagraphs A and B remained unchanged. On August 19, 2010, Michael filed a petition for rule to show cause. The petition listed several workers' compensation claimants who had filed claims with the Illinois

Workers' Compensation Commission prior to April 12, 2010, and were recorded as being represented by "Hanagan & Associates" or "Hanagan & McGovern." Michael claimed that these clients originated at the Hanagan and Dousman firm but information was not provided by Steven per the June 23, 2010, order. The rule to show cause also alleged violations of other orders of the court with regard to firm accounting and bill payment.

¶ 12 Steven filed a response to the petition for rule to show cause. He argued that the cases which he did not include in the list to the bookkeeper were cases of clients retained by his new law firm after dissolution and were not Hanagan and Dousman cases. He also argued that the court's order was for the purpose of accounting and not a discovery order. Steven also filed a motion to dismiss the petition, arguing that the court's order was unclear and ambiguous and that his violations were not willful and contemptuous. He also raised, for the first time, the attorney-client privilege.

¶ 13 A hearing was held on Michael's petition for rule to show cause on November 1, 2010, at which counsel for both parties made vehement opposing arguments concerning the merits. After a recess from those proceedings, the following agreement was made part of the record:

> "MR. SHARP: I would like to announce a partial resolution of the matters before the court. In fact, I'd say a complete resolution, if you will.
>
> THE COURT: All right.
>
> MR. SHARP: I'd like to put it in the record, if I may. The Defendant, Steven Hanagan will admit to being in contempt of court for failure to provide the list as provided in Paragraph 4B of a certain Order. Nothing else in the Rule to Show Cause will be admitted. Also, there's a Paragraph 9 in that same Order, and the parties have agreed that Paragraph 9 shall apply to all cases which arose–strike that 'arose'–which appeared first on the call list maintained by the firm prior to April 9, 2010.
>
> MR. HARVEY: April 12th.

MR. STEVE HANAGAN: Yes, April 12th.

MR SHARP: My apologies–April 12, 2010. The appearance of the case on this phone log means nothing in and of itself, but it will be made applicable to Paragraph 9.

MR. HARVEY: And Paragraph 4B.

MR. SHARP: And, obviously, Paragraph 4B, too. I would point out at this time that Defendant, Steve Hanagan, does not have that phone log. It has disappeared, but he'd like to have a copy of it so he can fully comply with that. Steve Hanagan shall have the right to purge himself of this agreed contempt by delivering to the opposing counsel, within 20 days of today's date, a list in compliance with Paragraph 4B.

MR. HARVEY: Mr. Sharp left out the fact that as part of the purging, we will submit an Affidavit for Attorneys Fees. We can submit that within 14 days. Mr. Sharp should be given a time limited opportunity to object. If we don't have an agreement, then the Court will have to determine what the reasonable fees are, but the payment of those fees is–is part of the purging. ***

THE COURT: 21 days to object, and if you don't agree on fees, Gentlemen, I'll just take a look at that and make a decision.

MR. SHARP: That's fine."

¶ 14 On November 15, 2010, the circuit court entered an order memorializing the November 1, 2010, agreement. This order is set forth in its entirety as follows:

"THIS CAUSE having come before the Court on the Petition for Rule to Show Cause, to Name Plaintiff the Sole Winding Up Partner for the Partnership of Hanagan and Dousman and For Other Relief filed by the Plaintiff on August 19, 2010, and the parties having appeared in Court in person and with counsel, and having conferred

and reached an agreement as to certain issues contained within that Petition, and the Court being fully advised in the premises, finds and order as follows:

1. Defendant Steven Hanagan admits to be in indirect civil contempt of this Court by reason of his failure to abide by the requirements of Paragraph 4B and Paragraph 9 of the Order entered by this Court on June 23, 2010, pursuant to the parties' April 30, 2010 agreement.

2. In order to purge himself of contempt, the Defendant must do the following:

A. Completely comply with all the listed requirements contained in Paragraph 4B of the June 23, 2010, Order;

B. Comply with all of the disclosure requirements as set forth in Paragraph 9 of the June 23, 2010, Order with such disclosure requirements to be applicable to any client who made any inquiry regarding legal services from the firm of Hanagan & Dousman as shown by the telephone inquiry logs of said firm on or prior to April 12, 2010. A copy of the aforesaid inquiry logs has been delivered to Defendant's counsel in open court by Plaintiff's counsel;

C. All such matters shall be fully and completely disclosed within twenty days of November 1, 2010; and

D. Plaintiff shall be entitled to recover the attorneys fees and expenses reasonably occasioned by Defendant's failure to comply with any part of the Court's June 23, 2010 Order and the parties' April 30, 2010 agreement. Such claim for fees may include the cost incurred by Plaintiff in conducting his investigation to determine that Defendant had not complied with any part of the June 23, 2010 Order.

3. Plaintiff agrees to dismiss, without prejudice, the portions of the Petition for Rule to Show Cause related to alleged conversion of fees by Defendant from Hanagan & Dousman for purposes of this agreement and Counts II, III, and IV are dismissed with prejudice.

4. Plaintiff's attorney shall submit an affidavit regarding attorney's fees related to this matter within fourteen days of November 1, 2010. Defendant's counsel shall have twenty-one days to object to the reasonableness of such fees."

¶ 15 On November 12, 2010, Michael's counsel filed an affidavit regarding attorney fees in which he attested that the total attorney fees incurred by Michael in relation to the petition for rule to show cause was $32,058.40. Appended to the affidavit was a copy of the applicable retainer agreement, showing that counsel was employed by Michael at a rate of $225 per hour. Also appended to the agreement was an itemization of services rendered. On December 8, 2010, Steven filed his objection to the affidavit regarding attorney fees. Steven argued that many of the entries in the itemized statement had to do with other issues raised in the petition for rule to show cause other than the issue of his nondisclosure of cases he was involved with after January 12, 2009. Steven also argued that many of the entries were lumped with multiple tasks regarding different aspects of Michael's case, so that it was impossible to determine how much time was spent on the contempt issue itself. According to Steven, "only a small portion of the $7,875.25 shown in entries 1-35, up to Steven's reply of August 25, 2010, are properly attributable as 'fees and expenses reasonably occasioned by Defendant's failure to comply.' " Steven suggested that 1/4 of the $7,875.25 shown in the first 35 entries would be appropriate as fees, or $1,968.81. Steven included a copy of the itemized list with comments regarding whether they were appropriate.

¶ 16 At a hearing held on December 20, 2010, the circuit court heard oral argument regarding Michael's affidavit of attorney fees. Michael's attorney explained to the court the

time-consuming process that was required in order to discover that Steven was not disclosing all of the cases encompassed by the June 23, 2010, order. The circuit court stated that because Steven did not submit any evidence in contradiction to Michael's affidavit of attorney fees, "the only determination is whether or not the Court believes that the fees are reasonable." The circuit court took the issue under advisement and in a docket entry dated February 9, 2012, awarded Michael $11,178.75 in attorney fees. Steven filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 We first address the issue of whether the circuit court's finding of indirect civil contempt was proper. Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984). Here, Steven contends that the finding of contempt should be reversed because the circuit court's order was unclear and ambiguous, and because the information the circuit court required him to disclose was protected by the attorney-client privilege. "A party cannot assert as reversible error actions of the trial court which were committed pursuant to that party's stipulation or acquiescence." *Saxton v. Toole*, 240 Ill. App. 3d 204, 212 (1992). Our review of the transcript of the November 1, 2010, hearing reveals that Steven agreed to a finding that he was in contempt of court for violating paragraphs 4B and 9 of the June 23, 2010, order in exchange for Michael's agreement to dismiss other counts in the contempt petition that alleged that Steven violated other orders of the circuit court with regard to alleged conversion by Steven of Hanagan and Dousman fees and other matters. This is not a case of "friendly contempt," which is entered to allow the defendant to challenge the circuit court's discovery rulings with an immediate appeal. See, *e.g.*, *Willeford v. Toys "R" Us-Delaware, Inc.*, 385 Ill. App. 3d 265, 277 (2008). Accordingly, although we recognize that Steven cannot waive

the attorney-client privilege (see *In re Marriage of Decker*, 153 Ill. 2d 298 313 (1992)), we find that when Steven agreed to the finding of contempt at the hearing on November 1, 2010, he waived his ability, on appeal, to assert the privilege as a defense to the contempt petition.[1] For these reasons, we affirm the order of the circuit court finding Steven to be in indirect civil contempt.

¶ 19 We turn now to the circuit court's order awarding Michael $11,178.75 in attorney fees occasioned by Steven's failure to abide by paragraph 4B and 9 of the circuit court's June 23, 2010, order. A circuit court has broad discretion to award attorney fees, and its decision will not be reversed on appeal unless the court abused that discretion. *Pietrzyk v. Oak Lawn Pavilion, Inc.*, 329 Ill. App. 3d 1043, 1046 (2002). The circuit court must determine whether the party seeking attorney fees has presented sufficient evidence from which the court can render a decision as to the amount of reasonable attorney fees. *Id.* Such a determination necessarily involves a weighing of facts, such as the type of fee arrangement at issue, the amount of hours worked, or the hourly fees charged. *Id.* Accordingly, where a party on appeal is challenging an award of attorney fees, that party is actually challenging the trial court's discretion as to what is reasonable. *Id.*

¶ 20 Here, Steven does not argue that the hourly rate was unreasonable. His only argument is that the majority of the time entries submitted by Michael were unrelated to his failure to abide by paragraphs 4B and 9 of the June 23, 2010, order. Steven submitted his comments on each of the time entries to the circuit court, who reviewed them and determined that the entries related to the contempt amounted to $11,178.75. Steven cites no authority, and we are aware of none, that requires the circuit court to provide its reasoning for which time

[1]We note that there are actions Steven can take in order to comply with the June 23, 2010, order and protect the attorney-client privilege, such as moving for a protective order or requesting an *in camera* review of the case list at issue.

entries were reasonably related. It is apparent that the circuit court exercised its broad discretion in making a determination as to the reasonableness of the fees, and we will not disturb the circuit court's finding.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the orders of the circuit court are affirmed.

¶ 23 Affirmed.