An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-577

No. COA22-18

Filed 16 August 2022

Cabarrus County, No. 13 CVD 179

SARAH E. RIOPELLE (Cooper), Plaintiff,

v.

JASON B. RIOPELLE, Defendant,

v.

LINDSEY FULLER, and AVERY FULLER, Intervenors.

Appeal by defendant from order entered 15 September 2021 by Judge Robert Stiehl in Cabarrus County District Court. Heard in the Court of Appeals 8 June 2022.

No appellee brief filed.

Jason B. Riopelle, pro se, for defendant-appellant.

DIETZ, Judge.

¶ 1 Defendant Jason Riopelle appeals the trial court's denial of his request for attorneys' fees in this family law proceeding. As explained below, the trial court acted well within its sound discretion in denying that request for attorneys' fees. We therefore affirm the trial court's order.

Facts and Procedural History

¶ 2 Jason Riopelle and Sarah Cooper are the parents of a minor child. Riopelle and Cooper have been involved in a family law dispute for many years. In 2018, the trial court entered a child custody modification order awarding custody of the child to the child's maternal aunt and uncle, Lindsey and Avery Fuller.

¶ 3 In the two years following entry of that custody order, Riopelle continued to vigorously litigate the case, filing approximately 40 motions. Ultimately, the trial court entered the order from which this appeal is taken, holding both Riopelle and the Fullers in contempt for failure to comply with the terms of the existing child custody order. The court also found no substantial change in circumstances warranting modification of that existing order.

¶ 4 As part of the order, the trial court also denied Riopelle's and the Fullers' cross-motions for attorneys' fees. With respect to Riopelle's request for attorneys' fees, the trial court determined that Riopelle's "claims for sanctions and attorney's fees against the Fullers are denied," expressly noting that the court did so in the exercise of the court's sound discretion, and also determined that Riopelle's request "fails by not fully complying with the statutory requirements." Riopelle timely appealed the denial of his request for attorneys' fees.

Analysis

¶ 5 Riopelle argues that the trial court erred by denying his request for attorneys'

fees.

¶ 6 In a proceeding involving the custody of a minor child "the court may in its discretion order payment of reasonable attorney's fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit." N.C. Gen. Stat. § 50-13.6. We review the trial court's determination to grant or deny fees under Section 50-13.6 for abuse of discretion. *Brandon v. Brandon*, 10 N.C. App. 457, 463, 179 S.E.2d 177, 181 (1971). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

¶ 7 Riopelle is an interested party and the record indicates that he lacks sufficient means to defray the expense of this litigation. He therefore satisfies two of three criteria under Section 50-13.6. But, importantly, the record of this lengthy family law proceeding has abundant evidence that Riopelle has not acted in good faith and thus does not satisfy the third statutory criteria.

¶ 8 For example, this Court in an earlier appeal in this proceeding observed that the trial court previously had found that Riopelle "failed to take responsibility for his conduct," and has "a history of dishonesty and violence." *Riopelle v. Riopelle*, 267 N.C. App. 691, 833 S.E.2d 258, 2019 WL 4805254, at *3 (2019) (unpublished). Moreover, in the challenged order, the trial court found that Riopelle was in civil contempt for

violating the terms of the court's existing custody order and found that Riopelle had made allegations of misconduct by the Fullers' attorney and allegations of substance abuse by the Fullers that the trial court determined to be "completely unfounded."

¶ 9 In light of the trial court's findings and Riopelle's conduct during this litigation, the trial court correctly determined that Riopelle had not established that he was acting in good faith as a matter of law. Moreover, even setting aside the trial court's legal conclusion on this issue, the trial court's discretionary decision not to award attorneys' fees, in light of the court's findings in the order, unquestionably was a reasoned decision and thus within the court's sound discretion. *Brandon*, 10 N.C. App. at 463, 179 S.E.2d at 181.

¶ 10 Finally, Riopelle challenges the trial court's refusal to take judicial notice of customary hourly rates for attorneys in the community. We need not address this issue because, having determined that the trial court properly declined to award attorneys' fees both as a matter of law and in the court's sound discretion, the court's ruling on the judicial notice issue is moot.

Conclusion

¶ 11 We affirm the trial court's order.

AFFIRMED.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).