

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

KIM SOWDERS	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
	:	Hon. W. Scott Gwin, J.
Petitioner-Appellant	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 2012-CA-17
JAMES SOWDERS	:	
	:	
	:	
Respondent-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Ashland County Court of Common Pleas, Domestic Relations Division, Case No. 12-DMV-059

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: October 15, 2012

APPEARANCES:

For Petitioner-Appellant For Respondent-Appellee

CARL ANDERSON  
DENISE ZANNI  
Legal Aid of Western Ohio, Inc. (LAWO)  
109 West Water Street  
Sandusky, OH 44870

*Gwin, J.,*

{¶1} Petitioner Kim Sowers appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Ashland County, Ohio, which taxed court costs to her after she requested dismissal of the civil protection order she had previously obtained against respondent-appellee James Sowers. Appellant assigns a single error to the trial court:

{¶2} “I. THE TRIAL COURT ERRED IN TAXING COURT COSTS TO THE APPELLANT AFTER GRANTING AN EX PARTE CIVIL PROTECTION ORDER AND SUBSEQUENTLY DISMISSING THE PETITION AND VACATING THE EX PARTE CIVIL PROTECTION ORDER PRIOR TO A FULL HEARING BECAUSE THE DISMISSAL FALLS WITHIN THE SCOPE OF O.R.C. §3113.31 (J) AND THEREFORE, THE TRIAL COURT SHOULD NOT TAX COURT COSTS TO THE APPELLANT.”

{¶3} The record indicates the court granted appellant an ex parte civil protection order on April 5, 2012. On April 16, 2012, a magistrate called the matter for a full hearing. Appellant and appellee both appeared. The magistrate found appellant requested dismissal of the petition because the appellee was now currently taking his prescription medications. The magistrate dismissed the petition and vacated the ex parte domestic violence civil protection order.

{¶4} Upon reviewing the magistrate’s decision, the court found the magistrate had inadvertently omitted assigning costs, and ordered the costs taxed to appellant.

{¶5} Appellant cites us to 42 U.S.C. 3796 (gg)(5), which provides a court cannot tax court costs or fees to a petitioner in connection with the filing of a civil protection order. In accord with the federal law, Ohio enacted R.C. 3113.31(J). The statute states:

Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or a court of another state, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of a petition pursuant to this section or in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement.

{¶16} Appellant concedes there is no specific language addressing the dismissal of a civil protection order but apparently concedes court costs could be taxed to a petitioner if the court finds the petitioner is not a victim of domestic violence or if the matter falls outside the purview of the statute.

{¶17} Appellant also calls our attention to Ohio Supreme Court Forms 10.01-K and 10.01-L. These forms provide only for court costs to be taxed to the respondent or waived.

{¶18} The trial court stated no facts or other explanation for its order taxing the costs to appellant, but only found they had been omitted. We conclude the trial court erred.

{¶19} The assignment of error is sustained.

{¶10} For the reasons stated in the attached memorandum opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, of Ashland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By Gwin, J.,  
Delaney, P.J., and  
Hoffman, J., concur

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HON. W. SCOTT GWIN

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HON. PATRICIA A. DELANEY

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HON. WILLIAM B. HOFFMAN

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