

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
JUNE 12, 2007 Session

**CATHY A. CLARKSON v. WILLIAM C. CLARKSON**

**Direct Appeal from the Circuit Court for Williamson County  
No. I-01419 R. E. Lee Davies, Judge**

**No. M2006-02239-COA-R3-CV - Filed October 22, 2007**

This appeal involves a mother's recovery of attorney's fees pursuant to a marital dissolution agreement ("MDA"). The father had filed a petition to modify his child support obligation, and the mother counterclaimed alleging that he had violated various provisions of the MDA and should be held in contempt. She also sought a restraining order against the father and alleged that he had intentionally, negligently, or recklessly inflicted emotional distress on her and the children, entitling them to compensatory and punitive damages. Following a hearing on a motion to strike, the trial court ordered that any tort claims be severed from this action. After another hearing, the court modified the father's child support obligation and found that he was in civil contempt of court for various violations of the MDA. The court granted the restraining order and awarded the mother a judgment for the unpaid support obligations and a portion of her attorney's fees. On appeal, the mother contends that the attorney's fee award was entered solely as punishment for the father's violations, and that she is entitled to an additional award of attorney's fees pursuant to a clause in the MDA. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Rebecca E. Byrd, Kenneth J. Sanney, Lauren M. Spitz, Franklin, TN, for Appellant

Phillip R. Newman, Franklin, TN, for Appellee

## OPINION

### I. FACTS & PROCEDURAL HISTORY

William Clarkson and Cathy Clarkson were divorced by decree on October 16, 2001. The divorce decree incorporated a marital dissolution agreement (“MDA”) and parenting plan executed by the parties. At or near the time of the divorce, Mr. Clarkson was placed in a Tennessee correctional facility, and the MDA contemplated his incarceration. It provided that Mr. Clarkson would pay \$50 per month in alimony *in futuro* “until Husband is released from prison, Wife’s death or remarriage, whichever is first.” The MDA further stated that “Husband’s release from prison shall grant Wife the right to seek additional alimony.” Mr. Clarkson was also required to pay \$1,014 per month in child support for his two children. He was required to maintain a life insurance policy with Ms. Clarkson named as the beneficiary, and he agreed to reimburse Ms. Clarkson for the cost of the children’s health insurance and one half of any out of pocket dental or eye care expenses. The MDA also provided that Mr. Clarkson would execute a power of attorney granting Ms. Clarkson the right to sell the parties’ real property and to receive his retirement income. The property proceeds and retirement income were to be deposited into the parties’ joint account and used to pay Mr. Clarkson’s support obligations and debts until he was released from prison and resumed paying them himself. Ms. Clarkson retained the right to seek her marital share of Mr. Clarkson’s retirement benefits upon his release from prison. The MDA included the following clause relating to attorney’s fees:

**ENFORCEMENT.** In the event it becomes reasonably necessary for either party to institute legal proceedings to procure the enforcement of any provisions of this Agreement, he or she shall also be entitled to a judgment for reasonable expenses, including attorney’s fees, incurred in prosecuting the action.

Approximately four years later, in May 2005, Mr. Clarkson was released from prison. He became employed but was soon laid off. On October 20, 2005, he filed a “Petition to Modify Child Support” claiming that a material change in circumstances warranted a reduction in his child support obligation.

On November 22, 2005, Ms. Clarkson filed an answer, counter-complaint, and third party complaint. First of all, she addressed Mr. Clarkson’s petition to modify child support, denied that a material change in circumstances had occurred, and claimed that Mr. Clarkson’s complaint should be dismissed.

Next, Ms. Clarkson alleged that Mr. Clarkson had violated various provisions of the MDA and asked that he be held in criminal contempt and incarcerated for each of the violations. She attached a letter from Mr. Clarkson dated August 21, 2005, in which he stated that he had redirected his retirement payments into his own checking account. He also said that child support and other payments would continue as soon as funds were available and apologized for the inconvenience. Ms. Clarkson claimed that by redirecting the deposits of his retirement income from their joint account, Mr. Clarkson caused her to incur overdraft charges, and it resulted in his failure to meet various support obligations that were previously being paid from the joint account. Ms. Clarkson claimed that after redirecting the retirement pay, Mr. Clarkson had otherwise failed to pay her alimony payments, his life insurance premiums, the cost of the

children's insurance and uncovered expenses, and child support. Ms. Clarkson sought a judgment for the arrears and contended that Mr. Clarkson should be found in criminal contempt for each month that he failed to make payments and for each financial obligation that he failed to pay. Ms. Clarkson further alleged that Mr. Clarkson had changed the beneficiary of his life insurance policy and revoked the power of attorney allowing her to sell their real property, causing her to incur attorney's fees, and that these acts also constituted criminal contempt. Ms. Clarkson asked that Mr. Clarkson be permanently enjoined from changing the beneficiary of his policy and that she be granted an irrevocable power of attorney to access his life insurance information. She also sought a judgment for her marital share of his retirement income, and she sought alimony. Relevant to these claims, Ms. Clarkson alleged that she had incurred attorney's fees in enforcing her rights and her children's rights, entitling her to attorney's fees pursuant to Tenn. Code Ann. § 36-5-103(c) and the enforcement provision of the MDA.

Finally, Ms. Clarkson set forth various allegations of "outrageous conduct" on the part of Mr. Clarkson against her and the children. She claimed that Mr. Clarkson had intentionally, negligently, and recklessly inflicted emotional harm on them, so that she and the children were entitled to compensatory and punitive damages. She also asked that a permanent restraining order be entered against Mr. Clarkson, preventing him from contacting Ms. Clarkson, the children, their family members, medical providers, and school officials.

Mr. Clarkson subsequently filed a motion to strike the portions of Ms. Clarkson's answer, counter-complaint, and third party complaint that set forth the factual allegations in support of her claim for emotional distress. He claimed that her allegations involved pre-divorce matters that were immaterial and irrelevant to the issues before the court, and he sought an order striking the allegations from the complaint. Mr. Clarkson also asked that Ms. Clarkson be required to pay his attorney's fees incurred in obtaining the order. Ms. Clarkson filed a response to the motion to strike and amended her complaint, counter-complaint, and third party complaint to alternatively allege that Mr. Clarkson should be found in civil contempt for violating the provisions of the MDA.

The trial court held a hearing on January 10, 2006, and granted the motion to strike, in part. The judge also ruled, *sua sponte*, that all of Ms. Clarkson's allegations related to tort claims should be severed. However, he denied Mr. Clarkson's request for attorney's fees.

On May 5, 2006, the court held a hearing on Mr. Clarkson's petition to modify child support and Ms. Clarkson's second amended answer, counter-complaint, and third party complaint. The trial court's final order stated that its findings were based upon "arguments from counsel, testimony from the respective parties, and consideration of the records as a whole . . . ." The record before us only contains seventeen exhibits entered during the hearing and a transcript of the judge's ruling at the conclusion of the hearing. One of the exhibits from the hearing is an affidavit of attorney's fees and costs provided by Rebecca Byrd, Ms. Clarkson's counsel. The affidavit reflects that Ms. Clarkson had incurred a total of \$8,861.57 in attorney's fees and costs, excluding trial time, but the document did not differentiate between the time spent toward enforcing the MDA provisions and the time spent defending or pursuing other claims. Some fee charges were clearly attributable to defending against the petition to modify child support and to her claim for emotional distress and the motion to strike, but most were general charges not

clearly traceable to any specific claim. Another exhibit had been prepared by Ms. Clarkson's counsel and was entitled "Summary of Support Due." It detailed Mr. Clarkson's income, total support obligations due, the support payments he had made toward his obligations, etc., and it calculated a net support obligation due to Ms. Clarkson under the MDA. In addition, the exhibit set out the attorney's fees incurred by Ms. Clarkson as follows:

**Contempt of Court Expenses:**

Attorney Fees Due to [Mr. Clarkson's] Revocation of Power of Attorney and Costs to Reinstate Power of Attorney	\$
210.00	
Attorney Fees Due to [Mr. Clarkson's] Revocation of Beneficiary on Life Insurance and Costs to Reinstate Beneficiary Designation	\$
200.00	
Attorney Fees for Present Contempt Action	\$8,861.57
Overdraft Fees from Joint Account due to Automatic Withdrawals for Petitioner's Life Insurance Payments and [Mr. Clarkson's] Cessation of Retirement Deposits without [Ms. Clarkson's] approval	\$ 165.00
<b>Total Attorney Fees</b>	<b>\$9,436.57</b>

In the court's final order entered on June 13, 2006, it found that Mr. Clarkson's child support obligation should be set at \$1,327 per month under the current income shares guidelines, and it set forth specific terms for such payments. Next, the court found that Mr. Clarkson's original alimony obligation had ceased automatically when he was released from prison, and the court awarded Ms. Clarkson a percentage of Mr. Clarkson's monthly pension payments as alimony *in solido* beginning June 1, 2006. The court entered a permanent restraining order prohibiting Mr. Clarkson from contacting Ms. Clarkson, her children, family members, medical providers, and school officials. Mr. Clarkson was also ordered to maintain Ms. Clarkson as the beneficiary on his life insurance policy and to provide for her notification in the event of any changes in the policy.

The court found that Mr. Clarkson was guilty of civil contempt for violating several of the MDA provisions. Specifically, he was held in contempt for his failure to pay Ms. Clarkson her share of his retirement income, for changing the beneficiary on his life insurance policy, for failing to reimburse Ms. Clarkson for the cost of the children's medical insurance, for failing to pay child support, and for revoking the power of attorney given to Ms. Clarkson that enabled her to sell their real property. The trial court determined that Mr. Clarkson should not be sentenced to serve any jail time for the contempt. At the hearing, the trial judge stated:

I'm not going to put Mr. Clarkson – I don't feel like I should sentence Mr. Clarkson with any time at this point. I don't think that's necessary. I want to give him a chance to get himself going here now that he understands where I'm coming from. And if he can't abide by what I've set out, then he'll know what I'll have to do next.

The order granted Ms. Clarkson a judgment and lien on Mr. Clarkson's interest in their real property in the amount of \$25,638.51 "for reimbursement" due to his violations of the MDA, and the detailed calculations of the judgment were specifically explained in an exhibit attached to the court's order. The exhibit was a slightly altered version of Ms. Clarkson's exhibit entitled "Summary of Support Due," and it calculated the net support obligation due to Ms. Clarkson at \$22,563.51. In addition, the exhibit set out the attorney's fees to be awarded to Ms. Clarkson as follows:

**Contempt of Court Expenses:**

Attorney Fees Due to [Mr. Clarkson's] Revocation of Power of Attorney and Costs to Reinstate Power of Attorney	\$
210.00	

Attorney Fees Due to [Mr. Clarkson's] Revocation of Beneficiary on Life Insurance and Costs to Reinstate Beneficiary Designation	\$
200.00	

Attorney Fees for Present Contempt Action	\$2,500.00
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Overdraft Fees from Joint Account due to Automatic Withdrawals for Petitioner's Life Insurance Payments and [Mr. Clarkson's] Cessation of Retirement Deposits without [Ms. Clarkson's] approval	\$ 165.00
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<b>Total Attorney Fees</b>	<b>\$3,075.00</b>
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The court's "Summary of Support Due" exhibit then listed \$25,638.51 as the "Total Judgment Awarded to Respondent." Mr. Clarkson was also ordered to pay all court costs associated with the action.

Ms. Clarkson filed a motion to alter or amend the judgment, asking the court to award her attorney's fees pursuant to the enforcement provision of the MDA. She claimed that the court's finding that Mr. Clarkson was in contempt indicated that it was "reasonably necessary" for her to institute legal proceedings to enforce the MDA's provisions. Mr. Clarkson filed a response in which he claimed that Ms. Clarkson had already been awarded her attorney fees that were associated with the contempt action and enforcement of the MDA. The trial court entered an

order denying Ms. Clarkson's motion to alter or amend, stating that the motion was not well taken "based upon the undue financial hardship it would impose upon Mr. Clarkson." Ms. Clarkson timely filed a notice of appeal.

## II. ISSUES PRESENTED

Ms. Clarkson presents a single issue for our review:

Whether the trial court erred in refusing to enforce the contractually binding enforcement clause of the MDA by denying reasonable costs and attorney's fees to Ms. Clarkson.

For the following reasons, we affirm the decision of the circuit court. In addition, we decline to award attorney's fees to either party on appeal.

## III. STANDARD OF REVIEW

In the absence of an agreement between the parties, the decision of whether to award attorney's fees in a divorce or post-divorce proceeding is largely in the discretion of the trial court, and we will not interfere on appeal except upon a clear showing of abuse of that discretion. *Hogan v. Yarbrow*, No. 02A01-9905-CH-00119, 1999 WL 1097983, at \*4 (Tenn. Ct. App. W.S. Oct. 5, 1999) (citing *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995)). However, where a marital dissolution agreement contains a provision governing the payment of attorney's fees, the interpretation of that provision is a matter of law that we review *de novo*. *Id.* The language of a fee provision is subject to the usual rules of contract interpretation, and the award of such fees is limited to the situation agreed to by the parties. *Segneri v. Miller*, No. M2003-01014-COA-R3-CV, 2004 WL 2357996, at \*6 (Tenn. Ct. App. Oct. 19, 2004). When the contract provides for the recovery of attorney's fees in a certain situation, the trial court has no discretion regarding whether to award attorney's fees or not. *Seals v. Life Investors Ins. Co. of America*, No. M2002-01753-COA-R3-CV, 2003 WL 23093844, at \*4 (Tenn. Ct. App. Dec. 30, 2003) (citing *Hosier v. Crye-Leike Commercial, Inc.*, No. M2000-01182-COA-R3-CV, 2001 WL 799740, at \*6 (Tenn. Ct. App. July 17, 2001)). Determining the reasonableness of the amount of an attorney's fee is a discretionary inquiry by the trial court, however, to which appellate courts will defer, absent an abuse of discretion. *Keith v. Howerton*, 165 S.W.3d 248, 250-51 (Tenn. Ct. App. 2004) (citing *Killingsworth v. Ted Russell Ford*, 104 S.W.3d 530, 534 (Tenn. Ct. App. 2002)).

## IV. DISCUSSION

As previously mentioned, the MDA in this case contained the following provision governing the payment of attorney's fees:

**ENFORCEMENT.** In the event it becomes reasonably necessary for either party to institute legal proceedings to procure the enforcement of any provisions of this Agreement, he or she shall also be entitled to a judgment for reasonable expenses, including attorney's fees, incurred in prosecuting the action.

Thus, Ms. Clarkson would be entitled to a judgment for reasonable expenses she incurred in prosecuting an action if it was reasonably necessary for her to institute the proceedings to enforce the MDA provisions. In this case, Ms. Clarkson instituted proceedings to enforce the MDA by way of a counterclaim seeking a judgment for arrears and contempt charges against Mr. Clarkson. However, under a plain reading of the fee provision, Ms. Clarkson would not be entitled to a judgment against Mr. Clarkson for the fees she incurred in defending against his petition to modify child support, in seeking a permanent restraining order against Mr. Clarkson, or in seeking compensatory and punitive damages for negligent, reckless, or intentional infliction of emotional distress. The fee provision of the MDA clearly limits recovery to the fees incurred in prosecuting an action, if the proceedings were instituted by the party to enforce provisions of the MDA.

The affidavit of attorney's fees and costs filed as an exhibit at the hearing reflected that a total of \$8,861.57 in fees had been incurred by Ms. Clarkson, excluding trial time, but it did not differentiate between the time spent seeking enforcement of the MDA provisions and the time spent pursuing or defending the other claims. In the other exhibit entitled "Summary of Support Due," Ms. Clarkson claimed that she should be awarded that total amount of \$8,861.57 in attorney's fees, plus \$575 in additional fees she incurred in reinstating the power of attorney and beneficiary designation, and overdraft fees due to Mr. Clarkson's redirection of the retirement pay. The affidavit of fees and costs states that Ms. Clarkson's counsel, Rebecca Byrd, billed her services at a rate of \$250 to \$300 per hour. Ms. Clarkson also incurred fees from three associate attorneys at Ms. Byrd's law firm at \$175 to \$225 per hour.

Having determined that the MDA did not provide for the recovery of all of Ms. Clarkson's attorney's fees, we now turn to an examination of the attorney's fees that the trial court actually awarded to Ms. Clarkson. Although Ms. Clarkson's initial brief failed to mention that she had been awarded any attorney's fees, Mr. Clarkson's brief directed us to the exhibit attached to the trial court's final order that awarded \$3,075 in attorney's fees to Ms. Clarkson. Again, this exhibit was a modification of the "Summary of Support Due" exhibit previously prepared by Ms. Clarkson's attorney setting out the support arrears under the MDA and the attorney's fees Ms. Clarkson had incurred. The trial court awarded her the \$575 in specific fees, but the judge had altered the attorney's fee figure to reflect that only \$2,500 of the claimed \$8,861 would be awarded for bringing the contempt action against Mr. Clarkson. This resulted in a total attorney's fee of \$3,075 being awarded to Ms. Clarkson. Ms. Clarkson acknowledged in her reply brief that the final judgment did encompass an award of attorney's fees, but she insisted that this award was meant "to serve as punishment of Mr. Clarkson for his wrongdoing," rather than to compensate her for her expenses.

We disagree with Ms. Clarkson's characterization of the trial court's award of attorney's fees as solely for punishment of Mr. Clarkson. The court's order specifically states that the total

judgment was “\$25,638.51 for reimbursement” due to Mr. Clarkson’s violations of the MDA, and the amount awarded as attorney’s fees is detailed in the exhibit. Again, we have no transcript or statement of the evidence before us concerning the substance of the hearing at which Ms. Clarkson introduced her proof of attorney’s fees. However, at the conclusion of the hearing, the trial judge explained:

All right. In terms of contempt, I do find Mr. Clarkson to be in contempt, and I’m going to award the \$210 for attorney’s fees, the \$200 for the revocation of the beneficiary on the life insurance. I’m going to award \$2,500 for the present contempt action, and I’m going to award overdraft fees of \$165 with regard to the contempt. Do I need to add that up? . . . Okay, \$3,075.

Later, he simply stated that the judgment was for \$22,563.51, “[a]nd then I will award her her attorney’s fees of \$3,075.” Ms. Clarkson’s attorney asked if there were “any *additional* fees” allowed under the enforcement provision of the MDA, and the trial judge replied, “No, just other than she gets the court’s costs.” Still, there is no indication in the record that the court meant for the \$3,075 award of attorney’s fees to serve as “punishment” for Mr. Clarkson’s violations of the MDA rather than reimbursement under the enforcement clause of the MDA. The court’s order specifically referred to the award as being “for reimbursement” due to Mr. Clarkson’s violations of the MDA. We interpret the trial judge’s reference to the award of attorney’s fees “for the present contempt action” as recognizing that Ms. Clarkson brought the contempt action in order to enforce her rights under the MDA. Contempt is a proper remedy for one party’s breach of a provision in a marital dissolution agreement. *Long v. McAllister-Long*, 221 S.W.3d 1, 9-10 (Tenn. Ct. App. 2006). Any tie between the contempt action and the award of attorney’s fees was simply because Ms. Clarkson chose to pursue contempt charges to enforce her rights under the MDA.

Furthermore, the trial court was not authorized to impose such an amount of attorney’s fees as punishment for Mr. Clarkson’s contempt, and we will not simply assume that the trial court exceeded its authority with nothing in the record to suggest such an error. At common law, the power of courts to punish contempts was vast and undefined. *Black v. Blount*, 938 S.W.2d 394, 397 (Tenn. 1996) (citing *State v. Galloway*, 45 Tenn. 326, 331 (1868)). However, because unlimited discretionary power carried with it the potential for abuse, specific statutory provisions were adopted to limit and define that power. *Id.* Tenn. Code Ann. § 29-9-102 (2000) limits the conduct punishable as contempt to certain situations, one of which includes willful disobedience of any party to any lawful order of the courts. *See* Tenn. Code Ann. § 29-9-102(3) (2000). After a finding of contempt, courts have several remedies available depending upon the facts of the case. *Ahern v. Ahern*, 15 S.W.3d 73, 79 (Tenn. 2000). Still, the power to punish for contempt is not unlimited and must be exercised within the fixed rules of law declared by our statutes. *State v. Gray*, 46 S.W.3d 749, 750 (Tenn. Ct. App. 2000). “Civil contempt” occurs when a person refuses or fails to comply with a court order and a contempt action is brought to enforce private rights. *State ex rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Group Trust*, 209 S.W.3d 602, 613 (Tenn. Ct. App. 2006). A court can imprison an individual for civil contempt to compel compliance with a court order if the person has the ability to comply with the order. *Ahern*, 15 S.W.3d at 79 (citing Tenn. Code Ann. § 29-9-104). On the other hand, “[a] court can also imprison and/or fine an individual simply as punishment for contempt,” which is known as

“criminal contempt.” *Id.* Criminal contempt is “intended to preserve the power and vindicate the dignity and authority of the law, and the court as an organ of society.” *Doe v. Bd. of Prof’l Responsibility*, 104 S.W.3d 465, 474 (Tenn. 2003). Punishment for criminal contempt is punitive and unconditional in nature. *Id.* However, Tenn. Code Ann. § 29-9-103 (2000) limits the courts to imposing a fine of \$50 and imprisoning an individual for not more than ten days.<sup>1</sup> *Ahern*, 15 S.W.3d at 79. Therefore, while the trial court could have simply punished Mr. Clarkson for his contempt, it would have been limited to imposing a \$50 fine or ten days in jail. Finding nothing in the record to suggest that this was the trial court’s intention, we find Ms. Clarkson’s theory that the attorney’s fee award was solely for Mr. Clarkson’s “punishment” to be without merit.

Next, we find it necessary to consider a separate but similar issue involving actual damages that may be recoverable upon a finding of contempt. “One may violate a court’s order by either refusing to perform an act mandated by the order or performing an act forbidden by the order.” *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 510-11 (Tenn. 2005). If the contempt consists of an omission to perform an act, such that the contemnor has willfully refused to perform an act mandated by the court’s order, the court may fine or imprison him until the act is performed pursuant to Tenn. Code Ann. § 29-9-104. *Id.* Where the alleged contempt involves the performance of acts that were forbidden by the trial court’s order, however, Tenn. Code Ann. § 29-9-105 provides that the person may be imprisoned “until the act is rectified by placing matters and person in status quo, *or by the payment of damages.*” *Id.* Even if the contemptuous conduct has ceased, the contemnor’s doing of the forbidden act would not be “rectified” until he has paid damages to make the injured party whole. *Id.* Therefore, Section 29-9-105 allows for compensation of the party for injuries arising from the illegal disobedience of the court, and the measure of damages is the “actual injury sustained” as a result of the contemptuous act. *Id.* Attorney’s fees are among the types of damages that are compensable under Tenn. Code Ann. § 29-9-105. *Reed v. Hamilton*, 39 S.W.3d 115, 120 (Tenn. Ct. App. 2000).

In *Bryan v. Leach*, 85 S.W.3d 136, 161, n. 27 (Tenn. Ct. App. 2001), the Middle Section of this Court noted the distinction between contempts involving the performance of a forbidden act, where compensatory damages are statutorily provided, and contempts involving omissions, where the statute does not provide for a compensatory damage award.

Tennessee appears to have incorporated the concept of damages arising from contempt in Tenn. Code Ann. § 29-9-105, which makes damages available where the contempt consists of the performance of a forbidden act. Because Father’s contempt herein consisted of failure to pay support as ordered, Mother will be compensated for his delay by the interest accumulated on the arrearage. *See* Tenn.Code Ann. § 36-5-101(a)(5).

*Bryan*, 85 S.W.3d at 161, n.27.

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<sup>1</sup> The legislature has also provided a specific statute that allows an obligor who fails to comply with a child support order to be imprisoned for a period not to exceed six months. *Ahern*, 15 S.W.3d at 79 (citing Tenn. Code Ann. § 36-5-104).

The *Overnite* case involved the performance of a forbidden act, where a union took certain actions in the context of a strike that were forbidden by a trial court's injunction. 172 S.W.3d at 509. The Supreme Court of Tennessee held that damages were available under § 29-9-105 to compensate a party who had sustained an actual injury by the actions taken in violation of the court's order. *Id.* at 511.

In *Reed*, landowners affirmatively interfered with their neighbors' use of an easement despite a temporary injunction preventing such interference. 39 S.W.3d at 116-17. This Court held that the neighbors' attorney's fees were among the types of damages compensable under § 29-9-105<sup>2</sup> because they were compensation "for the loss they sustained as a result of the wrongful and contemptuous actions of [the landowners]." *Id.* at 120. Similarly, in *Outdoor Mgmt., LLC v. Thomas*, No. W2006-01464-COA-R3-CV, 2007 WL 1139429, at \*1, \*11 (Tenn. Ct. App. Apr. 18, 2007), a landowner intentionally blocked access to property in violation of a restraining order, and we affirmed an award of attorney's fees, expenses, and costs to the neighbors as damages stemming from the contempt. *See also Town of Cornersville v. Harmon*, No. M2003-01061-COA-R3-CV, 2005 WL 229872, at \*6 (Tenn. Ct. App. Jan. 28, 2005) (town was properly awarded attorney's fees under § 29-9-105 where party contemptuously operated business in violation of injunction); *B.M.M. v. P.R.M.*, No. M2002-02242-COA-R3-CV, 2004 WL 1853418, at \*16, \*24 (Tenn. Ct. App. Aug. 18, 2004) (father was properly awarded attorney's fees incurred when mother contemptuously violated an order forbidding her from moving with child to Florida).

Applying Tenn. Code Ann. § 29-9-105 to this case, it appears that some of Mr. Clarkson's affirmative violations of the MDA, such as changing the beneficiary of his life insurance policy, revoking Ms. Clarkson's power of attorney, and redirecting his retirement pay, would give rise to an award of Ms. Clarkson's attorney's fees attributable to these actions. The exhibit attached to the trial court's order specifically listed these fees separately from the other fees incurred for the contempt action as follows:

Attorney Fees Due to [Mr. Clarkson's] Revocation of Power of  
Attorney and Costs to Reinstate Power of Attorney                   \$  
210.00

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<sup>2</sup> We note that a recent case cited *Overnite* and *Reed* for the notion that "the general rule is that a court may award attorney's fees as a sanction for a properly made finding of contempt." *Battleson v. Battleson*, 223 S.W.3d 278, 287 (Tenn. Ct. App. 2006). However, both of the cases it relied upon involved awards under Tenn. Code Ann. § 29-9-105, which only governs contempt for the performance of an act forbidden by an order. In Tennessee, litigants are required to pay their own attorney's fees absent a statute or an agreement providing otherwise. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000). We find no authority for the proposition that attorney's fees are generally recoverable by any party who successfully brings a contempt petition. This Court has previously found that an award of attorney's fees to a prevailing party in a criminal contempt proceeding is not authorized by Tennessee law, except for those discretionary awards based on Tenn. Code Ann. § 36-5-103 in cases involving alimony, child support, or custody. *Butler v. Butler*, No. 02A01-9409-CH-00218, 1995 WL 695123, at \*2 (Tenn. Ct. App. W.S. Nov. 21, 1995); *see also Larson v. Halliburton*, No. M2004-02435-COA-R3-CV, 2007 WL 1241343, at \*4 (Tenn. Ct. App. Apr. 27, 2007) (memorandum opinion reaching same conclusion); *Cooner v. Cooner*, No. 01-A-01-9701-CV00021, 1997 WL 625277, at \*7 (Tenn. Ct. App. M.S. Oct. 10, 1997). We stated, "Although we sympathize with Plaintiff because she was forced into court by Defendant's actions, the general rule is that absent a statute, contract, or recognized ground of equity, there is no inherent right to have attorneys' fees paid by the opposing party." *Butler*, 1995 WL 695123, at \*3 (citations omitted).

Attorney Fees *Due to [Mr. Clarkson's] Revocation of Beneficiary on Life Insurance and Costs to Reinstate Beneficiary Designation*

200.00 \$

Attorney Fees for Present Contempt Action \$2,500.00

Overdraft Fees from Joint Account *due to Automatic Withdrawals for Petitioner's Life Insurance Payments and [Mr. Clarkson's] Cessation of Retirement Deposits* without [Ms. Clarkson's] approval \$ 165.00

These fees could have been properly awarded as compensatory damages for Mr. Clarkson's aforementioned contemptuous actions. However, even assuming *arguendo* that the trial court intended this portion of the award as damages under § 29-9-105, we do not agree with Ms. Clarkson's contention that she is entitled to another award of the fees under the enforcement provision of the MDA.

Cases applying Tenn. Code Ann. § 29-9-105 consistently emphasize that the damages that may be awarded are compensatory and limited to the actual loss or injury suffered. *See, e.g., Overnite*, 172 S.W.3d at 511 ("the measure of damages is the actual injury sustained as a result of the contempt"); *Reed*, 39 S.W.3d at 120 ("damages under section 29-9-105 are compensatory in nature"). In *Powell v. Powell*, 124 S.W.3d 100, 108 (Tenn. Ct. App. 2003), this Court reversed a damage award imposed for contempt after a husband violated a status quo injunction by making investments during a divorce proceeding. The trial court awarded the wife a one-half interest in each investment the husband had made. *Id.* Although we recognized the trial court's authorization to award damages for the contempt pursuant to § 29-9-105, we stated:

While Mrs. Powell asserts that she may suffer damages in the future as a result of these investments, such speculation does not merit the trial court's award, as it was not tied to any specific damages which she has suffered as a result of Mr. Powell's act of contempt. Accordingly, as Mrs. Powell suffered no quantifiable damages as a result of Mr. Powell's actions, the trial court lacked the authority to award Mrs. Powell the relief that it did.

*Powell*, 124 S.W.3d at 109. We also noted that the trial court was not authorized to impose a fine for contempt in excess of \$50. *Id.*

It is clear that a trial court is not authorized to impose damages under § 29-9-105 beyond the actual loss suffered by a party. As we have discussed, if a trial court wishes to impose a fine for contempt simply as punishment, it is limited to \$50 pursuant to Tenn. Code Ann. § 29-9-103. In this case, if Ms. Clarkson was allowed a double recovery of her attorney's fees from Mr. Clarkson, the award would be punitive and Ms. Clarkson would receive more than her actual loss. Such an award is not authorized under the statutes and case law governing a court's contempt power.

Ms. Clarkson limited her argument in the trial court and on appeal to claiming that she was entitled to an additional, separate fee under the MDA, and she did not seek to challenge the reasonableness of the \$3,075 fee that the trial court awarded in the event that it was confirmed. We have already determined that Ms. Clarkson was not entitled to recover the total amount of fees that she had incurred. The trial judge awarded \$2,500 of the \$8,861.57 in fees claimed for bringing the contempt action, which resulted in a total award of \$3,075 out of the \$9,436.57 that Ms. Clarkson requested. The determination of a reasonable fee amount rests within the sound discretion of the trial court, and reasonableness depends upon the facts of each case. *McNeil v. Nofal*, 185 S.W.3d 402, 412 (Tenn. Ct. App. 2005) (citing *Fell v. Rambo*, 36 S.W.3d 837 (Tenn. Ct. App. 2000)). The trial court's award of attorney's fees will be upheld if not clearly unreasonable and reasonable minds can disagree about the decision's correctness. *Simpkins v. Blank*, No. M2002-02383-COA-R3-CV, 2003 WL 23093849, at \*7 (Tenn. Ct. App. W.S. Dec. 30, 2003).

We recognize that in determining a reasonable fee amount, courts are directed to look to the guidelines outlined in *Connors v. Connors*, 594 S.W.2d 672, 677 (Tenn. 1980) and to the factors listed in Tennessee Supreme Court Rule 8, DR 2-106.<sup>3</sup> *Kline v. Eyrich*, 69 S.W.3d 197, 209 (Tenn. 2002). In this case, the trial court's final order did not discuss the factors, but once again, we have no transcript or statement of evidence of the hearing at which Ms. Clarkson's counsel introduced exhibits listing the fees Ms. Clarkson was claiming under the MDA. We have nothing to indicate whether the trial judge heard any testimony regarding the fees, whether Ms. Clarkson's counsel was questioned about her fees, whether the judge expressly considered the appropriate factors, or how he reached the conclusion as to what would constitute a reasonable award. "However, reversal of a fee award is not required merely because the record does not contain proof establishing the reasonableness of the fee." *Id.* at 210 (citing *Kahn v. Kahn*, 756 S.W.2d 685 (Tenn. 1988)). Obviously, the burden of proof on the question of what is a reasonable fee in any case is upon the plaintiff. *Wilson Mgmt. Co. v. Star Distribs. Co.*, 745 S.W.2d 870, 873 (Tenn. 1988). The trial judge may feel that the proceedings which he or she has heard have sufficiently acquainted him or her with the appropriate factors to make a proper award of an attorney's fee without proof or opinions of other lawyers. *Kahn v. Kahn*, 756 S.W.2d 685, 696-97 (Tenn. 1988). "[A] trial judge may fix the fees of lawyers in causes pending or which have been determined by the court, with or without expert testimony of lawyers and with or without a prima facie showing by plaintiffs of what a reasonable fee would be." *Kline*, 69 S.W.3d at 210 (citing *Wilson Mgmt. Co. v. Star Distribs. Co.*, 745 S.W.2d 870, 873 (Tenn.1988)). A trial court may judge a reasonable amount of the attorney's fees by having participated in the proceedings before it. *Chaffin v. Ellis*, 211 S.W.3d 264, 291 (Tenn. Ct. App. 2006).

On appeal, it is essential that "the record must contain some evidence showing that an award of attorneys' fees is unreasonable under the circumstances before a reversal of that fee is

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<sup>3</sup> "The *Connors* guidelines include the time devoted to performing the legal service; the time limitations imposed by the circumstances; the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; and the experience, reputation, and ability of the lawyer performing the legal service." *Kline*, 69 S.W.3d at 209, n.11.

warranted.” *Kline*, 69 S.W.3d at 209. Here, with no transcript of the hearing at which proof of the fees was introduced, and no differentiation in the fee affidavit as to the amount of time devoted to enforcing the MDA, we cannot say that the award of \$3,075 in attorney’s fees was unreasonable and an abuse of the trial court’s discretion.

## V. CONCLUSION

We find Ms. Clarkson’s argument that she is entitled to additional attorney’s fees to be without merit. The trial court’s order in this case found Mr. Clarkson in civil contempt for violating the MDA and accordingly awarded Ms. Clarkson a judgment to enforce her rights under the MDA. The judgment properly included a reasonable attorney’s fee. For the aforementioned reasons, we affirm the decision of the circuit court. Further, we decline to award attorney’s fees on appeal to either party. Costs of this appeal are taxed to the appellant, Cathy Clarkson, and her surety, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE