

IN THE SUPREME COURT OF GUAM

SUSAN ELIZABETH CRUZ,
Plaintiff-Appellee/Cross-Appellant,

v.

MICHAEL WARREN CRUZ,
Defendant-Appellant/Cross-Appellee.

Supreme Court Case No.: CVA03-030
Superior Court Case No.: DM0405-01

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on November 10, 2004
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; MIGUEL S. DEMAPAN and RAMONA V. MANGLONA, Justices *Pro Tempore*.

CARBULLIDO, C.J.:

[1] The Defendant-Appellant, Michael Warren Cruz (“Michael”) appeals from an order directing him to pay \$8,837.21 in reasonable attorney’s fees to the Plaintiff-Appellee, Susan Elizabeth Cruz (“Susan”). Michael contends that the trial court erred in its determination of this amount. He argues that the \$8,837.21 amount is based upon erroneous billing and attorney’s fees which are not based upon credible evidence. In response and cross-appeal, Susan requests that this court award her attorney’s fees for expenses incurred as a result of this appeal.

[2] We hold that the trial court’s award of attorney’s fees was proper and therefore affirm the trial court’s judgment. We further hold that although this court has the discretion to award attorney’s fees for expenses incurred on appeal, the trial court in this particular case would be the more appropriate forum to decide this issue, and we remand for its consideration.

I.

[3] Michael and Susan were divorced in the Superior Court of Guam on May 23, 2003 *nunc pro tunc* to March 18, 2003. The court ordered Michael to pay Susan’s reasonable attorney’s fees in bringing the action.

[4] Susan requested an award of \$20,884.21 in attorney’s fees. She submitted into evidence invoices for fees owed to her attorney for services rendered from February 2001 through March 2003, totaling \$23,884.21. Susan made a single payment for attorney’s fees on April 29, 2003, in the amount of \$3,000.00, resulting in an outstanding balance of \$20,884.21 owed to her attorney.

[5] The trial court granted Susan \$8,837.21 in reasonable attorney’s fees to compensate her for expenses she actually incurred and which remain due and owing. The court considered such factors as: (i) the payments Susan testified that she made for the year 2002; (ii) a credit adjustment of

\$3,000.00 for a payment Susan made on April 29, 2003; (iii) a \$37.00 credit for an error in billing; (iv) the balance of equities of the parties; (v) Susan's need to be compensated for expenses in bringing the action; and (vi) the financial abilities of the parties post divorce.

[6] The trial court entered the order for attorney's fees on November 4, 2003, and Michael appealed.

II.

[7] This court has jurisdiction to hear appeals of final judgments entered by the Superior Court pursuant to sections 3107(b) and 3108(a) of Title 7 of the Guam Code Annotated ("GCA") (2004), and the Organic Act of Guam, §1424-1(a)(2), 48 U.S.C. §1424-1(a)(2) (2004).

III.

[8] A trial court's award of attorney's fees is reviewed for an abuse of discretion. *Fleming v. Quigley*, 2003 Guam 4, ¶ 14. This court has defined abuse of discretion as a trial court decision "exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *People v. Quinata*, 1999 Guam 6, ¶ 17 (quoting *People v. Tuncap*, 1998 Guam 13, ¶ 12). This court will not reverse a decision unless "it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant facts." *Guam Radio Servs., Inc. v. Guam Econ. Dev. Auth.*, 2000 Guam 23, ¶ 6.

A. Trial Court's Award of \$8,837.21 in Reasonable Attorney's Fees.

[9] The first issue we address is whether the trial court abused its discretion in awarding Susan \$8,837.21 in attorney's fees. Pursuant to Title 19 GCA § 8402, a "court may, *in its discretion*, require the husband or wife, as the case may be, to pay as alimony any money *necessary* to enable the wife, or husband to . . . prosecute or defend the action" Title 19 GCA § 8402 (2001) (emphasis

added). Section 8402 is based on former California Civil Code § 137¹, and thus California cases interpreting section 137 are persuasive.² See *People v. Hall*, 2004 Guam 12, ¶ 18 (finding that California case law interpreting a California statute from which a Guam statute was derived is persuasive authority, and adopting such case law “absent a compelling reason to deviate.”); *Fajardo v. Liberty House Guam*, 2000 Guam 4, ¶ 17 (adopting California case law construing a similar Guam statute where “there [wa]s no compelling reason to deviate from that jurisdiction's interpretation of these statutes”).

[10] California courts consider various factors in determining what is “necessary” for a party to prosecute or defend the action. As the court in *Westphal v. Westphal* points out, “the word ‘necessary’ has not a fixed meaning, but is flexible and relative . . . the word was used in its broader sense, inasmuch as the action of the court rests in discretion.” *Westphal v. Westphal*, 10 P.2d 119, 120 (Cal. Dist. Ct. App. 1932). In *Howton v. Howton*, 124 P.2d 837, 838 (Cal. Dist. Ct. App. 1942), the court considered the definition of the term “necessary” as it appeared in section 137 and stated: “The term ‘necessary’ in section 137 must be given its broadest connotation. What is ‘necessary’ rests in the sound discretion of the trial court . . . to be exercised in view of the circumstances of the parties, their several necessities, and the pecuniary ability of the husband.”³

¹ See source note to Title 19 GCA § 8402 (2001).

² Former California Civil Code § 137 has since been repealed and reenacted as California Family Code § 2030. The current statute appears to have codified California case law. It states that “the court shall ensure that each party has legal representation to preserve each party’s rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay . . . whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding . . . amount shall . . . be determined based upon, (A) the respective incomes and needs of the parties and (B) any factors affecting the parties’ respective abilities to pay.” CAL. FAM. CODE § 2030(a). Note, however, that Guam has not adopted the current language of the California statute. Thus, we should rely only on cases interpreting the former section 137, which is similar to Guam’s section 8402.

³ Former California Civil Code § 137 focused on the husband’s ability to pay rather than both the husband’s and the wife’s abilities because it was assumed the husband had control of the property at the time. Therefore the wife would be the one to bring a claim and thus various cases reflect such language. The court in *Mudd v. Mudd*, 33 P. 114 (Cal. 1893) stated, “Presumptively, the community property is under the control, and in the hands of, the husband and the court needs only to be advised of his ability to pay . . . in order that . . . the parties may be upon an equal footing.” *Mudd v. Mudd*, 33 P. 114, 115 (Cal. 1893). We note, however, that Title 19 GCA § 8402 specifically says ‘husband or wife’ and either can bring a suit for attorney’s fees. 19 GCA § 8402 (2001).

Howton, 124 P.2d 837, 838 (quoting *Turner v. Turner*, 22 P. 72 (Cal. 1889)). The California Supreme Court similarly wrote in *Arnold v. Arnold*, that the “discretion of the trial court . . . is not arbitrary; it must be exercised along legal lines, taking into consideration the circumstances of the parties, their necessities, and the financial ability of the husband.” *Arnold v. Arnold*, 12 P.2d 435, 436 (Cal. 1932) (emphasis in original omitted). The court in *Sweeley v. Sweeley* considered “the circumstances of the parties, including the property which each possesses, their respective incomes and earning abilities, as well as their needs” *Sweeley v. Sweeley*, 170 P.2d 469, 470 (Cal. 1946). The court in *Loke v. Loke* gave further guidance. “Necessity may be proved only by showing that her need for proper support and the expenses of the litigation exceed her available resources. This means that the . . . judge must be informed in detail not only as to her needs, but also her resources.” *Loke v. Loke*, 217 P.2d 477, 478 (Cal. Dist. Ct. App. 1950) (citation omitted).

[11] On appeal, Michael argues that the trial court erred in ordering him to pay \$8,837.21 to Susan in attorney’s fees. He argues that the trial court determined this award of fees by accounting for three items: (i) \$5,800.21 for payments Susan allegedly made to her attorney for legal services provided in 2002; (ii) a \$3,000.00 payment that Susan made to her attorney on April 29, 2003; and (iii) \$37.00 for an erroneous billing made by Susan’s attorney reflected in his July 31, 2001 invoice. Michael contends that there is no credible evidence that Susan paid \$5,800.21 in attorney’s fees, and thus he should not be charged to pay for it. He further argues that he should not have to pay for the \$37.00 erroneous billing item. Michael states that the court should subtract the \$5,800.21 and \$37.00 charges from the attorney fee award.

[12] Susan argues that the trial court awarded this particular amount by beginning with her requested fees award and reducing it by amounts that Susan already paid to her attorney or were erroneous. She contends the trial court took her requested fees award of \$23,884.21 and reduced this amount by three items: (i) the \$3,000.00 payment Susan made to her attorney on April 29, 2003; (ii) \$12,000.00 derived from \$1,000.00 per month payments Susan testified she made to her attorney for each of the 12 months in 2002; and (iii) a \$37.00 erroneous billing charge. After subtracting

these 3 items, the total comes to \$8,847.21, which is \$10.00 more than what the trial court awarded. Susan does not know why the \$10.00 difference exists. She claims this is irrelevant, since the court can exercise discretion in calculating the award. We agree.

[13] The record before us indicates that Susan's attorney submitted to the court invoices of bills from February 2001 to February 2003 as well as March 2003 for a total of \$20,884.21. This sum is the total amount Susan still owes her attorney, and reflects the sole payment which Susan made on April 29, 2003 for \$3,000.00. The trial court noted the inconsistency between Susan's invoices that do not reflect her \$1,000.00 monthly payments in 2002, and her testimony that she made these monthly payments in 2002. The trial court apparently chose to deduct \$12,000.00 from the invoices, including it as "credit of payments Plaintiff testified that she made for the year 2002," along with the \$3,000.00 payment on April 29, 2003, and the \$37.00 error in billing. Appellant's ER, Tab C, p.3 (Decision and Order, Nov. 4, 2003). Since the \$8,837.21 amount that the trial court awarded for outstanding attorney's fees is less than the \$20,884.21 amount of fees that Susan still owes her attorney, we do not find that the award was "clearly against the logic and effect of the facts as are found." *Quinata*, 1999 Guam 6 at ¶ 17.

[14] In addition, it appears that the trial court considered the evidence presented, the abilities of the parties to pay, and the fact that Michael was the sole source of financial income during the marriage and continues to be the party generating the most income post divorce. The trial court also acknowledged that Michael paid Susan \$10,000.00 per month without any court order. The court balanced the "equities of the parties; the need of the Plaintiff to be compensated for expenses in order to bring this action, and the financial abilities of the parties post divorce." Appellant's ER, Tab C, p.3 (Decision and Order, Nov. 4, 2003). The court granted Susan the sum of \$8,837.21 in reasonable attorney's fees to partially compensate her for expenses she actually incurred and which remain a debt.

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[15] While both parties disagree as to how the trial court derived the exact amount of \$8,837.21, in applying the abuse of discretion standard, it does not appear that the trial court ordered an unreasonable amount given the facts and circumstances of the case. It is not this court's place to crunch numbers and order the trial court to provide a detailed calculation. The trial court considered relevant factors and ordered a reasonable amount of attorney's fees that is less than the amount that Susan's invoices state is still outstanding.

[16] Thus, we find that the trial court did not abuse its discretion and err in awarding \$8,837.21 to Susan in attorney's fees where its decision was justified by the evidence and reached upon by weighing relevant facts.

B. Attorney's Fees for Expenses Incurred as a Result of an Appeal.

[17] The next issue we address is whether this court has the discretion to award attorney's fees incurred on appeal, pursuant to Title 19 GCA § 8402. Specifically, Susan requests that this court either award a specific amount or remand the matter to the trial court to determine the specific amount. Again, section 8402 provides: "When an action for dissolution of marriage is *pending*, the court may, in its discretion, require the husband or wife ... to pay ... any money necessary to enable the wife, or husband, to ... prosecute or defend the action." 19 GCA § 8402 (2001) (emphasis added). According to Title 7 GCA § 26707, "An action is deemed to be *pending* from the time of its commencement *until its final determination upon appeal*, or until the time for appeal has passed . . ." Title 7 GCA § 26707 (1994) (emphasis added).

[18] As noted above, section 8402 was based on former California Civil Code § 137. *See Bruce v. Bruce*, 116 P. 66, 67 (Cal. 1911) (quoting section 137, which states that "when an action for divorce is pending, the court may, in its discretion require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action."). Relatedly, Title 7 GCA § 26707, which defines when an action is pending, is also based on California Civil Procedure Code § 1049. California Civil Procedure Code § 1049 states that "an action is deemed to be pending from the time of its commencement until its final determination upon

appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.” CAL. CIV. PRO. CODE § 1049 (1980).

[19] California courts interpreting California Civil Code § 137 and California Civil Procedure Code § 1049 have consistently held that appellate courts may award attorney’s fees to a party not only for fees incurred at the trial court level, but for fees incurred at the appellate level. In *Bruce v. Bruce*, the Supreme Court of California stated that: “Following these provisions, this court has repeatedly held that the power to make an allowance to the wife for her support, or to enable her to defend or prosecute the action, is not exhausted upon the rendition of the judgment in the trial court, but continues during the pendency of an appeal.” *Bruce*, 116 P. 66 at 67. This determination in *Bruce v. Bruce* was followed in other California cases. See *Viera v. Viera*, 236 P.2d 632, 633 (Cal. Dist. Ct. App. 1951); *McCahan v. McCahan*, 190 P. 458, 459 (Cal. Dist. Ct. App. 1920); see also *Grannis v. Superior Court*, 77 P. 647, 649 (Cal. 1904).

[20] Thus, pursuant to Guam statutory law and California precedential authority interpreting similar statutes, we hold that both this court as well as the trial court has discretion to award attorney’s fees to defend or prosecute an appeal when the record before it provides enough information to determine these factors and what was “necessary” for a party to prosecute or defend the action.

[21] We note a split of authority as to whether (i) a trial court is the more proper forum to determine whether to order attorney’s fees for the appeal as well as determine the exact amount; or (ii) an appellate court may order fees but must remand to the trial court to determine the exact amount. In *Craft v. Craft*, 316 P.2d 345, 347 (Cal. 1957), the plaintiff requested that the appellate court award attorney’s fees for services rendered on appeal. The court held: “The request for such fees is a matter which should ordinarily be addressed to the trial court, and we are of the view that the general rule should be followed here.” *Craft v. Craft*, 316 P.2d 345, 347 (Cal. 1957). Other California cases also follow the holding in *Craft*. See *Petropoulos v. Petropoulos*, 110 Cal. Rptr. 2d 111, 125 (Ct. App. 2001), *Schofield v. Schofield*, 73 Cal. Rptr. 2d 1, 7 (Ct. App. 1998). However,

in *Hayes v. Ward*, 4 Cal. Rptr. 2d 365, 372 (Ct. App. 1992), the appellate court ordered an award of attorney’s fees for services rendered at the appellate level, but remanded the issue of the exact amount to the trial court. The court stated: “Although this court has the power to render such an award, the trial court can better evaluate these . . . factors in determining an appropriate amount to be awarded . . . for fees on appeal.” *Hayes*, 4 Cal. Rptr. 2d at 372. Other California cases have followed the holding in *Hayes*, including *In re Marriage of Martin*, 280 Cal. Rptr. 565, 568 (Ct. App. 1991).

[22] Notwithstanding our holding that this court may, in its discretion, award Susan attorney’s fees incurred as a result of this appeal, the record before us does not provide a sound basis for this court’s determination of what is “necessary” for Susan to defend the action, such as the costs in light of the circumstances of the parties, the necessity, and the pecuniary ability of both parties. *See Arnold* 12 P.2d at 436; (finding relevant the “circumstances of the parties, their necessities, and the financial ability of the husband”); *Sweeley* 170 P.2d at 470; (finding relevant the “circumstances of the parties, including the property which each possess, their respective incomes and earning abilities, as well as their needs”); *Loke*, 217 P.2d at 478 ([T]he trial “judge must be informed in detail not only as to her needs, but her resources.”) (citation omitted). This court received no information regarding the fees for this appeal. On the other hand, the trial court has held extensive hearings and is more familiar with the facts and circumstances of this case.

[23] Accordingly, we find that the trial court is in a better position to determine what attorney’s fees, if any, are necessary for Susan to defend this action on appeal. Consistent with the *Hayes* line of cases, because this court does not have a complete record to award attorney’s fees and determine its amount, and because there is a strong argument that a trial court is the more proper forum to litigate this issue, we remand this issue to the trial court.

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IV.

[24] In sum, we cannot find that the trial court abused its discretion when it ordered Michael to pay \$8,837.21 in reasonable attorney's fees to Susan. Applying the abuse of discretion standard, we may overturn the trial court's decision only if it appears that there was no reasonable basis for it. We hold that the trial court considered reasonable factors in determining a reasonable amount of fees, and thus we **AFFIRM** the trial court's decision.

[25] We further hold that although we have the power to exercise our discretion and award attorney's fees to Susan for the cost of this appeal, we decline to do so. In this particular case, the trial court is the more appropriate forum to receive evidence and determine if Susan is entitled to attorney's fees on appeal, and if so, how much. It is more familiar with the facts and circumstances of this case and can make a more knowledgeable decision. Accordingly, we **REMAND** the issue to the trial court for its consideration.