

**Court of Appeals, State of Michigan**

**ORDER**

Tracy Lynn Sullivan v Brian Robert Sullivan

Docket No. 348606

LC No. 18-104696-DM

David H. Sawyer  
Presiding Judge

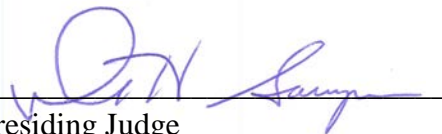
Anica Letica

James Robert Redford  
Judges

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The Court orders that the April 16, 2020 opinion is hereby AMENDED to correct a typographical error. The caption of the opinion is amended to correct petitioner-appellee's name to read "Trish Oleksa Haas."

In all other respects, the opinion remains unchanged.

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 17, 2020  
Date

  
Chief Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TRACY LYNN SULLIVAN,

Plaintiff,

v

BRIAN ROBERT SULLIVAN,

Defendant-Appellant,

and

TRISH OLESKA HAAS

Petitioner-Appellee.

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UNPUBLISHED

April 16, 2020

No. 348606

Wayne Circuit Court

LC No. 18-104696-DM

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Defendant appeals by leave granted<sup>1</sup> the trial court's ruling that it had jurisdiction, after dismissal of the parties' divorce case pursuant to a stipulated order for dismissal that resolved the last pending claim and closed the case, to decide petitioner's petition for costs and attorney fees from defendant for petitioner's representation of plaintiff. We reverse.

**I. FACTS AND PROCEDURAL BACKGROUND**

Plaintiff filed a divorce action during April 2018, but during January 2019 she requested that petitioner dismiss the divorce case because the parties were working on reconciling. Petitioner did not do so which, among other things, led to the breakdown in the attorney-client relationship and plaintiff's obtaining new counsel. Meanwhile, petitioner filed a motion in the divorce action for recovery from defendant her unpaid attorney fees. Plaintiff's new counsel advised petitioner

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<sup>1</sup> *Sullivan v Sullivan*, unpublished order of the Court of Appeals, entered June 7, 2019 (Case No. 348606).

that plaintiff did not want to seek attorney fees from defendant which prompted petitioner to file her own petition seeking fees from defendant. On February 12, 2019, plaintiff filed petition. Plaintiff and defendant reconciled and submitted a stipulated order for dismissal of the divorce action. On February 19, 2019, the trial court entered the parties' stipulated order for dismissal. That order vacated all previously entered orders and stated that it disposed of the last claim and closed the case. On March 6, 2019, however, the trial court held a hearing on petitioner's request for attorney fees at which plaintiff and defendant challenged the trial court's jurisdiction because the case had been dismissed and closed. The trial court held its decision in abeyance so that the parties could mediate the issue. The parties did not resolve the attorney fee issue and the trial court issued an opinion and order in which it held that it remained vested with jurisdiction to decide the petition for attorney fees and ordered that a hearing be held to determine the amount, if any, petitioner had entitlement to recover. This appeal followed.

## II. STANDARDS OF REVIEW

We review de novo whether a court has subject-matter jurisdiction which is a question of law. *Usitalo v Landon*, 299 Mich App 222, 228; 829 NW2d 359 (2012). "Issues of statutory construction are also questions of law that are reviewed de novo." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 331; 918 NW2d 191 (2018) (citation omitted).

## III. ANALYSIS

Defendant argues that the trial court lacked jurisdiction after the entry of the final order that disposed of all claims and closed the case. We agree.

Circuit courts are courts of general jurisdiction, with "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; see also Const 1963, art 6, § 1. Under MCL 600.1021(1)(a), the family division of circuit courts have jurisdiction over divorce cases and ancillary matters. In *Usitalo*, 299 Mich App at 228-229 (quotation marks and citations omitted), this Court explained:

Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case. Subject-matter jurisdiction describes the types of cases and claims that a court has authority to address.

"When there is a want of jurisdiction over the parties or the subject matter, no matter what formalities may have been taken by the trial court, the action is void because of its want of jurisdiction." *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992). Generally, when an order of dismissal has been entered in a divorce case, no suit remains pending between the parties. *Baskin v Dingeman*, 236 Mich 15, 19; 209 NW 925 (1926). In *Souden v Souden*, 303 Mich App 406; 844 NW2d 151 (2013), this Court considered whether a circuit court had jurisdiction to enforce against a party an attorney charging lien after entry of a judgment of divorce that specifically provided that the parties' attorneys each retained a lien on their respective client's share of the marital assets to insure payment. This Court explained:

In general, “the jurisdiction of a divorce court is strictly statutory and limited to determining the rights and obligations between the husband and wife, to the exclusion of third parties. . . .” *Estes v Titus*, 481 Mich 573, 582-583; 751 NW2d 493 (2008) (quotation marks and citation omitted); see also MCL 552.6. Third parties can be joined in a divorce action only if they are alleged to have conspired with one spouse to defraud the other spouse. *Estes*, 481 Mich at 583.

Specifically, a divorce court lacks jurisdiction to adjudicate the rights of third-party creditors. *Yedinak v Yedinak*, 383 Mich 409, 414-415; 175 NW2d 706 (1970). [*Id.* at 410.<sup>2</sup>]

In *Yedinak*, 383 Mich at 414-415, our Supreme Court considered the propriety of the circuit court’s entry of a judgment of divorce that imposed an equitable lien against properties to secure an indebtedness to the defendant husband’s brothers for work they performed on the marital home and explained:

There are two kinds of jurisdiction, that is to say, jurisdiction of parties and jurisdiction of subject matter. The most that can be said of the mentioned court rules is that, if they pertain at all to jurisdiction, it is to the former and not the latter kind. One must read these rules in vain to find therein any mention of or grant to courts of equity, in divorce proceedings, of power to disregard statutory provisions pertaining to divorce and to litigate the rights of others than the husband and wife.

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In *Maslen v Anderson* (1910), 163 Mich 477, it was said and held that parties cannot confer jurisdiction over a subject matter, by consent, upon a tribunal from which the law has withheld it.

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What this court has all along held is that it is beyond the power of a court of equity in divorce proceedings to grant a judgment to others than the husband and wife because such proceedings are strictly statutory and the statutes governing divorce do not provide for it.

“In domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule, MCR 3.206([D]).” *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005).<sup>3</sup> When interpreting a statute, this Court endeavors to give effect to the intent of the Legislature as indicated by the language of the statute itself. *Detroit Pub Schs v Connecticut*, 308 Mich App 234,

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<sup>2</sup> This Court relied on cases that recognized a divorce court’s power to enforce common law attorney charging lien against a client’s property that is secured by a judgment of divorce which it explained concerned an issue “ancillary to a trial court’s exercise of jurisdiction over the cases before it.” *Souden*, 303 Mich App at 411-412 (citation omitted).

<sup>3</sup> *Reed* cites MCR 3.206 subpart (C) which after amendment in 2018 is now subpart (D).

247-248; 863 NW2d 373 (2014). If the statutory language is unambiguous, this Court must enforce the statute as written. *Id.* at 248. Further, “nothing may be read into a statute that is not within the intent of the Legislature apparent from the language of the statute itself.” *Id.* The rules of statutory construction also apply to the construction of court rules. *Hill v LF Transp, Inc*, 277 Mich App 500, 507; 746 NW2d 118 (2008).

MCL 552.13(1) provides in relevant part:

In every action brought . . . for a divorce[], the court may require either party to pay . . . any sums necessary to enable the adverse party to carry on or defend the action, *during its pendency*. [Emphasis added.]

MCL 552.13(1) plainly provides that the trial court has authority to order a party’s payment of the other party’s attorney fees during the pendency of the divorce case. There is nothing ambiguous about the temporal limitation imposed by the statute. MCL 552.13(1) does not authorize ordering a party to pay the other party’s attorney fees after the case had been dismissed and closed. Accordingly, after entry of the dismissal order that specifically provided that the order resolved the last pending claims and closed the case, MCL 552.13(1) did not authorize the trial court’s exercise of jurisdiction over the attorney fees dispute.

MCR 3.206(D) provides:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

“In actions governed by statute, a party must have standing bestowed by statute” and “legal rights do not accrue on the basis of a relationship that does not meet the statutory requirements.” *Ryan v Ryan*, 260 Mich App 315, 332; 677 NW2d 899 (2004) (citation omitted).<sup>4</sup> Under MCL 552.6, an action for divorce is commenced by the filing of a complaint for divorce by one of the married persons and the married persons constitute the parties in a divorce action. The plain language of MCR 3.206(D) permits a “party” to a divorce proceeding to request that the other

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<sup>4</sup> The *Ryan* court concluded that “while the family division of the circuit court has subject-matter jurisdiction over married couples seeking a divorce, it is without jurisdiction over claims filed by children to divorce their parents.” *Ryan*, 260 Mich at 332.

party pay all or part of the attorney fees incurred related to the action or proceeding including those incurred during proceedings after entry of judgment. MCR 3.206(D), however, does not authorize a nonparty to the divorce action to do so. Petitioner is not a party to the divorce action and contrary to her contention, despite having served plaintiff as her counsel, petitioner cannot claim to be a party to the divorce action by virtue of her contractual relationship with plaintiff. Under MCR 3.206(D) a nonparty such as petitioner cannot claim entitlement to petition the trial court regarding payment of her attorney fees.<sup>5</sup>

To the extent that the trial court relied on MCL 552.13(1) and MCR 3.206(D) for its decision that it had jurisdiction to consider and decide petitioner's petition, it erred as a matter of law. MCL 552.13 applied during the pendency of the divorce action but once the trial court entered its final order and closed the case, that statutory provision no longer applied. MCR 3.206(D) did not apply because petitioner is not a party to the divorce action.

Petitioner also asserts that, under our Supreme Court's decision in *DePew v DePew*, 373 Mich 162; 128 NW2d 533 (1964), the trial court had jurisdiction over her petition after it dismissed the divorce action and closed the case. In *DePew*, our Supreme Court considered whether the trial court had jurisdiction to decide a petition by the plaintiff wife's attorneys for fees where the plaintiff did not join or authorize the petition and the trial court dismissed the divorce action because the parties reconciled. *Id.* at 163. Our Supreme Court quoted the dismissal order which expressly provided for dismissal " 'except for the pending Petition for Allowance of Attorney's Fees.' " *Id.* at 164. The Supreme Court did not reference, consider, interpret, or apply either MCL 552.13 or MCR 3.206. Nor did it offer explanation for its decision that the trial court "was vested with duly retained jurisdiction to determine whether and if so in what amount further compensation should be paid, to the plaintiff wife's counsel, by the defendant husband." *Id.* Instead, the Court affirmed the trial court's order. *Id.* at 165.

Analysis of our Supreme Court's *DePew* decision does not permit the conclusion that the Court announced a categorical principle that, regardless of the language used in a trial court's dismissal order in a divorce case, nonparty attorneys may petition after dismissal and closure of the case for payment of their client's attorney fees by the opposing party. Rather, one can reasonably infer from the Supreme Court's specific quotation of the dismissal order's reservation of the attorney fee issue for later determination that the Supreme Court recognized that a trial court speaks through its orders and judgments. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). Our Supreme Court considered the language of the dismissal order and concluded that the trial

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<sup>5</sup> Petitioner also argues that *Safdar v Aziz*, 327 Mich App 252; 933 NW2d 708 (2019), supports her argument that she is a "party" for purposes of understanding and interpreting MCR 3.206(D). The argument lacks merit because the case concerned who constituted a "party" under the Hague Convention on the Civil Aspects of International Child Abduction. *Safdar* did not address the term "party" as used in MCR 3.206(D) which plainly references a "party" to a divorce proceeding and does not expand the meaning of the term to encompass attorneys who represent clients in divorce proceedings. Further, petitioner's argument in this regard is premised on the incorrect notion that, as a party to the contract between herself and her client, she can claim "party" status under MCR 3.206(D). "A creditor is not a party to a divorce proceeding[.]" *Estes*, 481 Mich at 591.

court intended to retain jurisdiction and later decide the fee issue, and it upheld that discretionary decision. In this case, the trial court's dismissal order included no such reservation language. The record reflects that the parties did not intend to shift plaintiff's attorney fees obligation to defendant and they stipulated to the entry of an order wherein the trial court specifically gave the dismissal finality without reservation. The trial court incorrectly read *DePew* to extend the trial court's jurisdiction to render decisions after final dismissal and closure of a divorce case. *DePew*, however, does not go that far. Had the parties in this case stipulated to the retention by the trial court over the attorney fee dispute, as in *DePew*, the trial court would have retained jurisdiction. The parties in this case did not do so, and therefore, *DePew* is inapposite to the facts of this case.

Petitioner additionally contends that *Stackhouse v Stackhouse*, 193 Mich App 437; 484 NW2d 723 (1992), also supports the trial court's jurisdiction decision. We disagree.

In *Stackhouse*, this Court addressed whether a trial court in a divorce action where the dependent spouse died before entry of that judgment of divorce had jurisdiction to award attorney fees upon the request of the deceased client's counsel. *Id.* at 438. Before the divorce trial, the plaintiff requested attorney fees from the defendant. The trial court issued an opinion following the divorce trial but the trial court failed to address the attorney fees issue. The plaintiff sought clarification from the trial court regarding matters including the attorney fees issue. Before the trial court decided the motion and before the entry of a judgment of divorce, the plaintiff died. One month later before the trial court dismissed the divorce action, the plaintiff's attorney moved for an order requiring the defendant to pay his deceased client's attorney fees. The trial court granted the motion and the defendant appealed on the ground that the trial court lacked jurisdiction to enter an order for payment of fees because the divorce action abated upon the plaintiff's death. *Id.* at 438-439.

This Court distinguished *DePew* and found it inapposite to the facts of the case because it did not address the situation where the dependent spouse died before entry of a judgment of divorce. *Id.* at 440-441. This Court next considered how other jurisdictions resolved similar cases. It found instructive a New Jersey Supreme Court decision that, although a divorce action abates upon the death of a party, the dependent spouse's claim for attorney fees did not abate with the death of that spouse because the need to shift responsibility for payment of the decedent's fees remained, and to exempt the husband because of the death would be unfair and incompatible with the policy underlying the shifting of attorney fees and costs in divorce actions. *Id.* at 442. This Court took note that the marital estate vested with the living spouse and that the decedent's attorney would be relegated to filing a claim against the decedent's estate which lacked enough money to cover the outstanding attorney fees owed. This Court opined that, even if the decedent's estate could cover the cost, the surviving spouse should not gain a windfall from the decedent's untimely death. *Id.* at 442-444. This Court stated that MCL 552.13 rested on the longstanding policy that "the interests of justice are served when the financially deprived party to a divorce action is furnished with the requisite means of prosecuting or defending the suit" and attorneys should not be placed "in the position of weighing the risk of nonpayment on the basis of a prospective client's longevity[.]" *Id.* at 443 (quotation marks and citation omitted).

This Court next considered whether the deceased client's attorney could petition in his own right for the fees after his client's death. In this regard, this Court considered the applicability of MCR 3.206 which permitted either party to request the other spouse to pay attorney fees. This

Court held “that an attorney may bring a motion for fees pursuant to MCL 552.13 in his own name where the client has died and the client would otherwise be entitled to have the attorney fees, or a portion thereof, paid by the other spouse.” *Id.* at 444-445.

In this case, before the dismissal, petitioner moved to shift plaintiff’s responsibility to defendant to pay her attorney fees. After plaintiff’s new counsel advised that plaintiff did not desire to pursue defendant for payment of the attorney fees, petitioner did not pursue the motion. The record reflects that plaintiff had no intention of having defendant pay her attorney fees. Petitioner then filed her petition without plaintiff’s consent to recover the fees owed to her by plaintiff. Approximately coincident to that action, plaintiff fired petitioner. Plaintiff and defendant then stipulated for the dismissal of the divorce action without providing in the dismissal order for the trial court’s retention of jurisdiction to decide the attorney fee issue. The trial court entered the dismissal order about six days after petitioner filed her petition. The order specifically stated that it resolved all claims and closed the case. After dismissing and closing the case, the trial court lacked jurisdiction to consider and decide the petition.

We conclude that *Stackhouse* is inapposite because the trial court in that case had not entered a final order closing the case after the plaintiff’s death. Although the trial court could not enter a judgment of divorce following the plaintiff’s death, the case remained pending during which ancillary issues such as the attorney fees dispute could be determined by the trial court under MCL 552.13. Unlike *Stackhouse*, however, the trial court in this case entered a final order dismissing the action and closing the case.

This case is akin to *Dillon v Shiawassee Circuit Judge*, 131 Mich 574; 91 NW 1029 (1902), in which our Supreme Court considered whether the circuit court could entertain a petition filed by the wife’s former attorney to hold the husband in contempt for failing to obey an order requiring him to pay the wife’s attorney fees after the parties reconciled and stipulated to the dismissal of the divorce action. The circuit court held the husband in contempt and ordered him to pay the fees and costs. The husband appealed. *Id.* at 574-575. Our Supreme Court observed that the statute applicable to divorce actions that authorized the circuit court to enter orders in divorce proceedings did not prevent the parties from reconciling and discontinuing the divorce proceedings. The Supreme Court reasoned that once the case concluded the circuit court could not enter any further order. Therefore, the Supreme Court reversed the contempt order entered after the dismissal of the divorce case. *Id.* at 575-576.

This case is also similar to *Binkow v Binkow*, 298 Mich 609; 299 NW 734 (1941), in which our Supreme Court considered the propriety of the circuit court’s amendment of a decree that required the defendant husband to pay spousal support for a specified two-year period, and after the time limit elapsed, the wife petitioned for and obtained an extension of her spousal maintenance. The Supreme Court observed that a circuit court derived its jurisdiction solely under statutory authority in divorce and separate maintenance proceedings. It found that the original decree lacked a reservation of jurisdiction that permitted the circuit court to consider the wife’s petition, and therefore, the circuit court lacked jurisdiction to order the alteration of the decree after the period elapsed. The circuit court’s action when it lacked jurisdiction constituted reversible error. *Id.* at 613-614.



In this case, the trial court dismissed the divorce action by order that lacked any reservation of jurisdiction to decide later the attorney fees dispute. The trial court's order constituted a final order that disposed of all claims and closed the case. Once closed, the trial court lacked jurisdiction to enter further orders. The final order divested the trial court of jurisdiction over the divorce action and further divested it of jurisdiction to decide ancillary matters such as the attorney fees petition. Had the trial court reserved jurisdiction over the matter, it undoubtedly could conduct further proceedings in the manner described and upheld in *DePew*. The order, however, did not reserve the trial court's jurisdiction, and therefore, *DePew* is inapposite and does not control the disposition of this appeal. Further, *Stackhouse* is also inapposite. This case, having been dismissed by the final order that disposed of all claims and closed the case, the trial court could not continue to consider matters and enter further orders, there being no case or controversy before it over which it could exercise jurisdiction. Because the trial court's jurisdiction in divorce actions is entirely governed by statute, and the trial court's authority to order a party to pay the other party's attorney fees is governed by MCL 552.13(1), which specifically limits doing so during the divorce action's pendency, the trial court erred by holding that it had jurisdiction to consider and decide the petition. Accordingly, we reverse the trial court's jurisdiction decision. The trial court erred by holding that it had jurisdiction to consider and decide the petition for attorney fees because it previously entered a final order that disposed of all claims and closed the divorce case, and that order divested the trial court of jurisdiction over the divorce action and also divested it of jurisdiction to decide ancillary matters such as the attorney fee dispute.

Reversed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford