

STATE OF MICHIGAN
COURT OF APPEALS

ROBYN LYNN BENHAM, a/k/a ROBYN LYNN
WRIGHT,

UNPUBLISHED
July 17, 2014

Plaintiff-Appellee,

v

No. 315637
Muskegon Circuit Court
LC No. 08-241139-DM

DANIEL DOYLE BENHAM,

Defendant-Appellant,

and

CAROL BENHAM,

Defendant.

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Defendant Daniel Doyle Benham¹ appeals by right the March 23, 2012, order of the trial court, which denied his motion for attorney fees and costs. We affirm.

On November 7, 2008, plaintiff filed a divorce petition, requesting that her and defendant's marriage be dissolved and that custody of their two children be granted to her. In December 2008, the trial court entered an ex parte order, awarding plaintiff "sole legal and physical custody" the children. At the time the December 2008 order was entered, defendant was incarcerated, and the trial court ordered that defendant's parenting time would be "suspended pending his release from incarceration." On June 11, 2009, the trial court entered a judgment of divorce, dissolving defendant and plaintiff's marriage.

On April 14, 2010, defendant, who was in federal prison, moved the trial court to "modify parenting time." On July 9, 2010, the trial court entered an order, ordering that

¹ Because Carol Benham is not a party to this appeal, "defendant" as used herein refers only to defendant Daniel Doyle Benham.

defendant would be granted 15 minutes of “telephone parenting time” with the children on alternating Sunday evenings. In relevant part, it was also ordered that defendant not speak to the children “about his conviction,” the reason for his imprisonment, his views “about being a political prisoner,” and his views about being a “tax protestor.”

On August 16, 2012, defendant moved the trial court to enforce the parenting time order. He alleged that, in February 2011, plaintiff “permanently blocked [him] from calling” the children. Defendant also requested that the trial court modify the parenting time order to permit him to speak to the children about the circumstances surrounding his incarceration and his views regarding taxes. For reasons that are not apparent from the record, a motion hearing on the August 2012 motion was never held. On February 8, 2013, defendant filed a motion, requesting that the trial court hold a hearing to decide the issues raised in the August 2012 motion. On March 25, 2013, the trial court held a motion hearing. At the hearing, defendant moved for attorney fees and costs. The trial court denied defendant’s motion to modify the parenting time order and denied his request for attorney fees and costs. Defendant now appeals.

Defendant had an appeal of right from the March 26, 2013, postjudgment order denying his motion for attorney fees and costs. See MCR 7.202(6)(a)(iv). However, on appeal, defendant also seeks to directly challenge the July 9, 2010, parenting time order, through which the trial court restricted defendant from discussing the circumstances surrounding his incarceration and his views on paying taxes with the children. Specifically, defendant argues for the first time in this appeal that his rights to equal protection and due process were violated by the trial court’s restrictions on his ability to speak to the children about certain issues. Although these arguments are entirely related to the trial court’s July 2010 parenting time order, defendant never appealed the July 2010 order, and the time for filing an application for leave to appeal that order has long since passed. MCR 7.205(G)(3). The March 26, 2013, order from which defendant appeals is “a postjudgment order” denying attorney fees and costs. See MCR 7.202(6)(a)(iv). Under MCR 7.203(A), the scope of the appeal from that order is “limited to the portion of the order with respect to which there is an appeal of right,” i.e., whether the trial court properly denied the motion for attorney fees and costs. See MCR 7.203(A). Therefore, we lack jurisdiction to consider the constitutionality of the July 2010 order because it is outside the scope of the appeal from the March 26, 2013, order denying the motion for attorney fees and costs.

Next, defendant argues that the trial court improperly denied his motion for attorney fees and costs. On appeal, defendant argues, without citing authority, that he was entitled to attorney fees and costs because plaintiff “triggered” the filing of the motion to enforce the parenting time order and because he prevailed “on a major issue.” “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.” *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). Defendant’s argument is abandoned. *Id.* Nevertheless, we have reviewed the issue and find that defendant was not entitled to attorney fees or costs.

Defendant also requests that we “take judicial notice” of motions that are allegedly currently pending in the lower court. However, defendant does not explain why judicial notice of these alleged motions is necessary or relevant. Moreover, on appeal, this Court’s review is generally limited to the record presented to the trial court, MCR 7.210(A), and “[e]nlargement of

the record on appeal is generally not permitted,” *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). We decline to take judicial notice of the alleged motions. Defendant further requests that this Court vacate or deem void a personal protection order. Because the personal protection order was entered in an entirely different case and is not related to the order appealed, we do not have jurisdiction to consider the order. *In re Contempt of Johnson*, 165 Mich App 422, 427; 419 NW2d 419 (1988).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Douglas B. Shapiro