

State of Minnesota
In Court of Appeals

In re the Marriage of:

Patricia L. Rooney,

Respondent,

v.

Michael T. Rooney,

Respondent,

and

Christ's Household of Faith, Inc.,

Third-Party Defendant, Appellant,

and

Ramsey County,

Intervenor, Respondent.

RESPONDENT PATRICIA L. ROONEY'S BRIEF

Steven P. Aggergaard (#336270)

Mark R. Bradford (#335940)

BASSFORD REMELE,

A Professional Association

33 South Sixth Street, Suite 3800

Minneapolis, MN 55402-3707

(612) 333-3000

Attorneys for Christ's Household of Faith, Inc.

Michael T. Rooney

825 Marshall Avenue

St. Paul, MN 55104

(651) 602-3200

Respondent, Pro se

Joseph F. Schmidt (#96994)

THE LAW OFFICES OF

JOSEPH F. SCHMIDT

The Kenosha - Suite 4

1204 Harmon Place

Minneapolis, MN 55403

(612) 333-5040

Attorney for Respondent Patricia L. Rooney

Amy Anderson (#120445)

Assistant Ramsey County Attorney

Ramsey County Government Center-West

50 West Kellogg Boulevard, Suite 415

St. Paul, MN 55102

(651) 266-3187

Attorney for Ramsey County

TABLE OF CONTENTS

Table of Authorities	2
Statement of Legal Issues	3
Statement of the Case	4
Statement of Facts	4
Scope and Standard of Review	7
Law and Argument	
I. The trial court’s finding of contempt and order for incarceration of Rev. Donald Alsbury was a reasonable exercise of the trial court’s discretion, where Rev. Alsbury refused to obey orders of the court. . . .	8
II. The trial court erred in determining that the judgment against Christ’s Household of Faith, Inc. for arrearages for child support and maintenance operated as a bar to recovery of attorneys’ fees incurred in enforcing such obligations	10
Conclusion	13
Certification of Brief Length	14

TABLE OF AUTHORITIES

Cases:

Hauschildt v. Beckingham, 686 N.W.2d 829, 840 (Minn. 2004) 7, 11

Hauser v. Mealey, 263 N.W.2d 803, 807 (Minn. 1978) 11

Hopp v. Hopp, 156 N.W.2d 212 (Minn. 1968) 7, 8

Myers v. Price, 463 N.W.2d 773, 776 (Minn.App.1990)
review denied (Minn. Feb. 4, 1991) 12

Paulos v. Johnson, 597 N.W.2d 316, 319 (Minn.App.1999),
review denied (Minn. Sept. 28, 1999) 11

Rooney v. Rooney, 669 N.W.2d 362 (Minn. App. 2003) 9

State v. Joseph, 636 N.W.2d 322 (Minn. 2001) 7, 12

Statutes:

Minn. Stat. § 518A.53(5)(c) 4, 6,
10, 12, 13

STATEMENT OF LEGAL ISSUES

- I. Did the trial court err in finding Rev. Donald Alsbury in contempt and directing incarceration, where he refused to obey orders of the court?**

The trial court ruled that contempt and incarceration were appropriate.

- II. Did the trial court err in determining that the judgment against Christ's Household of Faith, Inc. for child support and maintenance arrearages operated as a bar to a recovery of attorneys' fees incurred in enforcing such obligations?**

The trial court ruled that the judgment did operate as a bar to recovery of attorneys' fees incurred in enforcing the obligations.

STATEMENT OF THE CASE

Respondent Patricia L. Rooney has a judgment against Christ's Household of Faith, Inc. ("CHOF") in the amount of \$234,945.85 entered on December 3, 2008. CHOF has refused to pay the judgment, and refuses to answer post judgment discovery requests. The trial court issued an order on March 12, 2009 directing CHOF to provide the requested information, and CHOF refused to do so. Subsequently the trial court found the Rev. Donald Alsbury in civil contempt of court and directed his incarceration, which contempt could be purged upon compliance with the discovery requests. CHOF refuses to comply, and brought this appeal seeking to overturn the contempt sanction.

In addition to the contempt proceedings, Patricia L. Rooney brought a post judgment motion asking for an award of attorneys' fees incurred in enforcement of the support obligations pursuant to Minn. Stat. 518A.53(5)(c). The trial court denied that motion on the grounds that entry of the judgment operated as a bar to a recovery of attorneys' fees. Patricia L. Rooney filed a Notice of Review seeking review of that decision.

STATEMENT OF FACTS

The marriage of Patricia L. Rooney and Michael T. Rooney was dissolved by a Judgment and Decree issued in 1988. Mr. Rooney was directed to pay child support and maintenance. Mr. Rooney was, and still is, a member of Christ's Household of Faith, Inc. ("CHOF"). The members of CHOF provide services to CHOF's for-profit enterprises and their living needs are met by CHOF. Mr. Rooney became delinquent in

his obligations, and an order for withholding was served upon Christ's Household of Faith, Inc., in 1990.

Eventually, through the course of several hearings, including two trials, numerous motions, and three appellate court decisions, as well as a federal court proceeding commenced by CHOF, it was determined that CHOF was liable for the child support and maintenance arrearages and judgment in the amount of \$234,945.85 was entered against CHOF on December 3, 2008. In the course of those proceedings, CHOF alleged that payment of child support or maintenance to Patricia L. Rooney violated its constitutional rights to free expression of religion. All of those arguments were exhaustively examined and rejected, with the finding that payment of obligations did not even incidentally infringe upon CHOF's expression of religion.

After judgment was entered against CHOF, it refused to pay the judgment, and refused to answer post judgment discovery intended to obtain information about its assets, liability and income. After notice and a hearing, CHOF was directed by the trial court to provide such information. (*See*, Addendum to CHOF's Appellate Brief). CHOF refused to do so, and after further notice and hearing for the purpose of imposing contempt sanctions against CHOF and its officers, the trial court found that Rev. Donald Alsbury was the person of authority in CHOF who made the decision to not comply with the court order, it made a finding that Rev. Alsbury had the ability to comply and was in contempt of the court's order, and directed incarceration with the ability to purge such contempt by complying with the court's order. (*See*, Addendum to

CHOF's Appellate Brief). Rev. Alsbury refused to purge the contempt, and refused to report for incarceration, and remains at large at the date of this writing.

In connection with the post judgment enforcement proceedings, Patricia L. Rooney sought an award of attorneys' fees in the amount of \$52,753.00 for fees incurred in enforcing the liability for child support and maintenance against CHOF, as provided for by Minn. Stat. 518A.53(5)(c). This was denied by the trial court on the grounds that the entry of the judgment operated as a bar to such relief.

CHOF moved the trial court for a stay pending the appeal, and the trial court granted the motion upon the condition that CHOF post a supersedeas bond in the amount of \$275,000, to protect Patricia L. Rooney from any damage she may incur as a result of the stay. CHOF declined to post the bond.

SCOPE AND STANDARD OF REVIEW

The standard of review in reviewing a finding of contempt is that the decision of the trial court is an exercise of discretion and will not be reversed unless it is clearly erroneous. *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968). The question of what analysis and findings must be done by the trial court to support its decision, as well as whether entry of a judgment operates as a bar to recovery of statutory authorized attorneys' fees are legal questions and are reviewed de novo by the appellate court. *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968); *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004); *State v. Joseph*, 636 N.W.2d 322.

LAW AND ARGUMENT

I. The trial court's finding of contempt and order for incarceration of Rev.

Donald Alsbury was a reasonable exercise of the trial court's discretion, where Rev. Alsbury refused to obey orders of the court.

Civil contempt orders normally must include adequate findings to provide a basis for meaningful review. *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968). CHOF argues that the trial court's contempt order is lacking in some respects, and this brief will address those objections set forth by CHOF in its appellate brief.

CHOF argues that the Rev. Donald Alsbury does not have the ability to comply with the court's order for disclosure of financial information because it would violate his religious beliefs. He does admit that the decision on whether or not to disclose was his decision, and that CHOF has the information available to it. The issue, then, really is not whether or not Rev. Alsbury has the *ability* to comply, as he clearly does have that ability, it is whether his reasons for not doing so justify his conduct. His statement is that to do so would violate his free expression of religion, but that statement must be analyzed in terms of whether or not such disclosure would in fact infringe on his free expression of religion.

Rev. Alsbury objects to disclosure of financial information because it might be used by a former member (Patricia L. Rooney), to collect a valid judgment that she holds against CHOF. (*See*, Appellant's Brief, page 13). Presumably however, if the Internal Revenue Service or Department of Revenue were to audit CHOF and seek similar information, CHOF would readily comply. CHOF, then, does not object *per se* to

the release of such information, but objects because it may facilitate the payment of past due child support and maintenance to Patricia L. Rooney. (Appellant's Brief at page 13: "This is particularly true with regard to providing information that could be used to secure *spousal maintenance* to Patricia Rooney" (emphasis in the original).

However, the Court of Appeals has previously ruled that payment of child support and maintenance by CHOF to Ms. Rooney does not unduly infringe on religious expression. *Rooney v. Rooney*, 669 N.W.2d 362 (Minn. App. 2003) at page 369. If payment of support does not infringe on free expression, compliance with an order which has as its purpose the facilitation of such payment cannot as a matter of law infringe on religious expression. Further, the mere requirement that CHOF produce financial information does not by itself ensure that any payment is made, and does not require CHOF to perform any action which infringes on any religious expression.

CHOF argues that the record shows that the contempt order is not likely to lead to compliance and thus contempt should not be available as a remedy. The only evidence of this assertion is CHOF's self-serving statements that they will not comply. CHOF compares itself to the participants in *Hershberger I*, 444 N.W.2d at 287 and *Hershberger II*, 462 N.W.2d at 396, where the Minnesota Supreme Court noted that the sincerely held religious beliefs included a "willingness to be incarcerated" and "[t]he fact that at least one of the appellants has already actually suffered jail incarceration". CHOF argues that "The exact circumstance is present here" (At page 22 of Appellant's Brief). However, the fact is that Rev. Alsbury is not willing to be incarcerated, and in fact has not at this writing reported to jail as ordered to do so by the court in August of

2009. Rev. Alsbury does not appear to have either the convictions stated or the willingness to accept the consequences of them. The trial court is not required to accept as true self-serving statements which have no basis other than a desire to prevent a former member from receiving funds due her.

II. The trial court erred in determining that the judgment against Christ's Household of Faith, Inc. for arrearages for child support and maintenance operated as a bar to recovery of attorneys' fees incurred in enforcing such obligations.

Minn. Stat. 518A.53(5)(c) provides that "a payor of fund is liable for reasonable attorneys' fees of the obligee or public authority in enforcing liability under this paragraph". CHOF's liability for withholding commenced when it was served with an order for income withholding in 1990. Thus, the statute creates a liability for fees incurred from and after 1990, which are reasonably and necessarily incurred in enforcing such liability.

Patricia L. Rooney submitted an affidavit and detail of fees incurred totaling \$61,181.57, and requested by motion an award of only \$52,753.00. This amount is obviously reasonable, given that it covers a period of time of eight years, two trials, two courts of appeals proceedings, collection activities, a federal court action involving Patricia L. Rooney's rights, post judgment proceedings and numerous other motions. The amount requested is appropriate given Patricia L. Rooney's ability to pay fees and is commensurate with the amount in controversy, and was necessarily incurred to enforce such liability. But for the work done by counsel, no recovery would be had.

The motion for fees was made to the trial court after the judgment was entered. The trial court, in denying the motion, did not dispute either the reasonableness of the amount requested or the necessity for such fees, but held that the judgment entered December 3, 2008 barred the later request for fees.

The trial court did not cite any authority for its proposition or provide any analysis, but presumably the bar it is citing is the legal principle that all claims arising out of the same set of facts must be asserted in one proceeding, and that the failure to do so prevents a later claim based on the same set of facts. Minnesota courts do not allow a plaintiff to split a cause of action, on the reasoning that a defendant should not be twice vexed for the same cause, and that there must be an end to litigation. *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978). The doctrine or merger by judgment and bar of claims is one of the two principles of *res judicata*, the other being issue preclusion, and it is applied only under certain circumstances. *Res judicata* is a finality doctrine designed to ensure an end to litigation. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Under the doctrine of *res judicata*, a final judgment on the merits is an absolute bar to a second suit for the same cause of action and is conclusive, not only as to every matter actually litigated, but also as to every matter that might have been litigated. *Paulos v. Johnson*, 597 N.W.2d 316, 319 (Minn.App.1999), review denied (Minn. Sept. 28, 1999). Because *res judicata* precludes litigation of subsequent claims arising out of the same group of operative facts, whether or not a particular issue or legal theory was actually litigated in the original action, a party must "assert all alternative theories of recovery in the initial action." *Hauschildt*, 686 N.W.2d at 840.

Four conditions must apply for a judgment to bar a claim. They are: (1) there has been a final judgment on the merits, (2) the same cause of action is involved, (3) the parties are identical or in privity, and (4) the estopped party had a full and fair opportunity to litigate the matter. *Myers v. Price*, 463 N.W.2d 773, 776 (Minn.App.1990) (final judgment, same cause of action, identical parties), review denied (Minn. Feb. 4, 1991). All four prongs must be met for *res judicata* to apply. *State v. Joseph*, 636 N.W.2d 322, at 327.

In this case, the facts which gave rise to Patricia L. Rooney's claim for support and maintenance relate to Michael T. Rooney's participation in CHOF, its operation of for profit enterprises and its failure to make withholdings as required by law. The facts relating to the claim for attorneys' fees are CHOF's refusal to pay support and the litigation necessary to obtain enforcement, with eventual determination of liability and eventual determination of the amount due, and post judgment enforcement efforts. The facts and causes of action are clearly separate, and thus the claim for fees under Minn. Stat. 518A.53(5)© is not barred by the judgment for unpaid support. Further, it should be noted that consideration of the fee issue by the trial court does not vex CHOF twice for the same cause, nor does it protract the litigation in this matter.

Since the claim for fees is not barred by the judgment, the Court of Appeals should remand that question to the trial court for further consideration. Determination of the reasonable amount of fees by motion is appropriate, and is a procedure routinely followed by trial courts in similar situations. See, for example, *Obraske v. Woody* 294 Minn. 105, 108, 199 N.W.2d 429, 431 (1972) (mechanic's liens), *Ly v. Nystrom* 615 N.W.2d

302 (Minn. 2000) (8.31 proceedings) *Gibson v. Burnet* 2003 MN 513 (MNCA, 2003) Rule 11 sanctions request.

CONCLUSION

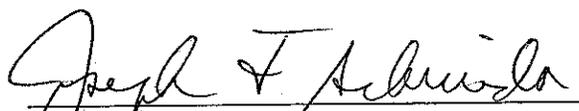
The trial court's findings of contempt and order for incarceration are adequately supported by the record and within the sound discretion of the trial court. The request for fees as authorized by Minn. Stat. 518A.53(5)(c) is not barred by entry of a judgment for support and maintenance, and may be determined by the trial court by motion. Patricia L. Rooney requests that the Court of Appeals dismiss CHOF's appeal, and remand the matter for further consideration by the trial court of the request for 518A.53(5)(c) fees.

It is time for the Court to enforce CHOF's support obligations. As Federal District Court Judge Davis noted in his decision to dismiss the federal action:

"After more than two decades of on-and-off litigation, multiple Minnesota courts have reviewed the facts of this case. They have all invariably decided that Patricia Rooney deserves the child support and maintenance payments. The Court hopes that its decision will bring this matter to a rest. After exhausting many available avenues of appeal, CHOF can no longer use dilatory litigation tactics to avoid paying the support it owes. (Page 18 of Memorandum of Law and Order dated May 17, 2009).

Respectfully submitted,

Dated: 10/19/09


Joseph F. Schmidt, #96994
The Kenosha - Suite 4

1204 Harmon Place
Minneapolis, MN 55403
(612) 333-5040

Attorney for Appellant Patricia L. Rooney

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. Rules of Civ. App. Pro. 132.01, subd. 1 and 3, for a brief produced with proportional Book Antiqua font. The length of this brief is 3,411 words. This brief was prepared using Microsoft Word 2003.

DATED: October 19, 2009.

Joseph F. Schmidt, #96994
The Kenosha - Suite 4
1204 Harmon Place
Minneapolis, MN 55403
(612) 333-5040

Attorney for Appellant Patricia L. Rooney