[Cite as *Brock-Hadland v. Weeks,* 2015-Ohio-834.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

SHAUNA M. BROCK-HADLAND	)	CASE NO. 13 MA 170
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	OPINION
	)	
JOHN H. WEEKS, JR.	)	
	)	
DEFENDANT-APPELLEE	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio Case No. 10 JH 1534
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellant:	Atty. William R. Biviano Biviano Law Firm Huntington Bank Tower, Suite 700 108 Main Avenue SW Warren, Ohio 44481-1010
For Defendant-Appellee:	John H. Weeks, Pro se 232 Brook Wood Drive Apartment 15 South Lyon, MI 48178

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: March 3, 2015

[Cite as *Brock-Hadland v. Weeks,* 2015-Ohio-834.]
WAITE, J.

{¶1} Appellant Shauna Brock-Hadland appeals the decision of the Mahoning County Court of Common Pleas, Juvenile Division, denying a motion for attorney fees, litigation expenses, guardian ad litem fees, and frivolous conduct fees, related to a child custody dispute. Appellant is the mother of minor child A.W., and will be referred to in this appeal as "Mother." The father, Appellee John H. Weeks, Jr. ("Father"), filed an underlying motion for reallocation of parental rights in April 2012. The matter was litigated to trial and final judgment was rendered on August 28, 2013, denying the motion. Mother filed her motion for fees and expenses on September 26, 2013. The motion was denied on October 3, 2013, leading to this appeal. Mother argues that the trial court was required to wait fourteen days to rule on the motion for fees based on the local rules of the Mahoning County Court of Common Pleas, and that the court was required to hold a hearing regarding fees sought for allegedly frivolous conduct pursuant to R.C. 2323.51. The record reflects that the court had the ability to deny the motion on its face and was not required to wait. Further, no hearing is required on an R.C. 2323.51 motion for frivolous conduct fees if the motion can be denied on its face or if a hearing would be redundant or useless. Mother also failed to support her motion with relevant law. This provided yet another basis for denying the motion on its face. There is no error in the trial court's ruling, and the judgment is affirmed.

{¶2} The case originally fell under the jurisdiction of the juvenile court due to child support and visitation issues surrounding the minor child, A.W., d.o.b. 10/23/08. Mother and Father are the natural parents of A.W. They were never married and

cohabitated for only a short period of time. Mother lived in Mahoning County, and Father primarily lived in Michigan. The parties originally entered an agreed judgment entry on all issues in July of 2011. Mother became the residential parent, while Father was granted visitation rights and was required to pay child support.

{¶3} On April 25, 2012, Father filed a motion seeking reallocation of parental rights. This was in response to Mother's motion to relocate with the child to Louisiana so that she could be with her husband. After more than a year of contentious litigation, the court denied Father's motion for reallocation of parental rights on August 28, 2013. Less than 30 days later, on September 26, 2013, Mother filed her motion seeking fees and expenses, including fees for allegedly frivolous conduct, arguing that fees were appropriate because the outcome of the trial was contrary to Father's position. Mother did not request a hearing. The motion was denied on October 3, 2013, on the grounds that Mother was not entitled to attorney fees and litigation expenses merely because she prevailed at trial, and that there were genuine issues resolved at trial, some of them regarding the fact that the guardian ad litem opined that Father should be granted custody and that the court should award him extra visitation time because he had not received all of his court-ordered visitation. The court also noted that Mother's motion for fees cited no supportive caselaw. This timely appeal followed. Father has not responded to this appeal.

ASSIGNMENT OF ERROR

> The trial court abused its discretion in denying Appellant's Motion for an Award of Attorney Fees and Costs pursuant to R.C. 2323.51 without a hearing since the motion demonstrated arguable merit and the court violated Appellant's due process rights based on its failure to adhere to local rules of court.

{¶4} Mother argues that the trial court abused its discretion, committed an error of law, and violated her rights of due process, by denying her motion for attorney fees and frivolous conduct fees without waiting at least fourteen days as required by local rule, and without holding a hearing.

{¶5} A trial court has broad discretion in the award of attorney fees or fees for frivolous conduct. *Bittner v. Tri-Cnty. Toyota, Inc.*, 58 Ohio St. 3d 143, 146, 569 N.E.2d 464 (1991). A court's decision on a request for attorney fees or frivolous conduct fees will not be reversed absent an attitude that is unreasonable, arbitrary, or unconscionable. *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 216, 2011-Ohio-5350, 957 N.E.2d 19, ¶11; *Dunbar v. Dunbar*, 68 Ohio St.3d 369, 371, 627 N.E.2d 532 (1994).

{¶6} Mother argues that the trial court violated Mahoning County Local Rule 6(A)(2), which gives an opposing party fourteen days to respond to a motion. Civ.R. 7(B)(2) allows local courts to create local rules regarding the submission and determination of motions without oral hearing. Mahoning County has such rules. Loc.R. 6(A)(2) states:

> Opposition briefs shall be filed no later than fourteen (14) days from the date of filing a motion unless, with leave of Court, an extension is granted. In no event shall an opposition brief be filed later than five (5) days prior to the non-oral hearing date. Motions may be heard and ruled upon the day following the cut-off for filing briefs.

Since this rule is clearly enacted to protect the due process rights of the opposing party rather than the party filing the motion, Mother cannot rely on this rule. In addition, Civ.R. 7(B)(1) also requires that a "motion, whether written or oral, shall state with particularity the grounds therefor". The juvenile court judge was aware of this requirement and noted in her judgment entry that Mother had failed to file any legal basis for the motion for fees, and for that reason, among others, the motion had no merit. Since Mother failed to support the motion with particularity and failed to request a hearing, any alleged error in prematurely denying the motion would be considered invited error and not reversible error. Under the invited error doctrine, "[a] party will not be permitted to take advantage of an error which he himself invited or induced the trial court to make." *Center Ridge Ganley, Inc. v. Stinn*, 31 Ohio St.3d 310, 313, 511 N.E.2d 106 (1987).

{¶7} Mother further argues that it was unfair to rule on the motion without setting a hearing on the matter as per the local rules. However, Loc.R. 6(A)(1) states that motions shall not be set for oral hearing unless approved by the court administrator or ordered by the court. No such approval or order is in the record. It appears that the rule was followed and that neither the court administrator nor the

trial judge thought that a hearing was needed. Mother is not arguing that the local rule is somehow flawed, only that it was not followed. This record reflects that it was followed.

{¶8} Mother argues that she filed her motion, at least in part, under the frivolous conduct statute, R.C. 2323.51(B), and that the statute requires a hearing to be held in all cases, whether requested or not and whether desired by the plaintiff or the defendant. Mother is incorrect in her assertions. The statute does not require a hearing in all cases. The statute states that "[a]n award may be made * * * only after the court does all of the following: (a) Sets a date for a hearing * * *; (b) Gives notice of the date of the hearing * * *." A hearing, then, is only required if a fee award for frivolous conduct is being made. It is not necessary if an award is clearly not being made.

{¶9} Further, the basic rule governing whether a hearing should be held on a motion for frivolous conduct fees is that no hearing is needed if the motion on its face lacks merit:

> Although R.C. 2323.51 allows a trial court to award attorney fees incurred by a party subjected to frivolous conduct, the statute does not mandate such an award. Additionally, though R.C. 2323.51 requires a trial court to hold a hearing before it grants a motion for attorney fees, a hearing is not required when the court determines, upon consideration of the motion and in its discretion, that the motion lacks merit.

State ex rel. Delmonte v. Woodmere, 8th Dist. No. 86011, 2005-Ohio-6489, ¶54. This is also the rule followed by this Court. *See, e.g., Bigelow v. Nguyen*, 7th Dist. No. 08 CO 48, 2009-Ohio-3325, ¶24, citing *Papadelis v. Makris*, 8th Dist. No. 84046, 2004-Ohio-4093, ¶12, and *Adlaka v. Giannini*, 7th Dist. No. 05 MA 105, 2006-Ohio-4611, ¶44.

{¶10} If the motion obviously lacks merit, no hearing is required. Holding such a hearing when the court has already determined that there is no possible basis for the award would be a waste of judicial resources. Mother acknowledges this principle in her brief on appeal, but argues nonetheless that a hearing should have been granted in her case because there were legal arguments that she could have made to prove that Father engaged in some type of frivolous conduct. She raises this argument despite the fact that she did not request a hearing or raise any legal arguments in her motion.

{¶11} Since the position Mother advocates is not the rule in this appellate district, Mother's citations to cases from the Sixth and Tenth District Courts of Appeals are inapplicable. In any event, Mother is incorrect as to the position of the Sixth and Tenth Districts, since they appear to follow the same rule as this Court. *See T.M. v. J.H.*, 6th Dist. No. L-10-1014, 2011-Ohio-283, ¶96 ("While no hearing is required to deny such a motion, due process demands such a hearing when an award may be made."); *Huddy v. Toledo Oxygen & Equip. Co.*, Sixth Dist. No. L-91-328, 1992 WL 95391, *2 ("such a hearing is not required where the court has sufficient knowledge of the circumstances for the denial of the requested relief and

the hearing would be perfunctory, meaningless, or redundant."); *Indep. Taxicab Assn. of Columbus, Inc. v. Abate*, 10th Dist. No. 08AP-44, 2008-Ohio-4070, ¶14 ("R.C. 2323.51 does not require a trial court to conduct a hearing prior to denying a motion for attorney fees.").

{¶12} The trial court was in the best position to determine whether the motion for frivolous conduct fees had any possible merit, as it immediately followed the litigation over reallocation of parental rights. The court determined that within the underlying reallocation litigation, genuine issues were raised and resolved. There was a genuine dispute as to whether Father should become the residential parent, and a dispute whether Father had been denied visitation rights. It would serve no legal purpose to wait for the full response period on the motion for frivolous conduct fees because the motion had no merit on its face. There is no reversible error, here. Appellant's assignment of error is overruled, and the judgment of the trial court affirmed.

Donofrio, P.J., concurs.

DeGenaro, J., concurs.