

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

FRANK N. TROVATO,
Appellant,

v.

FRANCES M. TROVATO n/k/a **FRANCES LINDEN,**
Appellee.

No. 4D08-3627

[August 26, 2009]

LEVINE, J.

Frank Trovato timely appeals the trial court's order modifying his alimony obligation to Frances Linden and the imposition of sanctions on him for his failure to comply with discovery orders. We affirm the alimony modification without further discussion. We also affirm the trial court's decision to impose sanctions on Mr. Trovato in the form of attorney's fees, pursuant to Florida Rule of Civil Procedure 1.380. Nonetheless, we reverse that portion of the order imposing sanctions on Mr. Trovato because Mrs. Linden did not produce evidence to support the reasonableness of the amount of fees awarded by the court.

"An award of attorney's fees must be supported by substantial competent evidence and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved." *Tutor Time Merger Corp. v. McCabe*, 763 So. 2d 505, 506 (Fla. 4th DCA 2000) (noting that this requirement also applies to fees awarded as a discovery sanction). With the exception of Mrs. Linden's attorney's statement that he billed Mrs. Linden \$3,500 in connection with Mr. Trovato's discovery violations, there is no evidence on the record to show that the amount of attorney's fees is reasonable or that the fees resulted from Mr. Trovato's failure to comply with discovery orders. See Fla. R. Civ. P. 1.380(b)(2) (indicating that the trial court shall order the non-complying party to pay the reasonable expenses caused by the failure to comply). Furthermore, the trial court did not make any findings of fact regarding the number of hours that Mrs. Linden's attorney reasonably expended in connection with this matter. Finally, despite Mrs. Linden's attorney's testimony that his firm billed \$135 per

hour for paralegal time, the trial court found that the paralegal hourly rate was \$150. This finding is not supported by the record.

Accordingly, we reverse the portion of the order requiring Mr. Trovato to pay \$3,500 in attorney's fees and remand only for Mrs. Linden to produce evidence that the fees are reasonable and resulted from Mr. Trovato's failure to comply with the trial court's discovery orders.

Affirmed in part; Reversed in part and remanded.

DAMOORGIAN and GERBER, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Elizabeth Metzger, Judge; L.T. Case No. 98-297 FS.

Karen O'Brien Steger of Steger & Steger, P.A., Stuart, for appellant.

Vincent P. Rollo Jr. and Noel A. Bobko of McCarthy, Summers, Bobko, Wood & Sawyer, P.A., Stuart, for appellee.

Not final until disposition of timely filed motion for rehearing.