

Rel: January 4, 2019

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170483

Melissa K. Marler

v.

Julie Lambrianakos

Appeal from Madison Circuit Court
(DR-17-504)

On Application for Rehearing

THOMPSON, Presiding Judge.

In her application for rehearing, Melissa K. Marler ("the mother") argues that this court erred in determining that her public-policy argument was raised for the first time on appeal

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and that she had not argued the merits of the application of New York law before the trial court. The mother also contends that this court erred in awarding Julie Lambrianakos ("the paternal grandmother") an attorney fee on appeal. For the reasons set forth in our opinion on original submission, we continue to disagree with the mother's arguments on these issues.

In her opposition to the mother's application for rehearing, the paternal grandmother has requested another award of an attorney fee. The mother electronically filed her application for rehearing and supporting brief on October 12, 2018, the 14th day following the issuance of this court's September 28, 2018, opinion. The brief in support of the application for rehearing contains a certificate of service by the mother's attorney stating that, on that same date, he had served by mail the paternal grandmother with the application for rehearing and supporting brief. The mother's attorney did not file in this court the required paper copies of the application for rehearing and supporting brief. Therefore, on October 22, 2018, this court's clerk issued a deficiency notice, noting that paper copies of electronically filed

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documents are due within 24 hours of the electronic filing. Documents submitted by the parties to this court indicate that the paternal grandmother's attorney first learned of the application for rehearing at the time the deficiency notice was sent by this court's clerk. Also, those documents indicate that the paternal grandmother's attorney attempted to contact the mother's attorney by telephone and by electronic mail ("e-mail") to request a copy of the application for rehearing and supporting brief. The mother's attorney first sent, via e-mail, a copy of the application for rehearing and supporting brief to the attorney for the paternal grandmother on October 25, 2018, which was one day before the paternal grandmother's brief in response to the application for rehearing was due. See Rule 40(f), Ala. R. App. P. On that same date, i.e., 13 days after the electronic filing of the application for rehearing and supporting brief, the mother's attorney filed paper copies of those documents in this court.

On October 25, 2018, apparently before he received from the mother's attorney the e-mail communication with a copy of the application for rehearing and supporting brief attached, the paternal grandmother's attorney filed a brief opposing the

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mother's application for rehearing. In that brief, the paternal grandmother's attorney alleged that the failure to serve the application for rehearing and supporting brief on the paternal grandmother was an intentional act and was designed to further delay the paternal grandmother's ability to enforce the New York judgment awarding her visitation with her grandchild, the mother's child. The paternal grandmother has requested that this court award her an attorney fee for two hours' work as a sanction for the failure of the mother's attorney to timely serve the paternal grandmother with the application for rehearing and supporting brief.

In response, the mother's attorney filed a document alleging that he had been busy in a "murder trial" and that he had electronically served the paternal grandmother with a copy of the application for rehearing and supporting brief on October 25, 2018, that he had mailed a copy of the application for rehearing and supporting brief to the paternal grandmother on that same date, and that he had also mailed the required paper copies of the application for rehearing and supporting brief to this court on that date.

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The mother's attorney has, in numerous appeals before this court, filed documents electronically. He has been repeatedly contacted by this court's clerk concerning his failure to file in those appeals the required paper copies of the documents he filed electronically. In this appeal, the mother's attorney failed to timely file the required paper copies of the application for rehearing and the supporting brief, and he failed to properly serve the opposing party, in contradiction to his certificate of service contained in that brief. Given that history and the history of this action, we grant the paternal grandmother's request for an attorney fee as a sanction for the delay in service. The mother's attorney, not the mother, is ordered to pay the paternal grandmother a \$500 attorney fee on application for rehearing. Continued failure to comply with the rules of this court could result in a harsher sanction in the future.

APPLICATION OVERRULED.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.