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ARKANSAS COURT OF APPEALS

DIVISIONS IV & I
No. CV-21-101

MEAGAN LONGORIA
APPELLANT

V.

CALEB LONGORIA
APPELLEE

Opinion Delivered March 9, 2022

APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT
[NO. 23DR-18-665]

HONORABLE SUSAN WEAVER, JUDGE

AFFIRMED IN PART; REVERSED IN PART

RITA W. GRUBER, Judge

The sole issue on appeal in this case is whether the circuit court's award of attorney's fees constituted an abuse of discretion. Appellant, Meagan Longoria, does not challenge the reasonableness of the amount but only the award of fees at all. She presents three arguments in support of her position: (1) the court erred in awarding fees following an order granting her Rule 41 motion to dismiss; (2) an award of fees under Rule 11 was error because appellee did not follow Rule 11 procedure; and (3) the court violated Rule 6 by not allowing her time to respond to the motion for fees.[1] We affirm the court's first award of attorney's fees, and we reverse its second award of fees.

The parties in this case are parents to a minor child. In March 2020, the Faulkner County Circuit Court entered a permanent-change-of-custody order awarding appellee,

[1]Unless specified otherwise, the rules in this opinion refer to the Arkansas Rules of Civil Procedure.

Caleb Longoria, sole custody of the child subject to Meagan's reasonable visitation. At that time, Meagan lived in Conway (Faulkner County), and Caleb lived in Russellville (Pope County).

On July 14, 2020, Meagan filed a verified motion for change of venue in the Faulkner County Circuit Court, asking the court to change venue in the domestic-relations case to the Pope County Circuit Court. She alleged that venue was not proper in the Faulkner County Circuit Court, she resided in Faulkner County, Caleb resided with their child in Pope County, and venue should be changed to the Pope County Circuit Court pursuant to Ark. Code Ann. § 9-12-320.[2] Caleb filed a response denying that venue was not proper in the Faulkner County Circuit Court and stating that both parties resided in the same county they resided in when he filed for custody in July 2019 and when the court entered

[2]Ark. Code Ann. § 9-12-320 provides in pertinent part:

> (2)(A)(i) Either party, or the court on its own motion, may petition the court that granted the final decree to request that the case be transferred to another county in which at least one (1) party resides if, more than six (6) months subsequent to the final decree:
>
> (*a*) Both of the parties to the divorce proceedings have established a residence in a county of another judicial district within the state; or
>
> (*b*) One (1) of the parties has moved to a county of another judicial district within the state and the other party has moved from the State of Arkansas.
>
> (ii) The decision to transfer a case is within the discretion of the court where the final decree of divorce was rendered.
>
> (B) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

Ark. Code Ann. § 9-12-320(a)(2)(A)–(B) (Repl. 2020).

its order awarding him permanent custody in March 2020, and alleging that it would not be in the child's best interest to transfer the case to Pope County given the Faulkner County Circuit Court's familiarity with the parties and extensive case history. In addition, Caleb asked for his "attorney fees for being forced to answer Plaintiff's frivolous" motion. The court set the matter for a Zoom hearing on November 9, 2020, due to pandemic precautions.

On November 9, 2020, at 8:04 a.m., less than thirty minutes before the scheduled hearing, Meagan filed a motion for a Rule 41 dismissal, which the court granted at 11:19 a.m. At 10:12 a.m., Caleb filed a petition for attorney's fees arguing that Meagan's motion for change of venue was frivolous on its face and indicated that she had no legal right to request such a change pursuant to the very statute she cited for authority because her motion clearly stated that both parties still live in the counties in which they resided just months earlier when the change-of-custody order was entered. He contended that she had 117 days to research this but waited until Caleb was forced to hire an attorney, who was fully prepared for the final hearing, before she nonsuited the case on the morning of the hearing. The court granted Caleb's request for fees in an order entered at 12:02 p.m. the same day, recognizing counsel's extensive experience with domestic-relations litigation, his skill and reputation, and the calculated time and hourly rate spent on the matter. The court found that Caleb had incurred $1,950 in attorney's fees defending against Meagan's motion for change of venue. Although the court noted that Meagan's motion was "frivolous and not grantable under Arkansas statutory or case law," the court's order awarding fees did not mention Rule 11.

Meagan filed a motion to set aside and dismiss the order awarding fees that evening at 11:25. She alleged that she had not been provided ten days to respond to Caleb's petition for attorney's fees as allowed under Rule 6(c). She also argued that it was not "legal" for the court to assess attorney's fees and costs upon dismissal under Rule 41(a), contending a party has an absolute right to dismiss without prejudice and, citing Rule 41(d), that costs cannot be assessed unless the same identical cause of action involving the same parties is raised at a later time.

Caleb responded, arguing that he had expressly requested his attorney's fees in his response to Meagan's motion for change of venue. He noted that the time periods in Rule 6 may be modified by the court. In addition, he argued that the attorney's fees were not awarded pursuant to Rule 41, stating that circuit courts have inherent authority to award attorney's fees in family-law cases. He also said fees are warranted under Rule 11 when a motion is frivolous and not grounded in fact or warranted by existing law. Finally, he alleged that his counsel had spent an additional 4.3 hours at $250 an hour preparing to defend against Meagan's motion to set aside and dismiss the order awarding fees, that Meagan was wasting the court's valuable time arguing over a blatantly frivolous motion, and that the court should award sanctions. He petitioned the court for his additional attorney's fees incurred in defending against the motion to set aside the order awarding fees.

The court entered an order November 16, 2020, denying Meagan's motion to set aside and dismiss its order awarding attorney's fees and granting Caleb's petition for additional attorney's fees, awarding him $1,075 in addition to the $1,950 awarded in its first order. The court noted that it had awarded fees in its November 9 order pursuant to Rule

11 because Meagan's motion for change of venue was frivolous on its face and not grantable under Arkansas statutory or case law.

On November 23, Meagan filed a second motion to dismiss Caleb's petition for attorney's fees, again alleging that she had an "absolute right" under Rule 41(a) to dismiss her motion for change of venue and arguing that "costs" could be awarded under Rule 41(d) only when the same action was again filed by the nonsuiting plaintiff against the same defendant, and those costs did not include attorney's fees. Caleb responded that the attorney's fees were awarded pursuant to Rule 11, not Rule 41, and that Meagan's arguments were barred by res judicata because the court entered a final order on November 16 denying her motion to set aside and dismiss its order awarding attorney's fees. On November 25, the court entered an order denying Meagan's motion to dismiss.

On December 4, Meagan filed a motion to dismiss Caleb's motion for additional attorney's fees—that is, those the court granted in its November 16 order. Counsel admitted that she "was mistaken" in filing a motion for change of venue alleging she had been under the "mistaken belief" that Meagan had "relocated to another county," and she had not caught the mistake until immediately before the hearing. She argued that the procedural requirements under Rule 11—specifically that a separate motion be filed under Rule 11 and that the motion be served twenty-one days before it is filed to allow the challenged contention to be withdrawn, *see* Ark. R. Civ. P. 11(c)(5)—had not been met. Therefore, she contended, Caleb's petition for additional fees must be dismissed. Caleb responded, arguing that the court had inherent authority to award attorney's fees upon its own initiative

for a violation of Rule 11. The court entered an order denying Meagan's motion to dismiss Caleb's motion for additional attorney's fees on December 4.

Although, as a general rule, an award of attorney's fees is not allowed in the absence of statutory authority, a circuit court has the inherent power to award attorney's fees in domestic-relations proceedings. *Hudson v. Hudson*, 2018 Ark. App. 379, at 6, 555 S.W.3d 902, 906. When awarding attorney's fees in a domestic-relations case, the court is not required to conduct an analysis using the *Chrisco*[3] factors or make any particular findings. *Tiner v. Tiner*, 2012 Ark. App. 483, at 16, 422 S.W.3d 178, 187. Rather, in domestic-relations cases, where the court is intimately acquainted with the record and the quality of services rendered, we have held that the circuit court is in a better position than we to evaluate the services of counsel and observe the parties, their level of cooperation, and their obedience to court orders. *Hudson*, 2018 Ark. App. 379, at 7, 555 S.W.3d at 906. We will not disturb a circuit court's decision regarding attorney's fees absent an abuse of discretion. *Vice v. Vice*, 2016 Ark. App. 504, at 10, 505 S.W.3d 719, 725

Meagan first contends that the circuit court erred in awarding the original attorney's fees based on Rule 41. She claims that Rule 41 gives a party the absolute right to dismiss before a case has been submitted to the trier of fact. The circuit court granted her motion to dismiss pursuant to Rule 41(a) on the day she filed the motion. Ark. R. Civ. P. 41(a)(1) (2021); *White v. Perry*, 348 Ark. 675, 74 S.W.3d 628 (2002). Meagan then argues that Rule 41 does not give the circuit court authority or discretion to award attorney's fees for a Rule 41 dismissal. In support of her argument, she cites Rule 41(d), which states that if a plaintiff

[3]*Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).

who has once dismissed an action under Rule 41 "commences an action based upon or including the same claim against the same defendant," the court may order the plaintiff to pay the "costs" incurred in the action "previously dismissed" and may stay the proceedings until the costs have been paid. "Costs" are defined in Rule 54(d)(2), and the definition does not include attorney's fees.

It is clear in this case that the circuit court did not award "costs" pursuant to Rule 41. The court awarded attorney's fees, and it did not cite Rule 41 as authority for its award. Without deciding whether Rule 41 even applies to the dismissal of a motion, we note that Meagan has cited no authority for her position that Rule 41(d) forbids a court from awarding attorney's fees in a case in which a party has moved for a dismissal under Rule 41(a). We have frequently stated that we will not consider an argument when the appellant presents no citation to authority or convincing argument in its support, and it is not apparent without further research that the argument is well taken. *Hollis v. State*, 346 Ark. 175, 55 S.W.3d 756 (2001).

For her second argument, Meagan only challenges the court's second fee award. She contends that the circuit court erred in awarding additional attorney's fees of $1,075 on November 16 because Caleb failed to comply with Rule 11 procedures. Rule 11 provides in relevant part as follows:

> (b) *Certificate.* The signature of an attorney or party constitutes a certificate by the signatory that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support;

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information;

(5) when a party's claim or affirmative defense may only be established in whole or in part by expert testimony, the party has consulted with at least one expert, or has learned in discovery of the opinion of at least one expert, who (i) is believed to be competent under Ark. R. Evid. 702 to express an opinion in the action and (ii) concludes on the basis of the available information that there is a reasonable basis to assert the claim or affirmative defense; and

(6) the pleading, motion, or other paper complies with the requirements of Rule 5(c)(2) regarding redaction of confidential information from case records submitted to the court.

(c) *Sanctions*. (1) . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon any attorney or party who violated this rule an appropriate sanction.

(2) Sanctions that may be imposed for violations of this rule include, but are not limited to:

. . . .

(D) an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee;

. . . .

(3) The court's order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction. If a monetary sanction is imposed, the order shall explain how it was determined.

(4) The court shall not impose a monetary sanction against a party for violating subdivision (b)(2), on its own initiative, unless it issued the show-cause order under subdivision (c)(6) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

> (5) A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5 but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.
>
> (6) On its own initiative, the court may order an attorney or party to show cause why conduct specifically described in the order has not violated subdivision (b). The order shall afford the attorney or party a reasonable time to respond, but not less than 14 days.

Ark. R. Civ. P. 11 (2021).

We agree with Meagan that Caleb did not comply with the Rule 11 requirements for requesting fees. Rule 11 requires such a motion to "be made separately from other motions or requests" and not to be filed with the court before "21 days after service of the motion" in order to allow time for "the challenged paper, claim, defense, contention, allegation, or denial" to be withdrawn or appropriately corrected. Ark. R. Civ. P. 11(c)(5). Caleb's "motion" for additional fees was not a separate motion but was buried in his response to Meagan's motion to set aside and dismiss the court's initial fee award and was filed long before twenty-one days after the motion had been served. Although we recognize that a court may impose Rule 11 sanctions "on its own initiative," the court must still "order an attorney or party to show cause why conduct specifically described in the order has not violated subdivision (b)" and "afford the attorney or party a reasonable time to respond, but not less than 14 days" when the sanction is a monetary sanction imposed against a party "for violating subdivision (b)(2)." Ark. R. Civ. P. 11(c)(4) and (6); *see also Swindle v. S. Farm*

Bureau Cas. Ins. Co., 2015 Ark. 241, 464 S.W.3d 905. That was not done here. Accordingly, we reverse the court's award of additional attorney's fees in its November 16 order.

In her third point on appeal, Meagan argues that the circuit court erred by failing to give her time to respond to Caleb's motion for attorney's fees.[4] She claims that Rule 6 mandates that a party has ten days to respond to a motion and that the court here granted Caleb's motion the day it was filed. She argues that no hearing was held and that the court did not modify the time periods because no motion for modification of the time periods was requested.

Rule 6 provides in relevant part:

> (c) *For Motions, Responses, and Replies*. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 20 days before the time specified for the hearing. Any party opposing a motion shall serve a response within 10 days after service of the motion. The movant shall then have 5 days after service of the response within which to serve a reply. The time periods set forth in this subdivision may be modified by order of the court and do not apply when a different period is fixed by these rules, including Rules 56(c) and 59(d).

Ark. R. Civ. P. 6(c) (2021).

A circuit court is always free to exercise its inherent authority to grant attorney's fees in domestic-relations cases, and no hearing is required because the judge has presided over the proceedings and is familiar with the case and the quality of services rendered. *Hargis v. Hargis*, 2019 Ark. 321, at 6, 587 S.W.3d 208, 212. Because of the court's intimate acquaintance with the record in these cases, the court is not required to conduct an analysis

[4]We do not address her arguments to the extent Meagan argues her rights to due process were violated because she failed to argue this to the circuit court. It is elementary that this court will not consider arguments that were not preserved for appellate review. *See Seidenstricker Farms v. Doss*, 374 Ark. 123, 286 S.W.3d 142 (2008).

using the *Chrisco* factors or make any particular findings. *Conley v. Conley*, 2019 Ark. App. 424, at 11, 587 S.W.3d 241, 247; *Goodson v. Bennett*, 2018 Ark. App. 444, at 20, 562 S.W.3d 847, 861.

Rule 6(c) requires that a "written motion" and "notice of the hearing thereof" be served no later than twenty days before the hearing. Clearly, there was no hearing here, and *Hargis* holds that none was required. And although Caleb did include a written request for fees in his response to Meagan's motion and later filed a written petition, we note the supreme court has determined that a written motion is not required for an award of attorney's fees. *See State Auto Prop. & Cas. Ins. Co. v. Swaim*, 338 Ark. 49, 60, 991 S.W.2d 555, 562 (1999). The sentence in Rule 6(c) that is relevant to this appeal is that any party opposing the motion "shall serve a response within 10 days after service of the motion." Where Rule 6 applies—and it is not clear that it applies in a domestic-relations attorney's-fee case in which there was no hearing and the request for fees was made in a responsive pleading—it places the burden on a party responding to a written motion in which a hearing is contemplated to file a response within ten days or lose the opportunity. It does not state specifically that a party is allowed ten days to respond to a motion in all cases. Indeed, the rule provides that the time periods may be modified by order of the court.

Caleb requested attorney's fees in his response to Meagan's change-of-venue motion, several months before he submitted his petition requesting fees and before the court awarded them. He submitted affidavits and time records to support his request, which Meagan has not challenged. Meagan has cited no authority for her argument that Rule 6(c) requires a court to give her ten days to respond to a petition for fees in an ongoing domestic-relations

case. We hold that Rule 6 was not a bar to the circuit court's inherent power to award attorney's fees in this domestic-relations case, and we affirm its first award of fees. *John v. Bolinder*, 2019 Ark. App. 96, 572 S.W.3d 418; *Pollard v. Pollard*, 2009 Ark. App. 455.

Affirmed in part; reversed in part.

KLAPPENBACH, BARRETT, VAUGHT, and BROWN, JJ., agree.

VIRDEN, J., dissents.

BART F. VIRDEN, Judge, dissenting. I agree with the majority that Rule 41 is inapplicable to the matters at hand and that the second set of attorney's-fee awards should be reversed pursuant to the trial court's failure to follow the Rule 11 procedures. However, I cannot reconcile the majority's rationale in treating the two attorney's-fee awards differently. Either the rules apply, or they don't.

Meagan argued below and on appeal that she should get the benefit of the response time delineated in Arkansas Rule of Civil Procedure 6(c). Caleb never argued below that Rule 6(c) did not apply, nor did he argue that on appeal—or anything else, for that matter—because no appellee brief was filed. Arguments not raised below are waived, and parties cannot change the grounds for an objection on appeal but are bound by the scope and nature of the objections and arguments presented at trial. *Goins v. State*, 2019 Ark. App. 11, 568 S.W.3d 300. Instead, Caleb admitted that Meagan had not been given the time allowed under Rule 6(c) but claimed that the trial court can modify the response time required under Rule 6(c). It can, by "order of the court," but there was no order shortening the response time in the record. Nothing in the record supports the proposition that Rule 6(c)

should be discarded; however, the majority has now thrown application of Rule 6(c) broadly into question without being invited to do so.

The majority then looks to the inherent authority of a domestic-relations court to affirm the first fee award. It is undoubtedly true that a domestic-relations court has the inherent authority to award attorney's fees; but in this instance, the trial court did not undertake this action sua sponte (as it might a finding of contempt in the court's presence with summarily punishing the offender). Instead, it was upon a party's (Caleb's) written motion (which, following the contempt analogy, would allow for written response time that is not required if the trial court acts sua sponte). Further, the trial court makes it clear in the record that the first set of attorney's fees was awarded pursuant to Rule 11, not the court's inherent authority. The majority dismisses both the trial court's finding and Caleb's statement that the first award of fees was pursuant to Rule 11. If it was, then it, like the second award, was procedurally deficient. How can "inherent authority" apply to affirm the first attorney's-fee award, only to be defeated by Rule 11 in reversal of the second attorney's-fee award? Either "inherent authority" is absolute, or it is not.

The supreme court has indicated that appellate courts will affirm the trial court's order when it reaches the right result even though it may have announced the wrong reason. *Malone v. Malone*, 338 Ark. 20, 991 S.W.2d 546 (1999). In that regard, we are not constrained by the trial court's rationale but may go to the record for additional reasons to affirm. *State of Wash. v. Thompson*, 339 Ark. 417, 428, 6 S.W.3d 82, 88 (1999). However, in affirming the first attorney's-fee award, the majority goes beyond affirming "for any

reason supported by the record." It requires us to deliberately ignore the record itself and make findings that the trial court did not make and adopt arguments Caleb never argued.

We require little by way of appellate review of attorney's fees. Caleb may well have been fully entitled to the fees awarded in both instances. However, if our review is to have any meaning, we make not only the lower courts and attorneys follow the rules, but we should do so as well. Accordingly, I would also reverse the first award of attorney's fees.

Owings Law Firm, by: *Steven A. Owings* and *Tammy B. Gattis*, for appellant.

One brief only.