

STATE OF MICHIGAN
COURT OF APPEALS

DARNEL LYNN ROSS,

Plaintiff/Counterdefendant-Appellant,

v

RICHARD WAYNE ROSS, JR.,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED

October 19, 2026

11:14 AM

No. 369117

Berrien Circuit Court

LC No. 2017-002251-DO

DARNEL LYNN ROSS, also known as DARNELL
LYNN ROSS,

Plaintiff/Counterdefendant-Appellant,

v

RICHARD WAYNE ROSS, JR.,

Defendant/Counterplaintiff-Appellee.

No. 370805

Berrien Circuit Court

LC No. 2017-002251-DO

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals by delayed leave granted the parties’ judgment of divorce and appeals as of right the trial court’s order that held plaintiff in contempt. Because the trial court erred with regard to rebuttal evidence, we affirm in part and vacate in part the parties’ judgment of divorce in Docket No. 370805. In Docket No. 369117, we dismiss plaintiff’s appeal for lack of jurisdiction.

I. BACKGROUND

In this divorce proceeding, the trial court conducted a bench trial to divide the parties’ assets, and one of the key issues was valuation of the parties’ cleaning business, Ross Cleaning

Services, LLC (RCS). Defendant introduced expert testimony from William David VanderSalm, a licensed attorney and certified public accountant (CPA), who opined that RCS had a value of \$512,000. The trial court found VanderSalm to be credible and adopted that value.

Plaintiff attempted to introduce her own evidence of valuation by using two different CPAs as witnesses: (1) James Scarpone's testimony to rebut VanderSalm's valuation; and (2) Susan Valentine's expert testimony about her own calculation of valuation. For her part, Valentine did not provide her curriculum vitae or her report on the valuation of the business; she also stated that she did not perform a "formal business valuation" and only used unsigned tax returns and conversations with plaintiff to form her calculation of value. The trial court did not allow plaintiff to present the witnesses, and instead, told plaintiff that she could challenge VanderSalm's method of calculating the business's value during closing argument.

The trial court entered a divorce judgment awarding RCS valued at \$512,000 to plaintiff and an equalization payment of \$313,857 to defendant, which included his half of RCS. Additionally, throughout the proceedings, defendant filed several motions for orders to show cause against plaintiff, claiming that plaintiff violated the trial court's orders regarding specific personal property items, health insurance, and vehicles in plaintiff's possession. After conducting a show-cause hearing, the trial court determined that plaintiff was in contempt of court and ordered plaintiff to pay \$25,000 in attorney fees to defendant.

Plaintiff now appeals both the contempt order and the judgment of divorce. She filed an appeal from the contempt order as an appeal of right. For the judgment of divorce, plaintiff applied for delayed leave, which this Court granted. *Ross v Ross*, unpublished order of the Court of Appeals, entered December 30, 2024 (Docket No. 370805).

II. ANALYSIS

A. BUSINESS VALUATION

In Docket No. 370805, in regard to the divorce judgment, plaintiff argues that the trial court abused its discretion by not allowing plaintiff to present rebuttal testimony. We review for an abuse of discretion the trial court's decision to admit or exclude evidence. *Fraser Trebilcock Davis & Dunlap, PC v Boyce Trust* 2350, 304 Mich App 174, 198; 850 NW2d 537 (2014), rev'd in part on other grounds 497 Mich 265 (2015). The trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes or it makes an error of law. *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016).

The trial court abused its discretion by not allowing plaintiff to present evidence to rebut defendant's valuation testimony. Rebuttal evidence is used to "contradict, repel, explain or disprove evidence produced by the other party." *Fraser Trebilcock*, 304 Mich App at 198. The trial court determined that it did not need evidence from two separate business valuation experts addressing the issue of RCS's value. This reasoning may be apt in instances where the evidence presented by the second witness is irrelevant or cumulative, see MRE 402 and MRE 403, but the trial court never determined whether plaintiff's proposed rebuttal testimony—that VanderSalm's valuation was in error—would have been irrelevant or cumulative. To disallow plaintiff's evidence without proper findings under the rules of evidence was error.

Further, the trial court's error in not allowing plaintiff's rebuttal witness was not harmless. Although plaintiff was able to cross-examine VanderSalm and argue against VanderSalm's valuation during closing arguments, those opportunities do not substitute for plaintiff's ability to present her own evidence. The valuation of the business was a key issue, and the trial court prevented plaintiff from presenting evidence to rebut defendant's evidence of valuation. By not allowing plaintiff to present her own evidence, the trial court essentially made a credibility determination after only hearing one side's evidence.

Plaintiff also claims on appeal that the trial court abused its discretion by accepting VanderSalm's opinion regarding the business's value. We find no error in the trial court's decision to admit VanderSalm's valuation evidence. Rather, as already discussed, the mistake that the trial court made was not allowing plaintiff's proposed rebuttal testimony; the rebuttal testimony may have made VanderSalm's testimony less credible, and the trial court may have placed less stock in VanderSalm's valuation when making its determination. Although VanderSalm's testimony and methodology may have been helpful to the trial court, the trial court did not get a full picture of the valuation dispute in the absence of plaintiff's rebuttal evidence. We thus vacate the divorce judgment as it related to the valuation of the business and plaintiff's equalization payment that resulted from that valuation.

B. EXPERT TESTIMONY

In addition to her claim that the trial court erred in excluding her rebuttal evidence, plaintiff also argues that the trial court abused its discretion by declining to admit Valentine's expert testimony. It is plaintiff's burden as the proponent to establish the relevance and admissibility of the expert testimony. See *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004).

MRE 702 provides that, among other things, an expert witness's testimony must be (1) based on sufficient facts or data, and (2) the product of reliable principles and methods. Plaintiff did not show that Valentine's testimony would meet either criterion. Valentine appeared without a copy of her curriculum vitae or the report that she had drafted. She relied on unsigned tax returns and plaintiff's statements to form a calculation of value, not a formal business valuation. Based on the information that Valentine and plaintiff supplied to the trial court, it was not an abuse of discretion for the trial court to find that Valentine's testimony would be insufficiently reliable to meet the standards under MRE 702.

C. CONTEMPT

In the other case on appeal, Docket No. 369117, plaintiff claims an error with the trial court's order holding plaintiff in contempt and ordering her to pay \$25,000 in attorney fees to defendant. When an order is not a final order under MCR 7.202(6), there is no appeal of right under MCR 7.203(A). For civil cases, "an order finding a party in civil contempt of court is not a final order for purposes of appellate review." *Alpena Co Bd of Co Rd Comm'rs v Tadajewski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374166); slip op at 2-4. Specifically, an award of attorney fees and expenses under MCR 3.206(D)(2)(b) for noncompliance with an order of the court is "a form of compensatory civil contempt" that is not appealable of right. *Uddin v Mukarram*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 377981); slip op at 1.

Here, although the trial court did not specify a legal authority, the trial court ordered plaintiff to pay defendant's attorney fees based on her violations of court orders. It is therefore reasonable to conclude that the trial court was ordering plaintiff to pay defendant's attorney fees based on MCR 3.206(D)(2)(b). Because an award under that rule for the failure to comply with a court order is not a final order appealable of right, see *Uddin*, ___ Mich App at ___; slip op at 1, this Court does not have jurisdiction to review the award as an appeal of right. Because "[t]he question of jurisdiction is always within the scope of this Court's review," we must dismiss the appeal in Docket No. 369117 for lack of jurisdiction. See *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004). See also *Uddin*, ___ Mich App at ___; slip op at 2.

III. CONCLUSION

We dismiss plaintiff's appeal in Docket No. 369117 for lack of jurisdiction. In Docket No. 370805, we affirm in part and vacate in part the parties' judgment of divorce and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock