

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SCOTT ALAN BAKER,

Plaintiff-Appellant,

v

KERRY COMMISSIONG BAKER,

Defendant-Appellee.

UNPUBLISHED

June 27, 2024

No. 364555

Bay Circuit Court

LC No. 2021-003190-DO

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Before: O'BRIEN, P.J., and M. J. KELLY and FEENEY, JJ.

FEENEY, J. (*concurring in part and dissenting in part*)

In the present case, the trial court expressly found that attorney fees would not be awarded pursuant to MCR 3.206(D)(2)(a): “I’m going to not order attorney fees under the rule, because I think [wife] has the ability to pay, and in light of the settlement and the spousal support order.” However, the trial court further determined that it would “allow a \$10,000 offset from any balance that [wife] owes under the property settlement” because “[husband] took \$10,000 from the marital estate [to pay his divorce attorney]. [Wife] should be allowed to do that as well.” Because the trial court specifically found that defendant had the ability to pay, attorney fees were not warranted under MCR 3.206(D)(2)(a), and the trial court did not make any findings to support awarding attorney fees under subrule (b). I agree that the trial court abused its discretion by ordering, in the judgment of divorce, that plaintiff pay \$10,000 “toward [defendant’s] attorney fees and costs.”

Unfortunately, the trial court denied as without merit plaintiff’s motion for reconsideration pursuant to MCR 2.119(F)(3). That motion was the trial court’s vehicle to acknowledge the erroneous depiction of the \$10,000 award to defendant as “attorney fees.” Had the trial court granted the motion in part and explained that the \$10,000 was a bookkeeping offset in defendant’s favor as ½ owner of Baker ENT, I would enforce the award. Without correcting the judgment of divorce regarding the \$10,000 award, however, I agree that the trial court erred in granting defendant \$10,000 in attorney fees.

/s/ Kathleen A. Feeny