

COURT OF APPEALS OF VIRGINIA

Record No. 0328-25-2

ASHLEY BLANKS
v.
TYLER WINSLOW BLANKS

Present: Judges Malveaux, Friedman and Bernhard

Argued at Richmond, Virginia

Opinion Issued September 15, 2026

FROM THE CIRCUIT COURT OF MECKLENBURG COUNTY

Robert G. O'Hara, Jr., Judge Designate

Shannon D. Lemm (Haugh & Lemm, PLLC, on briefs), for appellant.

Charles H. Crowder, III (Suzanne P. Inge, Guardian ad litem for the minor child; Harris, Matthews & Crowder, P.C.; Suzanne P. Inge, PLLC, on brief), for appellee.

PUBLISHED OPINION BY JUDGE DAVID BERNHARD

Ashley Blanks (mother) appeals the circuit court's order directing her to pay \$1,500 of the coparenting therapist's appearance fee. She contends that Code § 17.1-612 assigns that fee to the party in whose behalf the expert testified, and that the therapist testified in behalf of Tyler Blanks (father).

We agree and reverse the circuit court on this assignment of error. Code § 17.1-612 commits to the circuit court's discretion the amount of an expert witness's appearance fee, but not its allocation: the statute directs that the fee be paid by the party in whose behalf the witness

testifies. The therapist was subpoenaed and called by father, and she testified in his behalf. Mother's cross-examination of her did not make the therapist the mother's witness.¹

BACKGROUND²

After about eight years of marriage the parties separated; they had a daughter not yet two. The parents filed cross petitions for custody and visitation in the juvenile and domestic relations district court, and mother appealed that court's ruling to the circuit court. The circuit court announced a temporary shared custody arrangement in February 2024, entered the order in April, and set a review date for August 2024. It required the parents, among other things, to attend coparenting counseling. The coparenting therapist, a trauma counselor, used a variety of techniques to help the parents focus on the child's well-being. She later concluded that coparenting had become unfeasible and terminated her services.

The therapist appeared and testified on two days. The first was the review hearing, held August 30, 2024, at which father called her to testify; mother had not subpoenaed her but stipulated that the therapist was qualified as a coparenting therapist. Father and mother later filed cross motions for full custody, which the circuit court considered over two hearings. The second day was the first of those hearings, held December 3, 2024, at which father again called the therapist to testify in her field of expertise. Mother cross-examined her. The clerk's record also reflects a subpoena duces tecum issued on mother's behalf. Weighing the statutory factors, the circuit court found it was in the child's best interest for father to have full custody.

¹ The separate order issued in this appeal this day resolves in father's favor mother's remaining assignments of error, which challenge the custody award and the best-interest findings underlying it, the circuit court's finding that it had no indication of who was performing her counseling, and its reliance on the therapist's opinions.

² This record is sealed. We unseal only those facts discussed in this opinion; the rest of the record remains sealed. *Brown v. Va. State Bar ex rel. Sixth Dist. Comm.*, 302 Va. 234, 240 n.2 (2023).

The circuit court then considered the therapist's expert witness fee. Mother argued she never subpoenaed the therapist nor called her as a witness, so she was not responsible for payment under Code § 17.1-612. The circuit court noted mother's objection and set the therapist's fee at \$1,500 for each of her two days of appearance, directing each party to pay \$1,500 to the therapist. Mother appealed.

ANALYSIS³

Mother contends the circuit court erred in ordering her to pay \$1,500 of the therapist's appearance fee. Invoking Code § 17.1-612, the final order set the fee of the therapist, Stephanie Becker, at \$1,500 for each day of appearance and directed that "[e]ach party shall pay the sum of \$1,500 to Ms. Becker, for a total of \$3,000." The statute provides that

Every witness who qualifies as an expert witness, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may, if requested in its discretion, order without regard to any limitation described above, but the same shall be paid by the party in whose behalf he shall testify.

Code § 17.1-612. The limitations that sentence sets aside are described earlier in the same section, which ties an ordinary witness's reimbursement to the daily mileage prescribed by Code § 2.2-2823 and leaves the court to allow as much of the mileage and attendance fee as it finds reasonable. For an expert witness the General Assembly lifted those limits, and in the same sentence fixed who pays. That concern runs through the section: the entry of what a witness is owed must state "by what party it is to be paid," and a witness summoned in several cases may have the entry made against "either of the parties by whom he is summoned." Code § 17.1-612. The court's discretion

³ On appeal, we view "the evidence in the light most favorable" to father because he prevailed below, and we grant him all reasonable inferences the evidence supports. *Veldhuis v. Abboushi*, 77 Va. App. 599, 602 n.2 (2023) (quoting *Young Kee Kim v. Douval Corp.*, 259 Va. 752, 756 (2000)).

runs to the amount of the allowance. The direction that the fee be paid by the party in whose behalf the witness testifies is mandatory.

No party disputes the amount, so the question is one of statutory construction, which we review de novo. *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007). When the language is unambiguous, we are bound by its plain meaning, and we give effect to the legislature's intention as expressed in the language used unless a literal reading would produce a manifest absurdity. *Id.* We read the statute in its entirety, placing its terms in context and interpreting its several parts as a consistent and harmonious whole. *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012). And we presume that every part of a statute has some effect, treating no part as meaningless unless absolutely necessary. *Hubbard v. Henrico Ltd. P'ship*, 255 Va. 335, 340 (1998). The language of Code § 17.1-612 allocating the fee is unambiguous, and we apply it as written.

Giving that language its ordinary meaning, a witness testifies in behalf of the party who calls her to advance that party's case. The statute's opening condition confirms it: the allowance is triggered when the witness is "compelled to attend and testify," Code § 17.1-612, and the party who compels attendance is ordinarily the party in whose behalf the witness appears. Nothing in the statute treats the adverse party's cross-examination as an adoption of the witness. Reading it that way would drain the allocation of content, because every witness who testifies is subject to cross-examination, and the command that the fee "shall be paid by the party in whose behalf he shall testify" would then identify no party at all. Code § 17.1-612; *see Hubbard*, 255 Va. at 340.

Father does not contend otherwise as to who summoned the therapist. He acknowledges that he "did in fact subpoena Ms. Becker." The record confirms that the therapist was called as father's witness. The circuit court reasoned that she "answered questions by both parties." But that describes the exercise of cross-examination, not the alignment the statute makes controlling. Nor

does it matter that both parties engaged the therapist. The court also reasoned that she “was engaged by both the father and the mother.” So she was, as their coparenting counselor, under a temporary order directing them to share her counseling costs equally. But the fee at issue is not a counseling cost. The therapist’s own rate sheet separated her hourly charge for clinical work from a flat testimony fee payable by the party requesting her testimony, and the circuit court drew that same line, disclaiming any ruling on “her \$250.00 an hour for counseling fee.” Joint engagement for treatment does not make a witness jointly aligned when she later testifies. Nor does the clerk’s record of a subpoena duces tecum issued on mother’s behalf alter the analysis. Such a subpoena commands the production of documents; it did not call the therapist to testify in mother’s behalf, and she did not testify in mother’s behalf at either hearing. Counsel also stated that an earlier subpoena issued on mother’s behalf had been withdrawn.

Because the therapist testified in father’s behalf, Code § 17.1-612 directs that father bear her appearance fees. The circuit court erred in directing mother to pay \$1,500 of that expense.

CONCLUSION

We reverse the provision of the final order directing mother to pay \$1,500 of the therapist’s appearance fee and remand for entry of an order allocating that fee consistent with this opinion, including requiring father to reimburse mother if she has already paid.⁴

Reversed and remanded.

⁴ Father has not contended that mother’s payment of the fee, if she has made it, forfeits her challenge to the order directing it. Voluntary payment of a *judgment* ordinarily deprives the payor of the right of appeal. *Citizens Bank & Tr. Co. v. Crewe Factory Sales Corp.*, 254 Va. 355, 355 (1997); *see Sheehy v. Williams*, 299 Va. 274, 278-80 (2020).