**No. 126192**
**IN THE SUPREME COURT OF ILLINOIS**

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|---|---|
| IN RE: THE MARRIAGE OF: | ) |
| | ) |
| DIANA LYNN BARR CRECOS, | ) |
| | ) |
| Petitioner/Appellee. | ) |
| | ) |
| and | ) |
| | ) |
| GRECORY CRECOS | ) |
| | ) |
| Respondent/Appellant. | ) |
| | ) |

Appeal from the Illinois Appellate Court, First District No. 1-18-2211

Appeal from the Circuit Court of Cook County, Illinois
County Department, Domestic Relations Division, No. 07 D 10902

The Honorable Robert W. Johnson, Judge Presiding

# RESPONSE BRIEF OF APPELLEE, DIANA LYNN BARR

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## ARGUMENT

In an extremely rare occasion in the last 13 years since the parties first filed for divorce, Petitioner/Appellee, Diana Lynn Barr ("Diana"), actually agrees with Respondent/Appellant Gregory Crecos ("Gregory"). Specifically, Diana agrees with Gregory that the Appellate Court had jurisdiction to review the circuit court's September 17, 2018 Order in its entirety. Therefore, the Supreme Court should reverse the Appellate Court's June 22, 2020 opinion and remand the case with directions for the Appellate Court to consider the merits of the appeal.

Diana agrees with Gregory that the circuit court's September 17, 2018 Order was a final judgment on the merits, awarding Diana contribution from Gregory for the appellate fees she incurred in *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U ("*Crecos I*") and *In re Marriage of Crecos*, 2015 IL App (1st) 132756 ("*Crecos II*"). More specifically, the September 17, 2018 order did in fact fully and finally dispose of Diana's two separate ***post-judgment*** claims for contribution: (1) her post-judgment claim for contribution from Gregory under Section 508(a)(3) for the attorney fees she incurred in defending the dissolution judgment in *Crecos I*; and (2) her claim for contribution from Gregory under Section 508(a)(3.1) for the attorney fees she incurred in prosecuting *Crecos II*, an appeal of a post-judgment claim raised by Gregory. 750 ILCS 5/508(a)(3) and (3.1).

The circuit court's judgment left nothing else for that court to consider on Diana's two post-judgment claims. And since the circuit court had already entered a final dissolution judgment 8 years earlier, neither the parties nor the circuit court could ever seek to reallocate the fees awarded to Diana in the September 17, 2018 Order. Furthermore, absent reversal on appeal, the circuit court would never have occasion to ever reconsider its Order.

Diana also agrees with Gregory that the fees awarded to Diana cannot reasonably be characterized as interim fees. Temporary awards of "interim fees" granted under Section 501(c-1) during the pendency of ongoing dissolution proceedings (that is, before any final dissolution judgment is entered) are *always* subject to reallocation later when the dissolution judgment is eventually entered. But the award of attorney fees under Section 508(a)(3) and (3.1) for appeals that were already done and over with would never be subject to reallocation or even reconsideration in the circuit court. Therefore, as Gregory argues, the September 17, 2018 Order was final, and the circuit court's Rule 304(a) finding made it appealable.

Diana agrees with Gregory that *In re Marriage of Olesky*, 337 Ill.App.3d 946 (2003), to the extent it would otherwise apply, was nonetheless abrogated by subsequent amendments to Sections 501(c-1) and 508(a). As Gregory demonstrated, those amendments made it clear Section 501(c-1) applies only to pre-judgment proceedings.

Furthermore, Diana also agrees with Gregory that the cases of *In re Marriage of Arjmand*, 2017 IL App (2d) 160631, *In re Marriage of Johnson*, 351 Ill.App.3d 88 (2004), and *In re Marriage of Derning*, 117 Ill.App.3d 620 (1983) are inapplicable here. Both *Arjmand* and *Johnson* involved attempted appeals of temporary awards of interim fees under Section 501(c-1) entered during the pendency of the dissolution proceedings and before the entry of a final dissolution judgment. Thus, the awards of interim fees at issue in *Arjmand* and *Johnson* were both subject to later reallocation or reconsideration by the circuit court even after the respective appellants appealed. Therefore, the courts' respective orders on contribution of fees were not yet final when they were appealed. Likewise, in *Derning*, the appellant appealed from a dissolution judgment which was not yet final because the parties' claims for final attorney fee contribution had not yet been decided. In simple terms, none of the cases relied on by the Appellate Court involved a ***final*** order and that is why the courts in those cases held they were not appealable either.

Here in this case, unlike in *Arjmand*, *Johnson*, or *Derning*, the circuit court entered a final award of contribution to Diana's attorney fees. The circuit court did not retain jurisdiction or reserve the ability to reallocate or reconsider its award. Nor could it, because a final judgment of dissolution had already been entered 8 years earlier and affirmed on appeal over 6 years earlier. Therefore, the September 17, 2018 order was a final judgment and

the Appellate Court had jurisdiction under Illinois Supreme Court Rule 304(a) to consider the merits of Gregory's appeal.

Finally, this Court should not lose the forest for the trees or allow legal niceties to gloss over reality. The truth is that contribution awards under Section 508(a) are ***absolutely meaningless*** unless they can be enforced or appealed immediately.

And the facts of this very case illustrate the point that fee awards under Section 508(a) are useless if they cannot be collected until all post-judgment proceedings are over. First of all, it is well over two years since the circuit court ordered Gregory to pay Diana her attorney's fees and Gregory has not yet paid a dime of those fees. Allowing such a situation to exist is directly contrary to the legislature's purpose for Section 508(a) of "leveling the playing field" between the parties. The playing field has remained un-level for years and will remain so for years more if the Appellate Court's ruling is accepted.

Second, the Appellate Court's ruling creates ample opportunity for any party ordered to contribute to the other side's attorney fees to engage in mischief so as to avoid ever having to pay those fees. According to the Appellate Court, Gregory will effectively never have to contribute to Diana's fees under Section 508(a)(3) or (3.1) as long as other post-judgment matters are pending because those fees will remain uncollectible. But the parties in this case have been litigating post-judgment matters for over 10 years and

there is no end in sight. Gregory's and Diana's youngest daughter is still years away from the age of majority and there will be numerous opportunities for Gregory or any other spouse in his position to file new and varied claims regarding visitation, child support, and payment of college expenses and so on.

In short, the Appellate Court has created a vehicle for spouses to avoid for years if not forever any obligation to contribute to the other side's attorneys fees, thus rendering Section 508(a) a nullity. Under the Appellate Court's ruling, either Gregory or Diana could be dead by the time Diana could seek enforcement of the fee award. That is an absurd result that the legislature never intended. This Court should reverse the Appellate Court's opinion and make it clear that the circuit court has the discretion to render final fee awards under Section 508(a) enforceable and appealable by entering a finding under Rule 304(a).

## CONCLUSION

WHEREFORE Petitioner/Appellee, Diana Lynn Barr, respectfully requests that this Court reverse the Appellate Court's June 22, 2020 opinion, and remand the case to the Appellate Court for consideration of the merits of the appeal.

Respectfully submitted,

**DIANA LYNN BARR**

By: */s/ James R. Branit*
One of Her Attorneys

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**Supreme Court Rule 341(c) Certificate of Compliance**

I, James R. Branit, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 1,429 words.

*/s/ James R. Branit*
James R. Branit

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**NOTICE OF FILING**

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PLEASE TAKE NOTICE that on **December 23, 2020**, we filed with the Supreme Court of Illinois, via File and Serve Illinois, the attached Response Brief of Petitioner/Appellee, Diana Lynn Barr, in the above-referenced action, a copy of which is hereby served upon you.

DIANA LYNN BARR

By: */s/ James R. Branit*
One of her Attorneys

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## CERTIFICATE OF SERVICE

Under penalties as provided by law under Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I served a copy of the foregoing Response Brief of Petitioner/Appellee, Diana Lynn Barr, upon all counsel of record by serving a copy of the same through the File & Serve Illinois e-filing system, and by emailing a copy of the same on December 23, 2020.

*/s/ James R. Branit*
James R. Branit