

2023 IL App (1st) 220216-U

No. 1-22-0216

Order filed February 10, 2023

FIFTH DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> PARENTAGE OF F.R.,)	
)	
JOSE RIVERA,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 2019 D 79817
)	
CARLENE PELINO,)	Honorable
)	David E. Haracz
Respondent-Appellant.)	Judge presiding.

JUSTICE MITCHELL delivered the judgment of the court.
Presiding Justice Delort and Justice Lyle concurred in the judgment.

ORDER

- ¶ 1 *Held:* A contribution award of attorney fees is affirmed where the trial court made appropriate findings to justify the award under the Illinois Parentage Act and the Illinois Marriage and Dissolution of Marriage Act.
- ¶ 2 Carlene Pelino appeals from an order granting Jose Rivera's second petition for attorney fees and ordering Pelino's contribution of \$40,000. Pelino challenges the fee award on the following three bases: did the trial court abuse its discretion in awarding attorney fees to Rivera because (1) it failed to specify the statutory authority for the award; (2) it found that Pelino has

ability to pay Rivera when she does not; and (3) it did not make a finding as to the reasonableness of Rivera's fees? For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Jose Rivera and Carlene Pelino, a couple never married and now separated, have a minor child together. When the child was three years old, Rivera filed a petition for determination of parentage and other relief in the circuit court of Cook County. After about two years of disputes surrounding the child's custody and parenting time, the parties entered into a settlement agreement on the eve of trial, fully resolving all issues of parentage and support of the child.

¶ 5 After entering the settlement agreement, the trial court conducted a hearing on Rivera's second petition for interim and prospective attorney fees, which he had filed shortly before the parties settled. The fee petition alleged that Pelino has continued to needlessly increase the cost of litigation by interfering with Rivera's parenting time and harassing him with unfounded allegations of sexual abuse and neglect of the child. Following a two-day evidentiary hearing, during which the trial court heard testimony from both parties and admitted various billing statements into evidence, the trial court granted Rivera's second petition for attorney fees and ordered Pelino to contribute \$40,000. Pelino's subsequent motion to reconsider was denied. This timely appeal followed. Ill. S. Ct. R. 303(a) (eff. July 1, 2017).

¶ 6

ANALYSIS

¶ 7 Pelino argues that the trial court abused its discretion in three instances in awarding attorney fees. A trial court's decision to award attorney fees will not be overturned absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13. Determining whether the trial court

applied the correct standard in awarding the fees requires statutory interpretation, which is a legal question that we review *de novo*. *Id.*

¶ 8 First, Pelino argues that the trial court abused its discretion in not specifying the subsection of section 508 of the Illinois Marriage and Dissolution of Marriage Act under which it awarded attorney fees. Rivera filed his second petition for interim and prospective attorney fees and costs pursuant to section 809 of the Illinois Parentage Act (750 ILCS 46/809 (West 2020)) and sections 501(c-1) and 508 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(c-1), 508 (West 2020)). Section 809 of the Parentage Act allows the court to order reasonable attorney fees and costs to be paid by the parties, after considering factors specified in section 508 of the Marriage Act:

“[T]he court may order, *in accordance with the relevant factors specified in Section 508 of the Illinois Marriage and Dissolution of Marriage Act*, reasonable fees of counsel, experts, and other costs of the action, pre-trial proceedings, post-judgment proceedings to enforce or modify the judgment, and the appeal or the defense of an appeal of the judgment to be paid by the parties.” (Emphasis added.) 750 ILCS 46/809.

Thus, section 809 directs our attention to section 508(a) of the Marriage Act, which in turn references section 501(c-1) factors for determining interim fees and section 503(j) for contribution to fees and costs at the conclusion of the proceedings. 750 ILCS 5/508(a). In either situation, section 508(a) instructs the court to “consider[] the financial resources of the parties.” *Id.*

¶ 9 Here, Rivera filed his petition seeking interim and prospective fees, but the parties subsequently settled prior to trial. Further, Pelino’s counsel conceded during the hearing on the fee petition that, due to the case’s procedural posture, the petition was “necessarily a de facto petition

for final contribution to attorneys' fees and costs." Accordingly, section 508(a) in conjunction with section 503(j) is the appropriate statutory authority.

¶ 10 The trial court's written order acknowledged that Rivera's petition was filed pursuant to section 501(c-1) and section 508 of the Marriage Act, and it considered the relevant statutory factors. Specifically, the trial court reviewed the parties' financial affidavits and considered their financial resources, which is required under section 508(a). 750 ILCS 5/508(a). It also made a finding that Pelino needlessly increased the cost of litigation. Pelino contends that needlessly increasing the cost of litigation is a consideration under section 508(b), but not under 508(a). However, the language in section 503 allows the court to consider an unnecessary increase in the cost of litigation when determining a fee award under section 508(a). Section 503(j) directs the court to base any award of contribution on the criteria for the division of marital property under section 503(d), which provides that the court "shall divide the marital property *** considering all relevant factors." 750 ILCS 5/503(d), (j)(2). Whether a party unnecessarily increased the cost of litigation is a relevant factor in the allocation of attorney fees, and it may be properly considered under section 508(a). See *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 117 ("Unnecessarily increasing the cost of litigation is a relevant factor in both the division of property and the allocation of attorney fees."); *In re Marriage of Haken*, 394 Ill. App. 3d 155, 161 (2009) (same).

¶ 11 Pelino's reliance on *In re Marriage of Budorick*, 2020 IL App (1st) 190994, in arguing the contrary is misplaced. In *Budorick*, the petitioner expressly denied bringing her petition under section 508(b), and the trial court did not consider the required factors under section 508(a). *Id.* ¶¶ 68-69. Here, the trial court's order cited, albeit generally, section 508 and discussed the ability of

the parties to pay as well as other relevant factors justifying the award under subsection (a). In substance, the trial court made all the findings required for a fee award under section 508(a).

¶ 12 Second, Pelino argues that the trial court abused its discretion because its finding that Pelino has the ability to contribute to Rivera's fees contradicted the evidence presented. She points to her testimony from the hearing that her uncle paid a substantial amount of her attorney fees with an expectation that she would repay him when able. Without citing any authority, Pelino contends that loans from family members cannot be considered in determining her financial resources. But the case law is to the contrary. See *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 43 (the court considered both parties' ability to obtain loans from family members as one of the just and equitable factors in determining interim attorney fees); see also *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶¶ 21-22 (the finding that a party had access to funds "by virtue of the fact he borrowed funds from a family member" could be read as meaning that he had ability to pay). The trial court properly exercised its discretion in considering Pelino's ability to obtain loans from her family members as her financial resources.

¶ 13 Third and lastly, Pelino contends that the trial court abused its discretion in not making a finding as to the reasonableness of the \$40,000 fee award. Under both sections 508(a) and 508(b), the court may only award reasonable attorney fees and costs. 750 ILCS 5/508(a), (b). Significantly, Pelino never contested the reasonableness of the fees that Rivera sought during the hearing or in her motion to reconsider the fee award. By failing to raise the issue in the trial court, Pelino has forfeited it. *In re Marriage of Beyer & Parkis*, 324 Ill. App. 3d 305, 321 (2001). Forfeiture aside, the trial court did make a reasonableness finding in its order that "Petitioner's attorney fees are fair and reasonable." The trial judge, having presided over the case for its two-year duration, was in a

position to best assess the reasonableness of the fees, based on his own experience and knowledge of the case. See *id.* The record shows that counsel for both parties have tendered their billing statements to the trial court and that these statements were admitted into evidence without objection. Rivera’s counsel also clarified during the hearing that she was asking for \$53,462, excluding fees demanded in anticipation of trial. That the trial court granted the fee petition for \$40,000, an amount lower than the demand, suggests that it actively engaged in reviewing the admitted evidence and determined the appropriate amount to award. See *In re Marriage of Powers*, 252 Ill. App. 3d 506, 510 (1993) (“All reasonable presumptions are in favor of the action of the trial court, and absent an affirmative showing to the contrary, the reviewing court will assume that the trial court understood and applied the law correctly. [Citation.]”). Further, the \$40,000 ultimately awarded to Rivera amounts to one-fifth of \$204,313 of attorney fees incurred by Pelino. See *Farfaras v. Citizens Bank & Trust of Chicago*, 433 F.3d 558, 569 (7th Cir. 2006) (the attorney fees incurred by the party sought to be charged is considered in the reasonableness analysis to prevent “hypocritical objections”).

¶ 14

CONCLUSION

¶ 15 For all these reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 16 Affirmed.