No. 126192

IN THE SUPREME COURT OF ILLINOIS

IN RE: THE MARRIAGE OF:	)	
	)	On Appeal from the Illinois Appellate
DIANA LYNN BARR CRECOS,	)	Court, First District No. 1-18-2211
	)	
Petitioner/Appellee,	)	
	)	On Appeal from the Circuit Court of
- and -	)	Cook County
	)	
GREGORY CRECOS,	)	No. 2007 D 10902
	)	
	)	The Honorable Robert W. Johnson,
Respondent/Appellant.	)	Judge Presiding.

BRIEF OF APPELLANT

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STATUTES INVOLVED

(750 ILCS 5/508) (from Ch. 40, par. 508)

Sec. 508. Attorney's fees; client's rights and responsibilities respecting fees and costs.

(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501 and in any other proceeding under this subsection. At the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection. Fees and costs may be awarded in any proceeding to counsel from a former client in accordance with subsection (c) of this Section. Awards may be made in connection with the following:

(1) The maintenance or defense of any proceeding under this Act.

(2) The enforcement or modification of any order or judgment under this Act.

(3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.

(3.1) The prosecution of any claim on appeal (if the prosecuting party has substantially prevailed).

(4) The maintenance or defense of a petition brought under Section 2-1401 of the Code of Civil Procedure seeking relief from a final order or judgment under this Act. Fees incurred with respect to motions under Section 2-1401 of the Code of Civil Procedure may be granted only to the party who substantially prevails.

(5) The costs and legal services of an attorney rendered in preparation of the commencement of the proceeding brought under this Act.

(6) Ancillary litigation incident to, or reasonably connected with, a proceeding under this Act.

(7) Costs and attorney's fees incurred in an action under the Hague Convention on the Civil Aspects of International Child Abduction.

All petitions for or relating to interim fees and costs under this subsection shall be accompanied by an affidavit as to the factual basis for the relief requested and all hearings relative to any such petition shall be scheduled expeditiously by the court. All provisions for contribution under this subsection shall also be subject to paragraphs (3), (4), and (5) of subsection (j) of Section 503.

The court may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her name, or that it shall be paid to the appropriate party. Judgment may be entered and enforcement had accordingly. Except as otherwise provided in subdivision (e)(1) of this Section, subsection (c) of this Section is exclusive as to the right of any counsel (or former counsel) of record to petition a court for an award and judgment for final fees and costs during the pendency of a proceeding under this Act.

(a-5) A petition for temporary attorney's fees in a post-judgment case may be heard on a non-evidentiary, summary basis.

NATURE OF THE CASE

This appeal arises from the appellate court's dismissal of Greg Crecos's ("Greg") appeal from attorney fee awards entered against him and in favor of his ex-wife, Diana Lynn Barr Crecos ("Diana") (sometimes collectively referred to as "the parties"), for the defense and prosecution of two prior appeals in this case. The awards were made pursuant to 750 ILCS 5/508(a)(3) ("Section 508(a)(3)") and 750 ILCS 5/508(a)(3.1) ("Section 508(a)(3.1)"), and entered by the circuit court of Cook County amidst still on-going post-dissolution judgment proceedings. The circuit court made a finding pursuant to Supreme Court Rule 304(a) ("Rule 304(a)") as to the fee awards. Notwithstanding, the appellate court determined that the fees awarded constitute "interim fees" pursuant to 750 ILCS 5/501(c-1) ("Section 501(c-1)"), and, given the pendency of other claims, are non-final, such that the Rule 304(a) finding did not confer appealability. For the reasons that follow, there is no basis for the appellate court's characterization of the fees awarded here as "interim fees," nor does the fact the fees were awarded while other claims remain pending affect the order's finality, or appealability, when accompanied by a Rule 304(a) finding. No questions are raised on the pleadings.

QUESTION PRESENTED FOR REVIEW

Whether the appellate court has jurisdiction to review the merits of Greg's challenges to the circuit court's appellate fee awards for prior appeals entered on September 17, 2018.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Supreme Court Rule 315. Greg's petition for leave to appeal was allowed on September 30, 2020.

STATEMENT OF FACTS

This is a long-running and complex domestic relations case from the circuit court of Cook County. This case is the fourth disposition from the appellate court arising out of the Crecos divorce; the fee judgments at issue arise out of the first two of those dispositions.

The first was filed in 2012. In re Marriage of Crecos, 2012 IL App (1st) 102158-U ("Crecos I"). (A56-A73) Greg filed the appeal in Crecos I, challenging various aspects of the dissolution judgment entered on December 24, 2009. (C778-C842) The appellate court affirmed the judgment in all respects. (A72) On March 31, 2016, Diana filed a petition for attorney fees and costs relative to her defense of Crecos I pursuant to Section 508(a)(3). (C4695-C4706; A10-A21)

The second was filed in 2015. In re Marriage of Crecos, 2015 IL App (1st) 132756. ("Crecos II"). (A74-A80) Diana filed the appeal in Crecos II, challenging various post-dissolution judgment rulings, including a $746,000 money judgment entered against her for stealing Greg's personal property awarded to him in the dissolution judgment. Id. at ¶¶ 7-11. In the midst of those same post-dissolution judgment proceedings, the parties also resolved by agreement Greg's petition to modify his child support obligation. (C2526-C2527) As a threshold issue in Crecos II, Diana challenged the trial judge's initial ruling denying her motion for substitution of judge as of right. Id. at ¶¶ 22-29. The appellate court reversed the circuit court's order denying the substitution of judge, thereby causing the necessary vacature of all later orders which that same trial judge entered—including the $746,000 money judgment. Id. at ¶ 31. The appellate court remanded the case, meaning that a new judge would rehear Greg's action to recover the personal property awarded to

him in the dissolution judgment. [1] Id. at ¶ 32. On March 18, 2016, Diana filed a petition for attorney fees and costs relative to her prosecution of Crecos II, pursuant to Section 508(a)(3.1). (C4584-C4595; A22-A33)

Greg opposed both fee petitions on numerous grounds in the circuit court. (C4943-C4950; C4952-C4959)

On September 17, 2018, the circuit court, after a hearing (R755-R809), entered an order obligating Greg to pay Diana's attorneys $32,952.50 in fees and costs relative to her defense of Crecos I and $89,465.50 in fees and costs relative to her prosecution of Crecos II. (C8033; A34) The order included a Rule 304(a) finding that "there is no just reason to delay enforcement or appeal of this order." (C8033; A34)

On October 16, 2018, Greg filed his timely notice of appeal.[2] (C8417; A35)

On June 22, 2020, the appellate court filed its opinion dismissing Greg's appeal from the fee judgments. In re Marriage of Crecos, 2020 IL App (1st) 182211. (A1-A9)

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[1] Crecos II did not make reference to the child support modification agreement because Diana did not specifically challenge it. However, later proceedings revealed that the agreement was also vacated by virtue of the reversal of the denial of the substitution of judge. After Crecos II, Diana initiated collection proceedings for back child support she claimed was owed pursuant to the dissolution judgment. These collection efforts were affirmed, over Greg's objections, by the appellate court in In re Marriage of Crecos, 2019 IL App (1st) 171368-U. ("Crecos III"). (A81-A92) Crecos III made clear that, despite the vacature of the agreed child support modification because of the initial erroneous denial of Diana's motion for substitution of judge, Greg's petition to modify child support remained pending and undetermined in the circuit court, and it still does. Id. at ¶ 27.

[2] Greg has raised several merits challenges to each fee award. Regarding the fees for Crecos I, Greg argues that Diana did not prove the reasonableness and necessity of the fees awarded. Regarding the fees for Crecos II, Greg argues the same but also that Diana did not "substantially prevail" within the meaning of Section 508(a)(3.1), because the case was reversed based only upon the trial judge's erroneous denial of her motion for substitution of judge. (A47-A52)

The appellate court interpreted Section 508(a)(3.1) to mean that the fee orders are interim, non-final, orders because "issues remain pending," referring to "Greg's claim that Diana took his personal property."[3] Id. at ¶ 13. The court believed that the fees were "interim fees" pursuant to Section 501(c-1), and it analogized the fees to those entered during pre-judgment proceedings. Id. at ¶¶ 14-17. The court concluded that post-dissolution judgment fee orders related to appeals entered pursuant to Section 508(a) are "interim fees not subject to immediate appeal" when "the trial court has other issues other than the fees still pending" even when the circuit court makes a Rule 304(a) finding. Id. at ¶¶ 18-19.

STANDARD OF REVIEW

Review is *de novo* because the issue before this Court is jurisdiction and whether Greg's appeal is properly brought pursuant to Rule 304(a). In re Marriage of Fatkin, 2019 IL 123602, ¶ 25.

ARGUMENT

The appellate court has jurisdiction to review determine the merits of the circuit court's fee award because: (1) the order is final; and (2) the circuit court made the requisite Rule 304(a) finding to make its order appealable.

I. The fee awards are final orders.

A. Diana's appellate fee petitions are claims that have been adjudicated to a conclusion on their merits.

"An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either of the entire controversy or a

[3] A close examination of the appellate court's opinion reveals it only analyzed Section 508(a)(3.1) and not Section 508(a)(3), despite the circuit court making separate awards under each section. Crecos, 2020 IL App (1st) 182211, ¶ 11.

separate part thereof." In re Marriage of Gutman, 232 Ill. 2d 145, 151 (2008) (*quoting* R.W. Dunteman Co. v. C/G Enterprises, Inc., 181 Ill. 2d 153, 159 (1998)). Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved. Id. (*citing* Marsh v. Evangelical Covenant Church of Hinsdale, 138 Ill. 2d 458, 464 (1990)). This Court has defined a "claim" as "any right, liability or matter raised in an action." Id. (*quoting* Marsh, 138 Ill. 2d at 465).

Diana's fee petitions filed pursuant to Section 508(a)(3) and Section 508(a)(3.1) are claims because they invoke her right to seek fees for defending against Crecos I and prosecuting Crecos II, respectively. This Court has previously afforded merits review of fee awards under both sections. In re Marriage of Talty, 166 Ill. 2d 232, 240-42 (1995) (Section 508(a)(3) award); In re Marriage of Murphy, 203 Ill. 2d 212, 218-23 (2003) (Section 508(a)(3.1) award).

The circuit court conducted a hearing on both of Diana's fee petitions. (R755-R809) Both parties were permitted to litigate the petitions as they saw fit. The circuit court considered (albeit erroneously – as Greg asserts on the merits) the financial status of the parties, the reasonableness and necessity of the fees sought, and the applicability of the relevant statutory provisions. In re Marriage of Heroy, 2017 IL 120205, ¶¶ 12-22. Nothing at the hearing suggested any later reassessment, re-evaluation, or reallocation of the fees sought for the prior appeals.

Relatedly, Diana filed her fee petitions long after both appeals had been adjudicated. Crecos I was decided on July 23, 2012. (A56) Diana filed her fee petition about that appeal on March 31, 2016. (C4695; A10) Crecos II was decided on July 28,

2015. (A74) Diana filed her fee petition about that appeal on March 18, 2016. (C4584; A22) By their nature, appeals are compartmentalized proceedings with a beginning, middle and end. Nothing about Crecos I and Crecos II is ever going to change, nor will any more work ever be done on them. Thus, the circuit court's September 17, 2018, fee order is final because it disposed of a "separate part" of the post-dissolution judgment controversy between the parties—namely, Diana's claims for fees as appellee in Crecos I, and as appellant in Crecos II. Gutman, 232 Ill. 2d at 151.

B. The fees awarded are not interim fees.

The appellate court labeled the fees awarded here as "interim fees" entered pursuant to Section 501(c-1). Crecos, 2020 IL App (1st) 182211, ¶¶ 13-15. The court cited In re Marriage of Olesky, 337 Ill. App. 3d 946, 950 (2003) for the proposition that Section 501(c-1) applies to post-dissolution judgment interim fee proceedings. Id. at ¶ 13. Contrary to the appellate court's characterizations, the fees here are neither interim, nor awarded pursuant to Section 501(c-1).

i. Section 501(c-1) is not applicable to post-dissolution judgment proceedings

The appellate court's reliance on Olesky is misplaced. Public Act 96-583, effective January 1, 2010, made certain amendments to Section 501(c-1) and Section 508(a), clarifying that Section 501(c-1) applies only to pre-dissolution judgment proceedings. [4]

It is a well-settled rule of construction that an amendment to a statute demonstrates the legislature's intent to remedy a defect as the statute was previously written. Hyatt Corp. v. Sweet, 230 Ill. App. 3d 423, 433 (1992) (*citing* State of Illinois v. Mikusch, 138 Ill. 2d

[4] https://www.ilga.gov/legislation/publicacts/96/096-0583.htm

242 (1990)) ("[A] statutory amendment presumptively represents an intent to change existing law."); *See also* People v. Redmond, 59 Ill. 2d 328, 334 (1974) ("To merely say that no substantive change was intended by these rule modifications would be to adopt the position that the amendments were superfluous and are of no meaning. This construction cannot generally be presumed.")

The plain language of both sections, as amended, demonstrates that Section 501(c-1) governs *only* pre-dissolution judgment interim fee disputes. Section 508(a) was amended to state that interim fees may be awarded "**in a pre-judgment dissolution proceeding** in accordance with subsection (c-1) of Section 501 **and in any other proceeding under this subsection**." (emphasis added to denote amendment). It also added an affidavit requirement. At the same time, added to Section 501(c-1)(1) was new language denoting its applicability to fees and costs "in a pre-judgment dissolution proceeding." Helen W. Gunnarsson, New statute clarifies family law attorney-fee provisions, 97 Ill. B.J. 490 (2009) (noting amendment to Section 501(c-1) such that it applies to pre-dissolution judgment proceedings) (A101-102); Jody Meyer Yazici, David I. Grund, Marvin J. Leavitt, The Illinois Practice of Family Law, 19th Ed., p. 336, n.1 (2020) (interim fees in post-decree actions are pursuant to Section 508(a) as of January 1, 2010).

The distinction between a "pre-judgment dissolution proceeding" and "any other proceeding under this subsection" is further highlighted by Public Act 99-090 and Public Act 99-763.[5] These amendments re-established procedural guidance for post-dissolution judgment interim fee hearings, which was lost when Section 501(c-1) was limited to pre-

[5] https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0690; https://www.ilga.gov/legislation/publicacts/99/PDF/099-0763.pdf

dissolution judgment interim fee hearings, adding that "[a] petition for temporary attorney's fees in a post-judgment case may be heard on a non-evidentiary, summary basis" and then by making that provision its own subsection, 750 ILCS 5/508(a-5) ("sub-section a-5").

The statutory amendments highlight the appellate court's misplaced reliance on cases like In re Marriage of Arjmand, 2017 IL App (2d) 160631 and In re Marriage of Johnson, 351 Ill. App. 3d 88 (2004), both of which involve Section 501(c-1) interim fee disputes arising out of pre-dissolution judgment cases where the initial petition for dissolution of marriage had not been adjudicated to conclusion. Crecos, 2020 IL App (1st) 182211, ¶¶ 13-15. Pre-dissolution judgment interim fee concepts such as awards being "deemed to have been advances from the marital estate" simply have no applicability to post-dissolution judgment proceedings, because the marital estate has already been distributed in the dissolution judgment. 750 ILCS 5/501(c-1)(2).[6]

That said, it is clear under Section 508(a) that interim fees may be awarded in post-dissolution judgment proceedings. But, there is nothing in the statute to define what those "interim" fees mean, because there is no longer a marital estate to "advance" from. Section 508(a) simply includes an affidavit requirement and that hearings may be summary and

[6] In a case decided after the instant matter, the appellate court made a similar mistake in applying Section 501(c-1) to post-dissolution judgment proceedings. In re Marriage of Gabriel, 2020 IL App (1st) 191840, ¶¶ 9-17. In Gabriel, the court dismissed an appeal from a prospective Section 508(a)(3) award, concluding that it represented an "interim," and therefore non-appealable, order. Id. This decision seemingly conflicts with the merits review provided by this Court to a similar prospective Section 508(a)(3) award. In re Marriage of Talty, 166 Ill. 2d 232, 240-42 (1995).

non-evidentiary pursuant to sub-section (a-5).[7] It is suggested, however, that interim fees as used in Section 508(a) for post-dissolution judgment purposes are temporary fees in the sense that they can be readdressed later and either reduced – if the work for which fees were awarded was not performed, or increased – if more work was done than which was initially awarded.

ii. Irrespective of what "interim" means in a post-dissolution judgment proceeding, the fees at issue here are not interim

The fees at issue in this case cannot be considered "interim" under any understanding of that term. The fees are not "temporary" or subject to future review in any way. The fee award is the final adjudication of Diana's rights against Greg pursuant to Section 508(a)(3) and Section 508(a)(3.1) for Crecos I and Crecos II. They are in the nature of a final contribution award, something also expressly contemplated in Section 508(a) in post-dissolution judgment proceedings. In re Marriage of DeLarco, 313 Ill. App. 3d 107, 111-14 (2000) (discussing difference between final fee contribution hearings and interim fee hearings); In re Marriage of Kane, 2018 IL App (2d) 180195, ¶ 17 (discussing the types of fee hearings envisioned under Section 508(a)). Later proceedings on any pending claim, or any future claim either party may file, will have no bearing on the fees awarded for the long-ago concluded appeals in Crecos I and Crecos II. At this point, the circuit court would never have reason to re-examine the award. That is precisely why the circuit court allowed the Rule 304(a) finding in the first place. Simply put, the appellate court did not appreciate

[7] The discretion afforded in subsection (a-5) to conduct an evidentiary hearing in post-dissolution judgment proceedings when appropriate differs from the mandatory requirement of Section 501(c-1)(1), that an interim attorney fee hearing be non-evidentiary in nature in pre-decree proceedings "except for good cause shown." 750 ILCS 5/501(c-1)(1).

that, under Section 508(a), post-dissolution judgment fee claims (like those for appeals that have concluded) can stand alone and that the circuit court may dispose of those claims while leaving other post-dissolution judgment claims unresolved. In re Marriage of Beyer and Parkis, 324 Ill. App. 3d 305, 310 (2001) (labeling Section 508(a) an "umbrella provision" linking various types of fee hearings).

C. The fee awards are not interim awards merely because other claims remain pending.

Related to its misunderstanding of Section 501(c-1) in the context of post-dissolution judgment proceedings, the appellate court found In re Marriage of Derning, 117 Ill. App. 3d 620 (1983), which relied substantially on this Court's decision in In re Marriage of Leopando, 96 Ill. 2d 114 (1983), to be similar to this case. Crecos, 2020 IL App (1st) 182211, ¶¶ 16-17. Derning involved an attempted appeal from a dissolution judgment where final attorney fee contribution had not yet been decided. In other words, the petition for dissolution had not been fully adjudicated, so there was no final order. Derning, 117 Ill. App. 3d at 625-27 (*citing* Leopando, 79 Ill. 2d at 119). The appeal was dismissed because a "petition for dissolution is not a final judgment until the remaining issues are resolved" due to the interrelatedness of the many issues when deciding the initial petition for dissolution. Id.

The appellate court here found that "the order for attorney fees" is "inextricably intertwined with the property issues that remain partially unresolved," holding "when the trial court awards fees for an appeal in a divorce case and the trial court has issues other than fees still pending, the award grants interim fees not subject to immediate appeal." Crecos, 2020 IL App (1st) 182211, ¶ 18. Effectively, the appellate court applied the Leopando understanding of finality (meant by this Court to apply only to pre-judgment

dissolution proceedings and the adjudication of the initial petition for dissolution) to post-dissolution judgment proceedings.

This misapplication can only be described as trying to fit the proverbial square peg into a round hole. In re Marriage of Ehgartner-Schacter, 366 Ill. App. 3d 278, 284, fn. 5 (2006) (noting that post-dissolution judgment proceedings are not subject to the Leopando "jurisdictional limitation.") In post-dissolution judgment litigation, each new claim that a party files stands alone—as do the parties, each is now divorced, and each has received their equitable share of property and support awards. In re Marriage of Sutherland, 251 Ill. App. 3d 411, 413-14 (1993). Unlike a petition for dissolution of marriage, which advances one "single claim" each and every time, there are myriad potential post-dissolution judgment claims that can be advanced based upon the facts and circumstances of the particular parties. Leopando, 96 Ill. 2d at 119. Thus, there is no reason to treat pre- and post-dissolution judgment finality in the same way. Once the dissolution judgment is entered, the post-dissolution judgment universe becomes analogous to every other area of law—the specific claims before the court are dependent on what the parties choose to file and each claim filed may be disposed of at different times. The fact that other post-dissolution judgment claims remain pending when a separate post-dissolution judgment claim is adjudicated to a conclusion cannot render the latter non-final. It can only mean, as detailed below, that a Rule 304(a) finding is required to make the order appealable, like in all other civil proceedings.

In short, the appellate court's conclusion that the pendency of Greg's personal property claim, as well as his pending child support modification claim, makes the appellate fee awards non-final, is wrong. Crecos, 2020 IL App (1st) 182211, ¶¶ 18-19.

D. A final contribution hearing for post-dissolution judgment fees can occur irrespective of the pendency of other claims.

The appellate court also made reference to 750 ILCS 5/503(j) ("Section 503(j)") and its applicability vis-à-vis final attorney fee contribution awards. Crecos, 2020 IL App (1st) 182211, ¶¶ 12-13. This Court recently construed Section 503(j), as applied to a final post-dissolution judgment fee contribution award. In In re Marriage of Heroy, 2017 IL 120205, ¶ 14-15, this Court examined the standard by which a party must prove "inability" to pay in order to seek a final contribution to fees, pursuant to Section 508(a). Id. ¶¶ 15-22, 30. This Court determined that the spouse seeking a final contribution to her fees and costs had proven her relative "inability," considering the factors set forth in Section 503(j) *as guidance* for judging relative "inability" in the context of a Section 508(a) final fee contribution petition. Id. ¶¶ 21-22, 30.

While Section 503(j) provides guidance for the standard of "inability," there is no requirement that all pending post-dissolution judgment claims be adjudicated prior to a final contribution hearing on any individual claim. It is here where the appellate court misconstrues Section 503(j) in the post-dissolution judgment context. The court found significant that Section 503(j) "applies only when the court has resolved 'all issues between the parties' other than the award of attorney fees." Crecos, 2020 IL App (1st) 182211, ¶ 13. While that may be true in pre-dissolution judgment proceedings, where only one claim is advanced—the petition for dissolution of marriage—it does not follow in the post-dissolution judgment setting, as discussed above.

II. The Rule 304(a) finding made the fee judgments appealable, and they would not have been appealable without it.

Rule 304(a) provides:

> (a) Judgments As To Fewer Than All Parties or Claims−Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.

Since (and even before) this Court's decision in In re Marriage of Gutman, 232 Ill. 2d 145, 151 (2008), the appellate court has long been divided on the applicability of Rule 304(a) when considering post-dissolution judgment appellate jurisdiction. Linda S. Kagan, Is it a claim or a new action? Characterization of post-judgment petitions in family law cases affects appealability, 51 Ill. St. B.A. Newsl. 1 (2008). (A93-A100)

For many years, the second and fourth districts held that, absent a Rule 304(a) finding, a post-dissolution judgment order is not appealable when other claims remain pending, unless some other rule specifically confers jurisdiction. In re Marriage of Alyassir, 335 Ill. App. 3d 998, 999-1000 (2003) (second district); In re Marriage of Gaudio, 368 Ill. App. 3d 153, 157-58 (2006) (fourth district). This position was consistent with this Court's decision in Gutman, which held a Rule 304(a) finding is required to make post-dissolution judgment orders appealable when a contempt claim remains pending. Gutman, 232 Ill. 2d at 151.

In the years following Gutman, the first and third districts distinguished it, finding that Gutman should be limited to its facts because the still-pending claim there was a contempt petition. In re Marriage of Demaret, 2012 IL App (1st) 111916, ¶¶ 35-36; In re Marriage of A'Hearn, 408 Ill. App. 3d 1091, 1097-98 (2011). This line of cases held that post-dissolution judgment orders are appealable as final orders pursuant to Supreme Court Rule 301 and Rule 303 ("Rule 301" and "Rule 303"), without the necessity of a Rule 304(a) finding, if the order appealed is not "related" to the claims still pending, so long as that claim is not a contempt petition. Demaret, 2012 IL App (1st) 111916, ¶ 36; A'Hearn, 408 Ill. App. 3d at 1098; see also In re Marriage of Carr, 323 Ill. App. 3d 481, 483-85 (2001). Demaret and A'Hearn do not explain why the fact that the still-pending claim in Gutman was a contempt petition left the door open to hold that the pendency of any another other kind of claim means an appeal from a final post-dissolution judgment order lies under Rules 301 and 303 if the still-pending claim is "unrelated" to the order sought to be appealed. Demaret, 2012 IL App (1st) 111916, ¶ 36 ("Gutman should be read consistent with its facts.") If anything, Gutman said the opposite—a contempt petition is not special and is just like any another claim for jurisdictional purposes; the pendency of which defeats appellate jurisdiction in the absence of a Rule 304(a) finding. Gutman, 232 Ill. 2d at 151-54.

In any event, the problem with the "relatedness" theory of post-dissolution judgment jurisdiction is twofold. First, "relatedness" is not a word found in the rules. Rule 304(a) speaks in terms of "separate" claims, not "related" or "unrelated" claims. Alyassir, 335 Ill. App. 3d at 1000 (noting that the separability of issues is a necessary condition for a Rule 304(a) appeal). Framing the inquiry in terms of the "relatedness" of post-dissolution

judgment claims injects an inherent subjectivity into the jurisdictional rules applicable to post-dissolution judgment appeals—rules that should not be subjective but instead clear and mechanical. Second, permitting merits appeals from "unrelated" claims as final orders under Rules 301 and 303 renders the discretion afforded to the circuit court under Rule 304(a) to decide if a piecemeal appeal best serves judicial economy a dead letter. Id. at 1001.

Demaret, A'Hearn and Carr made no attempt to define what a "related" claim is in the post-dissolution judgment context, and the reader is left to compare the specific claims at issue to give "relatedness" any meaning. To be sure, all post-dissolution judgment claims can be considered "related"—all arise out of the same family, the same parties, the same children, and from the same set of financial and parent/child-related circumstances. In effect, the "relatedness" theory of post-dissolution judgment jurisdiction is really no jurisdictional standard at all, only a means to provide merits review when the rules did not permit it but when the appellate court wanted to provide it, however well-intentioned. Indeed, both A'Hearn and Demaret, in part, justified using the "relatedness" theory of jurisdiction because not doing so "does not serve the interests of justice," articulating a fear that "one party can defeat appellate jurisdiction, especially on issues of child custody, simply by filing a separate, completely unrelated petition." Demaret, 2012 IL App (1st) 111916, ¶ 39 (*quoting* A'Hearn, 408 Ill. App. 3d at 1098). With respect, the "interests of justice" is far too nebulous a concept to govern jurisdictional rules. Rather, these types of concerns are for the circuit court to consider when deciding whether or not to make a Rule 304(a) finding. AT&T v. Lyons & Pinner Electric Co., Inc., 2014 IL App (2d) 130577, ¶ 22 (discussing factors the circuit court should consider when deciding whether to make a

Rule 304(a) finding).

Three years ago, the first district righted its wrong. In In re Marriage of Teymour, 2017 IL App (1st) 161091, ¶¶ 12-43, one panel parted ways with its earlier case law and adopted the position of the second and fourth districts that post-dissolution judgment orders are not appealable when other claims remain pending, absent a Rule 304(a) finding. Teymour provides a thoughtful analysis of the history of this issue in the appellate court. Another first district panel later followed Teymour, again parting ways from its own previous case law. In re Marriage of Sanchez, 2018 IL App (1st) 171075, ¶¶ 20-29 (dismissing appeal from post-judgment orders when other claims remained pending absent a Rule 304(a) finding).[8]

For the reasons stated in Teymour and Alyassir, and those by this Court in Gutman, post-dissolution judgment final orders are only appealable with a Rule 304(a) finding when other claims remain pending. These cases are faithful to the language of Rule 304(a) and provide the clearest and most cogent approach to post-dissolution judgment appellate jurisdiction. Notwithstanding its recent trend towards uniformity, the appellate court remains divided on this issue. This Court should clarify the law and adopt the Teymour and Alyassir reasoning, because there is no horizontal *stare decisis* to bind the appellate court. O'Casek v. Children's Home and Aid Soc. of Illinois, 229 Ill. 2d 421, 440 (2008) (decisions of one panel of the appellate court are not binding on others).

[8]At least one panel of the third district has followed Teymour. In re Marriage of Fatkin, 2018 IL App (3d) 170779, ¶¶ 26-27, rev'd by In re Marriage of Fatkin, 2019 IL 123602. In Fatkin, the third district determined that it had jurisdiction over a relocation petition pursuant to Supreme Court Rule 304(b)(6), and ignored its prior decision in A'Hearn that would have provided for jurisdiction pursuant to Rules 301 and 303.

This Court should further overrule cases like Demaret, A'Hearn and Carr to make clear that, without a Rule 304(a) finding, a post-dissolution judgment order is *not appealable as a final order pursuant to Rules 301 and 303 when other claims remain pending*. In re Marriage of Goesel, 2017 IL 122046, ¶ 33. (resolving appellate court conflict on issue of disgorgement of earned fees and expressly overruling previously decided appellate court decisions to the contrary). The appellate court divide over jurisdictional rules cannot go on; the uncertainly borne from these cases is unfair to lawyers, judges and litigants. No one knows for sure when to file a notice of appeal in post-dissolution judgment cases, because at any particular time any particular appellate panel might employ one approach or another. This simply cannot be permitted to continue. Venting his frustration (felt by many) over the uncertainty that has befallen post-dissolution judgment appellate jurisdiction, one appellate court justice wrote:

> Out in the real world, far, far away from the rarified air of the appellate court, real lawyers are struggling to figure out how to best protect the rights of their respective clients. With all due respect, appellate decisions such as this make that job difficult, if not impossible. Additionally, it will make the extremely expensive proposition of litigation even more expensive. Now, when there is a ruling on any portion of a multiple claim case in the trial court, the lawyers will have to figure out whether an appellate court will decide if the issue ruled upon was sufficiently similar to the remaining issues so as not to require an interlocutory appeal, or whether two of three judges might find the issue sufficiently dissimilar from the other issues, requiring a notice of appeal to be filed within 30 days. One can expect reasonable lawyers to avoid malpractice exposure by filing notices of appeal on every order in the trial court for fear that failure to do so could find the issue unreviewable at a later time due to lack of jurisdiction.

In re Custody of C.C., 2013 IL App (3d) 120342, ¶ 81 (J. Schmidt, concurring in part and dissenting in part).

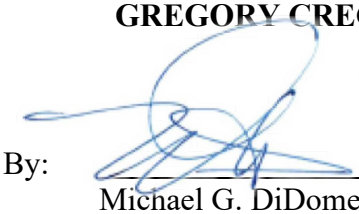
Because the appellate fee awards here were final orders and the circuit court made a Rule 304(a) finding, the appellate court has jurisdiction over Greg's appeal. This Court

should reverse the appellate court's dismissal and remand back to the appellate court for its consideration of Greg's merits challenges to the fee awards. Roddy v. Armitage-Hamin Corporation, 401 Ill. 605, 613 (1948).

PRAYER

WHEREFORE, GREGORY CRECOS, prays that this Court reverse the judgment of the Appellate Court, remand this case back to the Appellate Court for its consideration of Greg's merits challenges to the September 17, 2018, appellate fee orders, and for such other, further, and different relief as this Court in its equity deems just and proper.

Respectfully submitted,
GREGORY CRECOS



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No. 126192

IN THE SUPREME COURT OF ILLINOIS

IN RE: THE MARRIAGE OF:	)	
	)	On Appeal from the Illinois Appellate
DIANA LYNN BARR CRECOS,	)	Court, First District No. 1-18-2211
	)	
Petitioner/Appellee,	)	
	)	On Appeal from the Circuit Court of
- and -	)	Cook County
	)	
GREGORY CRECOS,	)	No. 2007 D 10902
	)	
	)	The Honorable Robert W. Johnson,
Respondent/Appellant.	)	Judge Presiding.

CERTIFICATION OF BRIEF

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the cover page, table of contents, points and authorities, appendix, and this certification, is 18 pages.

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IN THE SUPREME COURT OF ILLINOIS

IN RE: THE MARRIAGE OF:	)	
	)	On Appeal from the Illinois Appellate
DIANA LYNN BARR CRECOS,	)	Court, First District No. 1-18-2211
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- and -	)	Cook County
	)	
GREGORY CRECOS,	)	No. 2007 D 10902
	)	
	)	The Honorable Robert W. Johnson,
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APPENDIX

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2020 IL App (1st) 182211
No. 1-18-2211
June 22, 2020

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF DIANA LYNN BARR CRECOS, Petitioner-Appellee, and GREGORY CRECOS, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court Of Cook County. No. 07 D 10902 The Honorable Robert W. Johnson, Judge Presiding.

JUSTICE WALKER delivered the judgment of the court, with opinion.
Presiding Justice Griffin and Justice Pierce concurred in the judgment and opinion.

OPINION

¶ 1 In the course of divorce proceedings from Gregory Crecos, Diana Barr Crecos filed a motion for an award of attorney fees incurred in two appeals. The trial court awarded Diana the requested fees and found no just reason to delay enforcement or appeal of the award. Gregory appealed, claiming that Diana had not substantially prevailed in the prior appeals because the appellate court's order left several issues unresolved, in need of retrial. We find that the need for further litigation of other issues pursuant to this court's remand makes the award of fees here an interim award under sections 508(a) and 501(c-1) of the Illinois Marriage

and Dissolution of Marriage Act (Act) (750 ILCS 5/508(a), 501(c-1) (West 2016)). We dismiss the appeal from the interlocutory order for lack of jurisdiction.

¶ 2 BACKGROUND

¶ 3 In 2007, Diana Barr Crecos petitioned to dissolve her marriage to Gregory Crecos. On December 24, 2009, Judge Reynolds entered a final judgment dissolving the marriage and allocating the marital property. Gregory appealed Judge Reynolds's decision, and this court affirmed the judgment. *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U (*Crecos I*).

¶ 4 Both parties filed postdecree petitions. After denying a timely motion for substitution of judge, Judge Raul Vega entered a series of orders against Diana. Diana appealed, and this court vacated all of those orders, as well as all orders that followed from and depended on Judge Vega's orders. *In re Marriage of Crecos,* 2015 IL App (1st) 132756 (*Crecos II*). Our order vacating all of Judge Vega's orders left unresolved all issues addressed in Judge Vega's many orders.

¶ 5 In March 2016, Diana filed petitions under section 508(a) of the Act (750 ILCS 5/508(a) (West 2016)) for attorney fees incurred for the appeals in *Crecos I* and *Crecos II*.

¶ 6 On September 17, 2018, the trial court ordered Gregory to pay Diana's attorney $32,952.50 for the appeal in Crecos I and $89,465.50 for the appeal in Crecos II. The court added, "There is no just reason to delay enforcement or appeal of this order."

¶ 7 Gregory appealed on October 16, 2018, naming the September 17 order as the subject of the appeal.

¶ 8 ANALYSIS

¶ 9 On appeal, Gregory contends that the trial court should not have awarded Diana all the fees she sought because she did not prevail on all issues. He argues, "[Diana] did not prevail at all because the theft-of-personal-property issue is still pending in the circuit court below, awaiting re-trial."

¶ 10 We asked the parties to submit briefs concerning our jurisdiction. Both parties assert that this court has jurisdiction to consider the appeal because the trial court did not enter an interim award of fees under section 501(c-1) of the Act (750 ILCS 5/501(c-1) (West 2018)); instead the court entered a final award of attorney fees under section 503(j) of the Act (750 ILCS 5/503(j) (West 2018)). We note that neither the motion for fees nor the court's order cited section 503(j) as the statute authorizing the award.

¶ 11 Section 508(a) of the Act provides:

> "(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501 and in any other proceeding under this subsection. At the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance

> with subsection (j) of Section 503 and in any other proceeding under this subsection. *** Awards may be made in connection with ***
>
> * * *
>
> *** [t]he prosecution of any claim on appeal (if the prosecuting party has substantially prevailed)." 750 ILCS 5/508(a)(3.1) (West 2018).

¶ 12 Section 503(j) provides that, "[a]fter proofs have closed in the final hearing on all other issues between the parties ***, a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided." 750 ILCS 5/503(j) (West 2018).

¶ 13 The parties argue that Section 501(c-1) does not apply because the appeals involve post-decree petitions. However, "[s]ection 501(c-1) applies to both predissolution and postdissolution decree proceedings." *In re Marriage of Oleksy*, 337 Ill. App. 3d 946, 950 (2003). Section 503(j) on its face applies only when the court has resolved "all *** issues between the parties" other than the award of attorney fees. 750 ILCS 5/503(j) (West 2018). The parties admit that the court has not yet resolved some issues in the case, particularly Gregory's claim that Diana took his personal property. Because issues remain pending, the trial court may reconsider its initial allocation of attorney fees, and provide for an assessment of further attorney fees in connection with the pending issues, in its final judgment. See *In re Marriage of Arjmand*, 2017 IL App (2d) 160631, ¶ 20.

¶ 14 Section 501 of the Act defines "interim attorney fees and costs" as "attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel." 750 ILCS 5/501(c-1) (West 2018). Because the case is still pending, awaiting

retrial on issues Gregory raised, the order of September 17, 2018, awards amounts that meet the statutory definition of "interim attorney fees."

¶ 15 Interim awards of attorney fees are temporary in nature, and they are subject to adjustment (including, if necessary, the disgorgement of overpayments to an attorney) at the close of the dissolution proceeding. *Arjmand*, 2017 IL App (2d) 160631, ¶ 20.

> "[T]he legislature intended the remedy for any error in the granting of interim attorney fees to be addressed through a comprehensive reconsideration and reallocation at a final hearing on attorney fees held near the entry of the final judgment of dissolution. In accordance with this intent, the interlocutory appeal of interim-attorney-fee awards is not permitted by any supreme court rule." *Arjmand*, 2017 IL App (2d) 160631, ¶ 21.

"The statute's plain language indicates interim attorney fee awards provide *temporary* relief during divorce litigation. [Citation.] These interim awards are treated as interlocutory orders and are not subject to appeal." (Emphasis in original.) *In re Marriage of Johnson*, 351 Ill. App. 3d 88, 96 (2004).

¶ 16 We find this case similar to *In re Marriage of Derning*, 117 Ill. App. 3d 620 (1983). The trial court in *Derning* divided the marital property but reserved its ruling on the issue of attorney fees. The wife appealed. The appellate court held that it lacked jurisdiction to consider the appeal because the trial court had not entered a final order. The *Derning* court explained:

> "Section 508 of the Illinois Marriage and Dissolution of Marriage Act [citation] empowers the trial court to require one party to pay the other party's attorney fees after consideration of the financial resources of the parties. Since this section

requires a comparison of the parties' respective financial resources, the apportionment of the final fee award is inextricably dependent upon the ultimate division of property. ***

*** Necessarily, attorney fees should be allocated before the reviewing court can properly assess the trial court's division of property and decisions regarding maintenance and child support. *** [T]he allocation of attorney fees judgment is dependent upon and integrally related to decisions regarding property ***.

*** Given the policy *** of deciding all the issues in a dissolution-of-marriage case in a single judgment, we believe attorney fees cannot be resolved in a supplemental hearing as an incidental matter to the divorce decree.

Since attorney fees are not an incidental matter, this court has jurisdiction of this case only if the divorce decree is a final judgment or if the fees are a separate claim pursuant to Rule 304(a) [citation]. Here, we believe based upon the authority of the supreme court's recent decision in *In re Marriage of Leopando* (1983), 96 Ill. 2d 114, that the May 7, 1982, order was not a final judgment. In *Leopando*, the trial court entered an order dissolving the parties' marriage and determining permanent custody of their minor child. In his custody order, the trial judge recited the Rule 304(a) language and specifically reserved maintenance, property distribution and attorney fees for future consideration. On appeal, the supreme court held that a custody order in a dissolution-of-marriage case is not a separate claim and therefore is not appealable pursuant to Supreme Court Rule

> 304(a) [citation]. In support of its holding, the court reasoned that a petition for dissolution advances only a single claim and that the 'numerous other issues involved, such as custody, property disposition, and support are merely questions which are *ancillary* to the cause of action.' (*In re Marriage of Leopando* (1983), 96 Ill. 2d 114, 119.) Stressing the interrelatedness of custody awards and decisions regarding child support and maintenance, the *Leopando* court concluded that a petition for dissolution is not a final judgment until the remaining issues are resolved.
>
> The policy considerations underlying Rule 304(a), the court continued, also support the conclusion that a custody order is not a final judgment. Quoting from its earlier discussion of Rule 304(a) in *In re Marriage of Lentz* (1980), 79 Ill. 2d 400, 407, the court said: ' "The provisions of our rule were aimed at discouraging piecemeal appeals in the absence of some compelling reason and at removing the uncertainty as to the appealability of a judgment which was entered on less than all of the matters in controversy." ' *In re Marriage of Leopando* (1983), 96 Ill. 2d 114, 119, quoting *Lentz*." (Emphasis in original.) *Derning*, 117 Ill. App. 3d at 625-27.

¶ 17 The reasoning of the supreme court in *In re Marriage of Leopando*, 96 Ill. 2d 114 (1983), "leads to our conclusion that the *** order was not a final judgment. Like a custody order, an attorney fees judgment in a dissolution-of-marriage case is not a separate claim, but rather is integral to the order dissolving a parties' marriage." *Derning*, 117 Ill. App. 3d at 627.

¶ 18 We find the order for attorney fees here similarly inextricably intertwined with the property issues that remain partially unresolved. The claim for attorney fees here is not a separable claim for purposes of appeal, and the order awarding attorney fees for the appeal does not finally resolve any separate claim. We hold that when the trial court awards fees for an appeal in a divorce case and the trial court has issues other than fees still pending, the award grants interim fees not subject to immediate appeal.

¶ 19 "[T]he inclusion of the special finding [under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016)] in the trial court's order cannot confer appellate jurisdiction if the order is in fact not final." *Crane Paper Stock Co. v. Chicago & Northwestern Ry. Co.*, 63 Ill. 2d 61, 66 (1976). The order of September 17, 2018, which awards interim fees under section 508 of the Act, does not finally dispose of any separate claim, and therefore the inclusion of Rule 304(a) language in the order does not make the interlocutory order final and appealable. We must dismiss the appeal for lack of jurisdiction.

¶ 20 CONCLUSION

¶ 21 Because the order of September 17, 2018, awards interim fees, subject to correction in the final judgment, while other issues in the case remain unresolved, the order is not a final judgment ripe for appellate review under Illinois Supreme Court Rule 304(a). Accordingly, we dismiss the appeal.

¶ 22 Appeal dismissed.

No. 1-18-2211

No. 1-18-2211

Cite as:	*In re Marriage of Crecos*, 2020 IL App (1st) 182211
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 07-D-10902; the Hon. Robert W. Johnson, Judge, presiding.
Attorneys for Appellant:	Michael G. DiDomenico and Sean M. Hamann, of Lake Toback DiDomenico, of Chicago, for appellant.
Attorneys for Appellee:	James R. Branit, of Litchfield Cavo LLP, of Chicago, for appellee.

316608

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

In re the Former Marriage of:	)	
	)	
Diana Barr Crecos,	)	
	)	
Petitioner,	)	
	)	No. 07 D 10902
and	)	Judge Naomi Schuster
	)	
Gregory Crecos,	)	
	)	
Respondent.	)	

PETITIONER DIANA BARR'S PETITION FOR ATTORNEYS' FEES AND COSTS FOLLOWING APPEAL IN CRECOS I

Petitioner, Diana Barr ("Diana"), by her counsel, Brian W. Norkett, petitions this Court pursuant to Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (the "Act") for an award of contribution from Respondent Gregory Crecos ("Gregory") for the attorneys' fees and costs Diana incurred in defending the appeal taken by Gregory of Judge Reynold's final judgment, which culminated in the decision by the Appellate Court fully affirming Judge Reynolds' judgment, *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U ("*Crecos I*"). Having now successfully defended Judge Reynolds' judgment in full, Diana is entitled under Section 508(a)(3) to have Gregory pay in full her attorney's fees on appeal. Gregory is financially far better able to pay those attorney's fees than Diana who, as a result of five years of ruinous litigation all initiated by Gregory, has no current ability to pay her own attorney's fees and is otherwise financially destitute.

BACKGROUND

1. In 2007, Diana petitioned to dissolve her marriage with Gregory. The matter was tried before Judge Jeanne Reynolds through the entry of a final judgment of dissolution on December 24, 2009. Specifically, Gregory and Diana, in a trial lasting over five days, litigated and tried numerous issues under the Act – including: whether Gregory tried to hide income; the amount of child support owed by Gregory; whether Gregory dissipated marital assets; and the classification, valuation, and allocation of marital and non-marital property. With regard to the allocation of marital and non-marital property, Judge Reynolds entered several orders specifically directing Gregory and Diana to identify in detail all of the items of personal property that each were contending should be classified as either "non-marital" and "marital" property as well as the value of such property so that could fulfill her duties under the Act. However, Gregory never identified any personal property he was claiming was either non-marital or valuable except for a gun collection and his share of a wine collection.

2. On December 24, 2009, Judge Reynolds entered a detailed and well-considered 65-page final judgment (the "2009 Dissolution Judgment"). (A copy of Judge Reynold's opinion is attached as Exhibit "A"). In her lengthy Dissolution Judgment, Judge Reynolds set forth every item of real ***and personal*** property that Greg and Diana had disclosed to the Court and classified them as either marital or non-marital. Judge Reynolds then set a value for each item of such disclosed property as established by whatever evidence or stipulation the parties introduced and allocated the

marital property between Diana and Greg based on several factors, including the total value of each party's non-marital estate.

3. Judge Reynolds also specifically ruled in her 2009 Dissolution Judgment that: Gregory had tried to hide over $400,000 of his annual income[1]; that Gregory had dissipated some $615,000 of the marital estate by secretly using marital assets to purchase an apartment building for his own benefit; that Gregory had been in willful contempt of court by repeatedly refusing to pay child support; and that Diana was entitled to a greater portion of the marital estate in lieu of maintenance based on Gregory's dissipation, his efforts to hide his income, and his larger non-marital estate. In other words, by his past conduct, Gregory had so clearly demonstrated his untrustworthiness to Judge Reynolds that she felt that Gregory could not be trusted to pay maintenance to Diana and therefore Judge Reynolds awarded Diana more of the marital estate, including an apartment building on Hermitage Avenue.

4. In July 2010, Gregory appealed Judge Reynolds' final dissolution judgment in *Crecos I*. In his appeal, however, Gregory never anywhere argued that the circuit court had somehow erred in any way in its classification, valuation, or allocation of the couple's personal property. Gregory also **did not** seek in *Crecos I* to recover any additional items of personal property which he had failed to disclose to Judge Reynolds, and in fact Gregory never made even a single mention on appeal of any such property!

---

[1] Gregory earned a prodigious income from his executive recruitment firm, Gregory Michaels and Associates ("GMA"). In 2004 his income was $3,346,537, in 2005, $1,660,015; in 2006, $2,315,753; and in 2007 his income was $2,564,749. However, Gregory claimed that only one year later in 2008 his income had suddenly and mysteriously dropped to only $300,454 owing only purportedly to "the economy." However, Judge Reynolds understandably did not believe Gregory's claims with respect to his sudden drop in income. Gregory now claims he earns only a paltry $50,000 from GMA though he has tellingly refused to provide copies of either his own or GMA's tax returns to substantiate his suspicious claims of a sudden diminution in income.

5. The Appellate Court, First District, affirmed Judge Reynolds' 2009 Dissolution Judgment in its entirety on July 23, 2012. (A copy of the Court's 2012 Appellate Court Opinion is attached as Exhibit "B").

6. In the meantime, Phase Two of the dissolution proceeding – involving several post-decree petitions – progressed in the circuit court. By that time, however, Judge Reynolds had transferred to an outlying district so the case was administratively transferred to Judge Raul Vega on July 15, 2010. Diana then promptly filed a Motion for Substitution of Judge as of right. However, Judge Vega, without any explanation whatsoever, simply denied Diana's Motion for Substitution as of right. Thereafter, Greg initiated a large number of motions and proceedings before Judge Vega and many of the rulings by Judge Vega were, to put it politely, procedurally and substantively unusual.

7. Then on August 11, 2010 – or less than a month after filing his Notice of Appeal of Judge Reynolds' 2009 Dissolution Judgment – Gregory filed (and first served on Diana's counsel in court that very same day) a purported "emergency" motion seeking, among other things, an order compelling Diana to turn over items of previously unknown and undisclosed personal property Gregory now alleged were his (the "Motion for Turnover"). In his purported "emergency" Motion for Turnover, Gregory also sought in part to amend the 2009 Dissolution Judgment (which was *already pending* on appeal at the time) to now award him "as his pre-marital property" *three additional* items of alleged personal property never mentioned or awarded anywhere in Judge Reynold's 2009 Dissolution Judgment: (1) "Salvador Dali" prints; (2) "Andy Warhol paintings"; and, (3) "Steve Hudson paintings."!

8. However, over the course of two more years and five days of trial on Gregory's "emergency" Motion for Turnover, Gregory's memory suddenly improved as his list of items of personal property he was seeking to "recover" continued to grow considerably. Indeed, Gregory suddenly "recalled" for the first time ever (and long after a final judgment had been entered) that he allegedly had numerous *other items* of personal property – including dozens of alleged antiques, furniture, art, "first edition" books, and other items Gregory now surprisingly but conveniently remembered were worth over some $515,000 – that he had never before disclosed to Judge Reynolds or to anyone else.

9. On September 24, 2012, Judge Vega entered an order on Gregory's Motion for Turnover. Judge Vega found: Gregory and Diana were both not credible witnesses; Gregory's valuation of his alleged property was not credible; and Gregory had already recovered his entire gun and wine collections.

10. However, Gregory then filed a Motion for Reconsideration, advising Judge Vega that he now no longer wanted any of his claimed personal property returned to him. Instead, Gregory asked Judge Vega to simply enter in his favor a money judgment of $746,000 for the alleged value of all of his claimed personal property – including all of the new items which he never previously mentioned or disclosed before during two years of litigation before Judge Reynolds – based on a new theory of common law conversion.

11. Judge Vega obliged. On May 24, 2013, without ever hearing any new evidence and without providing any explanation whatsoever for reversing his very own

September 24, 2012 findings, Judge Vega entered a money judgment of $746,000 against Diana based on the common law tort of conversion.

12. Diana appealed. On appeal, Diana argued that Judge Vega committed a veritable parade of procedural and substantive errors in the case, from the very beginning when he denied Diana's Motion for Substitution of Judge, through the entire case by acting without subject matter jurisdiction to improperly amending the final property division, however, entered by Judge Reynolds, and all the way to the very end when he entered a money judgment for $746,000 based on a new common law tort of conversion. (A copy of Diana's 50 page Appellate Brief with respect to Phase Two is attached as Exhibit "C").

13. The appellate court agreed with Diana with respect to her very first point of error, however, and ruled that Judge Vega had improperly denied Diana's Motion for Substitution of Judge as of right. Accordingly, the Appellate Court concluded that all of Judge Vega's orders entered after Diana filed her Motion for Substitution were void. In short, Diana was the prevailing party on appeal. (A copy of the Appellate Court's Opinion – "*Crecos II*" – is attached as Exhibit "D"). ***Most importantly for purposes of this Petition, Judge Vega's oral statement that he would not hear any petition by Diana seeking contribution for her appellate fees in Crecos I is null and void as well.***

14. This Court should order Gregory to pay Diana's attorney's fees incurred in prosecuting the appeal in *Crecos I*. Diana successfully defended Judge Reynolds' judgment in full and was the prevailing party on the appeal and thus is entitled to an award for those attorney's fees from Gregory under Section 508(a). Gregory has and

had more financial resources to pay those fees. The amount of fees and costs requested is reasonable and indeed **far less** than the amount sought by Gregory for his own attorney's fees on the appeal in *Crecos II* to write an appellee brief defending not a full trial as herein but a motion.

15. Section 508(a)(3) provides that the Court may order any party to pay the other party's costs and attorney's fees in connection with the "defense of an appeal of any order or judgment under this Act". 750 ILCS 5/508(a)(3). By successfully defending Judge Reynolds' judgment, Diana is entitled to petition for an order requiring Gregory to retroactively pay her appellate attorney's fees. *Sidwell v. Sidwell*, 102 Ill.App.3d 56 (1981).

16. Diana had to borrow money to be able to pay those attorney's fees and indeed has since been largely unable to pay her attorneys at all in either the trial court or in the appellate court for well over two years. Her financial resources have been depleted as a result of: Gregory's constant and vindicative efforts to fight over every imaginable issue in court for over eight years; his refusal to pay the full amount of child support ordered by Judge Reynolds (the amount of child support unpaid now exceeds some $600,000); and because Gregory pursued collection proceedings against Diana on Judge Vega's void judgment and seized over $138,000 of her assets which he has now obstinately refused to return to Diana even after the judgment was vacated by the appellate court and even after he was specifically ordered by Judge Diana Marsalek to return those monies!

17. Gregory, on the other hand, has considerable financial resources to pay. He owns and operates his own executive recruitment firm which can earn him a

commission of several hundred thousand dollars with only a single placement. Gregory also owns and lives in a home in Highland Park worth almost $3 million. Upon information and belief, Gregory received over $1 million in net income from the sale of real estate in 2010 through 2012.

18. Just as importantly, Gregory should not be allowed to deny he has greater financial resources than Diana. He has repeatedly refused to respond to discovery regarding his financial resources. He has failed to provide any disclosure statements under Rule 13.3.1 since 2013. Moreover, contrary to the terms of Judge Reynolds' 2009 Dissolution Judgment, Gregory has failed to comply with the requirement that he provide to Diana copies of his annual tax returns. Instead, he has laughingly provided meaningless forms with numbers on it simply stamped "DRAFT RETURN" by his own accountant.

19. The amount of appellate attorney's fees sought herein – a mere $32,324.64 in fees and $627.86 in costs – to draft an appellate brief is not only reasonable but quite modest. Indeed, before the appellate court vacated Judge Vega's May 27, 2013 judgment, Gregory's attorneys claimed they had already incurred a whopping $110,000 in attorneys fees just to prepare a single appellee brief in *Crecos II*!

20. Diana's attorney for *Crecos I* – James R. Branit– has been practicing law since 1985. He has considerable appellate experience, having participated in over 150 appeals. He also has extensive litigation experience in many areas of law including family law. Based on his expertise, he was entitled to charge $300.00 per hour in 2010-2012.

21. The fees incurred in the appeal were reasonable and necessary to represent Diana and were incurred at her direction. (See the attached Affidavit of James Branit.)

Wherefore, for the reasons set forth above, Diana Barr, respectfully requests that the Court order Gregory to pay all of her attorney's fees and costs incurred in the appeal of *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U, and for such further relief as deemed appropriate by the Court.

Respectfully submitted,

DIANA BARR AND HER ATTORNEYS

By: _____
One of Her Attorneys

OF COUNSEL:
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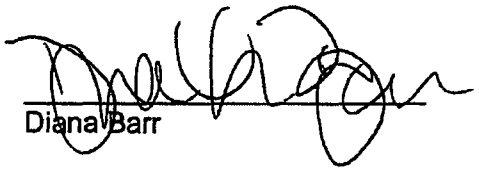
Bullaro & Carton, P.C.
200 N. LaSalle, Suite 2420
Chicago, Illinois
312-831-1000
bnorkett@bullarocarton.com

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.



Diana Barr

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

In re the Former Marriage of:	)	
	)	
Diana Barr Crecos,	)	
	)	
Petitioner,	)	
	)	No. 07 D 10902
and	)	Judge Naomi Schuster
	)	
Gregory Crecos,	)	
	)	
Respondent.	)	

AFFIDAVIT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, James R. Branit, hereby certify that the statements set forth in this Affidavit are true and correct.

1. I have personal knowledge of, and am competent to testify to, the following facts.

2. I am an attorney licensed to practice law in the State of Illinois and I was retained by Diana Barr to defend the appeal pursued by Gregory Crecos of the final judgment entered by Judge Reynolds in this case, which culminated in Diana prevailing on appeal in the appellate court's decision, *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U ("*Crecos I*").

3. Diana incurred attorney fees and costs in the amount of $32,324.64 and $627.86 in costs in defending and prevailing on the appeal.

4. The fees and costs incurred in the appeal were reasonable and necessary to represent Diana and were incurred at her direction.

5. Gregory Crecos should be required to pay for the legal fees incurred by Diana because Diana successfully defended Judge Reynolds' judgment in full and because Gregory has greater financial resources to pay those fees.

By: James R. Branit
James R. Branit

36608

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

In re the Former Marriage of:

Diana Barr Crecos,

Petitioner,

and

Gregory Crecos,

Respondent.

No. 07 D 10902
Judge Naomi Schuster

3560
2004

PETITIONER DIANA BARR'S PETITION FOR ATTORNEYS' FEES AND COSTS FOLLOWING APPEAL

Petitioner, Diana Barr ("Diana"), by her counsel, Brian W. Norkett, petitions this Court pursuant to Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (the "Act") for an award of contribution from Respondent Gregory Crecos ("Gregory") for the attorneys' fees and costs Diana incurred in the appeal of *In re Marriage of Crecos*, 2015 IL App (1st) 132756. (The Opinion in *Crecos II* is attached as Exhibit A.) Diana fully prevailed in that appeal (as she also fully prevailed in an earlier appeal): the appellate court reversed and vacated ***all*** of Judge Vega's orders entered in favor of Gregory and against Diana during more than five years of litigation, beginning on July 27, 2010 and through to the transfer of this case in September 2015 to this Court. As the prevailing party on appeal, Diana is entitled under Section 508(a) to have Gregory pay in full her attorney's fees on appeal. Gregory is financially better able to pay those attorney's fees than Diana who, as a result of five years of ruinous litigation all initiated by Gregory, has no ability to pay her own attorney's fees.

BACKGROUND

1. In 2007, Diana petitioned to dissolve her marriage with Gregory. The matter was tried before Judge Jeanne Reynolds through the entry of a final judgment of dissolution on December 24, 2009. Specifically, Gregory and Diana, in a trial lasting over five days, litigated and tried numerous issues under the Act – including: whether Gregory tried to hide income; the amount of child support owed by Gregory; whether Gregory dissipated marital assets; and the classification, valuation, and allocation of marital and non-marital property. With regard to the allocation of marital and non-marital property, Judge Reynolds entered several orders specifically directing Gregory and Diana to identify in detail all items of personal property they were contending should be classified as "non-marital" and "marital" property as well as the value of such property so that she could fulfill her duties under the Act. However, Gregory never identified any personal property he was claiming was either non-marital or valuable except for a gun collection and his share of a wine collection.

2. On December 24, 2009, Judge Reynolds entered a detailed and well-considered 65-page final judgment (the "2009 Dissolution Judgment"). (A copy of Judge Reynold's opinion is attached as Exhibit "B"). In her lengthy Dissolution Judgment, Judge Reynolds set forth every item of real ***and personal*** property that Greg and Diana had disclosed to the court and classified them as either marital or non-marital. Judge Reynolds then set a value for each item of such disclosed property as established by whatever evidence or stipulation the parties introduced and allocated the marital property between Diana and Greg based on several factors, including the total value of each party's non-marital estate.

3. Judge Reynolds also specifically ruled in her 2009 Dissolution Judgment that: Gregory had tried to hide over $400,000 of his annual income[1]; that Gregory had dissipated some $615,000 of the marital estate by secretly using marital assets to purchase an apartment building for his own benefit; that Gregory had been in willful contempt of court by repeatedly refusing to pay child support; and that Diana was entitled to a greater portion of the marital estate in lieu of maintenance based on Gregory's dissipation, his efforts to hide his income, and his larger non-marital estate. In other words, by his past conduct, Gregory had so clearly demonstrated his untrustworthiness to Judge Reynolds that she felt that Gregory could not be trusted to pay maintenance to Diana and therefore Judge Reynolds awarded Diana more of the marital estate, including an apartment building on Hermitage Avenue.

4. In July 2010, Gregory appealed Judge Reynolds' final dissolution judgment in Appeal No. 1-10-2158 ("*Crecos I*"). In his appeal, however, Gregory never anywhere argued that the circuit court had somehow erred in any way in its classification, valuation, or allocation of the couple's personal property. Gregory also **did not** seek in *Crecos I* to recover any additional items of personal property which he had failed to disclose to Judge Reynolds, and in fact Gregory never made any mention on appeal of any such property!

---

[1] Gregory earned a prodigious income from his executive recruitment firm, GMA. In 2004 his income was $3,346,537, in 2005, $1,660,015; in 2006, $2,315,753; and in 2007 his income was $2,564,749. However, Gregory asserted that only one year later in 2008 his income had suddenly and mysteriously dropped to only $300,454 owing only purportedly to "the economy." However, Judge Reynolds understandably did not believe Gregory's claims with respect to his sudden drop in income. Gregory now claims he earns only a paltry $50,000 from GMA though he has tellingly refused to provide copies of either his or GMA's tax returns to substantiate his suspicious claims of a sudden diminution in income.

5. The Appellate Court, First District, affirmed Judge Reynolds' 2009 Dissolution Judgment in its entirety on July 23, 2012. (A copy of the 2012 Appellate Court Opinion is attached as Exhibit "C").

6. In the meantime, Phase Two of the dissolution proceeding – involving several post-decree petitions – progressed in the circuit court. By that time, however, Judge Reynolds had transferred to an outlying district so the case was administratively transferred to Judge Raul Vega on July 15, 2010. Diana then promptly filed a Motion for Substitution of Judge as of right on July 21, 2010. However, on July 27, 2010, Judge Vega, without any explanation whatsoever, simply denied Diana's Motion for Substitution as of right. Thereafter, Greg initiated a large number of motions and proceedings before Judge Vega and many of the rulings by Judge Vega were, to put it politely, procedurally and substantively unusual.

7. Then on August 11, 2010 – less than a month after filing his Notice of Appeal of Judge Reynolds' 2009 Dissolution Judgment – Gregory filed (and first served on Diana's counsel in court that very same day) a purported "emergency" motion seeking, among other things, an order compelling Diana to turn over items of previously undisclosed personal property Gregory now alleged were his (the "Motion for Turnover"). In his purported "emergency" Motion for Turnover, Gregory also sought in part to amend the 2009 Dissolution Judgment (which was *already pending* on appeal at the time) to now award him "as his pre-marital property" *three additional* items of alleged personal property never mentioned or awarded anywhere in Judge Reynold's 2009 Dissolution Judgment: (1) "Salvador Dali" prints; (2) "Andy Warhol paintings"; and, (3) "Steve Hudson paintings."!

8. However, over the course of two more years and five days of trial on Gregory's "emergency" Motion for Turnover, Gregory's memory suddenly improved as his list of items of personal property he was seeking to "recover" continued to grow considerably. Indeed, Gregory suddenly "recalled" for the first time ever (and long after a final judgment had been entered) that he allegedly had numerous *other* items of personal property – including dozens of alleged antiques, furniture, art, "first edition" books, and other items Gregory now surprisingly but conveniently remembered were worth over some $515,000 – that he had never before disclosed to Judge Reynolds or anyone else.

9. On September 24, 2012, Judge Vega entered an order on Gregory's Motion for Turnover. Judge Vega found: Gregory and Diana were both not credible witnesses; Gregory's valuation of his alleged property was not credible; and Gregory had already recovered his entire gun and wine collections.

10. However, Gregory then filed a Motion for Reconsideration, advising Judge Vega that he now no longer wanted any of his alleged personal property returned to him. Instead, Gregory asked Judge Vega to simply enter in his favor a money judgment of $746,000 for the alleged value of all of his claimed personal property – including all of the new items which he never previously mentioned or disclosed before during two years of litigation before Judge Reynolds – based on a new theory of common law conversion.

11. Judge Vega obliged. On May 24, 2013, without ever hearing any new evidence and without providing any explanation whatsoever for reversing his very own

September 24, 2012 findings, Judge Vega entered a money judgment of $746,000 against Diana based on the common law tort of conversion.

12. Diana appealed. On appeal, Diana argued that Judge Vega committed a parade of procedural and substantive errors in the case, from the very beginning when he denied Diana's Motion for Substitution of Judge, through the entire case by acting without subject matter jurisdiction to improperly amending the final property division entered by Judge Reynolds, and all the way to the very end when he entered a money judgment for $746,000 based on a new common law tort of conversion. (A copy of Diana's 50 page Appellate Brief with respect to Phase Two is attached as Exhibit "D").

13. The appellate court agreed with Diana and ruled that Judge Vega had improperly denied Diana's Motion for Substitution of Judge as of right. Accordingly, the Appellate Court concluded that all of Judge Vega's orders entered after Diana filed her Motion for Substitution were void. In short, Diana was the prevailing party on appeal.

14. This Court should order Gregory to pay Diana's attorney's fees incurred in prosecuting the appeal. Diana was the prevailing party on the appeal and thus is entitled to an award for those attorney's fees from Gregory under Section 508(a)(3.1). Diana is unable to pay those fees and Gregory is able to pay them. The amount of fees and costs requested is reasonable and indeed **far less** than the amount sought by Gregory for his own attorney's fees on the same appeal - - to write only a single *appellee brief*.

15. Section 508(a)(3.1) provides that the Court may order any party to pay the other party's costs and attorney's fees in connection with the "prosecution of any claim on appeal (if the prosecuting party has substantially prevailed)." 750 ILCS 5/508(a)(3.1).

As the prevailing party here, Diana is entitled to petition for an order requiring Gregory to pay her appellate attorney's fees. *Sidwell v. Sidwell*, 102 Ill.App.3d 56, 61 (1981).

16. Diana is unable to pay those attorney's fees and indeed has been unable to pay her attorneys at all in either the trial court or the appellate court for well over two years. Her financial resources have been depleted as a result of: Gregory's constant and vindictive efforts to fight over every imaginable issue in court for over eight years; his refusal to pay the full amount of child support ordered by Judge Reynolds (the amount of child support unpaid now exceeds some $600,000); and because Gregory pursued collection proceedings against Diana on Judge Vega's void judgment and seized over $138,000 of her assets which he has now obstinately refused to return to Diana even after the judgment was vacated by the appellate court and even after he was specifically ordered by Judge Diana Marsalek to return the monies!

17. Gregory, on the other hand, has considerable financial resources to pay. He operates an executive recruitment firm which can earn him a commission of several hundred thousand dollars with a single placement. Gregory owns and lives in a home in Highland Park worth almost $3 million. Upon information and belief, Gregory received over $1 million in net income from the sale of real estate in 2010 through 2012.

18. Just as importantly, Gregory should not be allowed to deny he has greater financial resources than Diana. He has repeatedly refused to respond to discovery regarding his financial resources. He has failed to provide any disclosure statements under Rule 13.3.1 since 2013. Moreover, contrary to the terms of Judge Reynolds' 2009 Dissolution Judgment, Gregory has failed to comply with the requirement that he provide to Diana copies of his annual tax returns. Instead, he has laughingly provided

meaningless forms with numbers on it simply stamped "DRAFT RETURN" by his own accountant.

19. The amount of appellate attorney's fees sought - $89,465.50 in fees and $1,375.07 in costs – to draft an appellate brief and a reply brief is not only reasonable but very modest. Before the appellate court vacated Judge Vega's May 27, 2013 judgment, Gregory's attorneys claimed they had already incurred some $110,000 in fees just to prepare a single appellee brief on appeal and would incur an additional $50,000 in fees and costs just to read the briefs and then appear at oral argument!

20. Diana's attorneys – James R. Branit and Brian W. Norkett – have been practicing law since 1986. They both have considerable appellate experience, each having participated in over 100 appeals. They also have extensive litigation experience in many areas of law including family law. Based on their expertise, they are entitled to currently charge $575.00 per hour.

21. The fees incurred in the appeal were reasonable and necessary to represent Diana and were incurred at her direction. (See attached Affidavit.)

Wherefore, for the reasons set forth above, Diana Barr, respectfully requests that the Court order Gregory to pay all of her attorney's fees and costs incurred in the appeal of *In re Marriage of Crecos*, 2015 IL App (1st) 132756, and for such further relief as deemed appropriate by the Court.

Respectfully submitted,

DIANA BARR AND HER ATTORNEYS

By: _____
One of Her Attorneys

OF COUNSEL:
Brian W. Norkett
Bullaro & Carton, P.C.
200 N. LaSalle, Suite 2420
Chicago, Illinois
312-831-1000
bnorkett@bullarocarton.com

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

In re the Former Marriage of:	)	
	)	
Diana Barr Crecos,	)	
	)	
Petitioner,	)	
	)	No. 07 D 10902
and	)	Judge
	)	
Gregory Crecos,	)	
	)	
Respondent.	)	

AFFIDAVIT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, James R. Branit, hereby certify that the statements set forth in this Affidavit are true and correct.

1. I have personal knowledge of, and am competent to testify to, the following facts.

2. I am an attorney licensed to practice law in the State of Illinois and both Brian W. Norkett and I were retained by Diana Barr to pursue the appeal of Judge Vega's orders in this case, which culminated in her prevailing on appeal in the appellate court's decision, *In re Marriage of Crecos*, 2015 IL App (1st) 132756.

3. Diana incurred attorney fees and costs in the amount of $89,465.50 and $1375.07 in costs in pursuing and prevailing on the appeal.

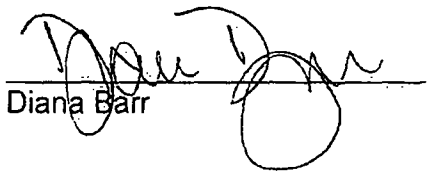
4. The fees and costs incurred in the appeal were reasonable and necessary to represent Diana and were incurred at her direction.

5. Gregory Crecos should be required to pay for the legal fees incurred by Diana because she prevailed on appeal and does not have the financial resources to pay more than an insignificant amount of those fees.

By: James R. Branit
James R. Branit

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.



Diana Barr

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:	)	
	)	
DIANA BARR-CRECOS,	)	
	)	Case No. 07 D 10902
Petitioner,	)	
	)	
and.	)	
	)	
GREGORY CRECOS,	)	
	)	
Respondent.	)	

ORDER

This cause coming to be heard on Petitioner Diana Barr's Petition for Attorney's Fees and Costs Following Appeal, and Petitioner Diana Barr's Petition for Attorney's Fees and Costs Following Appeal in Crecos I, the parties having submitted briefs on same and the Court having heard oral argument on same,

It is hereby ordered that Respondent Gregory Crecos is ordered to pay Petitioner Diana Barr Crecos' attorney, Brian W. Norkett, $89,465.50 in combined attorney's fees and costs pursuant to Petitioner Diana Barr's Petition for Attorney's Fees and Costs Following Appeal;

It is also hereby ordered that Respondent Gregory Crecos is ordered to pay Petitioner Diana Barr Crecos' attorney, Brian W. Norkett, $32,952.50 in combined attorney's fees and costs pursuant to Diana Barr's Petition for Attorney's Fees and Costs Following Appeal in Crecos I,

There is no just reason to delay enforcement or appeal of this order.

ENTERED:

Associate Judge Robert W. Johnson

SEP 17 2019

Circuit Court-2156

Judge Robert W. Johnson

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:	)	
	)	
DIANA BARR-CRECOS,	)	
Petitioner,	)	
	)	
and	)	No. 2007 D 10902
	)	
GREGORY CRECOS,	)	
Respondent.	)	

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Respondent, Gregory Crecos, by and through his attorneys, LAKE TOBACK DiDOMENICO, under Supreme Court Rule 304(a) and any other applicable rule and/or statute, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the order awarding attorney fees to Petitioner's counsel to be paid by Respondent, entered on September 17, 2018, by the Honorable Judge Robert W. Johnson, (and any and all order(s) leading up to and included in said order) premised upon the manifest errors in the rendering of said order(s).

Respondent-Appellant prays that the order entered September 17, 2018, and any attendant order(s) leading up to said order, be reversed by the Appellate Court, and that, if necessary, this cause be remanded to the circuit court with directives consistent with such disposition.

Respectfully submitted,
GREGORY CRECOS

By: _____
MICHAEL G. DiDOMENICO

LAKE TOBACK DiDOMENICO
Atty No. 91154
Attorneys for Gregory Crecos
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Telephone No. (312) 726-7111
mdidomenico@laketoback.com

E-FILED
Transaction ID: 1-18-2211
File Date: 5/15/2019 4:30 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-18-2211

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: THE MARRIAGE OF:	)	
	)	On Appeal from the Circuit Court of
DIANA BARR CRECOS,	)	Cook County, Illinois
	)	
Petitioner/Appellee,	)	
	)	No. 2007 D 10902
And	)	
	)	
GREGORY CRECOS,	)	The Honorable Robert W. Johnson
	)	Judge Presiding
Respondent/Appellant.	)	

BRIEF OF APPELLANT

Michael G. DiDomenico, Esq.
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POINTS AND AUTHORITIES
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NATURE OF THE CASE

The divorce case of GREG CRECOS ("Greg") and DIANA BARR-CRECOS ("Diana") returns to this Court for the fourth time.

In Crecos I, 2012 IL App (1st) 102158-U (A41-A57), this Court affirmed the dissolution of judgment on the merits. In Crecos II, 2015 IL App (1st) 132756 (A114-A120), this Court found that Judge Raul Vega had erroneously denied Diana's motion for substitution of judge, which had the necessary result of the vacature of all of Judge Vega's subsequent substantive orders, including a $700,000+ money judgment entered against Diana for stealing Greg's personal property. It was that substantial money judgment that Diana primarily challenged in Crecos II as appellant. In Crecos III, 2019 IL App (1st) 171368-U, this Court affirmed a turnover order for child support owed under the parties' original 2009 divorce judgment, while acknowledging that Greg's motion to modify that judgment has been, and remains, pending, notwithstanding the parties' agreement before Judge Vega.

Crecos IV comes to this Court as a challenge to money judgments entered against Greg for attorney fees and costs Diana allegedly incurred relative to prosecuting Crecos II and defending against Crecos I. The Crecos II award (nearly $90,000 – and 100% of what Diana claims she incurred) requires this Court to consider 750 ILCS 5/508(a)(3.1) ("Section 508(a)(3.1)") to determine if Diana "substantially prevailed" on *any* claim she prosecuted. Both fee awards ask this Court to consider the level of specificity (i.e. contemporaneous time records identifying time and task, etc.) an attorney is required produce relative to the amounts sought to prove up the reasonableness of the requested fees. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether Diana substantially prevailed on any claim she prosecuted in Crecos II within the meaning of Section 508(a)(3.1).

2. Whether Diana and her attorneys met their burden and proved up the reasonableness of the fees and costs allegedly incurred in Crecos I and Crecos II.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Supreme Court Rule 304(a) because the September 17, 2018 order awarding fees contains an express finding that "there is no just reason to delay enforce or appeal of this order." (C8033; A228) Greg filed his notice of appeal on October 16, 2018. (C8417) This reflects this Court's most current pronouncements on post-judgment jurisdiction in domestic relations cases. In re Marriage of Teymour, 2017 IL App (1st) 161091, ¶¶ 11-43; In re Marriage of Sanchez, 2018 IL App (1st) 171075, ¶¶ 20-27. However, even under this Court's prior approach in the absence of a Rule 304(a) finding, jurisdiction would be proper pursuant to Supreme Court Rule 303 because the fee petitions are not related to those matters still pending in the circuit court. See, e.g., In re Marriage of Demaret, 2012 IL App (1st) 111916, ¶¶ 25-38.

STATEMENT OF FACTS

The underlying facts of this long-running domestic relations case are recounted in Crecos I, 2012 IL App (1st) 102158-U (A41-A57), Crecos II, 2015 IL App (1st) 132756 (A114-A120) and Crecos III, 2019 IL App (1st) 171368-U.

Relevant here, on March 18, 2016, Diana filed a petition for attorney fees and costs relative to her prosecution of Crecos II pursuant to Section 508(a)(3.1). (C4584-C4595; A21-A32) Most of the petition was devoted to recounting Diana's version of the procedural

history of this case. (C4585-C4590; A22-A27) Regarding the fees incurred for prosecuting Crecos II, the petition sought $89,465.50. (C4591; A28) The petition further alleged that Diana's attorneys "have considerable appellate experience" and "extensive litigation experience" and that they were "entitled" to charge $575 per hour. (C4591; A28) The petition concluded that the claimed amount was "reasonable and necessary to represent Diana and were incurred at her direction." (C4591) An affidavit in support was attached. (C4593-C4594; A30-A31) No further details about the alleged amount of fees incurred were provided in the petition or affidavit, nor were any time records appended to petition or ever later produced.

On March 31, 2016, Diana filed a petition for attorney fees and costs relative to her defense of Crecos I pursuant to Section 508(a)(3). (C4695-C4706; A1-A12) Again, most of the petition was devoted to recounting Diana's version of the procedural history of this case. (C4696-C4702; A2-A8) Regarding the fees incurred for defending against Crecos I, the petition sought $32,324.64 in fees and $627.86 in costs. (C4702; A8) The petition again alleged that Diana's attorney "has considerable appellate experience" and "extensive litigation experience" and that he was "entitled" to charge $300 per hour in 2010-2012. (C4702; A8) The petition concluded that the claimed amount was "reasonable and necessary to represent Diana and were incurred at her direction." (C4703; A9) An affidavit in support was attached. (C4705-C4706; A11-A12) No further details about the alleged amount of fees incurred were provided in the petition or affidavit, nor were any time records appended to petition or ever later produced.

On June 10, 2016, Greg filed an answer in opposition to Diana's Crecos II appellate fee petition. (C4943-C4950; A33-A40) Greg denied the reasonableness and necessity of

the fees Diana allegedly incurred relative to prosecuting Crecos II. (C4945-C4946; A35-A36) Arguing affirmatively, Greg stated that "[n]otwithstanding the reversal on appeal of Judge Vega's purely procedural ruling on Diana's substitution (of judge) motion, the fact remains that the core substantive issue tried by the judge—whether Diana misappropriated property awarded Greg by their dissolution judgment—remains pending. Indeed, notwithstanding that reversal, the fact remains that Diana admitted under oath and in open court that she deliberately took Greg's property." (C4948-C4949; A38-A39)

On June 10, 2016, Greg also filed an answer in opposition to Diana's Crecos I appellate fee petition. (C4952-C4959; A13-A20) Greg denied the reasonableness and necessity of the fees Diana allegedly incurred relative to defending against Crecos I. (C4954; A15)

On July 30, 2018, Judge Robert W. Johnson conducted a hearing on Diana's fee petitions, although no evidence was admitted, nor any witnesses called. (R755-R809; A121-A175) Diana's counsel argued, amongst other things, that the hourly rate for Crecos II was increased from $300 per hour to $575 per hour, "because we weren't getting paid and there was a risk." (R760; A126)

Following counsel for Diana's argument, counsel for Greg argued that, as a threshold matter, a directed finding should be made, because Diana had failed to meet her *prima facie* burden. He argued there is precedential case law regarding an attorney's evidentiary burden to establish the reasonableness of the requested fees, which is "more than a mere complication of hours multiplied by a fixed hourly rate." (R768-R773; A134-A139) Counsel for Diana responded that the fee affidavit provided "[t]he hourly rate and the total. You can do some division. The costs are broken out separately, Judge." (R770;

A136) Counsel for Greg responded, "[b]ut that is not enough, Judge…. Mr. Norkett is entirely correct. That is all there is. That is not enough." (R770; A136)

After arguments, the circuit court stated, "[t]here is a concern, but go ahead and argue the merits." (R773; A139) Counsel for Greg argued that he thought "it is entirely wrong" to proceed, but followed the court's directive. (R773; A139)

With respect to Crecos II, Greg's attorney argued that under the Supreme Court's decision in In re Marriage of Murphy, 203 Ill. 2d 212 (2003), Diana did not "substantially prevail" for the purposes of Section 508(a)(3.1), and, pursuant to Murphy, the most that she was conceivably entitled to ask for fees is for any issue upon which she "substantially prevailed." (R767-R768; A133-A134; R775; A141) He further argued that, in light of the fact that there were no billing records, it was unclear how much time was dedicated to the issue of the denial of the substitution of judge, which is the only issue upon which she could have conceivably "substantially prevailed." (R775; A141) In the absence of billing records, counsel looked to Diana's Crecos II appellate brief itself, totaling 56 pages, of which approximately three pages were dedicated to the substitution. (R775-R776; A141-A142) Counsel argued that less than 10% of the brief even addressed the substitution issue. (R776; A142) He further argued that it was contrary to the intent of the legislature to force one litigant to pay for another's fees on the basis of a judge making a wrong decision, related to a technical issue and not a merits issue. (R776; A142) As such, he argued that the extent of Diana's potential claim, was on this singular issue, as this Court did not reverse any findings or address the merits of her theft of Greg's property and the judgment related thereto in Crecos II. (R777; A143) Counsel argued that because Judge Vega's denial of the substitution of judge is the only issue upon which this Court made its

determination, and Murphy says that only the issue upon which a party substantially prevails is the extent of the potential fee claim, Diana could not be entitled to the full amount she sought. (R777; A143)

Related thereto, Greg's counsel argued that the substitution issue was a threshold argument, and the "meat and potatoes" of the 30 pages of merits arguments in Diana's Crecos II brief related to the money judgment entered against her, upon which she did not substantially prevail. (R778; A144)

He further argued that pursuant to In re Marriage of Kane, 2016 IL App (2d) 150774, Diana's attorneys' failure to provide any level of specificity with respect to the alleged fees and costs incurred precluded a finding of reasonableness as to the fees and costs sought for both petitions. (R768-R769; A134-A135) Specifically, in reading the case, counsel stated that it is "well established that the burden of proof is on the attorney to establish the value of his services and that appropriate fees consist of reasonable charges for reasonable service." (R768-R769; A134-A135) Given Diana's attorneys failure to meet their burden of proof in providing detailed information about their fee claims, he argued that the petitions must be denied. (R778-R779; A144-A145; R786-R787; A152-A153)

After the hearing, the court took Diana's fee petitions under advisement. (C8409)

On September 12, 2018, the parties' attorneys appeared before Judge Johnson. The judge advised he was granting both of Diana's fee petitions "but that was he was a little confused about the exact amount of fees and costs Diana was seeking." (Sup R8; A226) Judge Johnson allowed Diana's attorney to submit a letter clarifying the amount of fees and costs Diana was seeking. (Sup R8; A226) The letter, dated that day, is included in the record on appeal, and states only the amount of fees and costs each fee petition sought,

$89.465.50 relative to prosecuting Crecos II and $32,952.50 relative to defending against Crecos I. (Sup R9; A227) No further detailed time records were produced, nor provided with or attached to the letter. (Sup R8; A226) An order was entered providing that Diana's fee petitions were granted, but that "the court reserves ruling on the amount of fees granted pending receipt from petitioner's counsel a statement of fees." (C7913; A225)

On September 17, 2018, the circuit court entered an order obligating Greg to pay Diana's attorney $89,465.50 in fees and costs relative to Crecos II and $32,952.50 in fees and costs relative to Crecos I. (C8033; A228) The order further provided that "there is no just reason to delay enforcement or appeal of this order." (C8033; A228)

On October 16, 2018, Greg filed his notice of appeal, and this challenge to the fee orders ensued. (C8417; A229)

ARGUMENT

I. Diana did not "substantially prevail" in Crecos II; even if she did, she only prevailed on her claim that Judge Vega erroneously denied her motion for substitution of judge and is therefore only entitled to recover fees incurred for prosecuting that claim on appeal.

In most appeals concerning attorney fees in divorce cases (including Greg's argument in Part II below), this Court reviews the circuit court's judgment for an abuse of discretion. In re Marriage of Kane, 2016 IL App (2d) 150774, ¶ 24. However, the statutory construction issue here is whether Diana "substantially prevailed" on any claim in Crecos II within the meaning of Section 508(a)(3.1), which the Supreme Court has said is reviewed *de novo*. In re Marriage of Murphy, 203 Ill. 2d 212, 219 (2003).

Section 508(a)(3.1) only allows for an award of fees for prosecution of an appeal relative to individual claims raised, and then imposes the additional requirement that the appellant "substantially prevail" on that claim before a circuit court may consider ordering

the opposing party to pay fees. Murphy, 203 Ill. 2d at 221. The statute does not mean that "the prosecution of any *appeal*" may entitle an appellant to an award of fees. Id. at 220. (emphasis in original) The Supreme Court acknowledged, "it still may at times be more of an art than a science to determine whether an appellant has substantially prevailed with respect to an individual issue…" Id. at 222.

Greg maintains in the first instance that Diana did not substantially prevail on her claims in Crecos II within the intent of the legislature in Section 508(a)(3.1). It is suggested that Diana only "prevailed" on a purely procedural, even technical issue—Judge Vega's erroneous denial of her motion for substitution of judge. In re Marriage of Crecos, 2015 IL App (1st) 132756, ¶¶ 22-30. It is suggested that the legislature could not have intended to shift liability for appellate fees to the other party merely because a judge made the individual, albeit erroneous here, decision to deny a motion for substitution of judge. It is presumed that the legislature did not intend absurd or unjust results (In re Marriage of Goesel, 2017 IL 122046, ¶ 13), and the general rule in this country is that parties pay their own fees. Murphy, 203 Ill. 2d at 222; In re Marriage of McGuire, 305 Ill. App. 3d 474, 479 (1999). Related thereto, Section 508(a)'s "fee shifting" provision is in derogation of the common law and, therefore, should be strictly construed. Sandholm v. Kuecker, 2012 IL 111443, ¶ 64.

Even assuming that Diana "substantially prevailed" on her substitution of judge claim, *that is all she "substantially prevailed" on.* While the necessary legal consequence under Illinois common law after a judge so errs is to vacate all subsequent substantive orders In re Marriage of Crecos, 2015 IL App (1st) 132756, ¶ 28, that cannot mean Diana "substantially prevailed" for purposes of Section 508(a)(3.1) fee shifting for *all claims* that

she raised in Crecos II. Indeed, she did not prevail at all because the theft-of-personal-property issue is still pending in the circuit court below, awaiting re-trial.

It is undisputed on this record that Diana claimed to have incurred $89,465.50 in fees and costs relative to Crecos II. (C8033) That amount is for *all work* allegedly performed in prosecuting Crecos II, *not just* the time spent to write about Judge Vega's substitution issue. (C4591; C4593-C4594) At the fee hearing, Greg's counsel noted how less than 10% of Diana's 56-page Crecos II brief was devoted to the substitution issue. (R775-R778) Despite this, the circuit court awarded her 100% of what she allegedly incurred prosecuting the entire appeal, effectively interpreting Section 508(a)(3.1) to mean that "the prosecution of any appeal" may entitle a party to relief; an interpretation the Supreme Court said is wrong. Murphy, 203 Ill. 2d at 220.

At most, Diana is entitled to those fees reasonably and necessarily incurred prosecuting the substitution issue only in Crecos II. Id. at 223 (finding that the appellant "substantially prevailed" on 1 of 4 issues raised and was only entitled to fees for that issue). The Crecos II fee judgment should be reversed and vacated.

II. Diana and her attorneys did not prove up the reasonableness of the fees and costs awarded and, thus, reversal is required.

It is well-settled that a party seeking fees bears the burden of proving entitlement. Kroot v. Chan, 2019 IL App (1st) 181392, ¶ 5 (internal citations omitted). Similarly well-established is that the burden of proof is on the attorney to establish the value of his services and that appropriate fees consist of reasonable charges for reasonable services. In re Marriage of Kane, 2016 IL App (2d) 150774, ¶ 25 (citing In re Marriage of Shinn, 313 Ill. App. 3d 317, 323 (2000)). Only fees established by the attorney as reasonable may be awarded. In re Marriage of DeLarco, 313 Ill. App. 3d 107, 114 (2000) (court must consider

reasonableness of fees when deciding Section 503(j) contribution); In re Marriage of Broday, 256 Ill. App. 3d 699, 707 (1993) (absence of specificity with regard to task and time precludes a finding of reasonableness).

In order to justify the fees sought, the attorney must present more than a mere compilation of hours multiplied by a fixed hourly rate. Kane, 2016 IL App (2d) 150774, ¶ 25 (*citing* In re Marriage of Angiuli, 134 Ill. App. 3d 417, 423 (1985)). Rather, the attorney ***must*** provide sufficiently detailed time records that were maintained contemporaneously throughout the proceeding, and those records ***must*** specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged. Id. (citing Shinn, 313 Ill. App. 3d at 323) (emphasis added).

After this basic informational threshold is satisfied, the trial court should consider a variety of additional factors when assessing the reasonableness of fees, such as the skill and standing of the attorney, the nature of the case, the novelty and/or difficulty of the issues involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for similar work, the benefit to the client, and whether there is a reasonable connection between the fees requested and the amount involved in the litigation. Id. (citing Kaiser v. MEPC American Properties, Inc., 164 Ill. App. 3d 978, 984 (1987)); see also In re Estate of Bitoy, 395 Ill. App. 3d 262, 273-276 (2009) (applying Kaiser to fee petitions in probate court and instructing on the detail required for such petitions). The trial court should scrutinize the records for their reasonableness in the context of the case. Id. (citing McHugh v. Olsen, 189 Ill. App. 3d 508, 514 (1989)). In ruling on the reasonableness of fees, the trial judge may also rely on his or her own experience. Id. (citing Richardson v. Haddon, 375 Ill. App. 3d 312, 315 (2007)).

Irrespective of the validity of rates, a review of billing records is necessary to determine, for example, whether double billing had occurred, something courts have considered when deeming a fee excessive. *See e.g.*, In re Marriage of Kosterka, 174 Ill. App. 3d 954, 957 (1988); Gasperini v. Gasperini, 57 Ill. App. 3d 578, 586 (1978).

Here, the quality of information submitted by Diana's attorney did not meet the above evidentiary requirements to prove up reasonableness justifying an award of fees and costs. In fact, the information submitted was nothing more than a bald statement (in each fee petition and counsel's subsequent "letter") that "We incurred x amount in fees, same are reasonable, so pay us." (C4591; C4593-C4594; C4703; C4705-C4706; Sup R9) This Court's cases requires much, much more detail about the fees sought—including the production of contemporaneous time records which detail attorney names, rates, hours spent and task, as established above.[1] Diana's counsel's failure to meet *their evidentiary burden to prove reasonableness imposed by this Court's case law* amounts to a failure of proof, precisely why Greg's counsel moved for a directed finding at the fee hearing. (R769-R773) The circuit court should have directed a finding in Greg's favor because Diana and her attorneys did not produce the required evidence to support the elements of her cause of action. Minch v. George, 395 Ill. App. 3d 390, 399 (2009) (upholding directed finding

[1] In the interest of candor, nearly 20 years ago this Court filed In re Marriage of Hasbabnis, 322 Ill. App. 3d 582 (2001). Hasabnis suggests that producing billing statements is not necessarily part of the reasonableness calculus. Id. at 595-596. To the extent that may be what Hasabnis says, it is at odds with all of the cases cited herein to the contrary, not to mention other fee cases from this district. *See, e.g.*, Young v. Alden Gardens, 2015 IL App (1st) 131887, ¶ 101 ("One of the most critical components of a fee petition is detailed entries describing services rendered based on records 'maintained during the course of litigation containing facts and computations upon which the charges are predicated.'"). Indeed, just last month this district reversed outright a fee judgment for lack of specificity. Kroot v. Chan, 2019 IL App (1st) 181392, ¶¶ 25-31.

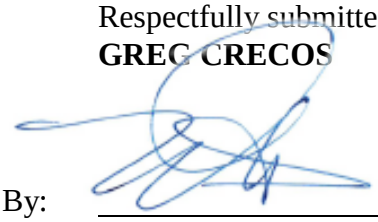
dismissing wife's fraud claim because she had not produced evidence showing the husband intentionally made a false statement to induce the wife to rely on to her detriment). Instead, the court ruled in Diana's favor on both fee petitions without requiring her to produce the necessary evidence this Court has said is required. Consider, for example, that Diana's attorneys admitted to nearly ***doubling*** their rates due to "collections concerns." (R760)

This Court should therefore reverse and vacate both the Crecos I and Crecos II fee judgments for failure to establish the reasonableness of the fees and costs sought.

PRAYER

WHEREFORE, GREG CRECOS prays that this Honorable Court reverse the September 17, 2018 judgments for attorney fees related to Crecos I and Crecos II, and for such other, further and different relief as the Court in its equity deems just and proper.

Respectfully submitted,
GREG CRECOS



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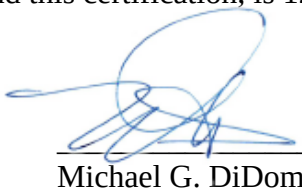
No. 1-18-2211

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: THE MARRIAGE OF:	)	
	)	On Appeal from the Circuit Court of
DIANA BARR CRECOS,	)	Cook County, Illinois
	)	
Petitioner/Appellee,	)	
	)	No. 2007 D 10902
And	)	
	)	
GREGORY CRECOS,	)	The Honorable Robert W. Johnson
	)	Judge Presiding
Respondent/Appellant.	)	

CERTIFICATION OF BRIEF

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the cover page, table of contents, points and authorities, separate appendix, and this certification, is 12 pages.



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	)	No. 2007 D 10902
And	)	
	)	
GREGORY CRECOS,	)	The Honorable Robert W. Johnson
	)	Judge Presiding
Respondent/Appellant.	)	

NOTICE OF FILING

Via Email Transmittal

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PLEASE TAKE NOTICE that on May 15, 2019, there will be electronically filed with the Clerk of the First District Appellate Court, Illinois, the attached: **Brief of Appellant and Separate Appendix.**

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CERTIFICATION

The undersigned states that on May 15, 2019, I served this Notice of Filing, together with the document referred to herein, to the parties as addressed above via the Odyssey EFile System and by electronic mail, at or before 5:00 p.m. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure I certify that the statements set forth in this instrument are true and correct.

Tammy Marcinko

Tammy Marcinko

2012 IL App (1st) 102158-U

FIRST DIVISION
July 23, 2012

No. 1-10-2158

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
DIANA BARR CRECOS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 07 D 10902
and	)	
	)	
GREGORY CRECOS,	)	Honorable
	)	Jeanne M. Reynolds,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *HELD:* Trial court's judgment finding respondent dissipated marital income and allocating marital estate is affirmed.

¶ 2 Respondent Gregory Crecos appeals from an order of the circuit court dissolving his marriage to petitioner Diana Barr Crecos and distributing the parties' assets. Gregory contests the court's allocation of the marital estate, arguing that the court erred

in (1) ruling that Gregory dissipated marital income and (2) making an inequitable distribution of the marital estate. We affirm.

¶ 3 Background

¶ 4 Gregory and Diana married in 2000 and had two children together. Diana filed a petition for dissolution of the marriage in 2007. On December 24, 2009, the court entered a judgment dissolving the parties' marriage; setting custody and child support; finding Gregory dissipated the marital estate; determining marital versus nonmarital property; barring Diana from collecting maintenance; and allocating the marital estate. On June 24, 2010, pursuant to Gregory's motion to reconsider and Diana's motion to clarify, the court amended its judgment and reallocated the marital estate. Gregory appeals from the judgments. He challenges only the court's finding that he dissipated marital income and its allocation of the marital estate. The relevant facts are as follows.

¶ 5 Before the marriage and through the dissolution proceedings, Gregory was the sole shareholder, chief executive officer and managing director of Gregory Michaels and Associates (GMA), an executive recruitment firm. He received the majority of his income from GMA. He earned in excess of $3.3 million in 2004, $1.6 million in 2005, $2.3 million in 2006 and $2.5 million in 2007. Gregory was in sole control of GMA and the entire net income of GMA was available to him as personal income. Before and during the marriage, Gregory bought real estate properties for investment purposes.

¶ 6 Diana worked as an executive recruiter prior to the marriage. After the marriage, she worked full and part-time for GMA. She also was involved in the acquisition and

rehabilitation of the parties' investment properties and was responsible for leasing and managing those properties. In November 2007, after she filed for dissolution of the marriage, Gregory terminated her employment with GMA. At that time, she was receiving an annual salary of $100,000. In March 2009, she took a full-time job earning a $100,000 annual base salary plus bonuses.

¶ 7 In the court's judgment for dissolution of marriage, it noted the parties' stipulation that the intended marital home, which was uninhabitable because it was under renovation, and four investment properties were marital property. The parties also stipulated that GMA (including Zoe Aviation, an aviation company of which GMA is the sole shareholder) and one investment property bought by Gregory prior to the marriage were Gregory's nonmarital property. The parties disputed the classification of assorted GMA assets, including a $365,000 payroll tax refund; the airplane owned by Zoe Aviation; and a checking account maintained by GMA. They also disputed the classification of an investment property at 4651-53 N. Wolcott, in Chicago. Diana asserted it was marital property and Gregory asserted it was nonmarital.

¶ 8 Gregory had purchased the Wolcott property, an apartment building, in January 2008, after Diana had filed for divorce. He bought the property for $3,850,000. Gregory obtained a $3,250,000 mortgage loan for the purchase. He financed the earnest money and down payment with approximately $300,000 in GMA funds and a $300,000 loan from his sister. GMA paid Prairie Title Company directly for the earnest money and down payment. Title to the property was held by 4653 Wolcott LLC, a

limited liability company of which Gregory was the sole shareholder. All the parties' investment properties were held by individual limited liability companies of which Gregory was the sole shareholder.

¶ 9 Gregory testified that he bought the Wolcott property after Diana filed for dissolution and he did not inform Diana he was buying it. He stated GMA had loaned the monies used for the earnest money and down payment to Wolcott LLC. He stated Wolcott LLC had not repaid GMA for the "loans" and he did not know that it ever would. He stated he structured the Wolcott property "deal" the way he did "to protect [his] assets." Asked whether he wanted to make the Wolcott property a nonmarital asset, he stated that he did.

¶ 10 Also in 2008, Gregory had GMA pay his sister $100,000 as repayment for her loan. In 2009, he had GMA pay $65,000 in expenses related in the Wolcott property. By the time of the dissolution hearing, the value of the property had dropped to $2,925,000, a $925,000 loss in value and $212,669 less than the amount of the mortgage lien on the property.

¶ 11 The court found that the Wolcott property was marital. It held that, given the Wolcott property was purchased during the marriage, there was a rebuttable presumption that the property was marital property and Gregory had not shown by clear and convincing evidence that his nonmarital funds were used to acquire the property during the marriage. The court also found Gregory had diverted his income from GMA, which was marital income, to the purchase of the property.

¶ 12 Gregory claimed a 2008 income of approximately $300,000. The court disagreed, finding the income stated in Gregory's disclosure statement not credible and unsupported by the evidence. It held that, although Gregory's 2008 income was reduced due to the economic downturn's impact on his business, it was still more than $700,000. The court found Gregory engaged in deceptive income strategy during the pendency of the dissolution proceedings in order to reduce his income. It determined that, after taxes and Gregory's $300,000+ compensation were paid, GMA's total available income was $426,179. Instead of disbursing this amount to himself as he usually did, Gregory made the decision to have GMA invest the money directly, without Diana's knowledge, in the Wolcott property, through Wolcott LLC, which neither GMA nor Zoe Aviation owned and of which Gregory was the sole shareholder. The court found Gregory usually deposited any GMA income, whether in the form of bonuses or other distributions, into his personal accounts. He would then use those personal funds to buy investment property.

¶ 13 The court found that, after Diana filed the petition for dissolution, Gregory changed his usual practice and, instead, had GMA invest monies in the Wolcott property directly. The court stated that Gregory intentionally directed GMA to make payments on his behalf versus using marital income to purchase investment property as he had historically done before the breakdown of the marriage. Noting that Gregory had the entire net income of GMA at his disposal as personal income, the court held that, had Gregory not directed GMA to make the Wolcott-related payments, none of

which were related to GMA's core business, then Gregory's actual income for 2008 would have been in excess of $700,000.

¶ 14 The court found Gregory dissipated a total of $1,049,825 in marital property and charged those funds against his share of the marital estate. Of relevance here is the court's finding that Gregory dissipated in excess of $515,000 in marital income in 2008 and 2009 when he directed GMA to make payments for his sole benefit for what Gregory had testified he intended to be a nonmarital property, the Wolcott property. GMA did not own the Wolcott property and Gregory had bought it without Diana's knowledge or consent. The court held that Gregory admitted he intentionally directed GMA, which did not own the property, to make the payments on his behalf in order to avoid the Wolcott property from being characterized as a marital asset. The court found this was a personal investment for Gregory and not an investment of GMA.

¶ 15 Looking to the allocation of marital assets, the court found that, given the parties' contributions of marital and premarital property, a disproportionate division of the marital assets to either Gregory or Diana was not appropriate. Then, however, it stated that a disproportionate share of the marital estate was appropriate for Diana in lieu of maintenance and as a result of Gregory's dissipation. After outlining and considering all the relevant factors to be considered pursuant to the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/503(d), 504(a) (West 2010)), the court determined that a larger property allocation to Diana and a greater marital debt allocation to Gregory would serve in lieu of maintenance to Diana and as reimbursement to Diana of

Gregory's dissipation of marital assets. The court set forth its classification of the parties' marital and nonmarital assets, determinations regarding the value of the assets and allocation of marital property and debts.

¶ 16 In the court's June 24, 2010, order clarifying and amending the judgment for dissolution, the court reiterated its holding that a disproportionate division of the marital estate, with Diana receiving a larger percentage of the assets and Gregory a larger share of the debts, was warranted in lieu of maintenance to Diana and as reimbursement to Diana for Gregory's dissipation of the marital estate. It amended some of its earlier findings, reiterated its finding that Gregory dissipated marital income through the Wolcott purchase and reallocated the marital property to reflect its amendments. The court awarded Diana $25,394 in nonmarital property and $1,540,843 in marital property (58% of the marital estate). It awarded Gregory $1,425,182 in nonmarital property and $1,099,173 in marital property (42% of the marital estate). In Gregory's allocation, the court included the $515,000 in marital income it had determined Gregory dissipated when he bought the Wolcott property.

¶ 17 Gregory filed a timely notice of appeal on July 23, 2010.

¶ 18 Analysis

¶ 19 Gregory argues the court's dissolution judgment should be reversed because the court erred in (1) finding Gregory dissipated marital income by using GMA funds to purchase the Wolcott property; and (2) inequitably allocating Diana more than 50% of the marital estate.

¶ 20 Pursuant to section 503(d) of the Act, the trial court must divide marital property in "just proportions." 750 ILCS 5/503(d) (West 2006); *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 650 (2009). In allocating property pursuant to the Act, the court must consider any "dissipation by each party." 750 ILCS 5/503(d)(2) (West 2006); *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652. Dissipation is " 'the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown.' " *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652-53 (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). We review a trial court's factual findings on dissipation under the manifest weight of the evidence standard and its final property distribution under an abuse of discretion standard. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007).

¶ 21 1. Dissipation

¶ 22 Gregory argues the court erred in finding he dissipated marital assets when he directed GMA income to the purchase and expenses of the Wolcott property. Pursuant to the Act, there is a rebuttable presumption that all property acquired by any spouse after the date of marriage but before entry of the dissolution judgment is marital property. 750 ILCS 5/503(b) (West 2010); *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). It is irrelevant that title to property acquired after marriage is in the name of only one spouse. 750 ILCS 5/503(b) (West 2010); *In re marriage of Hegge*, 285 Ill. App. 3d 138, 143 (1996). Dissipation occurs when a spouse uses marital

property for his or her own benefit, for a purpose unrelated to the marriage, during a time when the marriage is suffering from an irreconcilable breakdown. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d at 779.

¶ 23 The spouse charged with dissipation has the burden of establishing by clear and convincing evidence how the expenditures alleged to constitute dissipation were spent. *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 653. If that spouse cannot show by clear and specific evidence, through adequate documentation, that those expenditures were spent for a legitimate family expense, a finding of dissipation is appropriate. *In re Marriage of Asher-Goettler (Goettler)*, 378 Ill. App. 3d 1023, 1031 (2008); *In re Marriage of Awan*, 388 Ill. App. 3d 204, 215 (2009). "General and vague statements that the funds were spent on marital expenses or to pay bills are not enough to avoid a finding of dissipation." *Berger v. Berger*, 357 Ill. App. 3d 651, 662 (2005).

¶ 24 We review the trial court's factual findings on dissipation under the manifest weight of the evidence standard. *In re Marriage of Awan*, 388 Ill. App. 3d at 217. Accordingly, we will not reverse the court's finding that Gregory committed dissipation unless a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. *In re Marriage of Awan*, 388 Ill. App. 3d at 217.

¶ 25 Here, Diana presented evidence that Gregory's usual practice was to have any income he received from GMA deposited into his personal accounts, and he would then use the monies in the accounts to pay family expenses and buy investment properties. She showed that, after she filed for dissolution, Gregory did not follow this usual

practice when he bought the Wolcott property and paid related expenses. Instead, without her knowledge or consent, he used GMA funds directly to fund the purchase of the property, to repay his sister for her loan toward the purchase and to pay other expenses related to the property, while at the same time failing to pay family expenses.

¶ 26 The parties agree that GMA is Gregory's nonmarital property. Pursuant to the Act, income from the nonmarital property of one spouse becomes marital income unless it is shown by clear and convincing evidence that the income was not attributable to the personal efforts of the spouse. *In re Marriage of Schmitt*, 391 Ill. App. 3d at 1018. As the trial court found, Gregory had complete control over GMA's funds. Any net GMA income was available to Gregory as personal income and that income was earned entirely through Gregory's personal efforts. Therefore, GMA income earned during the marriage, whether in the form of distributions to Gregory or of direct payments for investments not related to GMA's core business, is marital income. *In re Marriage of Schmitt*, 391 Ill. App. 3d at 1018-22.

¶ 27 Accordingly, Diana's evidence showed that, at a time when the marriage was suffering from an irreconcilable breakdown, Gregory used marital income to buy an investment property without his spouse's knowledge or consent. And that, by diverting GMA marital income directly to the purchase rather than to his personal accounts, he did so in a manner different from that which he had employed before the marriage irretrievably broke down. After Diana presented her evidence of dissipation, the burden shifted to Gregory to show by clear and convincing evidence that he used that GMA

marital income and/or bought the property for the benefit of the family/marriage. *In re Marriage of Awan*, 388 Ill. App. 3d at 216. He failed to do this.

¶ 28 By Gregory's own admission, he used marital income without his spouse's knowledge to buy what he intended to be a nonmarital asset, after the marriage had broken down. Granted, he used his non-marital property as collateral for the loan on the Wolcott property but this does not take away from the fact that he used in excess of $500,000 in marital income to finance and support a purchase that he intended solely for his own benefit. Gregory testified that GMA owned Wolcott LLC but the evidence shows Gregory is the sole member of the LLC.

¶ 29 Gregory makes no showing that he used the GMA marital income for the benefit of the marriage or the family, that he used the GMA marital income for legitimate family expenses. Instead, he asserts that a spouse may continue his investment activities during the course of divorce litigation and "bona fide investments of marital property which prove to be losers are not classified as dissipation." As a spouse with a history of using marital income to make investments during the marriage, Gregory could indeed continue to make investments using marital income after the marriage irreconcilably broke down, even if those investments ultimately lost money, without those investments automatically being considered dissipation. See *In re Marriage of Phillips*, 229 Ill. App. 3d 809, 825-26 (1992); *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 683-84 (1987). However, as with any expenditure of marital funds during the period of irreconcilable marital breakdown, those investments could be subject to a dissipation

claim. In order to overcome such a claim, as with any claim involving dissipation of marital assets, the investing spouse must be able to show by clear and convincing evidence that his use of marital income for the investments during a period of marriage breakdown was not for his sole benefit. *In re Marriage of Phillips*, 229 Ill. App. 3d at 825-26.

¶ 30 The issue here has little to do with the fact that Gregory continued investing in real estate after Diana filed for dissolution or that the Wolcott property investment decreased in value after Gregory purchased it. Instead, the issue is whether Gregory can show that he made the Wolcott investment, using marital income during the period of marital breakdown, for the benefit of the marriage/family rather than for his sole benefit. He cannot.

¶ 31 By his own admission, Gregory intended the Wolcott property to be nonmarital; used GMA marital income to buy the "nonmarital" property without letting Diana know; and used that marital income to buy the property in a way different from how he used marital income to buy investment properties before Diana filed for dissolution, *i.e.*, he used the GMA funds/marital income directly versus funneling it through his bank accounts as he usually did. He made no showing by specific evidence that the Wolcott property investment was intended for the benefit of the family and, indeed, his own testimony would belie such an assertion. Accordingly, Gregory failed to meet his burden to show by clear and convincing evidence that his use of the marital funds was for a legitimate family expense.

¶ 32 Gregory states he is appealing "the narrow question of whether the court erred in ruling he dissipated marital property by losing money on his purchase of the Wolcott [property]." He asserts that what occurred "is that the trial court took the *losses* (the monies spent on the property less its current market value) on the [Wolcott property] and improperly turned them into a 'dissipation' entry on the marital balance sheet and unloaded them on Greg." (Emphasis in original.) He asserts "the court erred in having characterized legitimate and ordinary business losses as dissipation when Greg did nothing more than make an unfortunate business decision in his real-estate business." This argument is entirely unsupported by the evidence.

¶ 33 Having closely reviewed both of the court's orders, we find nothing to show that the court came up with the $515,000 dissipation amount by looking to the loss in value of the Wolcott property. The orders clearly show that the court calculated the $515,000 dissipation based on the monies Gregory diverted from GMA for the purchase of the Wolcott property. Nowhere does the court tie its dissipation finding to the fact that the property is now worth less than what Gregory paid for it. The court's opinion does not even mention the purchase price. Indeed, given that Gregory bought the property for $3,850,000 and it was worth $2,925,000 at the time of the dissolution judgment, had the court based the dissipation amount on the loss in value, it would necessarily have found that Gregory dissipated $925,000, not $515,000.[1]

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[1] Marital assets are generally valued as of the date of the dissolution judgment. *Helber v. Helber*, 180 Ill. App. 3d 507, 511 (1989).

¶ 34 Gregory failed to meet his burden to show by clear and convincing evidence that his unusual direct use of GMA income to pay costs associated with the purchase of the Wolcott property during the period of irreconcilable marital breakdown was for a legitimate family expense. The court's decision that Gregory dissipated marital income by diverting the GMA monies to the purchase of the Wolcott property and payment of related expenses is not against the manifest weight of the evidence.

¶ 35 2. Allocation of Marital Estate

¶ 36 Gregory argues the court erred by making an inequitable allocation of the marital estate. He asserts the court "originally intended to allocate the marital estate equally between the parties" but improperly refused to reallocate the estate to reflect this division. The court awarded Diana 58% of the marital estate and Gregory 42%. Notwithstanding Gregory's argument to the contrary, the court never intended that the marital estate be divided 50/50 between the parties. The court clearly stated, in both its original judgment for dissolution and its amended judgment for dissolution, that a "disproportionate share of the marital estate" was warranted to reflect the fact that Diana would receive property in lieu of maintenance and as reimbursement for Gregory's dissipation.

¶ 37 Pursuant to section 503(d) of the Act, the court must divide marital property, both assets and debts, in "just proportions." *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319 (1991). "Just proportions" mandates an equitable, rather than an equal, division of marital property. *In re Marriage of Orlando*, 218 Ill. App. 3d at 319. In determining the

allocations, the court must take into consideration all relevant factors including the duration of the marriage, the economic circumstances of each spouse upon division of the property, the amount and source of each spouse's income, whether the apportionment is in lieu of or in addition to maintenance, the employability of both parties, their ages, health, occupations; the reasonable opportunity of each spouse to acquire assets and income in the future; and each spouses contributions to the marriage. *In re Marriage of Abma*, 308 Ill. App. 3d 605, 614 (1999); *In re Marriage of Orlando*, 218 Ill. App. 3d at 319. "Each case rests upon its own facts." *In re Marriage of Orlando*, 218 Ill. App. 3d at 319.

¶ 38 We will not reverse a court's distribution of marital assets unless it is against the manifest weight of the evidence and, therefore, an abuse of the court's discretion. *In re Marriage of Abma*, 308 Ill. App. 3d at 614.

> "[A] trial court's resolution of property division is fettered only by the range of reason. * * * The question is not whether we agree with the trial court but rather whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all circumstances, exceeded the bounds of reason so that no reasonable person would take the view adopted by the trial court." *In re Marriage of Siddens,* 225 Ill. App. 3d 496, 500 (1992).

The court's allocation of the marital assets here was entirely reasonable.

¶ 39 The court chose to allocate Diana property instead of maintenance. The Act makes the division of marital property the primary means of providing for the parties'

future financial needs, such that each party is in the position to begin anew. *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 338 (1999) (citing *Hollensbe v. Hollensbe*, 165 Ill. App. 3d 522, 527-28 (1988)). In contrast, maintenance is intended for the support and maintenance of the recipient spouse, to meet the spouse's reasonable needs as determined by the parties' standard of living during the marriage, until such time, if ever, that spouse is able to become self-sufficient. *In re Marriage of Harlow,* 251 Ill. App.3d 152, 158 (1993). The court should grant maintenance only "when it finds the spouse seeking maintenance lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through employment or is otherwise without sufficient income." *In re Marriage of Harlow*, 251 Ill. App.3d 152, 157 (1993); 750 ILCS 5/504(a) (West 2002). The propriety, amount and duration of maintenance lie within the trial court's discretion. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 592 (2001).

¶ 40 The court allocated a greater percentage of the marital estate to Diana in lieu of maintenance. At the time of dissolution, Diana had $25,394.35 in nonmarital assets, earned a $100,000 salary and had limited earning capacity. Gregory had $1,425,182.68 in nonmarital assets, an income in excess of $700,000 and vastly greater earning capacity. Comparing the parties' circumstances, it is clear that, unless Diana receives a maintenance award or a larger property allocation, she would not be able to support herself in any semblance of the lavish standard of living she enjoyed during the marriage. Gregory's standard of living, although diminished, would not be

nearly as heavily impacted by the dissolution as Diana's.

¶ 41 The court's decision to award Diana property, including an income producing apartment building, instead of maintenance was entirely reasonable. Its decision reflects the Act's preference for making a property award the primary means of providing for a spouse's future financial needs and the economic realities facing both parties. This is so regardless of whether Gregory dissipated marital assets or not. With or without the dissipation finding, the circumstances of the parties warrant a disproportionate property award to Diana in lieu of maintenance. Looking at each spouses' economic circumstances upon division of the property, amount and source of income, employability, ages, health, occupations, reasonable opportunity to acquire future assets and income and contributions to the marriage, we find the court did not abuse its discretion in awarding Diana 58% of the marital estate in lieu of maintenance. The division of assets may not be equal, but it is equitable.[2]

¶ 42 Conclusion

¶ 43 For the reasons stated above, we affirm the decision of the trial court.

¶ 44 Affirmed.

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[2] Since the parties do not contest the values the court placed on the dissipation or the parties' marital and nonmarital assets, we will not belabor them.

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THEMIS N. KARNEZIS, Justice

Honorable Thomas E. Hoffman, Justice

SHELVIN LOUISE MARIE HALL, Justice

Steven M. Ravid — Thomas J. Dart, Sheriff

On the Twenty-third day of July, 2012, the Appellate Court, First District, issued the following judgment:

No. 1-10-2158
IN RE THE MARRIAGE OF:
DIANA BARR CRECOS,
Petitioner-Appellee,
v.
GREGORY CRECOS,
Respondent-Appellant.

Appeal from Cook County
Circuit Court No. 07D10902

As Clerk of the Appellate Court, in and for the First District of the State of Illinois, and the keeper of the Records, Files and Seal thereof, I certify that the foregoing is a true copy of the final order of said Appellate Court in the above entitled cause of record in my office.

APPELLATE COURT OF ILLINOIS FIRST DISTRICT JULY 1, 1877 SEAL

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Appellate Court, at this Fifth day of October, 2012.

Steven M. Ravid

Clerk of the Appellate Court
First District, Illinois

FILED
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2012 OCT -5 PM 3:55
CIVIL APPEALS DIVISION
DOROTHY BROWN
CLERK

Illinois Official Reports

Appellate Court

***In re Marriage of Crecos*, 2015 IL App (1st) 132756**

Appellate Court Caption	*In re* MARRIAGE OF DIANA CRECOS, Petitioner-Appellant, and GREGORY CRECOS, Respondent-Appellee.
District & No.	First District, Second Division Docket Nos. 1-13-2756, 1-13-3780, 1-14-0112 cons.
Filed	July 28, 2015
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 07-D-10902; the Hon. Raul Vega, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Litchfield Cavo LLP, of Chicago (James R. Branit, of counsel), for appellant. Grund & Leavitt, P.C., of Chicago (Marvin J. Leavitt, David C. Adams, Jody Meyer Yazici, and Jamie R. Fisher, of counsel), for appellee.

Panel JUSTICE NEVILLE delivered the judgment of the court, with opinion.
Presiding Justice Simon and Justice Pierce concurred in the judgment and opinion.

OPINION

¶ 1 Diana Barr-Crecos (Diana) filed a petition to dissolve her marriage to Gregory Crecos (Gregory) on October 30, 2007. Judge Jeanne Reynolds entered a judgment of dissolution on December 24, 2009 dissolving the marriage. Gregory appealed and this court affirmed the 2009 judgment of dissolution. *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U. During Gregory's appeal, the parties filed postdecree petitions, which were heard by Judge Raul Vega, a judge who was assigned to the case on July 15, 2010. Diana presented a motion for substitution of judge as of right, and Judge Vega denied the motion on July 27, 2010. At the conclusion of the parties' postdecree proceedings, Diana filed a notice of appeal on August 22, 2013 seeking review of all of the orders entered by Judge Vega. Supplementary proceedings (735 ILCS 5/2-1402 (West 2012)) were held and Judge Diann Marsalek entered a wage garnishment order on December 17, 2013. Diana timely filed another notice of appeal on December 23, 2013, seeking review of all of the orders entered by Judge Vega and Judge Marsalek.

¶ 2 We find that Diana's motion for substitution of judge as of right was filed before commencement of a trial or hearing on the merits and before Judge Vega made a substantial ruling so the circuit court erred when it denied the substitution motion. Therefore, we hold that the postdecree orders entered by Judge Vega after denying the substitution motion were void, and that the wage garnishment order entered by Judge Marsalek in the supplementary proceedings was also void because it was based on a void order entered by Judge Vega. *POM 1250 N. Milwaukee, LLC v. F.C.S.C., Inc.*, 2014 IL App (1st) 132098, ¶ 26. Accordingly, the orders entered by the circuit court in the postdecree proceedings and in the supplementary proceedings are reversed.

¶ 3 BACKGROUND

¶ 4 The Dissolution Proceedings

¶ 5 Diana filed a petition pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq*. (West 2006)) (Act) to dissolve her marriage to Gregory on October 30, 2007. On September 10, 2009, the parties reached an oral agreement as to all of their personal property. On December 24, 2009, Judge Reynolds entered a final judgment dissolving the marriage. In the 2009 judgment of dissolution, Judge Reynolds classified and valued every item of real and personal property that Gregory and Diana had disclosed to the court. Judge Reynolds then allocated the property to the parties. Gregory appealed Judge Reynolds' decision on July 23, 2010, but this court affirmed the order granting the 2009 judgment of dissolution on July 23, 2012. *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U.

¶ 6 Postdecree Proceedings

¶ 7 While Gregory's appeal was pending, Gregory and Diana filed postdecree petitions in the circuit court. The case was assigned to Judge Vega on July 15, 2010. That same day, Gregory filed a *pro se* "Emergency Verified Petition for Preliminary Injunction to Enforce Joint Parenting Agreement and to Preserve Status Quo." In his petition, Gregory sought to have the court enter an order mandating that his two daughters remain in the School of St. Mary's. In addition, he sought a preliminary injunction directing Diana to abide by the Joint Parenting Agreement and "(a) not make derogatory statements, ridicule, defame, and belittle Greg in the presence of the minor children or in any other way seek to undermine the *** children's love and respect for Greg; (b) not interrogate the children about their activities with their father; [and] (c) not prevent Greg from spending time with his children."

¶ 8 The next day, July 16, 2010, a hearing was held on Gregory's motion. At the hearing, Judge Vega entered an order which stated that Gregory's petition was "not an emergency" and which gave Diana "14 days to respond or otherwise plead" to Gregory's petition. The order also set Gregory's petition for hearing on August 11, 2010.

¶ 9 Before the August 11, 2010 hearing, but after Judge Vega entered the July 16, 2010 order, Diana filed a motion for substitution of judge as of right pursuant to section 2-1001 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(2) (West 2010)). Judge Vega entered an order on Diana's motion on July 27, 2010, which stated that the "motion for substitution as of right is denied." The order did not delineate the court's reasons for the denial of Diana's motion.

¶ 10 On August 11, 2010, Gregory's new counsel filed a motion entitled "Emergency Motion for Entry of Order Pursuant to September 10, 2009 Ruling and for Turnover of Property." In this motion, Gregory alleged that Diana stole several items that were to be equally divided between the two parties and as a result, the original oral agreement of September 10, 2009 must be enforced. Gregory also requested that the circuit court award him several additional items of personal property that were not mentioned in the 2009 judgment of dissolution: a Steve Hudson painting, Andy Warhol prints, and several Salvador Dali prints.

¶ 11 Judge Vega entered an order on September 24, 2012, that *inter alia*, ordered Diana to return all items belonging to Gregory within 14 days, otherwise a $400,000 monetary judgment would be entered against her. On October 24, 2012, Gregory filed a motion to reconsider Judge Vega's September 24, 2012 order. On May 24, 2013, Judge Vega granted Gregory's motion to reconsider and entered a $746,000 money judgment against Diana. On June 4, 2013, Diana filed a motion to reconsider both the September 24, 2012 and May 24, 2013 orders. On July 26, 2013, Judge Vega denied Diana's motion to reconsider. On August 22, 2013, Diana filed a notice of appeal from Judge Vega's orders in the postdecree proceedings (appeal No. 13-2756). The notice was timely filed and sought review of the "September 24, 2013, May 24, 2013, and July 27, 2013" orders entered by Judge Vega.

¶ 12 The Supplementary Proceedings

¶ 13 On December 17, 2013, during the supplementary proceedings, Judge Marsalek entered a final judgment entitled "Wage Deduction/Turnover Order," which included Rule 304(a) language. Diana timely filed her notice of appeal on December 23, 2013, seeking review of

all of the orders addressing the postdecree proceedings before Judge Vega and the supplementary proceedings before Judge Marsalek (appeal No. 14-0122).

¶ 14 ANALYSIS

¶ 15 Jurisdiction

¶ 16 Before reaching the merits of this appeal, we must review the orders referenced in Diana's notice of appeal based on our independent duty to determine whether jurisdiction is proper. *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 182 Ill. 2d 234, 238 (1998). We note that on August 22, 2013, Diana filed her first notice of appeal seeking review of the "September 24, 2013, May 24, 2013, and July 27, 2013" orders entered by Judge Vega. Because Diana filed her notice of appeal on August 22, 2013, we find that she could not appeal from the order entered on September 24, 2013. In addition, we find that the record reveals the circuit court did not enter an order on July 27, 2013, but the record does reveal that the circuit court entered an order on July 26, 2013.

¶ 17 Here, we find that Diana made two scrivener's errors when she typed the incorrect dates of July 27, 2013 and September 24, 2013, when she should have referenced the September 24, 2012 and the July 26, 2013 orders in her notice of appeal. *Schaffner v. 514 West Grant Place Condominium Ass'n*, 324 Ill. App. 3d 1033, 1042 (2001); *State Security Insurance Co. v. Linton*, 67 Ill. App. 3d 480, 486 (1978) (the wrong date on a notice of appeal does not create a fatal defect when it is a typographical error). In *Schaffner*, this court defined a "scrivener" as a writer and a "scrivener's error" as a clerical error resulting from a minor mistake or inadvertence when writing or when copying something on the record, including typing an incorrect number. *Schaffner*, 324 Ill. App. 3d at 1042. Therefore, we find that the incorrect dates on Diana's August 22, 2013 notice of appeal were scrivener's errors that do not create a fatal defect. *Linton*, 67 Ill. App. 3d at 486.

¶ 18 We find that neither party is prejudiced by Diana's scrivener's errors. *Illinois Bell Telephone Co. v. Purex Corp.*, 90 Ill. App. 3d 690, 693 (1980); *Linton*, 67 Ill. App. 3d at 486. The scrivener's errors do not inhibit this court's ability to ascertain from the record that Diana is appealing from the September 24, 2012 and the July 26, 2013 orders. *Linton*, 67 Ill. App. 3d at 486. Accordingly, because the July 26, 2013 order was a final order (*Pottorf v. Clark*, 134 Ill. App. 3d 349, 351 (1985)), and because Diana's notice of appeal was filed within 30 days of the July 26, 2013 order, we have jurisdiction over appeal number 13-2756.

¶ 19 The Record

¶ 20 Next, we address Gregory's argument that this court is unable to "properly consider" Diana's argument that her motion for substitution of judge as of right was timely because Diana has failed to meet her burden of presenting the court with a complete record. Specifically, Gregory argues that because the file stamped copy of Diana's motion for substitution of judge as of right was not dated prior to the entry of Judge Vega's order denying the motion, and because Diana did not submit a report of proceedings or bystander's report, this Court is left with an insufficient record. As a result of the insufficient record, Gregory argues that this Court is unable to review the case properly because we have "not

been given any of the argument on the substitution motion and/or any explanation of the trial court's ruling by Judge Vega."

¶ 21 Although there is no report of proceedings from the hearing on the motion, we find that Judge Vega's order denying the motion indicates that the substitution issue was raised, considered and ruled on by Judge Vega. See *Collins v. Hurst*, 316 Ill. App. 3d 171, 174 (2000). We note that an order denying a motion for substitution of judge as of right is reviewed *de novo*. *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 27. There is no evidence in the record that Judge Vega called witnesses and held an evidentiary hearing on the substitution motion. If no evidentiary hearing was held and the circuit court ruled on the substitution motion based on the pleadings, a report of proceedings or bystander's report are not required because the appellate court, on *de novo* review, reviews the same pleadings that were filed by the parties and reviewed by the circuit court. Therefore, since the motion for substitution of judge and the order denying that motion are included in the record and were the only pleadings considered by the circuit court, the appellate court has all the documents it needs to review the circuit court's order denying the motion for substitution. *Marx Transport, Inc. v. Air Express International Corp.*, 379 Ill. App. 3d 849, 853 (2008) (the failure to present a report of proceedings does not require a dismissal where issues can be resolved on the record as it stands).

¶ 22 Substitution of Judge

¶ 23 We now turn to the merits of the case and address whether Judge Vega's denial of Diana's motion for substitution of judge as of right was erroneous. Gregory argues that Diana's motion was not timely because: (1) Judge Vega made a substantial ruling prior to the presentation of the motion, and (2) Diana did not raise the motion at the earliest possible time.

¶ 24 In order to address Gregory's argument, we must examine the Code (735 ILCS 5/1-101 *et seq*. (West 2006)). Section 2-1001(a)(2) of the Code provides that a substitution of judge in a civil action may be had as of right in the following situation:

> "(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties." 735 ILCS 5/2-1001(a)(2)(i), (ii) (West 2006).

¶ 25 A motion is timely and *shall be* granted, according to the statute, provided that the motion is presented before a hearing begins and provided that the Judge *to whom it is presented* has not made any substantial rulings. 735 ILCS 5/2-1001(a)(2)(i), (ii) (West 2006). A ruling is considered substantial when it relates directly to the merits of the case. *Nasrallah v. Davilla*, 326 Ill. App. 3d 1036, 1039-40 (2001).

¶ 26 Judge Vega was assigned to the case on July 15, 2010, and Gregory filed his emergency motion on that same day. Gregory requested the following relief from Judge Vega in his

emergency motion: (1) that his children remain in the School of St. Mary's; (2) that Diana refrain from making disparaging remarks to the children about Gregory or undermining the children's love for Gregory; (3) that Diana no longer question the children about their interactions with Gregory; and (4) that Diana refrain from interfering with Gregory's ability to spend time with his children. On July 16, 2010, Judge Vega entered an order stating that the motion was "not an emergency" and set a briefing schedule without commencing a trial or hearing on the merits or expressing his opinion on the relief prayed for in Gregory's motion. An order which sets a briefing schedule or a hearing date is not a substantial ruling because it is not directly related to the merits of the case. *Chicago Transparent Products, Inc. v. American National Bank & Trust Co. of Chicago*, 337 Ill. App. 3d 931, 943 (2002). Therefore, because Judge Vega set a briefing schedule but never held a trial or hearing and never expressed his opinion on the relief prayed for in Gregory's motion, Judge Vega made no substantial ruling on the merits of the motion. *Chicago Transparent Products*, 337 Ill. App. 3d at 943; *Nasrallah*, 326 Ill. App. 3d at 1039-40.

¶ 27 The Illinois Supreme Court was presented with a set of facts similar to the facts in this case in *In re Marriage of Kozloff*, 101 Ill. 2d 526 (1984). In *Kozloff*, the Illinois Supreme Court held:

> "It follows that a judge's substantive ruling during the dissolution proceeding will preclude a change of venue[1] as of right on a post decree petition before that same judge. As sometimes occurs, however, the judge assigned to hear a post decree petition or motion may not be the same judge who presided at the dissolution proceeding, or different judges may hear different post decree matters at different times. Section 2-1001(c) of the Code of Civil Procedure provides that a motion for change of venue will be allowed unless 'the judge to whom it is presented has ruled on any substantial issue in the case.' [Citation.] Thus, the assignment of a different judge at any point in the proceedings entitles the parties to a change of venue as of right if that judge has not made a substantial ruling in the case." (Emphasis omitted.) *Kozloff*, 101 Ill. 2d at 532.

Because Judge Vega was assigned to the case during the postdecree proceedings and because he had not commenced a trial or a hearing or made a substantial ruling prior to the time Diana filed her motion for substitution of judge as of right, we find that Diana was entitled to a new judge and we hold that the circuit court erred by denying Diana's motion.

¶ 28 The Illinois Supreme Court has also held that "[w]here a petition for change of venue is timely filed and in proper form, it must be granted and any order entered after its presentation is a nullity." *In re Dominique F.*, 145 Ill. 2d 311, 324 (1991). Therefore, *all* orders entered by Judge Vega subsequent to the July 27, 2010 order denying Diana's motion for substitution of judge as of right are void. *In re Dominique F.*, 145 Ill. 2d at 324; *POM 1250 N. Milwaukee*, 2014 IL App (1st) 132098, ¶ 26. Accordingly, the circuit court's orders entered for Gregory and against Diana, subsequent to July 27, 2010, are reversed.

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[1]Under the prior version of the statute, which came into effect on January 1, 1993, Pub. Act 87-949 (eff. Jan. 1, 1993) (now 735 ILCS 5/2-1001, 2-1001.5 (West 2000)), a substitution of judge and a substitution of county were both referred to as "change of venue." *Schnepf*, 2013 IL App (4th) 121142, ¶ 42.

Because all orders filed after Judge Vega denied Diana's motion for substitution are void, we do not reach the remaining issues on appeal because they are based on a void order. *In re Dominique F.*, 145 Ill. 2d at 324.

¶ 29 CONCLUSION

¶ 30 When a case is assigned to another judge for postdecree proceedings and a party files a motion for substitution of judge as of right before the assigned judge has held a trial or a hearing or made a substantial ruling, it is error for the circuit court to deny the moving party's motion. In addition, all subsequent orders entered after the erroneous denial of the motion for substitution of judge as of right are void. Accordingly, we reverse the orders entered by the circuit court.

¶ 31 Reversed and remanded.

2019 IL App (1st) 171368-U
No. 1-17-1368
May 13, 2019

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE THE MARRIAGE OF DIANA BARR CRECOS,	Appeal from the Circuit Court Of Cook County.
Petitioner-Appellee,	
v.	No. 07 D 10902
GREGORY CRECOS,	The Honorable Daniel J. Kubasiak, Judge Presiding.
Respondent-Appellant.	

JUSTICE WALKER delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: An order entered by a judge without jurisdiction, cannot bind the parties to a purported agreement regarding child support. Where one party to the purported agreement consistently protested to the terms of the order, equitable estoppel does not apply.

¶ 2 Gregory Crecos appeals from the circuit court's order transferring funds in a bank account to Diana Barr Crecos, as partial payment of past due child support. We find that the purported agreement to an invalid order reducing the child support did not bind the parties

because Diana consistently argued that the court lacked authority to enter the order, and she did not agree to the reduction. Therefore, we do not find her equitably estopped from collecting the past due child support. Accordingly, we affirm the circuit court's order.

¶ 3 I. BACKGROUND

¶ 4 Diana and Gregory married in 2000 and had two children. Diana petitioned for dissolution of the marriage in 2007. In 2009, the trial court entered an order dissolving the marriage, allocating the parties' assets, and directing Gregory to pay child support of $10,000 per month. Gregory appealed and the appellate court affirmed the judgment. *In re Marriage of Crecos*, 2012 IL App (1st) 102158-U.

¶ 5 The circuit court assigned the case to Judge Raul Vega on July 15, 2010, for post-decree issues. Diana filed a motion for substitution of judge as of right. Judge Vega denied the motion on July 27, 2010. Gregory filed a petition to modify child support on July 29, 2010. In May 2013, Judge Vega entered an order awarding Gregory a judgment against Diana for $746,000. Diana appealed, challenging all orders entered by Judge Vega on grounds that he erred when he denied her motion for substitution of judge.

¶ 6 Judge Vega continued to preside over the case pending resolution of Diana's appeal. Gregory issued citations to discover Diana's assets. Diana, in her motion to quash the citations, again argued that "Judge Vega's May 24, 2013 order is void and thus unenforceable because Judge Vega acted entirely without jurisdiction."

¶ 7 In November 2013, Diana swore in an affidavit that Gregory unilaterally reduced child support in violation of the trial court's 2009 judgment. Both Diana's appeal and Gregory's petition to modify child support remained unresolved at the end of 2013.

¶ 8 On January 8, 2014, Judge Vega held a pretrial conference in chambers, with the attorneys but not the parties, on Gregory's petition to modify child support. The attorneys disagree about what happened in chambers. At a hearing on January 14, 2014, Diana's attorney reminded Judge Vega that at the end of the conference on January 8, Diana "wanted to give some more thought" to the proposed settlement of child support. The attorney said that Diana ultimately did not agree to the proposed terms. Gregory's attorney said the parties had an agreement, but the court allowed Diana "additional time to review said order." Judge Vega asked, "Wasn't there an agreement?" One of Diana's attorneys answered, "Honestly, yes, there was," and added, "after more review of the order and more *** time to think about it, [Diana] determined that this was not the order that she wanted entered."

¶ 9 Although Judge Vega allowed Diana time after January 8, 2014 to consider the proposed terms, he later decided that she could not refuse to consent. Judge Vega then signed a document, dated January 14, 2014, that said:

"AGREED ORDER

* * *

Greg's child support obligation pursuant to *** the December 24, 2009 Judgment are modified as follows:

a. Commencing on February 15, 2014 and continuing on the 15th of each month thereafter, Greg[] shall pay to Diana child support in the amount of $2,000.00 per month. Greg's gross monthly income is not expected to exceed $150,000.00 for the year 2013. The $2,000.00 monthly child support figure is based on Greg's estimated gross income for 2013."

¶ 10 Diana continued to pursue her argument on appeal that Judge Vega lost jurisdiction due to Diana's properly filed motion for substitution of judge. Diana also filed a motion to reconsider the January 14, 2014 order, supported by affidavits from her attorneys. The attorney who said Diana had agreed to the support order averred:

"After over one (1) hour of the pretrial on January 8, 2014, and prior to the presentation of any evidence, Judge Vega stated that he had determined, 'Whether we hold a hearing or not, this is how I am going to rule.' Judge Vega then stated that, as one element of his decision, he would order Gregory to pay $2000 per month in child support from February 2014 onward and he would not award Diana any amount for additional child support between July 2010 and January 2014.

*** I understood Judge Vega's comments to constitute a declaration of how he would rule regardless of whether we proceeded to present evidence or what the evidence showed. I repeated Judge Vega's comments to Diana on January 8, 2014 prior to entry of the court's order.

*** Based on Judge Vega's statements as to how he would rule either that day or after the evidence was presented, Diana had no choice but to either accept Vega's decision under duress or waste thousands of dollars of attorney's fees to no purpose except perhaps to preserve her right to an appeal. Consequently, on January 8, 2014, Judge Vega's comments coerced Diana into accepting his decision and her authority on that date to enter into an agreed order was given under duress."

¶ 11 The other attorney signed a similar affidavit. Diana submitted her own affidavit, in which she averred:

"Based on Judge Vega's statements as to how he would rule either that day or after the evidence was presented and regardless of what the evidence showed, I had no choice but to either accept Judge Vega's decision under duress or waste thousands of dollars of attorney's fees to no purpose. Consequently, on January 8, 2014, Judge Vega's comments were an attempt to coerce me into accepting his decision, and any authority I gave on that date to enter into an agreed order was given under duress."

¶ 12 Judge Vega denied the motion to reconsider. Diana appealed from the January 14, 2014 order and the denial of her motion to reconsider that order.

¶ 13 The appellate court issued its decision on Diana's appeals on July 28, 2015. *In re Marriage of Crecos*, 2015 IL App (1st) 132756. The court held that Judge Vega had no discretion to deny Diana's motion for substitution of judge as of right. The court concluded,

"*all* orders entered by Judge Vega subsequent to the July 27, 2010 order denying Diana's motion for substitution of judge as of right are void. [Citations.] Accordingly, the circuit court's orders entered for Gregory and against Diana, subsequent to July 27, 2010, are reversed." (Emphasis in original.) *Id.* at ¶ 28.

¶ 14 Diana sought payment of the child support Gregory owed under the only valid child support order entered in the case: the 2009 judgment directing Gregory to pay Diana $10,000 per month in child support. Gregory argued that Judge Vega's order reducing his payments to $2000 per month established the correct amount of child support. On December 7, 2016, the circuit court entered an order stating, "Gregory Crecos' monetary obligations to pay pursuant to the Judgment for Dissolution of Marriage entered 12/24/09, including health and life insurance premiums, child support, tuition, additional expenses and the like are stayed pending further Order of Court."

¶ 15 Diana filed a motion asking the court to hold Gregory in contempt for deceiving the court. She presented a loan application that Gregory completed in 2016 on which he told the lender he earned more than $43,700 each month (far exceeding the $150,000 per year he told the court he earned in 2013), and his net worth exceeded $2,500,000. Because Gregory had not paid the court ordered child support, Diana also filed a motion under section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2016)) for transfer of funds from Gregory's account with the First Bank of Highland.

¶ 16 On May 5, 2017, the circuit court entered an order holding that the 2009 order for child support operated as a series of judgments against Gregory, deemed entered as of the date

each ordered payment became due. The court found the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2016)) entitled Diana to enforcement of the judgments by citations to discover assets and by supplementary proceedings under section 2-1402 of the Code. In the First Bank account, Gregory had $226,473, a sum far less than the more than $700,000 Gregory owed for unpaid child support. On May 5, 2017, the court ordered First Bank to turn over $226,473 to Diana. Gregory now appeals.

¶ 17 Diana filed a motion to supplement the record with Gregory's tax returns. Gregory opposed the motion. We took the motion with the case.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Gregory makes the following arguments: (1) the circuit court violated his due process rights by entering the May 5, 2017 turnover order without an evidentiary hearing on the validity of the January 14, 2014 order; (2) the May 5, 2017 turnover order violated the December 7, 2016 stay order; (3) the parties were bound by Judge Vega's January 14, 2014 order; (4) Diana is equitably estopped from denying the validity of the January 14, 2014 order.

¶ 20 A. Jurisdiction

¶ 21 Supreme Court Rule 304(b)(4) (Ill. S. Ct. R. 304(b)(4) (eff. March 8, 2016)) gives this court jurisdiction to consider the appeal from the May 5, 2017 order directing First Bank to turn over to Diana the funds in Gregory's account. See *Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162986, ¶¶ 26-33.

¶ 22 B. Briefs

¶ 23 The parties accuse each other of violating Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. May 25, 2018)) by presenting argumentative statements of facts with many irrelevant and unsupported assertions. While both claims have some merit, we find that the briefing defects do not significantly hamper our review. We will ignore all irrelevant assertions and all unsupported assertions in the statements of facts. See *Finance America Commercial Corp. v. Econo Coach, Inc.*, 95 Ill. App. 3d 185, 186 (1981).

¶ 24 C. Due Process

¶ 25 Gregory argues that the circuit court violated his right to due process by entering the May 5, 2017 turnover order without hearing argument on his claim that the January 14, 2014 order remained effective. "Due process is defined as an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case." *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 417-18 (1970). The trial court based the turnover order on the 2009 judgment which was entered after a full trial by a court with the power to decide the case. The Act establishes that the 2009 "support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder." 750 ILCS 5/505(d) (West 2008); see *Illinois Department of Healthcare & Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 486-87 (2011). We find that the proceedings prior to the 2009 judgment and the appeal affirming the judgment, met the requirements of due process. See *Kazubowski*, 45 Ill. 2d at 417-18.

¶ 26 Gregory cites *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 111410, as authority requiring an evidentiary hearing before the court may enter a turnover order under section 2-1402 of the Code. The court in *Workforce Solutions* held that the facts of that case required an evidentiary hearing because a third party, not involved in the litigation, had an ownership interest in the assets at issue. *Workforce Solutions*, 2012 IL App (1st) 111410, ¶ 41. Diana asserted that First Bank held assets that Gregory owned. Gregory did not assert that a third party owned the account. Instead, he sought to attack the 2009 judgment again, after his unsuccessful appeal. Section 2-1402 proceedings do not give the parties another opportunity to attack a valid judgment. *Workforce Solutions*, 2012 IL App (1st) 111410, ¶ 40.

¶ 27 The circuit court recognized that Gregory filed a petition for modification of child support in 2010, and no judge with jurisdiction heard the petition. The circuit court correctly observed that the Act specifically provides:

> "A petition to modify or terminate child support or allocation of parental responsibilities shall not delay any child support enforcement litigation or supplementary proceeding on behalf of the obligee." 750 ILCS 5/510(f) (West 2016); see *In re Marriage of Metz*, 233 Ill. App. 3d 50, 58 (1992).

Accordingly, we find the filed but unheard petition did not warrant denial of Diana's motion for turnover of the bank account.

¶ 28 D. Stay

¶ 29 Gregory argues that the May 5, 2017 turnover order violated the December 7, 2016 order in which the court stayed Gregory's obligation to pay child support. Gregory forfeited the argument by failing to raise it in the circuit court. See *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29.

¶ 30 E. January 2014 Order

¶ 31 Gregory asserts that the order Judge Vega entered on January 14, 2014, operates as a binding contract that remains enforceable despite Judge Vega's lack of jurisdiction. "[S]etting child support is a judicial function. Accordingly, private agreements to modify child support without court approval are unenforceable." *In re Marriage of Jungkans*, 364 Ill. App. 3d 582, 584 (2006). No court with jurisdiction approved the purported agreement. Accordingly, we find the January 14, 2014 order which was declared void (*In re Mar of Crecos*, 2015 IL App (1st) 132756), does not bind the parties, and the 2009 judgment remains the only valid determination of the amount Gregory must pay Diana for support of his children. *Id.*

¶ 32 F. Equitable Estoppel

¶ 33 Gregory asks this court to find Diana equitably estopped from denying the validity of the January 14, 2014 order. "A claim of equitable estoppel exists where a person, by his or her statements or conduct, induces a second person to rely, to his or her detriment, on the statements or conduct of the first person. [Citation.] The party asserting a claim of estoppel 'must have relied upon the acts or representations of the other and have had no knowledge or

convenient means of knowing the true facts' (citation) and such reliance should be reasonable." *Blisset v. Blisset*, 123 Ill. 2d 161, 169 (1988), *quoting Dill v. Widman*, 413 Ill. 448, 456 (1952).

¶ 34 Diana alerted Gregory on January 14, 2014, that she did not agree to the terms of the order Judge Vega entered. She alerted Gregory further in her arguments to the appellate court that she sought an order vacating all of Judge Vega's orders and specifically attacked the order of January 14, 2014.

¶ 35 Gregory did not rely on Diana's actions in his reduction of child support prior to January 2014. He relied on Judge Vega's void order of January 14, 2014, and not on Diana's actions when he reduced his child support to $2000 per month after January 2014. Diana consistently contested Judge Vega's order and Gregory's reduction of child support. Because Gregory did not rely on Diana's acts, his claim for equitable estoppel fails. See *Blisset*, 123 Ill. 2d at 170.

¶ 36 G. Amount Due

¶ 37 Finally, Gregory contends that the circuit court miscalculated the amount due under the support order, as the court, relying on Diana's summary, found more than $700,000 due. In his response to Diana's petition to hold him in contempt, Gregory admitted that he paid substantially less in child support than the court ordered in 2009. He does not contest the evidence showing that under the only valid order for child support, he owes far more than the $226,473 the court ordered First Bank to turn over to Diana. Gregory's argument concerning

the calculation does not present grounds for reversing the turnover order here. The May 5, 2017 turnover order is affirmed.

¶ 38 H. Motion To Supplement the Record

¶ 39 Because we resolve all of Gregory's arguments without resorting to the tax returns Diana asks us to consider, we deny, as moot, her motion to supplement the record. See *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1032 (2005).

¶ 40 III. CONCLUSION

¶ 41 The circuit court did not violate Gregory's right to due process when it enforced the 2009 judgment. Diana consistently repudiated the support order for which Gregory seeks enforcement, and therefore we find Diana is not equitably estopped from asserting her right to child support under the court's valid 2009 judgment. Gregory's argument concerning miscalculation of his debt does not affect the validity of the May 5, 2017 turnover order from which he appealed, as the turnover order transfers to Diana far less than Gregory owes her. Accordingly, we affirm the circuit court's May 5, 2017 turnover order.

¶ 42 Affirmed.

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FAMILY LAW

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Is it a claim or a new action? Characterization of post-judgment petitions in family law cases affects appealability

By Linda S. Kagan, Attorney at Law, Chicago, IL

Every good lawyer must know what types of orders will vest jurisdiction in the appellate court. How post-judgment dissolution of marriage petitions are characterized affects their appealability. Appealability of post-judgment orders is often a vexing question in family law because the typical case is comprised of many claims: mother seeks an increase in child support; father seeks an increase in visitation; mother seeks proof of insurance coverage; father seeks a change in child custody, ad infinitum. There is a continuing dispute among the appellate districts whether such petitions are claims (therefore requiring a Supreme Court Rule 304(a) finding to gain admission to the appellate court if other or competing petitions remain pending) or independent actions, each one requiring its own notice of appeal to be filed within the time limits of Supreme Court Rules 301 and 303. A recent opinion from the Second District Appellate Court, *In re Marriage of Duggan*, No. 2-06-0061 (October 16, 2007), 2007 WL 3051995, illustrates the continuing debate and suggests to this author that the Illinois Supreme Court will be asked to resolve the dispute in an appropriate case.

Let's review the basics of Rule 304(a). This rule, when properly applied, makes an order which resolves fewer than all claims independently appealable. A Rule 304(a) finding must be requested in the trial court and written in a precise manner, colloquially known as the "magic words." The "magic words" are: "that there is no just reason for delaying either enforcement or appeal or both." First, ask yourself this question: Is this a pre-judgment or post-judgment dissolution of marriage case? It is rare to obtain a Rule 304(a) finding in a pre-judgment dissolution of marriage case. This is because of the decades-old *Leopando* doctrine. *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983) holds that a petition for dissolution of marriage presents one claim (for dissolution of the marriage) with multiple issues (such as child custody, visitation, distribution of property, attorneys fees, etc.). As a way to prevent piece-meal appeals and to promote appellate economy, *Leopando* prohibits the use of a Rule 304(a) finding to appeal any issues prior to the entry of final judgment.

That sounds straightforward. Does this mean that you can never appeal a pre-judgment order in a dissolution of marriage case? Never say never. Although beyond the scope of this brief article, the good lawyer will see if the order fits into some of the other, narrowly prescribed Supreme Court rules which permit appeals, either by petition or as a matter of right, of certain kinds of orders prior to the entry of a final judgment. See, for example, Rule 304(b)(5) (which permits an appeal from an order finding a person or entity in contempt of court which imposes a monetary or other penalty and does not require a Rule 304(a) finding); Rule 306(a)(5) (appeals from interlocutory orders affecting the care and custody of unemancipated minors); Rule 306(a)(7) (appeals from an order granting a motion to disqualify the attorney for any party; Rule 306A governing expedited appeals in child custody cases (still, by petition); Rule 308 governing interlocutory appeals of interlocutory orders not otherwise appealable after the trial court finds that the order involves a question of law as to which there is substantial ground for difference of opinion (not an easy finding to obtain in the trial court and not an easy petition to have granted in the appellate court); Rule 307(a)(1), as a matter of right from an order granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction; and Rule 307(a)(6), as a matter of right from

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an order terminating parental rights or granting, denying or revoking temporary commitment in adoption cases.

Let's focus now on post-judgment dissolution of marriage cases which do not fit into any of the slots found in Rules 306, 306A, 307 or 308. Because the Illinois Supreme Court ruled in *In re Custody of Purdy*, 112 Ill.2d 1 (1986) that Leopando's bar does not apply to post-judgment petitions, you may run into a Supreme Court Rule 304(a) problem in post-judgment litigation. Returning to the scenario described in the beginning of this article, your client's marriage was dissolved several years ago. You now represent the mother in various post-judgment petitions (or claims) and your esteemed opponent represents the father who has answered your petitions and filed a few of his own. In an ideal world, the trial court would resolve all post-judgment petitions at the same time. Indeed, if that were true, there would be no need to write this article because there would be only one final order or judgment which resolves all of the competing claims. The parties' respective appeal rights would then be governed by the straightforward timing requirements of Rules 301 and 303. It cannot be overemphasized that trial lawyers and trial judges should strive to wrap up competing post-judgment petitions with one final order to avoid the complications described here.

But we don't practice law in an ideal world and trial judges often rule in a piecemeal fashion. This is when appellate jurisdiction becomes complicated, because, depending upon whether the order is entered as part of a whole (therefore requiring a Rule 304(a) finding) or a stand alone matter, you may lose your right to appeal altogether by filing a notice of appeal too late. And you don't want to be on the receiving end of an order from the appellate court which dismisses your client's appeal for lack of jurisdiction.

What's so interesting about *In re Marriage of Duggan*, then? It examines the continuing debate whether competing post-judgment petitions present claims in one post-dissolution action (which require 304(a) language) or whether those competing petitions present independent actions which do not require Rule 304(a) language for their judgments to be separately appealable. In *In re Marriage of Duggan*, No. 2-06-0061 (October 16, 2007), 2007 WL 3051995, the appellate court was faced with the situation where the mother filed a petition to modify child support, the parties having been divorced for three years. It was ruled upon and the father moved to vacate it within 30 days. During that time period, the father also filed his own petition to establish specific visitation times, which was pending when the trial court denied the father's motion to vacate the child support order on December 21, 2005. On January 18, 2006, Father filed a notice of appeal from the order denying his motion to vacate the child support order; his visitation petition remained pending. Father did not obtain a Rule 304(a) finding when he sought to appeal the child support order. Father's visitation petition was not ruled upon until five months later, on May 23, 2006. Was the father's January 18, 2006 notice of appeal premature and of no effect because there was no 304(a) finding that there was no just reason for delaying either enforcement or appeal or both of the mother's order to increase child support? Would it have been correct for father to have waited until after the disposition of his visitation petition (in May, 2006) to appeal the mother's child support order (entered in December, 2005)?

The majority opinion in *In re Marriage of Duggan* held that the competing petitions were separate claims and that a Rule 304(a) finding would have been required, but under amended Rule 303(a), the father's prematurely filed notice of appeal was "saved" until May 23, 2006, the date the father's visitation petition was ruled upon. When the father moved to vacate the December, 2005 child support order, that motion rendered it unappealable pursuant to Rule 303. As amended, Rule 303(a) "acts to save appeals that would otherwise be premature by providing that, when a timely post-judgment motion has been filed, a notice of appeal filed before the 'final disposition of any separate claim' does not become effective until the order disposing of the separate claim is entered." *In re Marriage of Duggan*, No. 2-06-0061, slip. op. at 3; Official Reports Advance Sheet No. 8, (April 11, 2007).

Both the majority and special concurrence opinions in *In re Marriage of Duggan* take a scholarly approach to the debate about the characterization of post-judgment petitions. The majority opinion not only discusses the Illinois Supreme Court opinions *In re Marriage of Leopando*, 96 Ill. 2d 114 (1983), *In re Custody of Purdy*, 112 Ill.2d 1 (1986), *In re Marriage of Kozloff*, 101 Ill.2d 526 (1984), but also its own body of law, *In re Marriage of Alyassir,* 335 Ill.App.3d 998 (2003), *In re Marriage of Ruchala*, 208 Ill.App.3d 971 (1991), *In re Marriage of Merrick*, 183 Ill. App.3d 843 (1989), *In re Marriage of Piccione*, 158 Ill.App.3d 995 (1987), *In re Marriage of Sassano*, 337 Ill. App.3d 186 (2003) as well as the contrary views of the First Appellate district beginning with *In re Marriage of Carr*, 323 Ill.App.3d 481 (2001), *Shermach v. Brunory,* 333 Ill.App.3d 313 (2002), *In re Marriage of Ehgartner-Shachter,* 366 Ill.App.3d 278 (2006) and *In re Marriage of Carillo*, 372 Ill.App.3d 803 (2007). Mention is made that conflicting guidance is offered by the Third and Fourth appellate districts in *In re Custody of Santos*, 97 Ill.App.3d 629 (1981) and *In re Marriage of Gaudio*, 368 Ill.App.3d 153 (2006).

Justice O'Malley's special concurrence in *Duggan* highlights that there is a difference of opinion within the Second District itself on the question. Justice O'Malley wrote that the First District's opinion in *In re Marriage of Carr* and its progeny made more sense than the majority's position. Justice O'Malley would have treated the father's notice of appeal as timely, since it was filed within 30 days of the final ruling on the mother's petition which, like *In re Marriage of Carr,* was a new action, not a new claim, and therefore no Rule 304(a) finding was required.

Given the continued dispute about whether post-judgment petitions are new claims or new actions, it might be a prudent idea to obtain a Rule 304(a) finding and file a notice of appeal as to each order one wants to appeal, alert the appellate court by way of motion that other claims or petitions are pending in the trial court and later, move to consolidate appeals filed along the way. Alternatively, trial lawyers and trial judges should be mindful that piecemeal rulings on post-judgment petitions cause appellate jurisdiction traps for the unwary. They should strive to wrap up their competing post-judgment petitions with one comprehensive order. Then it won't matter whether it's a new claim or a new petition—there will be one final judgment which starts the appellate clock ticking under Rules 301 and 303, bypassing the Rule 304(a) quagmire altogether.

It's not nice to fool with Orders to Withhold Income

By David N. Schaffer

By playing really cute with the provisions of a child support withholding notice, an employer was hit with a $1.1M judgment for penalties. *In re Marriage of Miller*, N.E.2d-WL 4200819 (Ill. 2007). *Miller* should be required reading for anyone who advises anyone who may be served with a notice to withhold income.

In *Miller,* husband, Harold Miller and wife, Lenora Miller, get divorced. Lenora Miller gets custody of their only child. Harold Miller is ordered to pay $82 per week child support. Lenora Miller, properly serves a Notice to Withhold Income on Harold Miller's employer. The notice includes the usual caveat regarding the potential for a $100/day penalty, against any ''payor'' (the words ''employer'' and ''employee'' are nowhere to be found in the statute—thus a payor paying an independent contractor is also subject to penalties) served with a withholding notice for failing to timely withhold or pay the child support to the State Disbursement Unit. The crucial portions of the Withholding Act are as follows:

> The payor shall pay the amount withheld to the State Disbursement Unit within 7 business days after the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor. If the payor knowingly fails to withhold the amount designated in the income withholding notice or to pay any amount withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor, then the payor shall pay a penalty of $100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) is not paid to the State Disbursement Unit after the period of 7 business days has expired. The failure of a payor, on more than one occasion, to pay amounts withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor creates a presumption that the payor knowingly failed to pay over the amounts.

(Emphasis added and meant to scare employers into compliance) 750 ILCS 28/35(a).

By the way, Harold Miller works for his father H.E. Miller, an architect (although a similar result was had with unrelated entities in the 2d District Appellate Court case of *In re Marriage of Chen*, 354 Ill.App.3d 1004, 820 N.E.2d 1136, 290 Ill.Dec. 69 (Ill. App.2d 2004)). In a nutshell, while H.E. Miller did withhold child support from Harold Miller's weekly pay, H.E. Miller also withheld it from the SDU. After arrears amounted to more than $1,500, Lenora Miller made written request to H.E. Miller to pay over the support, indicating that, at this point, she was not seeking any penalties. H.E. Miller came clean with the $1,500, but then he reverted back to withholding from the SDU.

After H.E. Miller accrued more than $2,000 in fresh money owed, Lenora Miller had him joined as a third party to the divorce case and sued him for past due support and statutory penalties. H.E. Miller ignored the summons he was served with and defaulted. The day set for prove-up on damages, H.E. Miller is given 30 days to file an appearance. Like support, he withholds his answer. Almost three months later, he is given another 30 days to file an answer and is also ordered to ''remain current in his child support withholding.'' He does neither. Lenora Miller then files for a rule to show cause against H.E. Miller

In his answer, H.E. Miller admits that, from the very beginning, he fell behind in sending the withheld support to the SDU. H.E. Miller asserts two affirmative defenses, laches (because his former daughter-in-law said in her letter that she was not seeking penalties at

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that time) and that the Withholding Act violated an employer's substantive due process rights.

Both of H.E. Miller's affirmative defenses were stricken save for his laches claim as applied to penalties accrued prior to Lenora Miller's third-party complaint against H.E. Miller.

The parties stipulate to the amount of penalties—$1,172,100 (covering 11,172 separate days of violations of the Act since being sued by Lenora Miller) as well as a detailed spreadsheet, with dates and amounts, supporting the stipulated penalty amount. The circuit court then entered judgment against H.E. Miller on the stipulated amount of $1,172,100 based on his ''knowing failure to forward withheld child support payments.''

H.E. Miller appealed after his post-judgment motions were denied. The appellate court reversed the circuit court, finding the amount of the penalty violative of H.E. Miller's substantive due process rights. Noted was the great disparity between the penalties placed on H.E. Miller and the maximum $25K fine for a parent's willful failure to pay child support (cf. Non-Support Punishment Act 750 ILCS 16/15(d). (The Illinois Supreme Court made short shrift of this disparity argument by noting that the NSPA imposes criminal liability with the fine portion to not exceed $25K and in addition thereto, could include a sentence of imprisonment.)

Believing some lesser penalty was appropriate, the appellate court remanded to the trial court for setting of a more palatable penalty. Lenora Miller appealed. The Supreme Court allowed the Illinois attorney general's office to intervene as well. The Illinois Supreme Court reversed the appellate court and affirmed the trial court's judgment.

Substantive Due Process 101

H.E. Miller having made no argument that Illinois' substantive due process protections were any stronger than federal protections, analysis was based upon federal law. Miller went into depth affirming the state's authority to establish penalties for violation of the Withholding Act.

The Court quoted: ''The power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government. … [T]he legislature has broad discretion to determine not only what the public interest and welfare require, but to determine the measures needed to secure such interest.''

Under a substantive due process analysis, the rational basis test is used. That is, ''under this test, the statute need only bear a reasonable relationship to a legitimate state interest.'' The Miller opinion states that it ''is difficult to imagine a more compelling state interest than the support of children.''

As for the severity of the fine, the *Miller* opinion notes the following penalties passing muster by the U.S. Supreme Court: a $50-100 penalty plus costs of suit and attorney fees in a 1919 case where the railroad collected $0.66 more than prescribed fare; $500 minimum penalty for each unsolicited advertisement sent by a facsimile; the greater of treble damages or $1,000 per day that a product offered for sale is falsely suggested to be Indian-made.

Miller also shot down an attempt to analyze the penalty herein with excessive punitive damage awards. Unlike punitive damages, however, the penalty is an entity known to the payor as soon as the payor is served with a notice to withhold income.

It also does not escape the *Miller* court's attention that about $700,000 of the fine was amassed after Lenora Miller first sued H.E. Miller for withheld support payments. Nonetheless, H.E. Miller also ''allude[d] to the dire financial consequences to him … but offered no evidence on this in the trial court.'' This would not have mattered to the Supreme Court because as they so wonderfully stated, ''[o]ur lawmakers are under no obligation to make unlawful conduct affordable. Particularly where multiple statutory violations are at issue.''

In addition, of no small significance, the court noted, was the serious harm that befalls a parent who is denied timely financial assistance from the non-custodial parent for which to clothe, feed and shelter their child.

The essence of *Miller* is that H.E. Miller had the absolute ability to avoid any and all penalties by simply following the law and timely tendering to the SDU the withheld support.

Justice Warren D. Wolfson, in his appellate court dissent, alluded to the classic definition of the Yiddish word ''chutzpah,'' and that is: at the sentencing phase for being found guilty of murdering his parents, the defendant asks for mercy from the court because he is an orphan.

H.E. Miller certainly had chutzpah. Now he has a $1.1M judgment accruing 9 percent per annum interest. A copy of the Miller opinion, or at least this article, should be attached to any future notices to withhold.

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LawPulse

New statute clarifies family law attorney-fee provisions

By **Helen W. Gunnarsson**

A new law drafted by ISBA's Family Law Section Council should bring some order to Illinois's confusing, inconsistent scheme for awarding attorney fees in family law cases.

Woodstock lawyer Paulette Gray has found the provisions of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq) on attorney fees unclear and confusing for the more than dozen years she's been practicing family law. With the support of ISBA, she and the rest of ISBA's Family Law Section Council have now done something about it: legislation they drafted to clear up the statute's inconsistencies has now been signed into law as PA 96-583, which takes effect on January 1, 2010.

Attorney fees in non-divorce cases

A principal problem, Gray explains, is that the IMDMA's fee provisions were written as if referring only to divorce cases. But some provisions apply not only to attorney fees in dissolution of marriage proceedings but also to cases under the Parentage Act of 1984, see 750 ILCS 45/17, and to post-dissolution proceedings such as enforcement or modification actions respecting child custody, visitation, and support, as well as appeals.

As the statute currently reads, Gray says, it's unclear whether section 501 (c-1)(1), governing interim attorney fees, can apply to post-decree proceedings, appeals, or parentage cases. Likewise fuzzy are other procedures, she continues, including what parties must present to the court for interim fee petitions and whether counsel may continue to represent their clients on appeals where issues of fee allocation remain outstanding.

The new public act modifies sections 501, 503, and 508 of the IMDMA. Subsection (c-1)(1) of section 501, which governs temporary relief and refers to "the marriage" and "the marital estate," has been amended to clarify that its provisions apply only to pre-judgment dissolution proceedings. A sentence has also been added to that subsection requiring courts to schedule all hearings for or relating to interim attorney's fees and costs under that subsection in an expeditious manner.

Subsection (d)(1) of section 503, which governs the disposition of property in a proceeding for dissolution of marriage, has been modified to refer back to section 501(c-1)(2). As amended, the statute will provide that, when dividing the parties' marital property, courts are to consider any diminution in value of marital or nonmarital property resulting from a payment for interim attorney fees that is deemed to have been an advance from the parties' marital estate under section 501(c-1)(2).

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Section 508, governing attorney's fees and clients' rights and responsibilities respecting fees and costs, has been modified to clarify that interim attorney's fees may be awarded from one party to the other not only in pre-judgment dissolution proceedings, but also "in any other proceeding under this subsection," meaning, Gray notes, post-judgment proceedings, appeals, and actions under the Parentage Act of 1984.

Affidavits for interim-fee petitions

The new act also amends section 508(a) to conform the letter of the law with the practice in most courts, says Gray, by explicitly requiring petitions relating to interim fees and costs to have attached an affidavit regarding the factual basis for the relief requested. She explains that the general practice for interim fee petitions has long been for courts to hold non-evidentiary hearings and decide the petitions based on the facts contained in attached affidavits. Until now, however, the statute has not required affidavits.

Gray also notes a word substitution in section 508(b). Among other things, this provision currently requires a court to allocate attorney's fees and costs to a party or counsel found to have acted improperly "if at any time a court finds that a hearing under this Section was precipitated or conducted for any improper purpose." In substituting the word "Act" for "Section," the new statute substantially discourages vengeful or petty litigiousness, Gray believes.

The new public act also amends section 508(c)(5) to provide for tolling the deadline for filing a final fee petition or praecipe for a fee hearing if a motion under section 2-1203 of the Code of Civil Procedure or a notice of appeal is filed. Without this change, Gray says, counsel wishing to file a fee petition would have to withdraw because of ethical considerations if the case were appealed. This change, therefore, permits the same counsel to handle their clients' appeals and provides needed flexibility for filing final fee petitions, she says.

Finally, section 508(d) has been amended to eliminate the requirement of attaching itemized attorney billing statements to petitions for entry of consent judgments in favor of simple representations from counsel and affidavits from clients that they received those statements. Noting that billing statements in family law cases may cover years of litigation and, thus, be extremely bulky, Gray suggests that this amendment makes sense from both cost and environmental perspectives.

Gray acknowledges that the IMDMA remains cumbersome. Absent a comprehensive rewriting of the statute, however, the changes PA 96-583 makes will, she believes, clarify practice regarding awards of attorney's fees under the statute.

Helen W. Gunnarsson is an attorney and writer in Highland Park. She can be reached at **helengunnar@gmail.com**.

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