
No. 122046

IN THE SUPREME COURT OF ILLINOIS

In re MARRIAGE of	)	Appeal from the Appellate Court
	)	Case #3-15-0101
CHRISTINE GOESEL,	)	Third Appellate District
Petitioner-Appellant,	)	2017 IL App (3d) 150101
)	
and)	
)	
ANDREW GOESEL,	)	Appeal from the Circuit Court of
Respondent,	)	Will County, Illinois, Twelfth Judicial
	)	Circuit. Circuit No. 2013 D 107
	)	Judge Dinah Archambeault, presiding
(Laura A. Holwell, Contemnor-Appellee))	

**BRIEF AND ARGUMENT FOR
PETITIONER-APPELLANT**

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I.**APPELLANT'S BRIEF**
POINTS AND AUTHORITIES

- I. WHERE A PETITIONER DILIGENTLY FILES ITS MOTION FOR INTERIM FEES AND DISGORGEMENT IN A TIMELY MANNER, AND OPPOSING COUNSEL'S FEES HAVE BEEN PAID LARGELY AS A RESULT OF THE RESPONDENT'S SURREPTITIOUS DEPLETION OF THE AVAILABLE FUNDS IN THE MARITAL ESTATE OF BOTH PARTIES, RESULTING IN A TRIAL COURT FINDING THAT NEITHER PARTY IS CAPABLE OF PAYING ATTORNEY FEES, THE RESPONDENT'S ATTORNEY'S FEES, WHETHER EARNED OR NOT, ARE "AVAILABLE" FOR DISGORGEMENT.**

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- II. THE THIRD DISTRICT APPELLATE COURT ERRED BY FINDING THAT RESPONDENT'S ATTORNEY WAS NOT IN INDIRECT CIVIL CONTEMPT OF COURT FOR FAILING TO DISGORGE ATTORNEY FEES PAID TO HER AS ORDERED BY THE TRIAL COURT.**

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II.**APPELLANT'S BRIEF**
INTRODUCTION

Contemnor-Appellee ("Holwell" hereafter) was found in indirect civil contempt of court on January 16, 2015 and appealed both the finding of contempt and the Court's September 29, 2014 Order of disgorgement to the Third District Appellate Court. The Third District Appellate Court reversed the Court's finding of contempt and vacated the order of disgorgement on January 24, 2017.

This is the Brief of Petitioner-Appellant, Christine Goesel, ("Christine" hereafter) appealing from the Third District Appellate Court decision filed on January 24, 2017. The Third District Appellate Court denied Christine's Petition for Rehearing on February 16, 2017. Christine's Petition for Leave to Appeal to the Supreme Court was allowed on May 24, 2017.

The issues in this appeal mainly deal with the statutory definition of the word "available" within Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act regarding the disgorgement of attorney's fees.

Christine contends in this appeal that the Third District Appellate Court erred in finding that the attorneys fees paid to Holwell by Christine's spouse over a four month period during the pendency of dissolution proceedings were not available for disgorgement. Christine further contends that, given the facts presented to the trial court, the Third District Appellate Court erred in vacating the trial court's finding of indirect civil contempt against Holwell.

No issues are raised on the pleadings.

III.**APPELLANT'S BRIEF**
ISSUES PRESENTED FOR REVIEW

1. WHETHER, WHERE A PETITIONER DILIGENTLY FILES ITS MOTION FOR INTERIM FEES AND DISGORGEMENT IN A TIMELY MANNER AND OPPOSING COUNSEL'S FEES HAVE BEEN PAID LARGELY AS A RESULT OF THE RESPONDENT'S SURREPTITIOUS DEPLETION OF THE AVAILABLE FUNDS IN THE MARITAL ESTATE OF BOTH PARTIES, RESULTING IN A TRIAL COURT FINDING THAT NEITHER PARTY IS CAPABLE OF PAYING ATTORNEY FEES, THE RESPONDENT'S ATTORNEY'S FEES, WHETHER EARNED OR NOT, ARE "AVAILABLE" FOR DISGORGEMENT.
2. WHETHER THE THIRD DISTRICT APPELLATE COURT ERRED BY FINDING THAT RESPONDENT'S ATTORNEY WAS NOT IN INDIRECT CIVIL CONTEMPT OF COURT FOR FAILING TO DISGORGE ATTORNEY FEES PAID TO HER AS ORDERED BY THE TRIAL COURT.

IV.**APPELLANT'S BRIEF**
STATEMENT OF JURISDICTION

On January 24, 2017, the Third District Appellate Court filed its opinion reversing the trial court. On February 16, 2017, the Third District Appellate Court denied Christine's Petition for Rehearing.

Petitioner-Appellant filed her Petition for Leave to Appeal to the Supreme Court on March 21, 2017 and the Supreme Court allowed leave to appeal on May 24, 2017. Pursuant to Supreme Court Rule 315, Christine elected to supplement her Brief.

The Supreme Court of Illinois has jurisdiction pursuant to Illinois Supreme Court Rule 315.

V.**APPELLANT'S BRIEF**
STATUTES INVOLVED

The following statutes are involved in the issues of this case. The pertinent part of each statute to be construed is:

“750 ILCS 5/501. Temporary Relief

(1) Sec. 501. Temporary relief.

In all proceedings under this Act, temporary relief shall be as follows:

(c-1) As used in this subsection (c-1), "interim attorney's fees and costs" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and "interim award" means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(3) In any proceeding under this subsection (c-1), the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to pay reasonable amounts. In determining an award, the court shall consider whether adequate participation in the litigation requires expenditure of more fees and costs for a party that is not in control of assets or relevant information. Except for good cause shown, an interim award shall not be less than payments made or

reasonably expected to be made to the counsel for the other party. If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.”

“750 ILCS 5/102. Purposes; Rules of Construction

Section 102. Rules of construction.

This Act shall be liberally construed and applied to promote its underlying purposes which are to:

(8) make reasonable provision for support during and after an underlying dissolution of marriage, legal separation, parentage, or parental responsibility allocation action, including provision for timely advances of interim fees and costs to all attorneys, experts, and opinion witnesses including guardians ad litem and children’s representatives, to achieve substantial parity in parties’ access to funds for pre-judgment litigation costs in an action for dissolution of marriage or legal separation.”

VI.**APPELLANT'S BRIEF**
STATEMENT OF FACTS

Petitioner-Appellant, Christine Goesel, (hereafter, "Christine") filed a Petition for Dissolution of Marriage from Respondent, Andrew Goesel (hereafter, "Andrew") on January 18, 2013. (R. C003-007)

On October 10, 2013, Appellee, Laura Holwell, (hereafter, "Holwell") filed an appearance for Andrew and on February 20, 2014, filed a Motion to Sign Listing Agreement, supported by Andrew's affidavit, stating that the parties had little to no income, they were in severe financial straights, and the marital residence had to be sold to avoid financial ruin. (R. C375-380)

On March 10, 2014, The Law Offices of Edward Jaquays (hereafter, "Jaquays") entered its' appearance for Christine and filed a Petition for Interim Attorney Fees and Costs on June 12, 2014. (R. C709-715) Christine then filed an Amended Petition for Interim Attorney Fees and Costs on June 20, 2014. (R. C766-773; A1-A10)

After the Petition for Interim Attorney Fees and Costs was filed, Holwell was given leave to withdraw as Andrew's attorney on June 27, 2014, but the trial court reserved jurisdiction over Holwell on the issue of disgorgement. (R. C796-798)

On July 29, 2014, hearing commenced on the Petition for Interim Attorney Fees and Costs. (R. 5-6) The parties stipulated to an accounting, reflecting the withdrawal by Andrew of nearly all of the parties' marital retirement assets from January, 2014, through June, 2014, and that those funds were exhausted by the time of the hearing. (R. C797) The trial court found that Andrew paid his attorneys \$100,022 of which \$66,382 was paid

to Holwell with the balance to other attorneys. Christine paid \$18,000 to her attorneys, of which \$5,000 was paid to Jaquays as a retainer and the balance to previous attorneys. (R. C920) At the hearing, Holwell's billing statement disclosed that from March 10, 2014, through June 20, 2014, Andrew paid Holwell in excess of \$35,000.00 in attorney fees (R. C1148-1149): \$5,000 on March 31, 2014; \$10,000 on April 28, 2014; \$10,000 on April 29, 2014; \$1,382 on April 30, 2014; and \$10,000 on June 13, 2014. (R. C1148-1149) Andrew also endorsed a check in excess of \$33,000 from Fidelity investments to his prior counsel on June 13, 2014. (R. 97 Line 14; R. 102, Line 19) Holwell received \$13,000 of the Fidelity funds which she was "holding" at the time of the interim fee hearing. (R. 97; R. 102)

During the hearing Andrew argued he was unable to pay his attorney fees or contribute to those of Christine. (R. 201) The trial court found that neither party had the current ability to pay attorney fees and to level the playing field and achieve parity, Andrew's counsel must be disgorged of fees in the amount of \$40,952.61. Holwell was ordered to tender that amount to Jaquays within 14 days of the date of the order which was September 29, 2014. (R. C924)

Holwell did not pay any part of the amount ordered to be disgorged and was found, after the Court addressed her Motion to Reconsider, in indirect civil contempt of court on January 16, 2015 with an indeterminate sentence of not to exceed 179 days in jail subject to a purge provision of paying \$40,952.61, consistent with the trial court order of September 29, 2014. (R. C1547; A11-A16; A17-A18)

Holwell appealed to the Third District Appellate Court which in its' Opinion of January 24, 2017 (2017 IL App (3d) 150101 ¶39) (A51-A68) reversed the disgorgement

Order, vacated the contempt order and remanded the cause to the trial court. (A19-A20) After a Petition for Rehearing was denied by that Court, Christine filed a Petition for Leave to Appeal to the Supreme Court of Illinois on or about March 21, 2017, which Petition was allowed on May 24, 2017. (A69-A70; A76)

At the time of the decision by the Third District Appellate Court, this Court had rendered its decision in In re Marriage of Earlywine, 2013 IL 114779 ¶29, 374 Ill.Dec. 947, (A77-A86) interpreting the disgorgement provisions of Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act. Also in existence were In re Marriage of Squire, 2015 IL App (2d) 150271 ¶21, 403 Ill.Dec. 17 (A87-A92) and In re Marriage of Altman and Block, 2016 IL App (1st) 143076 ¶26, 406 Ill.Dec. 136 (A93-A104) which had conflicting opinions on how to interpret the statute as to disgorgement. The Third District aligned with the First District and thus this Petition asks the Supreme Court of Illinois to resolve the conflict in Appellate Districts on this issue.

VII.
APPELLANT'S BRIEF
ARGUMENT

I. WHERE A PETITIONER DILIGENTLY FILES ITS MOTION FOR INTERIM FEES AND DISGORGEMENT IN A TIMELY MANNER, AND OPPOSING COUNSEL'S FEES HAVE BEEN PAID LARGELY AS A RESULT OF THE RESPONDENT'S SURREPTITIOUS DEPLETION OF THE AVAILABLE FUNDS IN THE MARITAL ESTATE OF BOTH PARTIES, RESULTING IN A TRIAL COURT FINDING THAT NEITHER PARTY IS CAPABLE OF PAYING ATTORNEY FEES, THE RESPONDENT'S ATTORNEY'S FEES, WHETHER EARNED OR NOT, ARE "AVAILABLE" FOR DISGORGEMENT.

STANDARD OF REVIEW

This matter involves the interpretation of language in 750 ILCS 5/501(c-1)(3) providing for disgorgement of attorney fees which is an issue of law subject to de novo review. In re Marriage of Earlywine, 2013 IL 114779 at ¶24.

One of the purposes of the Illinois Marriage and Dissolution of Marriage Act is to make reasonable provision for the support during and after an underlying dissolution of marriage,... including provision for timely advances of interim fees and costs to all attorneys,... to achieve substantial parity in parties' access to funds for pre-judgment litigation costs in an action for dissolution of marriage. 750 ILCS 5/102(8).

The 1997 amendments addressed a concern that the economically advantaged spouse would apply his or her greater access to income or assets as a tool making it difficult for the disadvantaged spouse to retain counsel or otherwise participate in litigation. In re Marriage of Earlywine 2013 IL 114779 (2013) at ¶26. Dissolution of

marriage cases frequently entailed strenuous efforts to block access by the other side to funds for litigation. Earlywine at ¶26. All too frequently, the economically advantaged spouse would apply his or her greater access to income or assets as a tool, making it difficult for the disadvantaged spouse to retain or otherwise participate in litigation. Earlywine at ¶26. Thus, the new interim fee system was designed to ameliorate this problem by streamlining the process for obtaining interim attorney fees. Earlywine at ¶26.

Andrew's actions demonstrate a deliberate effort to misrepresent his access to funds while depleting the marital estate and blocking the Petitioner's ("Christine's") access to funds for litigation. Holwell was aware of the January 18, 2013 Order of Court providing that both parties legal fees would be paid from a home equity line of credit until further Order of Court. (R. C0002) (R. 111, Line 5; R. 113, Line 19) However, Holwell asserted that the language did not limit the parties to paying their attorney's fees exclusively from the home equity line of credit. (R. 111, Line 5; R. 113, Line 19) The January 18, 2013 Order of Court also provided that both parties were to deposit their income into a joint account. (R. C002) Holwell testified that she did not believe liquidated retirement funds constituted income under the terms of the Order. (R. 120, Line 14; R. 124, Line 13) Holwell did not give any thought to the source of her payments from Andrew because she did not know. (R. 117, Line 18; R. 114, Line 7)

On February 20, 2014, Holwell, on behalf of Andrew, filed a verified Motion to Sign Listing Agreement, supported by Andrew's Affidavit, stating that the parties had little to no income, that they were in "severe financial straights", and that the marital residence had to be sold to avoid financial ruin. (R. C375-380) On May 30, 2014,

Holwell caused to be filed a Motion requesting that the Court set the previously filed Motion to Sign Listing Agreement for hearing. (R. C607-608)

Holwell received lump sum payments from Andrew of: \$5,000 on March 31, 2014; \$10,000 on April 28, 2014; \$10,000 on April 29, 2014; and \$1,382.28 on April 30, 2014 from Andrew. (R. C1148-1149) Holwell did not advise the court that Andrew had made these payments towards his attorney's fees during the time period from February 20, 2014 through May 30, 2014, despite the January 18, 2013 Order of Court or pursuing Andrew's pleading alleging that the parties were in "severe financial straights" and had little to no income. (R. C607-608)

During the evidentiary hearing on the issue of interim fees from July 29, 2014 through July 31, 2014, the Court admitted a table entitled "GOESEL WITHDRAWALS" which reflected that Andrew had withdrawn nearly all retirement funds in his name belonging to the marital estate and utilized the same to pay his attorneys as well as his current and future expenses. (Petitioner's Exhibit 4) (A105-A110)

Andrew had engaged in a scorched Earth campaign to liquidate any remaining marital assets in his control. (Petitioner's Exhibit 4) Holwell's billing statement, admitted at the hearing on interim fees, reflects that from March 10, 2014 through June 20, 2014, Andrew had made total payments to Holwell of: \$5,000 on March 31, 2014; \$10,000 on April 28, 2014; \$10,000 on April 29, 2014; \$1,382.28 on April 30, 2014, and \$10,000 on June 13, 2014 (turned over to Attorney LeVine). (R. C1148-1149) In addition, Andrew endorsed a check in excess of \$33,000.00 from Fidelity Investments to his prior counsel on June 13, 2014. (R. 97, Line 14; R. 102, Line 19) Holwell's failure to give any

thought to the source of the funds paid to her served both her purpose of getting paid and Andrew's purpose of depriving Christine of marital assets/funds.

Holwell received \$13,000.00 of those Fidelity funds which she was "holding" at the time of the interim fee hearing as there was some dispute over whether Holwell or Andrew's prior attorney would receive those funds. (R. 97, Line 14; R. 102, Line 19) These funds were clearly available for disgorgement as they had not been allocated to either of Andrew's attorneys and were simply being held by Holwell (R. 97, Line 14; R. 102, Line 19)

This Court has previously found that funds belonging to an attorney, but subject to reimbursement, may be disgorged. In re Marriage of Earlywine, 2013 IL 114779 at ¶29. However, there has been a division among the districts whether funds applied towards attorney's fees due and owing are subject to disgorgement. In re Marriage of Altman and Block, 2016 IL App (1st) 143076, 406 Ill.Dec. 136, and In re Marriage of Squire, 2015 IL App(2d) 150271. Does the statutory definition of "available" include those funds already earned by an attorney and paid?

Earlywine confirms that advance payment retainers are subject to disgorgement. Earlywine at ¶29. The interim fee statute grants a Court the discretion to allocate retainers, interim payments, or both in a manner that achieves substantial parity. 750 ILCS 5/501(c-1)(3). To determine the nature of "interim payments" subject to disgorgement, the Court must construe the interim fee statute.

The primary goal in construing a statute is to give effect to the intention of the legislature. Earlywine at ¶24. To ascertain that intent, the Court may consider not only the language of the statute, but also the purpose and necessity for the law, and evils

sought to be remedied, and goals to be achieved. Id. The statutory language is the best indicator of the legislative intent. Id. A reasonable construction must be given to each word, clause, and sentence of a statute, and no term should be rendered superfluous. Bueker v. Madison County, 2016 IL 120024 at ¶13. The statutory definition of “available” includes not only “retainers” but “interim payments”. 750 ILCS 5/501(c-1)(3) The interim fee statute also refers to “interim awards” in addition to “interim payments”. 750 ILCS 5/501(c-1) Therefore, the term “interim payments”, “interim awards”, and “retainers” are separate and distinct terms and subject to interpretation.

Payment is defined, in a restricted legal sense, as the performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part. (Black’s Law Dictionary, Rev. 4th Ed, page 1285) The legislature not only included “interim payments” in the statutory definition of available funds but further clarified that the statute encompassed those “interim payments” that were “previously paid”. 750 ILCS 5/501(c-1)

The amounts paid to Holwell were in discharge of debt owed by Andrew to Holwell. Any interpretation of the statute wherein funds paid to Holwell are not available for disgorgement, under any circumstances, is inconsistent with the plain meaning of Section 501(c-1) of the IMDMA. 750 ILCS 5/501(c-1)(3)

A bright line rule that payments applied to an outstanding balance of attorney’s fees are not subject to disgorgement would not address the actions of Andrew and Holwell in this matter and, under these circumstances, would be contrary to the stated

purpose of Sections 102 and 501(c-1) of the IMDMA. 750 ILCS 5/102(8) and 750 ILCS 5/501(c-1) See generally, Earlywine at ¶12 (shielding assets so that one spouse may easily hire an attorney has the direct effect of making it difficult for the other spouse to hire his or her own attorney defeating the purpose and goals of the Act, which is to enable parties to have equitable access to representation).

Altman states in footnote 4, “were the question here purely a matter of equity, we would be tempted to uphold the disgorgement Order given Gerage’s (as well as Tzinberg’s) conduct in aiding Block’s ‘scorched earth’ approach to litigating this case...” In re Marriage of Altman and Block, 2016 IL App(1st) 143076 at ¶34. This matter is distinguishable from Altman as Christine did not delay the filing of her request for interim fees nor had Holwell been paid the fees sought to be disgorged over an extended period of time.

A determination that funds are available while in possession of the parties but unavailable when paid to their attorneys will allow parties to strategically undermine the levelling the playing field legislation. Christine did not delay the filing of her request for interim attorney’s fees as it was filed three months after counsel entered its Appearance on her behalf. (R. C709-715) (R. C478) During that time period, Holwell received in excess of \$35,000.00 towards outstanding attorney’s fees and Andrew liquidated the marital retirement accounts without Christine’s knowledge. (Petitioner’s Exhibit 4) Yet, the Third District’s decision finds those marital funds paid to Holwell to be unrecoverable through disgorgement and, without any remaining marital assets, through any request for contribution from Andrew. This matter exemplifies that parties will be able to manipulate that portion of the marital estate subject to division by funneling

marital funds to their attorney. The party with the greatest control over assets can simply pledge those assets to their attorney with the attorney recognizing that substantial lump sum payments made towards balances due will not be subject to disgorgement. Andrew and Holwell's actions effectively undermined Section 501(c-1)'s purpose. Earlywine is surely not the first example of a party's willingness and efforts to shield marital assets from their spouse. Fortunately, this Court recognized the danger of advance payment retainers due to their ability to destroy the interim fee statute's purpose. Earlywine at ¶29.

II. THE THIRD DISTRICT APPELLATE COURT ERRED BY FINDING THAT RESPONDENT'S ATTORNEY WAS NOT IN INDIRECT CIVIL CONTEMPT OF COURT FOR FAILING TO DISGORGE ATTORNEY FEES PAID TO HER AS ORDERED BY THE TRIAL COURT.

STANDARD OF REVIEW

A trial court's decision to award attorney's fees is generally reviewed for an abuse of discretion. However, to the extent the award of attorney's fees hinges on issues of statutory construction and constitutionality, the standard of review is de novo. In re Marriage of Nash, 2012 IL App(1st) 113724 at ¶15.

Holwell's actions in this matter reflect not a good faith effort to appeal a novel issue without direct precedent but, rather, an attempt to avoid or at least delay payment of the court's disgorgement order. Holwell's knowing acceptance of payments towards her attorney's fees (R. C1148-1149) while representing to the Court that Andrew was in financial straits with little to no income (R. C607-608) provides no basis for her refusal to comply with the September 29, 2014 Order of Court.

On May 30, 2014, Holwell caused to be filed a Motion requesting that the Court set the previously filed Motion to Sign Listing Agreement for hearing. (R. C607-608) Holwell had knowledge that she had received lump sum payments of: \$5,000 on March 31, 2014; \$10,000 on April 28, 2014; \$10,000 on April 29, 2014; and \$1,382.28 on April 30, 2014 from Andrew. (R. C1148-1149) In addition, Holwell acknowledged that she was “holding” \$13,000.00 of the funds Andrew turned over at the time of the hearing on interim attorney’s fees. (R. 97, Line 14; R. 102, Line 19)

It is appropriate to vacate a contempt finding on appeal where the refusal to comply with the court’s order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent. In re Marriage of Nash 2012 ILApp(1st) 113724 ¶30. Holwell’s efforts in this matter as set forth above are not in good faith. If she was acting in good faith and merely challenging whether those funds paid to her balance of attorney’s fees were subject to disgorgement, she would have complied with the September 29, 2014 Order of Court to the extent she argued that funds were available- the \$13,000 she was “holding” which had not been allocated to any of Andrew’s attorneys. Holwell paid none of these amounts resulting in a finding of contempt by the Court- not “friendly” although Holwell requested the same. (R. 461, Line 15; R. 464, Line 18)

Holwell “interpreted” the January 18, 2013 Order regarding payment of attorney’s fees and the deposit of the parties’ income into the joint account in her favor and against reason. Holwell filed, on behalf of Andrew, a pleading asserting that Andrew was in dire “financial straights” while accepting over \$35,000 in payments without a thought as to the source of the payments. (R. 117, Line 18; R. 114, Line 7) As Upton Sinclair stated,

“It is difficult to get a man to understand something, when his salary depends upon his not understanding it”. As an officer of the Court, Holwell, had a duty of candor to the court above and beyond her need for getting paid.

Holwell was found in indirect civil contempt on Christine’s Petition for Indirect Civil Contempt. (R. C983-985) The trial court rejected her argument that the contempt finding be deemed “friendly”. (R. 461, Line 15; R. 464, Line 18) While a party may request to be held in contempt to allow for appeal, this purpose alone, is not sufficient to vacate a contempt finding on appeal. Nash at ¶30.

VIII.**APPELLANT'S BRIEF**
CONCLUSION

The Illinois Marriage and Dissolution of Marriage Act sets forth several underlying purposes including timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs. 750 ILCS 5/102(8)

Allowing Holwell to retain those funds received by her from Andrew as a result of Andrew's liquidation of marital assets would completely undermine the purpose of the levelling the playing field legislation. An attorney cannot be allowed to plead before a court that her client is destitute in dire financial straights while receiving thousands of dollars towards attorney's fees and then argue that those funds are not available for disgorgement.

Given the circumstances in this matter, the Third District Appellate Court erred in reversing the trial court's September 29, 2014 Order of disgorgement and erred by vacating the finding of indirect civil contempt entered on January 16, 2015.

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IX.**APPELLANT'S BRIEF**
CERTIFICATION

I certify that this Brief conforms to the requirements of Rules 341 (a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

BY: /S/ Mark Ellis
MARK ELLIS on behalf of EDWARD R.
JAQUAYS, Attorneys for Appellant

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)	Circuit. Circuit No. 2013 D 107
)	Judge Dinah Archambeault presiding
(Laura A. Holwell, Contemnor-Appellee))	

**APPENDIX TO PETITIONER-APPELLANT'S
BRIEF**

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APPENDIX TO APPELLANT'S BRIEF

APPENDIX I

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1. Petitioner-Appellant's Amended Petition for Interim Attorney Fees, Costs and Other Relief (June 20, 2014) (R. C766-775);	A1 – A10
2. Trial Court Decision and Order dated September 29, 2014 granting interim fees and ordering disgorgement fees by attorney (R. C919-924);	A11 – A16
3. Trial Court Order of January 16, 2015, finding attorney Holwell in Indirect Civil of Court (for failure to comply with disgorgement order), providing sentence for same and ability to purge conditions (R. C1547-1548);	A17 – A18
4. Trial Court Order of January 21, 2015 finding the previous Order of contempt is final and appealable (R. C1575-1577);	A19 – A20
5. Plaintiff-Appellee's Brief and Argument filed with the Third District Appellate Court on October 2, 2015;	A21 – A38
6. Plaintiff-Appellee's Response to Supplemental Brief of The Contemnor-Appellant filed with the Third District Appellate Court of Illinois on October 13, 2016;	A39 – A50
7. Opinion of Third District Appellate Court of Illinois in <u>In re Marriage of Goesel (Laura Holwell, Contemnor-Appellant)</u> , 2017 IL App (3d) 15101 filed January 24, 2017;	A51 – A68
8. Petitioner-Appellant's Petition for Rehearing to the Third District Appellate Court of Illinois filed February 6, 2017;	A69 – A75
9. Third District Appellate Court of Illinois' Order denying Petitioner-Appellant's Petition for Rehearing filed February 16, 2017;	A76
10. <u>In re Marriage of Earlywine</u> , 2013 IL 114779, 374 Ill.Dec. 947;	A77 – A86
11. <u>In re Marriage of Squire</u> , 2015 IL App (2d) 150271, 403 Ill.Dec.17;	A87 – A92
12. <u>In re Marriage of Altman and Block</u> , 2016 IL App (1 st) 143076, 406 Ill.Dec. 136;	A93 – A104

- | | |
|--|-------------|
| 13. Petitioner's Exhibit #4 admitted during interim fee hearing July 29, 2014 | A105 – A110 |
| 14. Appellant's correspondence to the Third District Appellate Court of Illinois dated June 30, 2017 | A111 |

APPENDIX II

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APPENDIX III

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STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)

CHRISTINE GOESEL)

Plaintiff,
 vs.)

ANDREW GOESEL,)

Defendant.)

Case No. 13 D 107

FILED
 2014 JUN 20 PM 3:32
 CLERK, CIRCUIT COURT
 WILL COUNTY, ILLINOIS

**AMENDED PETITION FOR INTERIM ATTORNEY FEES, COSTS
 AND OTHER RELIEF**

Amended Count I- Interim Fees

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and pursuant to *Section 501(c-1)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(c-1))*, and as her Amended Count I of her Amended Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to pay interim attorney's fees and costs, and in support thereof states as follows:

1. On or about March 7, 2014, the Plaintiff, **CHRISTINE GOESEL**, contacted **THE LAW OFFICES OF EDWARD R. JAQUAYS** to represent her relative to the above-captioned cause. The Plaintiff, **CHRISTINE GOESEL**, formally retained **THE LAW OFFICES OF EDWARD R. JAQUAYS** on March 7, 2014, and agreed to pay those fees that were necessarily and reasonably incurred on behalf of the Plaintiff, **CHRISTINE GOESEL**, at

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the hourly rate set forth in the following paragraphs.

2. That the Plaintiff, **CHRISTINE GOESEL**, filed a Petition for Dissolution of Marriage in this action, which remains pending and undetermined in this Court.

3. That **EDWARD R. JAQUAYS** is the principal attorney entrusted with this case, and the agreed charges for his time in this case are \$375.00 per hour for office time and \$400.00 per hour for depositions, pre-trials, settlement conferences, and Court time. These rates represent **EDWARD R. JAQUAYS'** customary charges for representation in such actions, and are fair and reasonable in light of **EDWARD R. JAQUAYS'** expertise and standards established by custom and usage in the community at large.

4. That the Defendant, **ANDREW GOESEL**, is represented by **LAURA HOLWELL**.

5. That the Defendant, **ANDREW GOESEL**, has now retained the firm of **LEVINE, WITTENBERG, SHUGAN, & SCHATZ** to represent him in addition to **LAURA HOLWELL**.

6. The Defendant, **ANDREW GOESEL**, has also caused to be filed a Petition for Appointment of a 604.5 Evaluator in this matter. The Defendant's motion alleges that custody is a contested issue in this matter.

7. **EDWARD R. JAQUAYS** reasonably expects to expend at least fifty (50) to seventy-five (75) hours in conjunction with the issues in this cause including custody of the parties' minor children; a 604.5 evaluation; support issues; and various other contested matters prior to trial.

8. These hourly expenditures of time are necessary and reasonable in light of the nature and complexity of this matter.

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9. That the Plaintiff, **CHRISTINE GOESEL**, paid an initial retainer of **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)**. She is without sufficient income to pay any additional fees to **ATTORNEY EDWARD R. JAQUAYS**, and currently has an outstanding balance due to **THE LAW OFFICES OF EDWARD R. JAQUAYS**, in the amount of **TWENTY-SEVEN THOUSAND ONE HUNDRED FORTY-TWO DOLLARS AND 60/100THS (\$27,142.60)**, as of June 1, 2014.

10. That the Defendant, **ANDREW GOESEL**, is gainfully employed, earning substantial sums of money, or is capable of earning substantial sums of money, and is further capable of discharging this Court's Order for Interim Attorney's Fees and Costs.

11. The Plaintiff, **CHRISTINE GOESEL**, lacks sufficient funds to pay for her reasonable attorney's fees and costs incurred in conjunction with this cause. The Defendant, **ANDREW GOESEL**, has engaged two firms to represent him in this matter, **THE LAW OFFICES OF LAURA HOLWELL** and **LEVINE WITTENBERG, SHUGAN & SCHATZ**, as his attorneys. The Plaintiff, **CHRISTINE GOESEL**, is entitled to parity in the representation she requires in this case. She is entitled to be on a level playing field with the Defendant, **ANDREW GOESEL**, in terms of legal representation. She is entitled to an interim award payable to **EDWARD R. JAQUAYS** which should be not less than the payments made or reasonably expected to be made to the attorneys for the Defendant, **ANDREW GOESEL**. These amounts are necessary to enable her to participate adequately in the litigation. If she is not afforded this ability, her rights will be prejudiced.

12. The application of the Plaintiff, **CHRISTINE GOESEL**, for interim attorney's fees and costs should be decided by the Court on a non-evidentiary basis pursuant to *Section 501(c-1)(1)* of the *Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/501(c-1)(1)]*.

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13. The Plaintiff, **CHRISTINE GOESEL**, attaches hereto the Affidavit of her attorney, **EDWARD R. JAQUAYS**.

14. That subsequent to the filing of the Petition for Interim Attorney's Fees, Costs, and Other Relief, the Defendant submitted to a deposition.

15. During the course of the Defendant's deposition, the Defendant testified that he had paid his attorney, **LAURA HOLWELL**, approximately **FORTY THOUSAND DOLLARS (\$40,000)** to **FIFTY THOUSAND DOLLARS (\$50,000.00)** since January 1, 2014.

16. That the Plaintiff has paid approximately **FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00)** to the Law Offices of Edward Jaquays and no money to her prior counsel during the year 2014. That the Plaintiff owes a substantial amount in attorney's fees to The Law Offices of Edward R. Jaquays for which there is a Petition for Interim Attorney's Fees and Costs pending.

17. That, during his deposition, the Defendant, **ANDREW GOESEL**, further testified that he had withdrawn in excess of **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00)** from the marital retirement assets which were used to pay his personal expenses including attorney's fees to Attorney, **LAURA HOLWELL**.

WHEREFORE, pursuant to *Section 501(c-1)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(c-1))*, the Plaintiff, **CHRISTINE GOESEL**, requests that this Court:

A. Enter an Order requiring the Defendant, **ANDREW GOESEL**, to pay **EDWARD R. JAQUAYS** the sum **THIRTY THOUSAND DOLLARS (\$30,000.00)**, which said amount includes **TWENTY-SEVEN THOUSAND ONE HUNDRED FORTY-TWO DOLLARS AND 60/100THS (\$27,142.60)**, which is the balance due and owing **THE LAW OFFICES OF**

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EDWARD R. JAQUAYS, by the Plaintiff, as of June 1, 2014, which said balance includes the retainer and payments paid by the Defendant to date; and an additional two thousand eight hundred fifty-seven and 74/100 dollars (\$2,857.74) representing interim fees and costs in connection with the future representation of the Plaintiff, **CHRISTINE GOESEL**, in this cause, and/or an amount not less than the payments made or reasonably expected to be made by the Defendant, **ANDREW GOESEL**, to his attorney;

B. Or in the alternative, in the event this Court finds that the Defendant, **ANDREW GOESEL**, lacks the ability to pay interim fees, that this Court enter an order disgorging an amount necessary from Attorney, **LAURA HOLWELL**, to ensure that the Plaintiff can be adequately represented in this matter and there is parity among the parties with regard to payment of their respective attorneys; and

C. For such other and further relief as this Court may deem just.

Count II- Funding of 503(g) Trust

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and pursuant to *Section 503(g)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(g))*, and as Count II of her Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to withdraw sufficient additional funds to be deposited in the 503(g) trust for the benefit of the children, and in support thereof states as follows:

1. That on February 20, 2014, a Court Order was entered that provides, in part, as follows:

“Respondent’s T-Rowe Price account ending (omitted pursuant to Supreme Court Rule 138) shall be liquidated to

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fund a 503(g) trust for the purposes of support of the minor children; Respondent shall initiate such liquidation on 2/20/14; the check shall be delivered to Nancy Donlon and held in the IOLTA trust account Panos & Associates until further order of Court, Nancy Donlon shall issue a check to Christine Goesel in the amount of \$3,500.00 per month for child support until further order of court; if there is less than \$40,000.00 in the T-Rowe Price Account Respondent shall take the difference from the Respondent's Fidelity Account (IRA)."

2. That the Defendant failed to withdraw sufficient funds to fully fund the 503(g) Trust as required by the Court Order of February 20, 2014.

3. The Defendant, in violation of the Court Order, liquidated the Plaintiff's (rather than his own) T Rowe Price account in the amount of **THIRTY ONE THOUSAND SEVEN HUNDRED SIXTEEN AND 70/100 DOLLARS (\$31,716.70)** and said funds were subsequently deposited into the IOLTA Trust Account of Panos & Associates.

4. The Defendant never delivered to the children's representative, Nancy Donlon, the difference to ensure that the trust held funds in the amount of forty thousand dollars (\$40,000.00).

5. That, due to the Defendant's failure to comply with the February 20, 2014 Order of Court, the funds held in trust for the benefit of the children are nearly completely depleted.

6. That in order to ensure that the children receive the support necessary for their needs, additional funds must be deposited into the 503(g) Trust.

7. That, despite being employed and earning substantial income, the Defendant has not made any contribution towards the needs of the children since establishment of the 503(g) Trust.

WHEREFORE, the Plaintiff, **CHRISTINE GOESEL**, prays this Honorable Court enter an Order requiring the Defendant, **ANDREW GOESEL**, to liquidate funds from his T-Rowe

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Price Account and Fidelity IRA and deliver said funds to the children's representative to be deposited into the 503(g) Trust and utilized as set forth in the February 20, 2014 Court Order.

Count III- Accounting

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and as Count III of her Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to account for certain funds, and in support thereof states as follows:

1. That the Court has jurisdiction of the parties and the subject matter hereto.
2. That the Defendant recently took a trip to Europe to tour with his band as a professional musician.
3. The Defendant has obtained employment as a chiropractor having purportedly closed his chiropractic practice.
4. That, upon information and belief, the Defendant has purchased a boat.
5. That, due to the Defendant's refusal to contribute any amounts towards the support of his children, this Court previously established a 503(g) trust.
6. That, upon information and belief, the Defendant has no assets other than his share of the marital property in this matter.
7. That the Defendant has not contributed any funds towards the marital expenses since March, 2014 and the mortgage has not been paid since March, 2014.
8. That there is no good reason for the Defendant to purchase a boat or any other luxury item during the pendency of these proceedings.

WHEREFORE, the Plaintiff, **CHRISTINE GOESEL**, prays this Honorable Court enter

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an Order requiring the Defendant, **ANDREW GOESEL**, to provide an accounting of his income and expenses including any funds utilized for the purchase of a boat.

CHRISTINE GOESEL, Plaintiff,

By:

Edward R. Jaquays for
EDWARD R. JAQUAYS, Her Attorney

**THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
(815) 727-7600
ATTORNEY REG. #01326627
AmendedPet.1stAttyFees 062014**

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STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)

CHRISTINE GOESEL)

Plaintiff,)

vs.)

Case No. 13 D 107

ANDREW GOESEL,)

Defendant.)

FILED
 2014 JUN 20 PM 3:32
 CLERK, CIRCUIT COURT
 WILL COUNTY, ILLINOIS

AFFIDAVIT OF EDWARD R. JAQUAYS

1. I am an Attorney at Law licensed to practice in the State of Illinois, maintaining my offices at Five West Jefferson, Joliet, Illinois. Each of the statements contained herein are true and correct and known to me of my own personal knowledge. If called as a witness, I could and would competently testify thereto.

2. That I am an attorney licensed to practice law in the State of Illinois, and have been so licensed since 1975. That I am a sole practitioner, whose practice is involved in all areas of litigation, including a heavy concentration in the family law area.

3. I am attorney of record for **CHRISTINE GOESEL**, who is the Plaintiff in this case, having been formally engaged to represent her on March 7, 2014.

4. That this action involves property and support issues, as well as custody and/or visitation.

My law firm has received an initial retainer of **FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,000.00)**. It is difficult to estimate entirely anticipated legal fees in representing

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the Plaintiff, **CHRISTINE GOESEL**, in order to prepare this matter for trial. Based upon my experience as a family law practitioner since 1975, and my involvement in a number of similar cases, I would certainly expect to expend fifty (50) to seventy-five (75) hours of time in conjunction with the discovery, pre-decree and preparation of the trial of this cause.

The Plaintiff, **CHRISTINE GOESEL**, has signed a contract of employment with my firm obligating herself to pay my legal fees at a rate of \$400.00 per hour for Court and deposition time and \$375.00 per hour for non-Court time. Based upon the attorney's fees and costs incurred to date, as well as the estimate of time to be expended in the trial preparation and trial of this cause, a contribution of **THIRTY THOUSAND DOLLARS AND 00/100THS (\$30,000.00)**, which includes the attorneys fees due and owing to date, toward Defendant's attorney's fees, or an amount equal to the amount paid by Defendant, **ANDREW GOESEL**, to his attorney, will provide reasonable assistance to the Plaintiff, **CHRISTINE GOESEL**, in her representation.

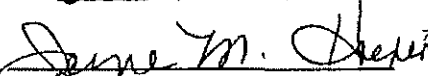
Further, Affiant sayeth not.

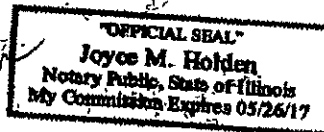
BY:



**EDWARD R. JAQUAYS, Attorney
for Plaintiff, CHRISTINE GOESEL**

Subscribed and sworn to before me
this 20 day of June, 2014.


NOTARY PUBLIC



THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING ~ FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432 - (815) 727-7600 ~ ATTY. #01326627
(Pet4IntAttyFees.060614)

3-15-0101

09/29/14 13:01:26 WCH

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF)
)
CHRISTINE GOESEL,)
Petitioner,)
) NO 13 D 107
and)
)
ANDREW GOESEL,)
Respondent)

FILED
14 SEP 29 AM 11 EE
CLERK OF COURT
JANICE L. HARRIS

DECISION AND ORDER

This cause came before the Court for hearing on July 29, 30 and 31, 2014 CHRISTINE GOESEL (Wife) was represented by Edward R Jaquays of The Law Offices of Edward R Jaquays ANDREW GOESEL (Husband) was represented by Howard Levine of Levine, Wittenberg, Shugan, & Schatz The minor children were represented by child representative Nancy Donlon of Panos & Associates

ISSUES

Wife petitioned for interim attorney fees After a hearing, Wife moved to amend her petition to conform to the proofs

Should leave to amend the amended petition for fees be granted?

Should interim fees be awarded?

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a claim for "true disgorgement" of fees wrongfully obtained from Attorney Laura Holwell. The motion for leave to amend was not supported by affidavit.

PRINCIPLES OF LAW

AMENDMENT: 735 ICLS 5/616(c)

Pleadings may be amended to conform to proofs upon just terms 735 ILCS 5/616(c). However, the right is not absolute. *First Robinson Savings and Loan v Ledo Construction Co, Inc*, 210 Ill App 3d 889, 892 (5th Dist 1991). A motion for leave to amend a pleading must be in writing, state the reason for the amendment, set forth the amendment that is being proposed, show the materiality and propriety of the proposed amendment, explain why the proposed additional matter was omitted from earlier pleadings, and be supported by an affidavit. *First Robinson Savings and Loan*, 210 Ill App 3d 889, 892.

INTERIM FEES: 750 ILCS 5/501(c-1)

One of the underlying principles of the IMDMA is to promote its purpose by, in part, making reasonable provisions for spouses, including provisions for timely awards of interim fees to achieve substantial parity in the parties' access to funds for litigation. 750 ILCS 5/102(5). Section

3-15-0101

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5/501(c-1)(3) If both parties lack the ability to pay reasonable attorney fees, the court shall order allocation of available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties *Earlywine*, 2013 IL 114779, ¶¶ 23

ANALYSIS

AMENDMENT:

A motion to amend must be supported by Affidavit *First Robinson Savings and Loan*, 210 Ill App 3d 889, 892 Wife's motion to amend the amended petition for fees is not supported by affidavit

INTERIM FEES:

Husband claims current monthly net income of \$3,343.56, with expenses exceeding income Wife seeks contribution as she has the inability to pay her attorney fees Both parties currently lack the financial ability to pay reasonable attorney fees

To date Husband paid his attorneys \$100,022.27 \$66,382.28 to Holwell, \$10,000.00 to Levine and \$23,639.99 to Boback Wife paid her attorneys \$18,117.04 \$5,000.00 to Jaquays and \$13,117.04 to Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd The total fees paid to date is \$118,139.31 (not including fees paid to the child representative) To level

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the playing field, each party should have \$59,069.65 for fees. To achieve parity, Husband's attorneys should be disgorged of \$40,952.61.

CONCLUSIONS OF LAW

The petition to amend to conform to the proofs does not comply with 735 ILCS 5/616(c).

Neither party has the current ability to pay attorney fees. To level the playing field and achieve parity, Husband's counsel must be disgorged of fees in the amount of \$40,952.61.

ORDER

The petition for leave to amend to conform to the proofs is denied.

The amended petition for interim fees is granted. Attorney Laura A. Holwell shall tender fees Husband paid her in the amount of \$40,952.61 to counsel for Wife, The Law Offices of Edward R. Jaquays, within 14 days of this order. Wife's counsel, The Law Offices of Edward R. Jaquays, may apply the disgorged fees toward any outstanding balance owed for attorney fees and costs incurred to date and shall hold any remaining funds in escrow as a retainer for future fees and costs.

Sept 29, 2014

Date

[Signature]

Judge

10001547

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F

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE DISSOLUTION OF

CHRISTINE GOESER

Plaintiff

vs

ANDREW GOESER

Defendant

CASE NO. 13 D 107

ORDER

Page 2 of 2

PLAINTIFF PRESENT	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JAGUAS</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

③ MATTER IS SET FOR STATUS & PURGE ON JANUARY 21, 2015 AT 9:30 AM AND HEARING ON ISSUE OF JURISDICTION AND CONTEMPT PETITION FILED ON 10-1-14. INTERVENOR: HOWELL STATUS OF

④ THE SENTENCE ~~SHALL BE~~ OF INCARCERATION SHALL BE STAYED FOR THIRTY DAY PERIOD DURING WHICH ATTORNEYS HOWELL MAY FILE APPEAL AND FOR PERIOD APPEAL IS PENDING PROVIDED NOTICE OF APPEAL IS FILED. DURING TIME PERIOD SENTENCE OF INCARCERATION IS STAYED, ATTORNEYS HOWELL SHALL BE ASSESSED A PENALTY OF TEN DOLLARS PER DAY.

⑤ COURT FINDS APPEAL BOND SHALL BE IN THE AMOUNT OF FORTY-FOUR THOUSAND DOLLARS (\$44,000⁰⁰).

Dated JAN 16 2015

Enter [Signature]

Judge

Attorneys or Party Present: Mark [Signature]

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

SUBMITTED - 37973 - Mark Ellis - 7/18/2017 12:25 PM

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3 Ms Holwell indicates that she may or may not file an appeal. If she does file an appeal and seeks to post a bond to stay enforcement of the judgment during the appeal, then said bond shall be filed with the Clerk of the Circuit Court of Will County *or other form of security as provided and in accordance with S.C.R. 308e*

4 The fine of \$10 00 per day as a portion of the court's previous finding of contempt shall become effective as of today's date

5 The court finds that it does have subject matter and personal jurisdiction over Ms Holwell, but finds that the Petition for Rule to Show Cause now pending against her as filed on October 1, 2014, fails to state a cause of action

Accordingly, pursuant to Section 2-615 of the Code of Civil Procedure, said Petition for Rule to Show Cause is dismissed without prejudice. Plaintiff is granted leave to file an amended Petition for Rule should she so choose. *Counsel represents that* said amended petition, if filed, shall be filed within 28 days of today's date

6 Matter continued to February 20th at 9 00a m, for ~~Ms. Holwell to surrender~~ *execution of* ~~herself with respect to~~ *Ms Holwell* the mittimus issued unless ~~she~~ has either purged herself from the previous finding of contempt or filed an appropriate Notice of Appeal

Date

01/21/2015
 THE LAW OFFICES OF EDWARD R. JAQUAYS
 FREEDOM COURT BUILDING
 FIVE WEST JEFFERSON STREET
 JOLIET, ILLINOIS 60432
 (815) 727-7600
 ATTORNEY#01326627
 Email info@jaquayslawoffices.com
 Order#012115 re Holwell

JUDGE

01/21/15 15:14:58 WCCH

A-20

No. 03-15-0101

IN THE APPELLATE COURT OF ILLINOIS
THIRD APPELLATE DISTRICT

In Re: The Marriage of:	)	Appeal from the Circuit Court of
	)	Will County, Illinois, Twelfth
CHRISTINE GOESEL,	)	Judicial Circuit
Plaintiff-Appellee,)	
	)	Circuit No. 2013-D-107
Vs.)	
)	
ANDREW GOESEL,	)	The Honorable Dinah Archambeault
Defendant-Appellee	)	Judge Presiding
Vs.)	
)	
LAURA HOLWELL,)	
Appellant.)	

**BRIEF AND ARGUMENT FOR
PLAINTIFF-APPELLEE**

EDWARD R. JAQUAYS
MARTIN RUDMAN
MARK ELLIS
THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
(815) 727-7600
ARDC #01326627; #02417278; #6281341
ATTORNEYS FOR PLAINTIFF-APPELLEE, CHRISTINE GOESEL

ORAL ARGUMENT REQUESTED

A21

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III. ARGUMENT	5 - 13
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V. CERTIFICATION	16

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I.
APPELLEE'S BRIEF
POINTS AND AUTHORITY

**I. THE COURT DID NOT ABUSE ITS DISCRETION BY
DISGORGING FEES PAID TO ATTORNEY HOLWELL**

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<u>In re Marriage of Nash</u> , 2012 ILApp(1 st) 113724	5, 7
<u>In re Marriage of Levinson</u> , 2013 ILApp(1 st) 121696	6
<u>In re Marriage of Beyer</u> , 324 Ill.App.3d 305, 753 N.E.2d 1032, 257 Ill.Dec. 406 (1 st Dist. 2001)	7
<u>Kaufman, Litwin, and Feinstein v. Edgar</u> , 301 Ill.App.3d 826, 704 N.E.2d 756, 235 Ill.Dec. 183 (1 st Dist. 1989)	8
<u>In re Marriage of Johnson</u> , 2011 ILApp(1 st) 102826	9
<u>750 ILCS 5/501(c-1)</u>	5

**II. THERE IS NOT EVIDENCE OF THE AMOUNT INCURRED
AS A RESULT OF THE DISQUALIFICATION PROCEEDINGS**

<u>Engle v. Foley and Lardner, LLP</u> , 393 Ill.App.3d 838, 912 N.E.2d 715, 332 Ill.Dec. 228 (1 st Dist 2009).	9
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**III. THE COURT'S FINDING THAT ATTORNEY HOLWELL
WAS IN INDIRECT CIVIL CONTEMPT OF COURT SHOULD
NOT BE VACATED**

<u>In re Marriage of Levinson</u> , 2013 ILApp(1 st) 121696	10
<u>In re Marriage of Nash</u> , 2012 ILApp(1 st) 113724	11
<u>In re Marriage of Earlywine</u> , 2013 IL 114779	11
<u>In re Marriage of Radzik and Agrella</u> , 2011 ILApp(2d) 100374	11
<u>In re Marriage of Beyer</u> , 324 Ill.App.3d 305, 753 N.E.2d 1032, 257 Ill.Dec. 406 (1 st Dist. 2001)	11

**IV. THE SEPTEMBER 29, 2014 ORDER OF COURT WAS
ENFORCEABLE AGAINST ATTORNEY HOLWELL**

735 ILCS 5/2-1501

12

750 ILCS 5/508(a)

13

II.
APPELLEE'S BRIEF
STATEMENT OF FACTS

The Petitioner, CHRISTINE GOESEL, ("CHRISTINE") filed a Petition for Interim and Prospective Attorney's Fees and Costs on June 12, 2014. (R. C708-718) The Petition for Interim and Prospective Attorney's Fees was set for presentation on June 17, 2014. (R. C708) On June 17, 2014, Attorney HOLWELL failed to appear on behalf of the Respondent, ANDREW GOESEL ("ANDREW"), and the matter was addressed by her co-counsel, Attorney LEVINE. (R. C750-751) The Petition for Interim and Prospective Attorney's Fees was set for hearing on June 27, 2014. (R. C750-751) On June 18, 2014, Attorney HOLWELL sent notice via facsimile of her Motion to Withdraw as attorney for ANDREW. (R. C761) The Motion to Withdraw was set for presentation on June 27, 2014 (R. C761) On June 20, 2014, CHRISTINE filed an Amended Petition for Interim and Prospective Attorney's Fees and Costs which was served upon Attorney HOLWELL and set for presentation on June 27, 2014 along with Attorney HOLWELL's Motion to Withdraw. (R. C765)

On June 27, 2014, orders were entered granted Attorney HOLWELL leave to withdraw as ANDREW'S attorney and setting the Amended Petition for Interim Prospective Attorney's Fees and Costs for hearing on July 21, 2014. (R. C796-798) On June 27, 2014, the court reserved jurisdiction over Attorney HOLWELL for the issue of disgorgement. (R. C796) On July 21, 2014, the Amended Petition for Interim and Prospective Attorney's Fees and Costs was continued for hearing to July 29, 2014. (R. C841)

On July 29, 2014, hearing commenced on CHRISTINE and ANDREW'S cross-petitions for interim fees and costs. (R. 5- 6) The parties stipulated to the expertise and billing rates of

counsel and that the work performed by counsel was reasonable and necessary. (R. 11-12) The Court accepted CHRISTINE'S financial statements and an accounting of the marital funds liquidated and utilized by ANDREW during 2014. (R. 23-30) The financial disclosure statements admitted at the hearing were un rebutted by testimony and subject to argument of counsel. (R. 5) (R. 37) CHRISTINE rested her case in chief upon admission of the exhibits. (R. 36)

The evidence reflected that ANDREW had paid his attorneys \$100,022.27 while CHRISTINE had paid her attorneys \$18,177.04. (R. C923) The Court awarded interim fees to CHRISTINE in the amount of forty thousand nine hundred fifty-two and 61/100 dollars (\$40,952.61). (R. C919-924) The Court found that neither party had the current ability to pay attorney's fees. (R. C924) The Court ordered the amount to be paid within fourteen days. (R. C924)

Attorney HOLWELL failed to pay pursuant to the September 29, 2014 order of court and was found to be in contempt on December 18, 2014.

III.
APPELLEE'S BRIEF
ARGUMENT

I. THE COURT DID NOT ABUSE ITS DISCRETION BY DISGORGING FEES PAID TO ATTORNEY HOLWELL

CHRISTINE argued two bases for the award of interim fees and/or disgorgement of Attorney HOLWELL: 1) that Attorney HOLWELL did not have any right to retain those fees she had accepted in violation of orders of court and 2) that ANDREW had the ability to pay interim fees to CHRISTINE or, in the alternative if ANDREW was found not to have the ability to pay, that Attorney HOLWELL should be disgorged of fees paid to her in an amount necessary to create parity among the parties.

The court awarded interim fees based upon the standard set forth in Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act and supporting case law regarding leveling the playing field among parties. 750 ILCS 5/501(c-1). Therefore, the issue of whether HOLWELL accepted fees in violation of orders of court is not relevant to this appeal as it did not serve as a basis for the court's decision to disgorge fees.

This matter is distinguishable from In re Marriage of Nash wherein the trial court made no findings as to the parties' financial abilities to pay reasonable attorney's fees. 2012 ILApp(1st) 113724. Nash requires a finding that neither party has the ability to pay reasonable attorney's fees to order disgorgement on an interim basis. Id. at ¶18. Nash held that a court's statement that a party lacked the financial ability and access to funds to pay reasonable attorney's fees was sufficient. Id. at ¶23. The issue in Nash a court's order both requiring a party to pay interim fees and, if he failed to do so, ordering his attorney to be disgorged. Id. Due to this

ambiguity, there was no clear finding that both parties lacked the financial ability or access to assets or income for reasonable attorney's fees and costs so the disgorgement order was found to be in error. Id. (Husband was ordered to pay which implied finding that he had ability to pay fees and, in addition, disgorgement of Husband's attorney was ordered in event Husband did not pay which implied Husband did not have ability to pay fees.)

In this matter, the court properly found that neither CHRISTINE nor ANDREW had the ability to pay their attorney's fees. (R. C924) The Court's finding was based upon the circumstances of the parties as of the time of the hearing in July, 2014. As reflected by the record, the court was familiar with the parties and their circumstances not only from the financial disclosures and exhibits admitted during the hearing on the interim fee petition but as a result of the numerous issues that had been addressed before the court prior to the hearing on interim fees. See generally, In re Marriage of Levinson 2013 ILApp(1st) 121696 ¶44 (finding although court held no evidentiary hearing, it was familiar with case and parties based upon documents submitted and prior appearances before the court).

The parties' respective Financial Disclosure Statements were admitted as exhibits. (R. 23) and (R. 37) The parties stipulated to an accounting reflecting the withdrawal by ANDREW of nearly all of the parties' marital retirement assets from January, 2014 through June, 2014 and that in excess of seventy thousand dollars (\$70,000.00) of said funds had been paid to ANDREW'S attorney, HOLWELL. All of the liquidated marital retirement funds were exhausted by the time of the hearing in July, 2014. (R. C797)

The balance between income and expenses can exhibit an inability to pay. Levinson, 2013 ILApp(1st) 121696 ¶37. CHRISTINE'S financial disclosure statement indicated a net monthly income of \$7,658.38 (including child support paid from a 503(g) trust in the amount of

\$3,500.00 per month) and monthly expenses of \$7,295.44 per month (this did not include the mortgage payment for CHRISTINE'S residence of \$3,249.00 per month). CHRISTINE'S financial circumstances, which were unrebutted, showed that CHRISTINE did not have the present ability to pay her attorney's fees and costs. Given the monthly expenses balanced against CHRISTINE'S monthly income, the Court did not abuse its discretion in determining that CHRISTINE could not afford to pay her attorney's fees.

Based upon the evidence presented, the court further determined that ANDREW did not have the present ability to pay attorney's fees. (R. C924)

Attorney HOLWELL attempts to create an ambiguity (similar to Nash) by arguing that the court found that the parties had an ability to pay their attorney's fees as of the date of the hearing on July 29, 2014 by entering an order allowing the parties to pay their attorneys from a source other than the HELOC on December 12, 2014. The court's order of December 12, 2014 makes no finding that either party had the ability to pay attorney's fees as of July, 2014. (R. C1281) It simply provides that the source for payment of fees is not limited to the HELOC. (R. C1281) The order was retroactive to the date of filing of the motion- August 15, 2014, by agreement of the parties. (R. C1281)

The filing of the motion to modify is not a basis to reverse the disgorgement order. In fact, courts recognize that facts and circumstances change and develop in the course of litigation, therefore, as an interim fee award in the nature of temporary relief, the award is subject to modification or revocation. In re Marriage of Beyer, 324 Ill.App.3d 305, 316, 753 N.E.2d 1032, 1042, 257 Ill.Dec. 406, 416 (1st Dist. 2001).

Attorney HOLWELL was not deprived of due process during the July, 2014 hearing. The claim that disgorgement of an attorney violates substantive due process by depriving

attorneys of the right to keep fees earned has previously been rejected. Beyer, 324 Ill.App.3d 305, 315, 753 N.E.2d 1032, 1040, 257 Ill.Dec. 406, 414 (1st Dist. 2001) (citing Kaufman, Litwin, and Feinstein v. Edgar, 301 Ill.App.3d 826, 704 N.E.2d 756, 235 Ill.Dec. 183 (1st Dist. 1998)). The court did not violate Attorney HOLWELL's substantive due process rights by entering an order of disgorgement subject to reallocation at the end of the proceedings. (R. C924)

The issue of an attorney's procedural due process rights as they relate to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act and the potential order to return fees was first addressed in Kaufman. 301 Ill.App.3d 826, 704 N.E.2d 756, 235 Ill.Dec. 183 (1st Dist. 1998). Although Attorney HOLWELL asserts that she had a right to be heard, Kaufman provides that Illinois courts frequently award attorney's fees without discovery by the party charged with paying them and without holding an evidentiary hearing. Id. at 837. Further, the court noted that a non-evidentiary proceeding is proper as long as the decision maker can determine from the evidence presented in the petition and answer what amount would be a reasonable award and the opposing party had an opportunity to be heard. Id.

In this matter, the court held a hearing in which Attorney HOLWELL testified regarding her fees and the payments made to her. (R. 1-161) Attorney HOLWELL's assertion that she had no notice of CHRISTINE'S intent to seek disgorgement is without any basis in the record. Attorney HOLWELL was served with the Amended Petition for Interim Attorney's Fees and Costs in which CHRISTINE prayed for disgorgement of Attorney HOLWELL. (R. C765) Prior to the hearing, Attorney HOLWELL received notice of the petition for interim fees which sought disgorgement. (R. C765) Pursuant to the notice, Attorney HOLWELL had an opportunity to respond to the petition which she chose not to do. Finally, Attorney HOLWELL also had notice of the hearing, appeared in court, and testified during the interim fee hearing. (R. 8-9) At no

time prior to (or during the hearing) did Attorney HOLWELL seek leave to file her appearance as an intervenor despite her knowledge that disgorgement was an issue. Attorney HOLWELL asserted no objection to testifying nor did she object to being excluded from the hearing with the knowledge that disgorgement was an issue. The court advised Attorney HOLWELL that she could be called first so she did not have to stay for the entire hearing and Attorney HOLWELL replied "that would be lovely for me". (R. 9) Now, for purposes of appeal, Attorney HOLWELL asserts that she did not have the right to be present during the hearing since she was excluded as a witness.

In re Marriage of Johnson is not relevant to this matter. Attorney HOLWELL was not sanctioned by the court. 2011 ILApp(1st) 102826 Attorney HOLWELL was present at the hearing on the amended petition.

Attorney HOLWELL's contention that she was deprived of notice of the temporary injunction entered on June 17, 2014 is likewise without notice as Attorney HOLWELL acknowledges that the same was served upon Attorney LeVine. Supreme Court Rule 11(c) provides that service upon one of a parties' attorneys is sufficient when that party is represented by multiple attorneys.

II. **THERE IS NO EVIDENCE OF THE AMOUNT INCURRED AS A RESULT OF THE DISQUALIFICATION PROCEEDINGS**

Attorney HOLWELL argues that a sum certain should be imputed to CHRISTINE as and for the fees incurred by ANDREW during the disqualification proceedings. A party must provide proper citation to the record of evidence in support of its contentions on appeal. Engle v. Foley and Lardner, LLP, 393 Ill.App.3d 838, 854, 912 N.E.2d 715, 728, 332 Ill.Dec. 228, 242 (1st Dist. 2009). A failure to provide proper citations to the record is a violation of Supreme Court Rule 341 and a waiver of the facts or argument lacking a citation. Id.

Attorney HOLWELL'S brief fails to cite that portion of the record where either ANDREW or Attorney HOLWELL stated during the hearing on the interim fee petition the amount of fees incurred due to the disqualification hearing involving CHRISTINE'S prior counsel. In fact, no evidence was offered to the court. Attorney HOLWELL presented her complete billing statement without providing any evidence of what portion of the same was attributable to the disqualification proceedings. (R. 38) The amounts paid to her from ANDREW were from marital funds belonging to both ANDREW and CHRISTINE. (R. 210) Funds that would have been subject to allocation among the parties. Those fees remained subject to allocation and modification at the end of the proceedings.

Attorney HOLWELL provides no legal support in her brief for "imputing" the fees earned by HOLWELL during the disqualification proceedings to CHRISTINE on an interim basis. Attorney HOLWELL'S brief also fails to point out that by taking the total fees paid by both parties and allocating them equally among the parties, the court assessed one half of the fees incurred by ANDREW for the disqualification hearing, on an interim basis, against CHRISTINE. The court did not abuse its discretion by allocating the fees and costs equally among the parties at the time of the interim fee hearing.

III. THE COURT'S FINDING THAT ATTORNEY HOLWELL WAS IN INDIRECT CIVIL CONTEMPT OF COURT SHOULD NOT BE VACATED

Exposing oneself to a finding of contempt is an appropriate method of testing the validity of a court order particularly where the refusal to comply with the court's order constitutes a good faith effort to secure an interpretation of an issue without direct precedent. Levinson at ¶55. It is appropriate to vacate a contempt finding on appeal where the refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct

precedent. Nash 2012 ILApp(1st) 113724 ¶30. The issues of disgorgement and enforcement of payment of interim fees are not novel or without direct precedent. See Nash, In re Marriage of Earlywine, 2013 IL 114779; In re Marriage of Radzik and Agrella, 2011 ILApp(2d) 100374, Beyer. While a party may request to be held in contempt to allow for appeal, this purpose alone, is not sufficient to vacate a contempt finding on appeal. Nash at ¶30.

Attorney HOLWELL's refusal to comply with the court order was merely a method of making an interlocutory order appealable. (R. 480) (R. 449)

The court held Attorney HOLWELL in contempt of court after Attorney HOLWELL consented to the same. On December 18, 2014, through counsel, Attorney HOLWELL requested to be held in "friendly" contempt in order to appeal the court's disgorgement order of September 29, 2014. (R. 340) Pursuant to her request, the court held Attorney HOLWELL in contempt. (R. C1350-1351) Thereafter, CHRISTINE filed a Motion to Clarify asserting that the December 18, 2014 order of court was not a final and appealable contempt order unless some sanction or purge was set against Attorney HOLWELL. (R. C1464-1465) On January 16, 2015 the court reaffirmed its finding of contempt, sentenced Attorney HOLWELL and set a purge for the contempt. (R. C1547)

Attorney HOLWELL cannot now assert that the finding of contempt violated her due process rights. The court indicated to her several times that it would vacate the initial finding of contempt of December 18, 2014 and proceed to a hearing on the contempt issue. Attorney HOLWELL waived her right to a hearing each time and agreed to the finding of contempt. (R. 463) (R. 471) (R. 472) (R. 479)

Attorney HOLWELL's actions in this matter reflect not a good faith effort to appeal a novel issue without direct precedent but, rather, an attempt to avoid or at least delay payment of

the court's disgorgement order. The court rendered its disgorgement order on September 29, 2014. (R. C924) Attorney HOLWELL was granted 14 days to pay the amount ordered disgorged to CHRISTINE. C924. Attorney HOLWELL did not pay the amount due within fourteen days nor did she provide the court with any explanation of her failure to pay within that time period. Due to the same, on October 24, 2014, CHRISTINE filed a Petition for Rule to Show Cause against Attorney HOLWELL for her failure to pay. (R. C983) Attorney HOLWELL did not seek any further relief from the court with regard to the September 29, 2014 order until October 29, 2014 when she caused to be filed a Motion to Reconsider. (R. C1072) Attorney HOLWELL did not seek to present the Motion to Reconsider until November 20, 2014. (R. C1071) Hearing on the Motion to Reconsider eventually took place on December 18, 2014 at which time the motion was denied and Attorney HOLWELL requested to be held in "friendly" contempt and was held in contempt. (R. C1350)

IV. THE SEPTEMBER 29, 2014 ORDER OF COURT WAS ENFORCEABLE AGAINST ATTORNEY HOLWELL

Attorney HOLWELL contends that the September 29, 2014 order of court was not enforceable against her since it was temporary in nature and subject to modification/ reallocation at the end of the proceedings. Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act clearly and unambiguously provides that an interim order can be enforced by an attorney and that judgment may be entered. 750 ILCS 5/508(a). The proposition that a party cannot collect an amount ordered due as interim fees completely undermines the stated purpose of interim fees and one of the purposes of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/102(5). Section 2-1501 of the Illinois Code of Civil Procedure authorizes the initiation of supplementary proceedings for the collection of amounts due pursuant to an order of court. 735 ILCS 5/2-1501.

The trial court held that the September 29, 2014 order of court was a judgment. (R. C1350) The court simply followed the statutory language by finding that the interim fee award was an enforceable judgment against Attorney HOLWELL. Attorney HOLWELL'S actions reflect an individual attempting to evade or delay the enforcement of a court order.

Attorney HOLWELL chose to wait to file any motion seeking relief from the September 29, 2014 order of court until the last possible moment (October 29, 2014). (R. C1072-1102) By statute, the order was enforceable and the Court clarified that it entered a judgment against Attorney HOLWELL for the amount due. 750 ILCS 5/508(a).

IV.
APPELLEE'S BRIEF
CONCLUSION

The Illinois Marriage and Dissolution of Marriage Act sets forth several underlying purposes including timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs. 750 ILCS 5/102(5) Hearings related to interim fees are to be expeditiously scheduled by a court and addressed on a non-evidentiary basis unless good cause is shown. 750 ILCS 5/501(c-1)

It is important to consider the underlying purpose of Section 501(c-1) and the concerns it addresses, to wit: the interim fee system was an attempt to address the problem of the economically disadvantaged spouse, where one spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to participate adequately in the litigation. In re Marriage of Earlywine 2013 IL 114779 ¶26. Shielding assets so that one spouse may easily hire an attorney has the direct effect of making it difficult for the other spouse to hire his or her own attorney. Id. at ¶29. This would defeat the purpose and goals of the Act, which is to enable parties to have equitable access to representation. Id.

The stipulated evidence in this matter showed that ANDREW had liquidated marital retirement accounts, including those belonging to CHRISTINE, and received net proceeds (after penalties and required withholding tax) in excess of \$195,741.94 from January 8, 2014 through June 23, 2014. Plaintiff's Exhibit 4. Of these funds, more than \$100,000.00 was paid to ANDREW'S attorneys with Attorney HOLWELL receiving \$66,382.28 of said funds. (R. C923) None of said funds were paid to CHRISTINE or her attorneys. Attorney HOLWELL was aware


of the amounts paid to her and the financial circumstances of her client when the payments were made.

The disgorgement of fees and award of interim fees by the trial court to CHRISTINE complied with the procedural safeguards set forth in the statutory and case law. The award is consistent with the underlying statutory purposes for interim fees.

This court should affirm the September 29, 2014 order of disgorgement and require Attorney HOLWELL to immediately comply with the same.

V.
APPELLEE'S BRIEF
CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.

BY: 
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No. 03-15-0101

**IN THE APPELLATE COURT OF ILLINOIS
THIRD APPELLATE DISTRICT**

FILED
OCT 13 2016
THIRD DISTRICT
APPELLATE COURT CLERK

In Re: The Marriage of:	)	Appeal from the Circuit Court of
	)	Will County, Illinois, Twelfth
CHRISTINE GOESEL,	)	Judicial Circuit
Plaintiff-Appellee,)	
	)	Circuit No. 2013 D 107
vs.)	
)	
ANDREW GOESEL,	)	Trial Judge: Honorable Dinah Archambeault
Defendant-Appellee)	
vs.	)	Date of Notice of Appeal: Feb. 13, 2015
)	
LAURA HOLWELL,)	
Contemnor-Appellant.)	

**RESPONSE TO SUPPLEMENTAL BRIEF OF
THE CONTEMNOR-APPELLANT**

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OCT 14 2016

**THIRD DISTRICT
APPELLATE COURT**

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II.**APPELLEE'S RESPONSE TO SUPPLEMENTAL BRIEF
ARGUMENT****I. AMOUNTS PAID TO ATTORNEY HOLWELL FOR SERVICES
RENDERED WERE AVAILABLE AND SUBJECT TO
DISGORGEMENT**

Section 102 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") states that one of the purposes of the Act is to make reasonable provision for the support during and after an underlying dissolution of marriage, ... including provision for timely advances of interim fees and costs to all attorneys, ... and opinion witnesses including guardians ad litem ... to achieve substantial parity in parties' access to funds for pre-judgment litigation costs in an action for dissolution of marriage. 750 ILCS 5/102(8).

Prior to the 1997 amendments, the economically advantaged spouse would apply his or her greater access to income or assets as a tool making it difficult for the disadvantaged spouse to retain counsel or otherwise participate in litigation. *In re Marriage of Earlywine* 2013 IL 114779 (2013) at ¶26. Dissolution of marriage cases frequently entailed strenuous efforts to block access by the other side to funds for litigation. *Earlywine* at ¶26. All too frequently, the economically advantaged spouse would apply his or her greater access to income or assets as a tool, making it difficult for the disadvantaged spouse to retain or otherwise participate in litigation. *Earlywine* at ¶26. Thus, the new interim fee system was designed to ameliorate this problem by streamlining the process for obtaining interim attorney fees. *Earlywine* at ¶26.

The record in this matter reflects the Respondent's ("ANDREW's") efforts to deplete the marital estate and block the Petitioner's ("CHRISTINE's") access to funds for litigation. A Petition for Dissolution of Marriage was filed by CHRISTINE on January 18, 2013. (C003-007)

On that same date, an order was entered providing that each party would pay attorney's fees from a home equity line of credit. (C0016) On October 10, 2013, the Appellant ("HOLWELL") filed her Appearance on behalf of ANDREW. (C67) On February 20, 2014, HOLWELL, on behalf of ANDREW, filed a verified Motion to Sign Listing Agreement supported by an ANDREW's Affidavit stating that the parties had little to no income, that they were in "severe financial straights", and that the marital residence had to be sold to avoid financial ruin. (C375-380) The Law Offices of Edward R. Jaquays entered its Appearance on behalf of CHRISTINE on March 10, 2014. (C478) On May 30, 2014, HOLWELL caused to be filed a Motion requesting that the Court set the previously filed Motion to Sign Listing Agreement for hearing. (C607-608) That at no time between February 20, 2014 and June 16, 2014 did HOLWELL advise the court that she had received payments in excess of \$35,000.00 in attorney's fees during that time period despite her pleadings alleging that the parties were in severe financial straights and had little to no income.

CHRISTINE caused to be filed a Petition for Interim Attorney's Fees and Costs on June 12, 2014. (C709-715) CHRISTINE filed an Amended Petition for Interim Attorney's Fees and Costs on June 20, 2014. (C766-773) The Court held an evidentiary hearing on the issue of interim fees from July 29, 2014 through July 31, 2014. (R. 001-221) A table entitled "GOESEL WITHDRAWALS" admitted at the hearing reflected that ANDREW had withdrawn substantial retirement funds belonging to the marital estate and utilized the same to pay his attorney as well as his current and future expenses. (Petitioner's Exhibit 4) HOLWELL's billing statement, admitted at the hearing on interim fees, reflects that from March 10, 2014 through June 20, 2014, ANDREW had engaged in his own "scorched Earth" campaign and, among other things, paid HOLWELL in excess of thirty-five thousand dollars (\$35,000.00) in attorney's fees.

(C1148-1149) These funds were not paid gradually over a nine month period but in lump sum payments of: \$5,000.00 on March 31, 2014; \$10,000.00 on April 28, 2014; \$10,000.00 on April 29, 2014; \$1,382.28 on April 30, 2014, and \$10,000.00 on June 13, 2014. (C1148-1149) In addition, ANDREW endorsed a check in excess of \$33,000.00 from Fidelity Investments to his prior counsel on June 13, 2014. (R. 97, L14 - R. 102, L19) HOLWELL received \$13,000.00 of the Fidelity funds which she was "holding" at the time of the interim fee hearing. *Id.* Also, ANDREW paid \$10,000.00 to Attorney Howard LeVine on June 13, 2014. (R. 51, L18-19) At hearing on the interim fee petition, after depleting the marital estate of marital retirement funds, ANDREW argued that he was unable to pay his attorney's fees or contribute to those of the Appellee. (R. 201, L11-16)

Given these facts, HOLWELL cites *In re Marriage of Altman* as new authority in support of her contention that funds paid to her as and for attorney's fees in this matter were not "available" and, therefore, not subject to disgorgement. 2016 IL App(1st) 143076. (Appellant's Supplemental Brief p. 2)

The First District finds that funds earned, paid, and used to pay salaries, overhead, and litigation expenses, etc. are not "available" for disgorgement pursuant to the statutory definition. Without statutory authority, *Altman* considered potential financial hardship to the attorney being disgorged and delay in filing the petition for interim fees. *Altman* at ¶34. If funds earned by an attorney and paid to that attorney do not fall under the Section 501(c-1) statutory definition of "available", then those funds are not available under any circumstances.

The First District raises the concern that the greater the delay, the greater the financial risk disgorgement poses for the responding attorney. *Id.* This factor is considered within the context of whether the attorneys were paying themselves while on notice of the possibility that

the court would at some future date order those fees disgorged. *Id.* *Altman* then “hedges” its definition of available funds by stating in footnote 4, “were the question here purely a matter of equity, we would be tempted to uphold the disgorgement order given Gerage’s (as well as Tzinberg’s) conduct in aiding Block’s ‘scorched earth’ approach to litigating this case...” *Id.* Therefore, the First District found that, under certain circumstances, funds earned and placed into an attorney’s general account could be available and subject to disgorgement. *Id.*

Further, *Altman*’s consideration of this factor is contrary to Section 501(c-1). Section 501(c-1) does not require that a petition seeking interim fees be filed within a certain amount of time of the filing of the Petition for Dissolution of Marriage. 750 ILCS 5/501(c-1).

Even if delay was a proper factor to be considered, this matter is distinguishable from *Altman*. ANDREW paid more than \$35,000.00 in attorney’s fees over a three month period. (C1148-1149) ANDREW paid these amounts during the time period he alleged, through HOLWELL, that the parties had little to no income and faced financial ruin. (C375-380) Given these alleged severe financial straights of the parties since February 20, 2014, HOLWELL knew payments to her from ANDREW could possibly be disgorged. Meanwhile, CHRISTINE did not delay in filing her petition for interim fees as it was filed approximately three months after retaining new counsel (the same three month period ANDREW paid the fees referenced).

When addressing the underlying purpose of the 1997 amendments to Section 501 of the IMDMA, First District stated that it “simply did not believe the legislature intended through Section 501(c-1)(3) that the financial burden of leveling the playing field should be borne, in substantial part, by lawyers who must refund, under pain of contempt, fees they have earned”. *Altman* at ¶36. However, the First District’s decision results in the possibility that the other party’s counsel will bear the burden in full. Rather than spreading the burden on both parties or

their counsel of record, *Altman* creates the likelihood of an all or nothing scenario directly contrary to the stated purpose of Sections 102 and 501(c-1) of the IMDMA and rejected by the Illinois Supreme Court in *Earlywine*. 750 ILCS 5/102(8) and 750 ILCS 5/501(c-1). *See generally, Earlywine* at ¶12 (shielding assets so that one spouse may easily hire an attorney has the direct effect of making it difficult for the other spouse to hire his or her own attorney defeating the purpose and goals of the Act, which is to enable parties to have equitable access to representation).

Altman states, “If the legislature meant that all funds ‘paid’ to one spouse’s lawyer were subject to disgorgement when neither spouse was able to pay attorney fees, it could easily have said so.” *Altman* at ¶33. In fact, this is exactly what the legislature stated in Section 501(c-1) of the IMDMA. 750 ILCS 5/501(c-1)(3). If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties. 750 ILCS 5/501(c-1)(3). Payment is defined, in a restricted legal sense, as the performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part. Black’s Law Dictionary, Rev. 4th Ed. The legislature included “interim payments” in the statutory definition of available funds and further clarified that the statute encompassed “interim payments” “previously paid”.

The interim fee provisions provide that amounts “paid” to an attorney are available and subject to disgorgement. 750 ILCS 5/501(c-1)(3). By its definition, payment is an amount paid

in discharge of a debt or liability. Black's Law Dictionary, Rev. 4th Ed. Any interpretation of the statute wherein funds paid to an attorney are not available for disgorgement is inconsistent with the plain meaning of Section 501(c-1) of the IMDMA. 750 ILCS 5/501(c-1)(3).

Altman addresses the Second District Appellate Court's decision in *In re Marriage of Squire*, however, HOLWELL fails to comment on, or distinguish, *Squire*. 2015 IL App (2d) 150271. Both *Altman* and *Squire* address whether funds are available for disgorgement pursuant to Section 501(c-1) of the IMDMA, 750 ILCS 5/501(c-1), and the Illinois Supreme Court's decision *In re Marriage of Earlywine*, 2013 IL 114779.

Earlywine held that an advance payment retainer, funds that are owned by an attorney upon payment, is subject to disgorgement. *Id.* The Illinois Supreme Court found that the advanced payment retainer in that matter was set up to specifically circumvent the "leveling of the playing field" rules set forth in the Illinois Marriage and Dissolution of Marriage Act. *Id.* at ¶27.

In *Squire*, a Petition for Dissolution of Marriage was filed in 2013. 2015 IL App(2d) 150271 at ¶2. The petition for interim and prospective attorney's fees was filed on June 2, 2014. *Id.* at ¶2. At the time the petition for interim fees was addressed, the Respondent had borrowed funds and paid her then attorney approximately \$120,000.00. The Petitioner had paid \$2,500.00 towards his attorney's fees. The trial court disgorged \$60,000.00 from Respondent's attorney-fees that counsel had already deposited into its general account.

Like *Altman*, the Second District's opinion in *Squire* depended on the meaning of "available" in Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act. Relying on *Earlywine*, the Second District addressed respondent's counsel's argument that the funds were not available as they had already been earned and deposited into counsel's general

account. *Id.* at ¶22. The Court found that *Earlywine* refuted counsel's argument when it noted the Supreme Court found that the retainer became the law firm's property immediately upon payment and was deposited in the firm's general account, but held that the funds were nevertheless subject to disgorgement. *Id.* Contrary to HOLWELL's argument and *Altman*, the Illinois Supreme Court has found that fees owned by an attorney are available for purposes of disgorgement. *Earlywine* at ¶29.

II. CHRISTINE'S RETIREMENT FUNDS WERE NOT SUBJECT TO AN INTERIM FEE ORDER

A spouse cannot be required to access a non-marital retirement account to pay interim fees. *Altman* at ¶1. HOLWELL now requests this Court to interpret *Altman* to find that Petitioner's retirement funds be deemed available to pay attorney's fees when ANDREW liquidated marital retirement accounts and received a net amount in excess of \$195,000.00. Petitioner's Exhibit 4. ANDREW's Financial Disclosure Statement reflects the extent of his actions- at the time of the hearing on interim attorney's fees, ANDREW listed only a Scottrade account with an approximate value between \$2,000.00 and \$4,000.00 for his only remaining retirement asset. (Respondent's Exhibit 1) *Altman*, while commenting in dicta that petitioner had not accessed retirement accounts for purposes related to the litigation, found that given the respondent's persistent efforts to avoid or reduce his child support obligations, the court would question the wisdom of any finding that petitioner should be required to invade retirement assets to pay her attorneys. *Id.* at ¶25. Meanwhile, ANDREW's child support obligation was being paid pursuant to an order establishing a 503(g) trust. (C438)

Given the circumstances of this matter, a Court can only question the wisdom of Appellant's position that the trial court should have found Petitioner's retirement assets available for interim fees.

III.**APPELLEE'S BRIEF**
CONCLUSION


Earlywine sets forth the rule of law regarding funds available for disgorgement pursuant to Section 501(c-1) of the IMDMA. *Altman* does not comport with the statutory factors or the finding in *Earlywine* that funds earned by an attorney are not subject to disgorgement. *Altman's* stated equitable concern over "scorched Earth" tactics certainly arise in this matter given ANDREW's actions including payments to Attorney Holwell from January 1, 2014 through June 30, 2014. Considering HOLWELL filed verified motions asserting that ANDREW had little to no income and the parties were facing financial ruin on February 20, 2014 and later sought to have said motion heard in July, 2014, she had notice the amounts received by her may be disgorged. During this same time period, ANDREW received net proceeds from liquidation of retirement assets in excess of \$195,000.00 and paid more than \$45,000.00 to the Appellant. There were no gradual payments over an extended period of time in this matter.

The trial court did not abuse its discretion by not considering CHRISTINE's retirement assets available for payment of interim attorney's fees. The establishment of a 503(g) trust in this matter indicates ANDREW's failure to pay child support to CHRISTINE. Further, given ANDREW's complete liquidation of marital retirement accounts, including CHRISTINE's marital share of the same, it would be completely inequitable to require her to utilize her own retirement funds for interim fees.

If the funds paid to Attorney Holwell are found to be unavailable for disgorgement, ANDREW and Attorney Holwell's actions would completely defeat the purpose of the 1997 amendments to Section 501 of the IMDMA.

IV.APPELLEE'S BRIEF
CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 8 pages.

BY: 
MARK ELLIS on behalf of EDWARD R. JAQUAYS,
Attorneys for Plaintiff-Appellee, CHRISTINE GOESEL

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2017 IL App (3d) 150101

Opinion filed January 24, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

In re MARRIAGE OF)	
)	
CHRISTINE GOESEL,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Petitioner-Appellee,	)	Will County, Illinois.
)	
and	)	Appeal No. 3-15-0101
	)	Circuit No. 13-D-107
ANDREW GOESEL,)	
)	
Respondent,	)	Honorable
	)	Dinah L. Archambeault,
(Laura A. Holwell, Contemnor-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court, with opinion.
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment and opinion.

OPINION

¶ 1 This appeal arises from the dissolution of marriage proceedings between petitioner, Christine Goesel, and respondent, Andrew Goesel. Contemnor, Laura Holwell, served as an attorney for Andrew. After Christine filed a petition for interim attorney fees, the trial court found that neither Andrew nor Christine had the current ability to pay attorney fees and ordered Holwell to disgorge \$40,952.61 of attorney fees that Andrew had paid to her. Holwell did not pay the disgorgement amount, and the trial court held her in contempt. On appeal, Holwell

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argues that the trial court erred in ordering the disgorgement of fees from her, finding the disgorgement order was a judgment, and holding Holwell in indirect civil contempt. Holwell also argues that the contempt orders and sanctions entered against her should be vacated because her refusal to comply with the disgorgement order constituted a good-faith effort to determine if the disgorgement was proper. We reverse the disgorgement order and vacate the trial court's order finding Holwell in contempt of court.

¶ 2

FACTS

¶ 3

Christine and Andrew were married on March 4, 1995. On January 18, 2013, Christine filed for divorce. Christine was represented by the firm Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd. (Goldstine), and Andrew was represented by Janice Boback of Anderson & Boback, LLC (Boback). During the dissolution proceedings, Christine lived in the marital home. Christine's attorneys instructed her to provide them Andrew's mail that arrived at the marital home. Goldstine then opened and viewed Andrew's mail.

¶ 4

On October 10, 2013, Laura Holwell, the contemnnor in this matter, filed her appearance as Andrew's counsel, and Boback was granted leave to withdraw. Prior to withdrawing, Boback filed a motion to disqualify Goldstine as Christine's counsel because the firm had obtained privileged information about Andrew by viewing his mail. The trial court eventually disqualified Goldstine on March 4, 2014. Holwell billed \$37,094.49 to Andrew for work related to the disqualification of Goldstine. Goldstine did not charge Christine for its defense of the motion to disqualify.

¶ 5

On March 10, 2014, the Law Offices of Edward R. Jaquays (Jaquays) appeared on behalf of Christine. On June 6, 2014, Howard LeVine of LeVine, Wittenberg, Shugan and Schatz, Ltd. (LeVine), appeared on behalf of Andrew. On June 12, 2014, Christine filed a petition for interim

attorney fees, which she later amended. Within the amended petition, Christine indicated that she paid Jacquays an initial retainer of \$5000, currently owed Jacquays \$27,142.60, and lacked sufficient funds to pay the outstanding fees. Christine requested that the trial court either order Andrew to pay her attorney fees or, if the court found that Andrew lacked the ability to do so, enter an order disgorging the necessary amount from the money that Andrew had already paid to Holwell. Andrew also filed a petition for attorney fees, indicating that he did not have the ability to pay his attorney fees.

¶ 6 On June 20, 2014, Holwell filed a motion to withdraw as Andrew's counsel. In response, Christine requested that the trial court condition its grant of Holwell's leave to withdraw upon the disgorgement of attorney fees. On June 27, 2014, the trial court issued an order allowing Holwell to withdraw but retained jurisdiction over Holwell should the court find disgorgement to be an issue, with Holwell to be notified of future dates pertaining to the disgorgement issue.

¶ 7 From July 29 to July 31, 2014, at the hearing on Christine and Andrew's petitions for attorney fees, Holwell provided testimony, and the parties provided financial disclosures. With regard to real estate, the financial disclosures indicated that (1) the parties' marital residence was valued at \$440,000, and there was a mortgage balance of \$350,000 that was four months in arrears; (2) the parties' investment real estate in Florida had approximately \$60,000 in equity; (3) Christine had a Michigan home with an unknown value that Andrew "gifted" to her; and (4) there was investment or business real estate valued at \$150,000 that was in arrears in association dues and property taxes. The financial disclosures also indicated that the parties owned four motor vehicles, with a total value of \$30,500. Christine had a checking account with a balance of \$4610.99, and Andrew had two checking accounts with a combined balance of \$50. The financial disclosures further indicated Andrew had an individual retirement account (IRA)

with a fair market value between \$2000 and \$4000 and a health savings account (HSA) with a fair market value of \$12,000. Christine had multiple retirement accounts including (1) a Roth IRA with an unknown fair market value, (2) an IRA with a fair market value of \$32,819.88, (3) a 403(b) plan with a fair market value of \$42,498.86, (4) a 401(a) plan with a fair market value of \$13,292.21, (5) a rollover plan with a fair market value of \$3838.04, (6) a 403(b) plan with a fair market value of \$27,954.71, and (7) a retirement and savings plan with a fair market value of \$17,356.23. Christine had \$16,339.12 in credit card debt and owed \$34,560.86 in attorney fees. After expenses, Christine's net monthly income was \$362.94. Her monthly income included a court-ordered support payment of \$3500, but her expenses did not reflect the monthly mortgage payment for the marital home or the Florida rental home's expenses. Andrew owed creditors approximately \$17,150, and his business, Goesel Chiropractic, owed creditors approximately \$69,180. The amount he owed to his attorneys was "unknown." The difference between Andrew's monthly income and expenses was a negative amount of \$3318.44.

¶ 8 At the outset of the hearing for interim attorney fees, the parties stipulated to the attorneys' rates and that the work performed by the attorneys was reasonable and necessary. Holwell testified she was holding approximately \$13,000 that Andrew had previously paid to Boback and Boback then paid to Holwell because there was a dispute as to which party owned the money. Copies of Holwell's invoices were entered into evidence and indicated that all money she had received was for work already performed. Andrew still owed Holwell \$17,500.38 and owed Levine \$26,000. Levine was holding \$10,000 received for work already performed because there was a question as to whether the money was paid from a proper source.

¶ 9 On September 29, 2014, the trial court found that both parties currently lacked the financial ability to pay reasonable attorney fees. The trial court determined that the total attorney

fees paid by the parties, as of September 29, 2014, was \$118,193.31 and each party should be allotted \$59,069.65 for their attorney fees. To achieve parity, the trial court ordered that Holwell disgorge \$40,952.61 of fees paid to her by Andrew, which were to be tendered to Christine's attorneys within 14 days of the order.

¶ 10 On October 24, 2014, Christine filed a petition for the trial court to enter an order of indirect civil contempt with sanctions against Holwell because Holwell had not paid any money toward the disgorgement order. On December 18, 2014, in response to the petition, the trial court clarified that the disgorgement order was a judgment and held Holwell in "friendly" contempt of court. On January 13, 2015, Christine filed a motion for sanctions to be imposed against Holwell because the contempt order was not immediately appealable without a penalty. On January 16, 2015, the trial court found Holwell to be in indirect civil contempt and sentenced her to an indeterminate jail sentence, which was to be stayed for 30 days during the pendency of an appeal. A fine of \$10 per day was to be imposed for each day the jail time was stayed. The trial court also indicated that Holwell could purge the contempt by paying \$40,952.61 to Christine's attorneys by January 21, 2015. On January 21, 2015, the trial court found that Holwell failed to purge herself of contempt, and the order of contempt was found to be final and appealable. Holwell appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, Holwell argues that the trial court erred in (1) ordering disgorgement of her fees because it failed to make a specific finding with respect to Christine's ability to pay, the evidence showed Christine had the ability to pay, and Holwell was deprived of notice and an opportunity to be heard; (2) finding the disgorgement order was a judgment because disgorgement orders are temporary advances against the marital estate; and (3) holding Holwell

in indirect civil contempt because it deprived Holwell of her right to notice and a hearing and the trial court failed to inquire into Holwell's ability to comply with the disgorgement order. Holwell also argues that the contempt orders and sanctions entered against her should be vacated because her refusal to comply with the disgorgement order constituted a good-faith effort to determine if the disgorgement was proper.

¶ 13 A court order granting interim attorney fees is not an appealable interlocutory order. *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45. However, when the trial court has issued a contempt sanction for violating an interim fees order, the contempt finding is final and appealable. *Id.* In this case, Holwell timely appealed from the trial court's order finding her in contempt, which was a final and appealable order.

¶ 14 A. The Parties' Inability to Pay Attorney Fees

¶ 15 On appeal, Holwell contends that the trial court erred in ordering disgorgement of attorney fees from her, which had been paid to her by Andrew, because the trial court failed to make a specific finding with respect to Christine's ability to pay and the evidence showed Christine had the ability to pay. The record shows that after a three-day hearing, the trial court specifically indicated in its order of September 29, 2014, that it found neither party had the current ability to pay attorney fees. Thus, we find Holwell's argument that there was no specific finding of Christine's inability to pay attorney fees to be without merit. We, thus, turn our attention to a review of the trial court's finding that neither party had a current ability to pay attorney fees and its award of interim attorney fees by way of disgorgement.

¶ 16 The standard for reviewing a trial court's award of attorney fees is for an abuse of discretion. *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 320 (2001). An abuse of discretion occurs "only when no reasonable person would take the view adopted by the court." *In re*

Marriage of Benkendorf, 252 Ill. App. 3d 429, 433 (1993). This court will not overturn the trial court's decision merely because it may have reached a different decision. *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 36. The “ ‘trial court is in a superior position to assess the credibility of witnesses and weigh the evidence.’ ” *Id.* (quoting *In re April C.*, 326 Ill. App. 3d 245, 257 (2001)).

¶ 17 It is well settled that financial inability to pay attorney fees is not equivalent to having no assets or no income available. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005) (“[f]inancial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability”); *In re Marriage of Marthens*, 215 Ill. App. 3d 590, 599 (1991) (“it [is not] necessary for a spouse seeking such [attorney] fees to divest herself of capital assets or deplete her means of support and thereby undermine her economic stability”); *In re Marriage of Vance*, 2016 IL App (3d) 150717, ¶ 61 (“ ‘financial inability does not mean destitution; the spouse need not exhaust his or her own estate’ ” (quoting *In re Marriage of Los*, 136 Ill. App. 3d 26, 33-34 (1985))).

¶ 18 In this case, the only evidence of Andrew and Christine's assets, income, and expenses was their financial disclosure statements, which neither party disputed. Christine's financial disclosure statement indicated a net monthly income of \$7658.38 and monthly expenses of \$7295.44 (not including a mortgage payment for the marital residence). Andrew's financial disclosure statement indicated a net monthly income of \$3343.56 and monthly expenses of \$4166.66. Thus, the record supports the trial court's finding that neither Andrew nor Christine had access to income for payment of reasonable attorney fees.

¶ 19 Holwell argues that Christine had access to retirement accounts and real estate as a means for paying attorney fees. Section 12-1006 of the Code of Civil Procedure (Code) provides that a

debtor's interest in or right to the assets in a retirement plan is exempt from judgment. 735 ILCS 5/12-1006 (West 2014). Section 15(d) of the Income Withholding for Support Act provides an exception to section 12-1006 of the Code for the collection of child support or spousal maintenance, but there is no such exception for interim attorney fees. 750 ILCS 28/15(d) (West 2014); *Jakubik v. Jakubik*, 208 Ill. App. 3d 119, 125-26 (1991) (holding "only support obligations enjoy the exception from property exemption," and explaining that "Illinois' public policy favors the payment of child support and maintenance obligations from exempt property to promote the support of the family, not the support of the attorneys"); *Radzik*, 2011 IL App (2d) 100374, ¶¶ 61-62 (concluding that the 1997 "leveling of the playing field" amendments to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2008)) "merely overhauled the methods by which and timing of when attorneys may obtain fees" but did not alter the rule that section 12-1006 of the Code exempts retirement accounts from the being used for collection of judgments). We, therefore, find that the trial court did not have discretion to consider Christine's retirement assets when determining her ability to pay attorney fees.

¶ 20 We also find Holwell's argument that the trial court should have ordered Christine to sell real estate assets to pay attorney fees to be without merit. A spouse requesting interim attorney fees does not need to be destitute, and "neither party's estate should be exhausted, nor their economic stability undermined." *Radzik*, 2011 IL App (2d) 100374, ¶ 51 n.4; *Schneider*, 214 Ill. 2d at 174 (finding that "[f]inancial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability"). An inability to pay is determined "relative to the party's standard of living, employment abilities, allocated capital assets, existing indebtedness, and income available from investments and maintenance." *In re*

Marriage of Carr, 221 Ill. App. 3d 609, 612 (1991). Inability to pay “does not require a showing of destitution nor does it require the fee-seeking spouse to divest himself or herself of capital assets.” *In re Marriage of Kennedy*, 214 Ill. App. 3d 849, 861-62 (1991); *In re Marriage of Pond*, 379 Ill. App. 3d 982, 992 (2008) (finding that the spouse clearly demonstrated that she was “unable to pay her attorney fees without invading her capital assets or undermining her financial stability”). Additionally, the trial court may not order a marital asset sold to directly satisfy an obligation for attorney fees. See *In re Marriage of Walsh*, 109 Ill. App. 3d 171, 176-77 (1982); *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶¶ 92, 116 (providing “a court may not order payment of attorney fees directly from the marital estate” and finding that the trial court’s order for the husband’s 401(k) to be liquidated to pay for interim attorney fees was “in contravention of *Radzik* and section 12-1006 of the Code”). Based upon our review of the record, the trial court did not abuse its discretion in finding that Christine did not have the ability to pay attorney fees.

¶ 21 Holwell argues that the parties had an ability to pay their attorney fees as of the date of the hearing because the trial court subsequently issued an order allowing the parties to pay their attorneys from a source other than the home equity line of credit. The order provided that by agreement of the parties, Christine and Andrew could pay their attorneys from funds other than the line of credit, with authorization to do so retroactively to August 15, 2014. However, nothing in the order indicated that either party had the ability to pay attorney fees as of the July hearing dates or that the trial court had made a specific finding as to available income or assets. Thus, we find that the trial court did not abuse its discretion in finding that neither party had the ability to pay attorney fees.

¶ 22

B. Disgorgement of Earned Attorney fees

¶ 23 On appeal, Holwell also argues that the trial court did not have the authority to order disgorgement of attorney fees that were previously paid to her by Andrew for services already rendered. The award of interim attorney fees is governed by section 501(c-1)(3) of the Act. 750 ILCS 5/501(c-1)(3) (West 2014). Pursuant to section 501(c-1)(3), an attorney may only be required to disgorge his or her fees if both parties “lack financial ability or access to assets or income for reasonable attorney[] fees and costs.” 750 ILCS 5/501(c-1)(3) (West 2014). Where there is a lack of financial ability of both parties to pay reasonable attorney fees, the trial court “shall enter an order that allocates available funds for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3) (West 2014). For purposes of disgorgement, it does not matter whether the retainer or interim fees came for the marital estate, from parents, or from others. *In re Marriage of Earlywine*, 2013 IL 114779, ¶¶ 30-31. By analogy to section 510(a) of the Act, any order with respect to disgorgement can only impact available retainer or interim fee funds subsequent to due notice by the moving party of the filing of the petition for interim fees. See 750 ILCS 5/510(a) (West 2014) (providing that a judgment regarding a maintenance or support obligation may be modified only as to “installments accruing subsequent to due notice by the moving party of the filing of the motion for modification”).

¶ 24 Here, the trial court’s order for the disgorgement of funds paid to Holwell by Andrew for legal services and for Holwell to tender those funds to Christine’s attorney was made pursuant to section 501(c-1)(3) of the Act. See 750 ILCS 5/501(c-1)(3) (West 2014). We review the appeal from the award of attorney fees that hinges on the interpretation of a statute *de novo*. See *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶ 15 (finding that the standard of review for the award of attorney fees is *de novo* when the award hinges on issues of statutory construction). As

set forth by the Illinois Supreme Court, the primary objective of statutory interpretation is to give effect to the intent of the legislature, and the most reliable indicator of intent is the language of the statute given its plain, ordinary, and popularly understood meaning. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004). To this end, a court may consider the reason and necessity for the statute and the evils it was intended to remedy, and the court will assume the legislature did not intend an absurd or unjust result. *People v. Pullen*, 192 Ill. 2d 36, 42 (2000).

¶ 25 Looking to the plain language of section 501(c-1)(3) of the Act, trial courts have the authority to “enter an order that allocates *available* funds for each party’s counsel, including retainers or interim payments, or both, previously paid.” (Emphasis added.) 750 ILCS 5/501(c-1)(3) (West 2014). The legislature’s use of the term “available” implies that some funds may be “unavailable.” *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 21 (“reasonable construction must be given to each word, clause, and sentence of a statute, and no term should be rendered superfluous”). We find the most reasonable interpretation of the term “available funds,” as that term relates to previously paid “retainers or interim payments” to an attorney as used in section 501(c-1)(3) of the Act, are those funds that are currently being held for a client that have not yet been earned by the attorney at the time the attorney is given notice of the petition for interim attorney fees and would be “available” to be returned to the client if the attorney was to immediately cease services. Finding otherwise would render the term “available” superfluous because earned funds paid to the attorney may have already been lawfully spent by the attorney and, thus, not “available” due to no fault of the attorney.

¶ 26 We acknowledge that the purpose of interim attorney fees is “to achieve substantial parity in parties’ access to funds.” 750 ILCS 5/102(8), 501(c-1)(3) (West 2014). The interim fee system was created to address the problem of the “‘economically disadvantaged spouse,’” where one

spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to adequately participate in the litigation. *Earlywine*, 2013 IL 114779, ¶ 26 (quoting *In re Minor Child Stella*, 353 Ill. App. 3d 415, 419 (2004), citing *A General Explanation of the "Leveling of the Playing Field" in Divorce Litigation Amendments*, 11 CBA Rec. 32 (1997)). The timely filing of a petition for interim fees would significantly advance the attempt to achieve parity in the parties' access to funds. *Id.*

¶ 27 Additionally, Illinois Rule of Professional Conduct 1.15 (eff. July 1, 2015), which governs an attorney's receipt of advance payment of attorney fees, supports our conclusion that attorney fees that have already been earned are not "available" for disgorgement under section 501(c-1)(3) of the Code. Illinois Rule of Professional Conduct 1.15(a) requires that an attorney hold a client's property that is in the attorney's possession in connection with the representation of that client separate from the attorney's own property. Ill. R. Prof'l Conduct (2010) R. 1.15(a) (eff. July 1, 2015); *Kauffman v. Wrenn*, 2015 IL App (2d) 150285, ¶ 27. Illinois Rule of Professional Conduct 1.15(a) requires attorneys to deposit client funds in a separate interest-bearing or dividend-bearing client trust account and keep "[c]omplete records" of the client's trust account for seven years after termination of the attorney's representation of the client. Ill. R. Prof'l Conduct (2010) R. 1.15(a) (eff. July 1, 2015). Illinois Rule of Professional Conduct 1.15(c) mandates that an attorney deposit into a client trust account those funds received by the attorney to secure payment of legal fees and expenses, with those funds to be withdrawn by the lawyer "only as fees are earned and expenses incurred." Ill. R. Prof'l Conduct (2010) R. 1.15(c) (eff. July 1, 2015). "Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer's general account or other account belonging to the lawyer." *Id.*

¶ 28

Thus, Illinois Rule of Professional Conduct 1.15(c) contemplates various types of “retainers”—legal fees and expenses paid in advance for work that a lawyer will perform in the future. A “general” retainer—paid by a client to the lawyer to ensure the lawyer’s availability during a specific period or for a specific matter—is earned when paid, so that it becomes the property of the lawyer immediately upon payment regardless of whether the lawyer ever actually performs any services for the client. A “security” retainer—paid in advance of services rendered—must be deposited into a client trust account and remains the property of the client until those funds are applied to services rendered or expenses incurred, with any unapplied funds refunded to the client. An “advance payment” retainer is payment to the lawyer for the commitment to provide legal services in the future, with ownership of the funds passing immediately to the lawyer (so that the funds may not be deposited into a client trust account) and with any portion of the advance payment retainer not earned by the lawyer to be refunded to the client upon termination of services. Ill. R. Prof’l Conduct (2010) R. 1.15(c), cmt. 3A-C (eff. July 1, 2015); *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 285-87 (2007). A “fixed fee” (or lump-sum fee) is a fee charged where the lawyer agrees to provide a specific service (e.g., defense of a criminal charge, a real estate closing, or preparation of a will) for a fixed amount and is generally not subject to the obligation to refund any portion to the client, although the lawyer may not charge or collect an unreasonable amount in a fixed fee, as with all fees. Ill. R. Prof’l Conduct (2010) R. 1.15(c), cmt. 3C (eff. July 1, 2015). It is not uncommon for a fixed fee retainer to be utilized in some uncontested prove-ups where there is an agreed settlement. General retainers are unlikely to be utilized for matters under the Act. In the majority of contested proceedings under the Act, a security retainer would likely be the most common type of retainer.

- ¶ 29 "An advance payment retainer should be used sparingly, only when necessary to accomplish a purpose for the client that cannot be accomplished by using a security retainer." Ill. R. Prof'l Conduct (2010) R. 1.15(c), cmt. 3C (eff. July 1, 2015). For example, an advance payment retainer is appropriate where the client wishes to hire counsel to represent him against judgment creditors, where paying a security retainer with the funds remaining the property of the client would subject those funds to the claims of creditors and could make it difficult for the client to hire legal counsel. *Dowling*, 226 Ill. 2d at 293. Both advance payment retainers and security retainers are subject to a lawyer's duty to refund any unearned fees, with the client having an unqualified right to discharge the lawyer. *Id.* If discharged, the lawyer may only retain the amount of money that is reasonable in light of the services performed prior to discharge. *Id.*
- ¶ 30 Any written retainer agreement should clearly define the kind of retainer being paid. *Id.* If the agreement is for a security retainer, the term "security retainer" should be used in the agreement, and the agreement should state that the funds remain the property of the client until used to pay for services rendered and that the funds will be deposited in a client trust account. *Id.* Similarly, an agreement for an advance payment retainer "shall be in a writing signed by the client that uses the term 'advance payment retainer' to describe the retainer." Ill. R. Prof'l Conduct (2010) R. 1.15(c) (eff. July 1, 2015). A written agreement for an advance payment retainer should state (1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client, (2) that the retainer will not be held in a client trust account and will become the property of the lawyer upon payment and that the funds will be deposited into the lawyer's general account, (3) the manner in which the retainer will be applied for services rendered and expenses incurred, (4) that any portion of the retainer not earned or required for expenses will be refunded to the client, and (5) that the client has the option of

employing a “security” retainer, but if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer’s reasons for that condition. Ill. R. Prof’l Conduct (2010) R. 1.15(c) (eff. July 1, 2015). If the parties’ intent is not evidenced from the retainer agreement, the agreement for a retainer will be construed as providing for a security retainer. Ill. R. Prof’l Conduct (2010) R. 1.15, cmt. 3B (eff. July 1, 2015). In the instant case, it appears the retainer fee paid was a security retainer.

¶ 31 In reviewing the various types of retainers, we find that when retainer money is available to be refunded to the client under a retainer agreement in accordance with Illinois Rule of Professional Conduct 1.15 as of the time of due notice by the moving party of the motion for interim attorney fees, those funds are also “available” for disgorgement under section 501(c-1)(3) of the Act. We acknowledge that there is a current conflict among the appellate court districts in Illinois as to how section 501(c-1)(3) of the Act should be interpreted for the purpose of disgorging fees already paid to and earned by the attorney. Compare *In re Marriage of Squire*, 2015 IL App (2d) 150271 (payments made to attorneys for services already rendered may be ordered disgorged), with *In re Marriage of Altman*, 2016 IL App (1st) 143076 (payments made to attorneys for services already rendered may not be ordered disgorged). For the reasons stated in the analysis, we agree with the *Altman* conclusion as to this issue. In *Squire*, 2015 IL App (2d) 150271, the Second District held that payments made to attorneys for services already rendered may be ordered disgorged. In *Altman*, 2016 IL App (1st) 143076, the First District, with one justice dissenting, refused to follow *Squire* and held that payments made to attorneys for services already rendered may not be ordered disgorged. Prior to those opinions, the Illinois Supreme Court held that “advance payment retainers” were subject to disgorgement, with no discussion of whether the disgorged payments were from unearned or earned fees paid to the

attorney for work already completed. *Earlywine*, 2013 IL 114779, ¶ 29 (holding that “advance payment retainers” in dissolution cases are subject to disgorgement pursuant to section 501(c-1)(3) of the Act).

¶ 32 In *Squire*, the husband petitioned for interim attorney fees. *Squire*, 2015 IL App (2d) 150271, ¶ 2. The husband was employed, but his monthly expenses exceeded his monthly income. *Id.* ¶ 3. The wife was unemployed but had paid her attorney a \$120,000 retainer with money borrowed from her mother. *Id.* ¶ 4. The wife’s counsel argued that the money could not be disgorged because the money had already been earned and deposited into counsel’s general account. *Id.* ¶ 5. The trial court ordered the wife’s attorney to pay the husband’s attorney \$60,000. *Id.* ¶¶ 6-7. On appeal, the wife’s attorney argued that section 503 of Act referred to “available” funds and the \$120,000 was not “available” for disgorgement because it had been earned and deposited into counsel’s general account. *Id.* ¶ 9. The Second District appellate court affirmed the trial court’s finding that the funds were available, reasoning that the purpose of the Act was to achieve substantial parity between the parties. *Id.* ¶¶ 20-23. The *Squire* court also reasoned that if it held that earned fees are not subject to disgorgement, the attorney of the financially advantaged spouse could “file voluminous pleadings and motions early in the case, thus ‘earning’ the retainer, while leaving the other spouse to respond to a mountain of paperwork with little chance of obtaining resources to do so properly.” *Id.* ¶ 21. It further found that the Illinois Supreme Court in *Earlywine* had determined that retainers were subject to disgorgement because retainers became a law firm’s property immediately upon payment, so that the term “available” funds as used in section 501(c-1)(3) simply meant that the “funds exist somewhere.” *Id.* ¶ 22. There was no discussion by the *Squire* court of the ethical obligation to refund the unearned portion of the retainer in either a security retainer or advanced payment retainer.

¶ 33 In *Altman*, the wife petitioned for interim attorney fees for \$54,098.68 of already incurred fees and \$25,000 for prospective fees. *Altman*, 2016 IL App (1st) 143076. The trial court found that “both parties lacked sufficient access to assets or income to pay reasonable attorney fees and costs and that the case presented a classic scenario for invocation of the Act’s ‘leveling of the playing field’ provisions.” *Id.* ¶ 10. The trial court, along with other allocations of marital money, ordered the husband’s attorney to disgorge \$16,000 in fees paid by the husband for services already rendered. *Id.* The husband’s attorney appealed the subsequent contempt order after he failed to comply with the disgorgement order. *Id.* ¶ 11. On appeal, the First District noted that some lawyers may be unable to comply with orders to disgorge funds that they have already earned over the past several months without serious financial hardship and that “it would be an anomaly” for a lawyer who had been granted leave to withdraw from a case to be called upon months or years later to write a check to the opposing party’s counsel. *Id.* ¶¶ 34-35. “It is just such an absurd result that our construction of the statute avoids.” *Id.* ¶ 34. The *Altman* court held that funds earned by and paid to a party’s lawyer for services rendered were not “available funds” within the meaning of section 501(c-1)(3), reasoning that it was not the legislature’s intent “that the financial burden of leveling the playing field should be borne, in substantial part, by lawyers who must refund, under pain of contempt, fees they have earned.” *Id.* ¶ 36.

¶ 34 In the current matter, pursuant to our analysis, there was no portion of the retainer paid by Andrew that was “available” for disgorgement because the entirety of the retainer had been applied to services rendered or expenses incurred and had already been earned by Holwell. The parties stipulated that the funds paid or owed to the attorneys were reasonable and necessary. Under our interpretation of section 501(c-1)(3) of the Act, at the time of the notice of the petition for interim attorney fees, there were no unapplied funds in Holwell’s possession that were

“available” to be refunded to Andrew and, therefore, no funds were “available” for disgorgement.¹ As to the determination of whether disgorgement of attorney fees pursuant to section 501(c-1)(3) of the Act was proper, we hold that a trial court may not require payment of interim attorney fees by way of disgorgement of retainer funds previously paid to an attorney when, prior to the attorney receiving notice of the petition for interim fees, the attorney has already earned those funds and the attorney is under no obligation to otherwise return those funds to the client. Thus, we conclude that the Holwell’s earned attorney fees, which the parties had stipulated were reasonable and necessary, were not “available funds” within the meaning of section 501(c-1)(3) of the Act. Accordingly, we reverse the trial court’s disgorgement order.

¶ 35

C. Contempt Order

¶ 36

Because the disgorgement order was invalid and was the underlying basis for the trial court finding Holwell in contempt, we vacate the contempt finding. See *Radzik*, 2011 IL App (2d) 100374, ¶ 67 (“[i]t is appropriate to vacate a contempt finding on appeal where the refusal to comply with the court’s order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent”).

¶ 37

CONCLUSION

¶ 38

Due to our resolution of the foregoing issues, we need not address the other arguments by the parties on appeal. For the foregoing reasons, we reverse the disgorgement order and vacate the contempt orders of the circuit court of Will County and remand for further proceedings.

¶ 39

Disgorgement order reversed; contempt orders vacated; cause remanded.

¹ Due to the lack of clarity and certainty in the record, we are not addressing the disputed \$13,000 previously paid to Boback that was being held by Holwell where there was a dispute as to which party owned the money.

FILED

FEB 06 2017

No. 03-15-0101

THIRD DISTRICT

APPELLATE COURT CLERK

IN THE APPELLATE COURT OF ILLINOIS
THIRD APPELLATE DISTRICT

In Re: The Marriage of:	)	Appeal from the Circuit Court of
	)	Will County, Illinois, Twelfth
CHRISTINE GOESEL,	)	Judicial Circuit
Petitioner-Appellee,)	
	)	Circuit No. 2013 D 107
Vs.)	
)	
ANDREW GOESEL,	)	The Honorable Dinah Archambeault
Respondent-Appellee	)	Judge Presiding
Vs.)	
)	
LAURA HOLWELL,)	
Appellant.)	

PETITION FOR REHEARING

EDWARD R. JAQUAYS
MARTIN RUDMAN
MARK ELLIS
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RECEIVED

FEB 08 2017

THIRD DISTRICT
APPELLATE COURT

A 69

No. 03-15-0101

IN THE APPELLATE COURT OF ILLINOIS
THIRD APPELLATE DISTRICT

In Re: The Marriage of:	)	Appeal from the Circuit Court of
	)	Will County, Illinois, Twelfth
CHRISTINE GOESEL,	)	Judicial Circuit
Petitioner-Appellee,)	
	)	Circuit No. 2013 D 107
Vs.)	
)	
ANDREW GOESEL,	)	The Honorable Dinah Archambeault
Respondent-Appellee	)	Judge Presiding
Vs.)	
)	
LAURA HOLWELL,)	
Appellant.)	

PETITION FOR REHEARING

Petitioner-Appellee, Christine Goesel, (hereafter "Appellee") by her attorneys, The Law Offices of Edward R. Jaquays, for her Petition for Rehearing, states:

1. The Petition for Rehearing is made pursuant to Illinois Supreme Court Rule 367 and is filed within 21 days after the filing of this Court's Judgment in the captioned case.
2. The cases cited in this Motion are:
 - a. In re Marriage of Goesel, 2017 IL App (3d) 150101 (1/24/2017);
 - b. In re Marriage of Johnson, 351 Ill.App.3d 88, 285 Ill.Dec. 841,848 (1st Dist. 2004);
 - c. In re Marriage of Squire, 2015 IL App (2d) 150271, 403 Ill.Dec. 17 (2015);
 - d. In re Marriage of Earlywine, 2013 IL 114779, 374 Ill. Dec. 947 (2013);

e. In re Marriage of Altman and Block, 2016 IL App (1st) 143076, 406 Ill.Dec. 136 (2016)

ARGUMENT

This Court understood In re Marriage of Earlywine, 2013 IL 114779 ¶29 to hold that advance payment retainers were subject to disgorgement, with no discussion of whether the disgorged payments were from unearned or earned fees paid to the attorney for work already completed pursuant to 750 ILCS 5/501(c)(3). (¶31 of Opinion). In discussing In re Marriage of Squire, 2015 IL App (2d) 150271 ¶21,22, this Court's opinion noted that Squire found that Earlywine had determined that retainers were subject to disgorgement because retainers became a law firm's property immediately upon payment, so that the term "available" funds as used in section 501 (C-1)(3) simply meant that the "funds exist somewhere" and that there was no discussion by the Squire Court of the ethical obligation to refund the unearned portion of the retainer in either a security retainer or advanced payment retainer. (Opinion, ¶32) Therefore, this Court held that "there was no portion of the retainer paid by Andrew that was "available" for disgorgement because the entirety of the retainer had been applied to services rendered or expenses incurred and had already been earned by Holwell." (Opinion ¶34)

Appellee filed her Petition for Interim and Prospective Attorney's Fees and costs on June 12, 2014 (R. C708-718; Appellee's Brief, p.3) The parties stipulated to an accounting reflecting the "withdrawal by ANDREW of nearly all of the parties' marital retirement assets from January, 2014 through June, 2014 and that in excess of seventy thousand dollars (\$70,000) of said funds had been paid to ANDREW'S attorney, HOLWELL". (R. C797) (Appellee's Brief, p.6) ANDREW acknowledged that he would have to account for the all funds he withdrew from the parties' marital retirement funds. (R. C14) Accordingly, Attorney LeVine

prepared an accounting of the fund surreptitiously withdrawn without CHRISTINE'S knowledge. (R. C30) Of the total amount paid to HOLWELL in 2014, all but fifteen thousand dollars (\$15,000.00) was paid from April 28, 2014 to the time of the hearing on interim fees in July, 2014. (R. C125) HOLWELL received ten thousand dollars (\$10,000.00) on April 28, 2014, ten thousand dollars (\$10,000.00) on April 29, 2014, and one thousand three hundred eighty-two dollars (\$1,382.00) on April 30, 2014. Further, ten thousand dollars (\$10,000.00) (R. C 35) and an additional thirteen thousand dollars (\$13,000.00) that HOLWELL was "holding" were paid to her subsequent to entry of the injunctive order of June 17, 2014. (R. C145) An additional ten thousand dollars (\$10,000.00) was paid to HOLWELL in June, 2014 which she testified was provided to Attorney LeVine. (R. C 69-70). This factual situation is exactly the kind of situation that Earlywine held the statutory interim fee system was designed to prevent: "where one spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to participate in the litigation". (Earlywine, ¶26) All totaled, HOLWELL received more than forty-four thousand dollars (\$44,000.00) from the marital estate from April 28, 2014 through July, 2014 with more than twenty-three thousand dollars (\$23,000.00) being received subsequent to the filing of the Petition for Interim Fees on June 12, 2014 (C 709).

Furthermore, this Court's opinion failed to consider that "Neither the interim award nor the disgorgement affects an attorney's claim for a final setting of fees... By definition, a disgorgement order is never a final adjudication of the attorney's right to fees - it merely controls the timing of the payment with no effect on whether, or how much, the attorney is entitled to collect at the conclusion of his services. (In re Marriage of Johnson, 812 N.E.2d 661, 285 Ill.Dec.

841,848 (1st Dist. 2004)

Earlywine held the courts primary goal in construing a statute is to give effect to the intention of the legislature and to ascertain that intent “we may properly consider not only the language of the statute, but also the purpose and necessity for the law and the evils sought to be remedied, and the goals to be achieved”. (Earlywine, ¶24)

Thus there are two competing interests at play here, both legitimate.

If the emphasis is to protect the earned retainer fees of lawyers by concentrating on the “available” language of the statute, then the decision in In re Marriage of Altman and Block, 2016, IL App (1st) 143076, 406 Ill.Dec. 136, and the decision in the instant case are correct. And it is not overstating the case that most family law practitioners in this state would prefer that result.

If the emphasis is the protect the disadvantaged spouse so that he or she can participate adequately in the litigation by preventing the other spouse from using his or her greater control of assets or income as a litigation tool (as, it is suggested occurred in the instant case), then the test for disgorgement should not be whether the fees are earned (owned) by the attorney or owned as an advance payment retainer because, as Earlywine held, “To hold otherwise would defeat the express purpose of the Act and render the ‘leveling of the playing field’ provisions powerless. (Earlywine, ¶29)

In interpreting the statute it is respectfully suggested Earlywine’s quotation from the statute clarified the underlying purposes of the “leveling the playing field” legislation which did not point to a disgorgement exception for earned retainer fees:

“This Act shall be liberally construed and applied to promote its underlying purposes,

which are to:... (5) make reasonable provision for spouses and minor children during and after litigation, *including provision for timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs (.)'...."*

(Earlywine, ¶25)

CONCLUSION

For the reasons stated, it is respectfully requested that this court reinstate the trial court's contempt finding and affirm the disgorgement order entered by the trial court.

Respectfully submitted:

CHRISTINE GOESEL, Petitioner-Appellee,

By:



MARK ELLIS, Her Attorney

THE LAW OFFICES OF EDWARD R. JAQUAYS
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ATTORNEY REG. #6281341

CERTIFICATION

I certify that this Petition for Rehearing conforms to the requirements of Rule 341 and 367(a)(b) and (c). The length of the Petition, excluding the Rule 341(d) cover, the Rule 341(c) certificate of compliance and the certificate of service is 5 pages

BY:

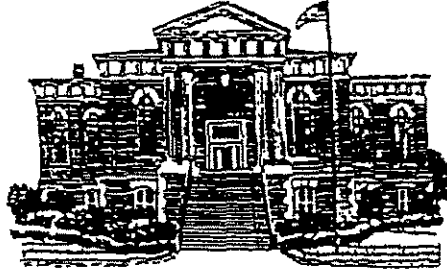


MARK ELLIS, Attorney for Petitioner-Appellee,
CHRISTINE GOESEL

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A-75

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



BARBARA TRUMBO
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

Be it remembered, That, to wit: On the 16th day of February, 2017, certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

3-15-0101

IN RE THE MARRIAGE OF:

Christine Goesel,
Appellee,
and
Andrew Goesel,
Appellant.

APPEAL FROM:
Will County
Hon. Dinah L. Archambeault
13D107

Now on this day this cause coming on for hearing upon the petition for rehearing filed by the Appellee, herein, and the Court having duly considered said petition, as well as the matters and things alleged in support thereof, and being now fully advised in the premises;

It is ordered by the Court that said petition for rehearing be and the same is hereby overruled and denied.

Barbara A. Trumbo
Clerk of the Court

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In re Marriage of Earlywine, 2013 IL 114779 (2013)

996 N.E.2d 642, 374 Ill.Dec. 947

KeyCite Yellow Flag - Negative Treatment
 Declined to Extend by In re Marriage of Altman and Block, Ill.App. 1
 Dist., July 27, 2016

2013 IL 114779
 Supreme Court of Illinois.

In re MARRIAGE OF John
 J. EARLYWINE, Petitioner,
 and
 Jessica A. Earlywine, Respondent (Thomas
 H. James, Contemnor--Appellant).

Docket No. 114779.

Oct. 3, 2013.

Synopsis

Background: In proceedings on husband's petition for dissolution of marriage, wife filed petition for interim attorney fees. The Circuit Court, Stephenson County, Theresa L. Ursin, J., entered turnover order against husband's counsel, ordering him to turn over to half of attorney fees previously paid to him as advance payment retainer, and holding husband's counsel in friendly contempt for purposes of appeal. Counsel appealed. The Appellate Court, 362 Ill.Dec. 215, 972 N.E.2d 1248, affirmed turnover order and vacated contempt order. Counsel petitioned for leave to appeal. Leave was granted.

Holdings: The Supreme Court, Burke, J., held that:

[1] advance payment retainers in dissolution cases are subject to disgorgement pursuant to the "leveling of the playing field" provisions of the Marriage and Dissolution of Marriage Act;

[2] funds in advance payment retainer which were obtained from husband's parents and were not marital property were subject to disgorgement; and

[3] rule of professional conduct setting forth requirements for advance payment retainers was not in conflict with "leveling of the playing field" provisions of Act.

Appellate court judgment affirmed.

Circuit court judgment affirmed in part and vacated in part.

West Headnotes (18)

[1] Divorce

⚡ Briefs

Supreme court would address merits of appeal by husband's counsel from disgorgement order issued in connection with wife's petition for interim attorney fees in dissolution proceeding, despite wife's failure to file brief on appeal, where record was simple and claimed errors were such that issues could be readily decided.

3 Cases that cite this headnote

[2] Attorney and Client

⚡ Retaining fee

"General retainer," also referred to as "true retainer" or "classic retainer," is paid to a lawyer to secure his or her availability during a specified time or for a specified matter, is earned when paid, and immediately becomes the property of the lawyer, whether or not the lawyer ever performs any services.

1 Cases that cite this headnote

[3] Attorney and Client

⚡ Retaining fee

"Security retainer" remains the property of the client until the lawyer applies it to charges for services actually rendered, and must be deposited in a client trust account and kept separate from the lawyer's own funds. Rules of Prof.Conduct, Rule 1.15(a).

1 Cases that cite this headnote

[4] Attorney and Client

⚡ Retaining fee

"Advance payment retainer" consists of a present payment to the lawyer in exchange for

the commitment to provide legal services in the future.

1 Cases that cite this headnote

[5] **Attorney and Client**

⚡ Accounting and Payment to Client; Client's Funds or Property

Attorney and Client

⚡ Retaining fee

Ownership of an advance payment retainer passes to the lawyer immediately upon payment; accordingly, the funds must be deposited in the lawyer's general account and may not be placed in a client's trust account due to the prohibition against commingling funds.

1 Cases that cite this headnote

[6] **Attorney and Client**

⚡ Retaining fee

Advance payment retainers should be used only sparingly, when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer.

2 Cases that cite this headnote

[7] **Attorney and Client**

⚡ Retaining fee

Guiding principle in a retainer agreement should be the protection of the client's interests; in the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account. Rules of Prof. Conduct, Rule 1.15(a).

1 Cases that cite this headnote

[8] **Attorney and Client**

⚡ Retaining fee

Advance payment retainers may properly be utilized in cases in which the use of a security retainer would disadvantage the client because the funds remain the client's property

and are subject to the claims of the client's creditors; under such circumstances, the client may have difficulty hiring legal counsel if the attorney fees cannot be shielded from those with legal claims to the client's property. Rules of Prof. Conduct, Rule 1.15(c).

2 Cases that cite this headnote

[9] **Attorney and Client**

⚡ Deductions and forfeitures

Where the court finds that both parties to a dissolution action lack the financial ability or access to assets or income to pay reasonable attorney fees and costs, the court may order disgorgement of fees already paid to an attorney. S.H.A. 750 ILCS 5/501(c).

3 Cases that cite this headnote

[10] **Divorce**

⚡ Counsel fees, costs and allowances

Whether funds held in an advance payment retainer are subject to disgorgement as part of an interim fee award in a dissolution proceeding is an issue of law, which is subject to de novo review on appeal. S.H.A. 750 ILCS 5/501(c).

1 Cases that cite this headnote

[11] **Attorney and Client**

⚡ Retaining fee

For purposes of determining whether funds held in advance payment retainer set up specifically to circumvent "leveling of the playing field" rules set forth in Marriage and Dissolution of Marriage Act were subject to disgorgement as part of interim fee award in dissolution proceedings, advance payment retainer directly undermined policy embodied in Marriage and Dissolution of Marriage Act of precluding an economically advantaged spouse from blocking economically disadvantaged spouse from access to funds for litigation, by allowing one spouse to stockpile funds in advance

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payment retainer held by his attorney. S.H.A. 750 ILCS 5/501(c).

1 Cases that cite this headnote

[12] Attorney and Client

⌘ Retaining fee

Advance payment retainers in dissolution cases are subject to disgorgement pursuant to the "leveling of the playing field" provisions of the Marriage and Dissolution of Marriage Act. S.H.A. 750 ILCS 5/501(c-1)(3).

3 Cases that cite this headnote

[13] Attorney and Client

⌘ Retaining fee

Funds in advance payment retainer which were obtained from husband's parents and were not marital property were subject to disgorgement pursuant to "leveling of the playing field" rules set forth in Marriage and Dissolution of Marriage Act; source of funds did not shield funds from disgorgement order, as statute specifically contemplated that retainers paid "on behalf of" a party were subject to disgorgement. S.H.A. 750 ILCS 5/501(c-1)(1).

3 Cases that cite this headnote

[14] Attorney and Client

⌘ Retaining fee

For purposes of a disgorgement order in a dissolution action pursuant to the "leveling of the playing field" provisions of the Marriage and Dissolution of Marriage Act in connection with an interim fee award, it is irrelevant whether a party's funds for attorney fees derived from marital or nonmarital property. S.H.A. 750 ILCS 5/501(c-1)(1)(A).

1 Cases that cite this headnote

[15] Constitutional Law

⌘ Remedies and procedure in general

State supreme court possesses rulemaking authority to regulate the trial of cases, and

pursuant to the separation of powers doctrine, where a statute conflicts with a supreme court rule, it infringes upon the power of the judiciary, and the rule must prevail. S.H.A. Const. Art. 2, § 1.

Cases that cite this headnote

[16] Constitutional Law

⌘ Conditions, Limitations, and Other Restrictions on Access and Remedies

Constitutional Law

⌘ Practice of law

Constitutional Law

⌘ Attorney fees

Legislature may impose reasonable limitations and conditions upon access to the courts, and has broad powers to regulate attorney fees and the attorney-client relationship, so long as a statute does not purport to limit the scope of a court's authority over those matters. S.H.A. Const. Art. 2, § 1.

Cases that cite this headnote

[17] Attorney and Client

⌘ Retaining fee

Constitutional Law

⌘ Attorney fees

For purposes of separation of powers analysis, rule of professional conduct setting forth requirements for advance payment retainers was not in conflict with "leveling of the playing field" provisions of the Marriage and Dissolution of Marriage Act, as applied in dissolution action to order disgorgement of funds held by husband's counsel pursuant to advance payment retainer; rule required that retainer agreement state special purpose and explain advantage to client of such form of retainer, and statute provided for awards of interim attorney fees and costs and left to discretion of court whether, and in what amount, attorney fees might be awarded. S.H.A. Const. Art. 2, § 1; S.H.A. 750 ILCS 5/501(c-1); Rules of Prof. Conduct, Rule 1.15.

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3 Cases that cite this headnote

[18] Attorney and Client

Retaining fee

Constitutional Law

Particular Constitutional Provisions in General

Husband's attorney in dissolution proceeding lacked standing to argue that disgorgement order entered pursuant to "leveling of the playing field" rules set forth in Marriage and Dissolution of Marriage Act violated husband's First Amendment right of access to the courts and right to retain counsel, as counsel's rights were not allegedly being infringed. U.S.C.A. Const.Amend. 1; S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

Attorneys and Law Firms

*644 Thomas H. James, of Forrester, appellant *pro se*.

No appearance for appellee.

Paul L. Feinstein and Michael G. DiDomenico, of Chicago, *amici curiae*.

*645 Justice BURKE delivered the judgment of the court, with opinion.

Chief Justice KILBRIDE and Justices FREEMAN, THOMAS, GARMAN, KARMEIER, and THEIS concurred in the judgment and opinion.

****950 OPINION**

¶ 1 In the course of dissolution of marriage proceedings, respondent, Jessica A. Earlywine, filed a petition for interim attorney fees pursuant to the "leveling of the playing field" provisions in the Illinois Marriage and Dissolution of Marriage Act (Act). See 750 ILCS 5/501(c-1) (West 2010). The circuit court of Stephenson County found that neither respondent nor petitioner, John J.

Earlywine, had the financial ability or resources to pay their respective attorney fees and costs. Pursuant to section 501(c-1)(3) of the Act, the court ordered petitioner's attorney, Thomas James, to turn over, or disgorge, to respondent's attorney half the fees previously paid to him. The court held James in "friendly" contempt at his request so that he could appeal the turnover order. On appeal, James argued that the fees were not subject to disgorgement because they were held in an advance payment retainer and became his property upon payment. The appellate court rejected James' argument, affirmed the turnover order, and vacated the order of contempt. 2012 IL App (2d) 110730, 362 Ill.Dec. 215, 972 N.E.2d 1248. We now affirm the appellate court.

¶ 2 Background

¶ 3 Petitioner filed his petition for dissolution of marriage on August 24, 2010. The parties had one son born of the marriage who was three years old at the time of filing. On November 1, 2010, respondent, through her attorney Richard Haime, filed a petition requesting interim attorney fees in the amount of \$5,000. Respondent asked the court to order petitioner to pay her fees or to order disgorgement of fees previously paid to petitioner's attorney. In her affidavit accompanying the petition, respondent stated that she was unemployed and had no assets or cash to pay her attorney fees. In response, petitioner stated that he had been unemployed for some time, had no money to retain counsel, and that his parents had paid his legal bills.

¶ 4 Both parties submitted financial disclosure affidavits. Respondent stated that she had earned \$300 from employment in 2010 and owed \$4,600 on a car. Petitioner stated that he was employed sporadically and had received some unemployment payments. Petitioner listed debts totaling more than \$66,000. He stated further that he owed his parents \$8,750 for legal fees paid to his attorney on his behalf.

¶ 5 Following a hearing, the trial court issued a memorandum opinion and order on April 26, 2011. The court found that there were substantial debts from the marriage which neither party was able to pay. The court further found that respondent's requested interim fees were reasonable due to the anticipated complexity of the case, including a custody evaluation. Pursuant to section

501(c-1)(3) of the Act, the court found that neither party had the financial ability or access to assets or income to pay their respective attorney fees, nor was petitioner able to pay any of respondent's fees. Accordingly, the court ordered James to turn over to Haime a portion of the fees paid to him by petitioner's parents, in the amount of \$4,000.

¶ 6 Petitioner filed a motion to reconsider the disgorgement order, arguing that because the attorney fees were placed in an advance payment retainer, they were not subject to a disgorgement order by the trial court. Attached to the motion was a copy of the attorney-client agreement between **951 *646 James and petitioner, which indicates that petitioner agreed that all fees paid to James would be considered an advance payment retainer, as that term is used in *Dowling v. Chicago Options Associates, Inc.*, 226 Ill.2d 277, 314 Ill.Dec. 725, 875 N.E.2d 1012 (2007). The agreement sets forth the requirements of the advance payment retainer in compliance with Rule 1.15 of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010). Relevant to this appeal, the agreement identifies the "special purpose" for the advance payment retainer as follows:

"(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client: In the case of family law with obligors or putative obligors, regardless of the source of obligation, the [Illinois Marriage and Dissolution of Marriage Act] can cause a court order to issue which will divide attorney retention funds which are held in an attorney's trust account because such funds are owned by the client and thus are part of the marital estate. This division or allocation is in a judge's discretion that provides the authority to allocate all of said funds should such facts portend such a result. The use of the 'advance payment retainer' avoids the problem of having to pay your counsel twice due to a fee allocation order albeit a Court may still order such a payment from the client directly. The benefit of the advanced payment retainer is

that it avoids what can at times be the financial adversity with the attorney which you have hired due to a fee allocation order's mandating allocation from an attorney's trust account to the party on the other side of the lawsuit."

¶ 7 In support of the motion to reconsider, petitioner's mother, Joyce M. Earlywine, submitted an affidavit stating that she, her fiancé, petitioner's father, and petitioner's father's wife had paid all of the attorney fees to petitioner's attorney on his behalf.

¶ 8 The trial court issued a memorandum opinion and order on May 25, 2011, denying the motion to reconsider the turnover order. The court made the following findings:

"The stated policy of 501(c-1)(3) is to achieve 'substantial parity between the parties.' That section further expressly designates 'retainers * * * previously paid' as a source for disgorgement * * *. Public policy allowing divorce litigants to participate equally should override the advance payment retainer device of protecting the fees of one side. To allow John to shelter the fees paid on his behalf as an advance payment retainer defeats the purpose of the 'substantial parity' provisions of the Illinois Marriage and Dissolution of Marriage Act. Divorce court is a court of equity, in which the court has a substantial amount of discretion * * *. This court does not find that the findings of *Dowling*, as cited by John, apply or were meant to apply to divorce cases."

¶ 9 James filed a motion for an entry of friendly contempt in connection with the fee disgorgement order. On June 21, 2011, the trial court granted the motion and fined James \$50. James subsequently filed his notice of appeal.

¶ 10 The appellate court affirmed the trial court's turnover order and vacated the contempt order. 2012 IL App (2d) 110730, 362 Ill.Dec. 215, 972 N.E.2d 1248. The court held

that the plain language of section 501(c-1)(3) of the Act allows a trial court to order disgorgement of retainers previously paid to an attorney in the event that the court finds that both parties lack the financial ability and resources to pay reasonable attorney fees and costs. *647

**952 *Id.* ¶¶ 19–21. The legislature's use of the general term “retainers,” in the court's opinion, encompassed an advance payment retainer. *Id.* ¶ 21. The court further held that allowing a party to avoid disgorgement through use of an advance payment retainer would defeat the purpose of the “leveling the playing field” provisions in section 501(c-1). *Id.* ¶¶ 15, 22.

¶ 11 This court allowed James' petition for leave to appeal pursuant to Illinois Supreme Court Rule 315 (eff. Feb. 26, 2010). We granted leave to matrimonial lawyers Paul L. Feinstein and Michael G. DiDomenico to file a brief *amicus curiae* in support of James. See Ill. S.Ct. R. 345 (eff. Sept. 20, 2010).

¶ 12 Analysis

[1] ¶ 13 At the outset, we note that no appellee's brief has been filed in this case. Nonetheless, we will address the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133, 345 N.E.2d 493 (1976) (in the absence of an appellee's brief, a reviewing court should address an appeal on the merits where the record is simple and the claimed errors are such that the court may easily decide the issues raised by the appellant).

¶ 14 At issue is whether the trial court had discretion to order James to turn over to Haine funds held in an advance payment retainer. James contends that because the funds in the advance payment retainer became his property upon payment and were placed in his general account, they were not subject to disgorgement under the leveling of the playing field provisions in the Act.

[2] [3] ¶ 15 This court first recognized advance payment retainers in *Dowling*, which involved a judgment creditor who sought to satisfy a judgment by accessing funds held in an advance payment retainer by the debtor's attorney. *Dowling*, 226 Ill.2d 277, 314 Ill.Dec. 725, 875 N.E.2d 1012. We held that the retainer was not subject to turnover to the judgment creditor because it was the property of the debtor's attorney. *Id.* at 298, 314 Ill.Dec. 725,

875 N.E.2d 1012. Prior to *Dowling*, only two types of retainers were explicitly allowed in Illinois. *Id.* at 292, 314 Ill.Dec. 725, 875 N.E.2d 1012. The first type, a “general,” “true,” or “classic” retainer, is paid to a lawyer to secure his or her availability during a specified time or for a specified matter. Such a retainer is earned when paid and immediately becomes the property of the lawyer, whether or not the lawyer ever performs any services. *Id.* at 286, 314 Ill.Dec. 725, 875 N.E.2d 1012. The second type of retainer is a security retainer, which remains the property of the client until the lawyer applies it to charges for services actually rendered. Pursuant to the Illinois Rules of Professional Conduct, a security retainer must be deposited in a client trust account and kept separate from the lawyer's own funds. *Id.* (citing Ill. R. Prof. Conduct R. 1.15(a)).

[4] [5] ¶ 16 In contrast to a general retainer or a security retainer, an advance payment retainer “consists of a present payment to the lawyer in exchange for the commitment to provide legal services in the future.” *Dowling*, 226 Ill.2d at 287, 314 Ill.Dec. 725, 875 N.E.2d 1012. Ownership of an advance payment retainer passes to the lawyer immediately upon payment. Accordingly, the funds must be deposited in the lawyer's general account and may not be placed in a client's trust account due to the prohibition against commingling funds. *Id.*

[6] [7] ¶ 17 Although this court recognized advance payment retainers as one of three retainers available to lawyers and clients in Illinois, we cautioned that such **953 *648 retainers “should be used only sparingly, when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer.” *Dowling*, 226 Ill.2d at 293, 314 Ill.Dec. 725, 875 N.E.2d 1012. As we explained, in most cases a security retainer is the best vehicle to protect the client's funds:

“The guiding principle, however, should be the protection of the client's interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, pursuant to Rule 1.15. Separating a client's funds from those of the lawyer protects the client's retainer from the lawyer's creditors. [Citation.] Commingling of a lawyer's funds with those of a client has often been the first step toward conversion of a client's funds. In addition, commingling of a client's and the lawyer's funds presents a risk of loss in the event

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of the lawyer's death. [Citation.]” *Id.* at 292–93, 314 Ill.Dec. 725, 875 N.E.2d 1012.

[8] ¶ 18 Examples of appropriate uses of advance payment retainers include the circumstances in *Dowling*, in which a debtor hired counsel to represent him in proceedings against a judgment creditor; a criminal defendant whose property remains subject to forfeiture; and a debtor in a bankruptcy case. *Id.* at 288–89, 293, 314 Ill.Dec. 725, 875 N.E.2d 1012. In each of these examples, a security retainer would disadvantage the client because the funds remain the client's property and are subject to the claims of the client's creditors. Thus, the client may have difficulty hiring legal counsel if the attorney fees cannot be shielded from those with legal claims to the client's property. *Id.*

¶ 19 Subsequent to our decision in *Dowling*, this court repealed the former Illinois Rules of Professional Conduct and replaced them with the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010). Subsection (c) of Rule 1.15 of the new rules sets forth the requirements for advance payment retainers consistent with those prescribed in *Dowling*. Ill. R. Prof. Conduct (2010) R. 1.15(c) (eff. Jan. 1, 2010).

¶ 20 Relying on *Dowling* and Illinois Rule of Professional Conduct 1.15, James contends that the public policy of Illinois is to recognize the freedom of a client to contract for an advance payment retainer if it is for the client's benefit. The benefit of an advance payment retainer in this context, according to James, is to avoid exposure of the client's funds to the “obligee” spouse and her counsel. He argues that divorce and family law cases are similar to debtor-creditor cases, in that the “leveling of the playing field” rules in the Marriage Act make it difficult for a client to secure legal representation in the absence of an advance payment retainer. Thus, James contends that a party to a dissolution case ought to be able to use an advance payment retainer to shield attorney fees from being turned over to opposing counsel. For the following reasons, we disagree.

¶ 21 First, James' use of an advance payment retainer to “protect” his client's funds from turnover undermines the purpose of the leveling of the playing field rules in the Act and renders these rules a nullity. On June 1, 1997, the legislature amended the Act, substantially rewriting the rules with regard to attorney fees in marriage and

custody cases. See Pub. Act 89–712 (eff. June 1, 1997); *In re Marriage of Beyer*, 324 Ill.App.3d 305, 310, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001). These amendments are commonly referred to as the “leveling of the playing field” rules. See *A General Explanation of the “Leveling of the Playing Field” in Divorce Litigation* **954 *649 Amendments, 11 CBA Rec. 32 (1997). Among other things, the amendments added a separate provision, section 501(c–1), governing “temporary” or “interim” fee awards. *Id.* “[I]nterim attorney's fees and costs” are defined by the statute 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, for reasonable fees and costs either already incurred or to be incurred.” 750 ILCS 5/501(c–1) (West 2010).

¶ 22 The statute allows a court, after consideration of relevant factors, to order a party to pay the petitioning party's interim attorney fees “in an amount necessary to enable the petitioning party to participate adequately in the litigation.” 750 ILCS 5/501(c–1)(3) (West 2010). Prior to doing so, the court must find that the petitioning party lacks sufficient access to assets or income to pay reasonable attorney fees, and that the other party has the ability to pay the fees of the petitioning party. *Id.*

[9] ¶ 23 Where, as in this case, the court finds that *both* parties lack the financial ability or access to assets or income to pay reasonable attorney fees and costs, the court may order disgorgement of fees already paid to an attorney. Specifically, “the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, *including retainers* or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” (Emphasis added.) *Id.* The order terminates at the time the final judgment is entered. 750 ILCS 5/501(d)(3) (West 2010).

[10] ¶ 24 Whether funds held in an advance payment retainer are subject to disgorgement as part of an interim fee award is an issue of law, which is subject to *de novo* review. See *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶ 15, 365 Ill.Dec. 802, 979 N.E.2d 406 (quoting *In re Marriage of Beyer*, 324 Ill.App.3d 305, 309, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001)). Our primary goal in construing a statute is to give effect to the intention of the legislature. *People v. Collins*, 214 Ill.2d 206, 214, 291 Ill.Dec. 686, 824 N.E.2d 262 (2005). To ascertain that intent, “we may properly consider not only the

language of the statute, but also the purpose and necessity for the law, and evils sought to be remedied, and goals to be achieved.' " *Id.* (quoting *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 280, 271 Ill.Dec. 881, 786 N.E.2d 139 (2003)). The statutory language is the best indicator of the legislative intent. *Id.*

¶ 25 In enacting section 501(c-1), the legislature did not specify what types of "retainers" previously paid to an attorney are subject to disgorgement. However, the policy underlying the interim fee provisions was clearly spelled out by the legislature. As part of the "leveling of the playing field" amendments, the following italicized language was added to the underlying purposes of the Act:

"This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

* * *

(5) make reasonable provision for spouses and minor children during and after litigation, *including provision for timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs [.]* " (Emphasis added.) 750 ILCS 5/102(5) (West 2010).

¶ 26 Other courts and commentators have expanded on the purposes and goals of the interim fee provisions in the Act. "In enacting section 501(c-1), the legislature's goal was to level the playing field by equalizing the parties' litigation resources where it is shown that one party can pay and the other cannot." **955 *650 *In re Marriage of Beyer*, 324 Ill.App.3d 305, 315, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001) (citing *In re Marriage of DeLarco*, 313 Ill.App.3d 107, 113, 245 Ill.Dec. 921, 728 N.E.2d 1278 (2000)). "[The] new interim fee system was an attempt to address the problem of the 'economically disadvantaged spouse,' where one spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to participate adequately in the litigation." *In re Minor Child Stella*, 353 Ill.App.3d 415, 419, 288 Ill.Dec. 889, 818 N.E.2d 824 (2004) (citing *A General Explanation of the "Leveling of the Playing Field" in Divorce Litigation Amendments*, 11 CBA Rec. 32 (1997)). Prior to the amendments, "[divorce] cases frequently entailed strenuous efforts to 'block' access by the other side to funds for litigation." *Id.* All too frequently, the "economically advantaged spouse" would apply his or her greater access to income or assets as a tool, making it difficult for the disadvantaged spouse to retain

counsel or otherwise participate in litigation. *Id.* Thus, the new interim fee system was designed to ameliorate this problem by streamlining the process for obtaining interim attorney fees. *Id.*

[11] ¶ 27 It is clear from the attorney-client agreement that the advance payment retainer in this case was set up specifically to circumvent the "leveling of the playing field" rules set forth in the Act. To allow attorney fees to be shielded in this manner would directly undermine the policies set forth above and would strip the statute of its power. If we were to accept James' argument, an economically advantaged spouse could obtain an unfair advantage in any dissolution case simply by stockpiling funds in an advance payment retainer held by his or her attorney.

¶ 28 Furthermore, the reasons expressed in *Dowling* for allowing advance payment retainers are not pertinent to a dissolution case in which one or both parties lacks the financial ability or access to funds to pay their attorneys. In *Dowling*, we held that advance payment retainers should be used "sparingly" and only when necessary to accomplish a special purpose for the client which could not be accomplished with a security retainer. *Dowling*, 226 Ill.2d at 293, 314 Ill.Dec. 725, 875 N.E.2d 1012. In bankruptcy and forfeiture cases, for example, a client may have difficulty hiring legal counsel if the funds for attorney fees are subject to the claims of the client's creditors. See *Dowling*, 226 Ill.2d at 293, 314 Ill.Dec. 725, 875 N.E.2d 1012.

[12] ¶ 29 In divorce cases, however, there are *two* clients, both of whom require access to legal counsel. Shielding assets so that one spouse may easily hire an attorney has the direct effect of making it difficult for the other spouse to hire his or her own attorney. This would defeat the purpose and goals of the Act, which is to enable parties to have equitable access to representation. See Alison G. Turoff, *Recovering Attorney Fees From the Opposing Party in Illinois Divorce Cases*, 92 Ill. B.J. 462, 463 (2004) (the interim fee provision "supplies a valuable tool for the attorney contemplating representing a client who individually would have difficulty paying the fees for a divorce but whose marital estate or spouse could afford such fees"). Accordingly, we hold that advance payment retainers in dissolution cases are subject to disgorgement pursuant to section 501(c-1)(3) of the Act. To hold otherwise would defeat the express purpose of the Act

and render the "leveling of the playing field" provisions powerless.

[13] ¶ 30 To the extent that James argues that the funds in his advance payment retainer were obtained from John's parents and are not marital property, we note that the statute does not distinguish **956 *651 between marital property and nonmarital property for the purpose of disgorgement of attorney fees. The statute contemplates that retainers paid "on behalf of" a spouse may be disgorged. See 750 ILCS 5/501(c-1)(1) (West 2010) (a responsive pleading by the nonpetitioning party must set out the amount of "each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party" (emphasis added)). Furthermore, the statute's repeated references to the parties' "access" to funds for litigation implies that funds may come from any source. See 750 ILCS 5/102(5), 501(c-1)(1)(A), (3) (West 2010).

[14] ¶ 31 We note, too, that one factor to be considered by the trial court in making an interim award is the "alleged non-marital property within access to a party." (Emphasis added.) 750 ILCS 5/501(c-1)(1)(A) (West 2010).¹ Thus, we find it irrelevant for purposes of interim fee awards whether the funds for attorney fees derived from marital or nonmarital property.²

[15] [16] ¶ 32 Alternatively, James argues that section 501(c-1)'s provision for disgorgement of attorney fees irreconcilably conflicts with Rule 1.15 of the Illinois Rules of Professional Conduct. He argues that this alleged conflict must be resolved in favor of the supreme court rule, pursuant to the separation of powers doctrine established in article II, section 1, of the Illinois Constitution of 1970. We are unpersuaded by this argument. Article II, section 1, provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1. "[T]his court possesses rulemaking authority to regulate the trial of cases." *Strukoff v. Strukoff*, 76 Ill.2d 53, 58, 27 Ill.Dec. 762, 389 N.E.2d 1170 (1979). Where a statute conflicts with a supreme court rule, it infringes upon the power of the judiciary, and the rule must prevail. *McAlister v. Schick*, 147 Ill.2d 84, 94, 167 Ill.Dec. 1021, 588 N.E.2d 1151 (1992); *People v. Joseph*, 113 Ill.2d 36, 45, 99 Ill.Dec. 120, 495 N.E.2d 501 (1986). However, **957 *652 "[t]his court has

repeatedly recognized that the legislature may impose reasonable limitations and conditions upon access to the courts." *McAlister*, 147 Ill.2d at 95, 167 Ill.Dec. 1021, 588 N.E.2d 1151. The legislature has broad powers to regulate attorney fees and the attorney-client relationship, so long as a statute does not purport to limit the scope of a court's authority over those matters. *Bernier v. Burris*, 113 Ill.2d 219, 250, 100 Ill.Dec. 585, 497 N.E.2d 763 (1986).

[17] ¶ 33 Upon examination of both Rule 1.15 and section 501(c-1) of the Act, we find no conflict between the rule and the statute. Rule 1.15, which incorporates the *Dowling* decision, sets forth the requirements for advance payment retainers. The rule provides that the attorney-client agreement must state a special purpose and explain why this type of retainer is advantageous to the client. Ill. R. Prof. Conduct (2010) R. 1.15(c) (eff. Jan. 1, 2010). Section 501(c-1), on the other hand, provides for awards of interim attorney fees and costs in proceedings arising under the Illinois Marriage and Dissolution of Marriage Act and sets forth the procedures to be followed by the parties and the court. The statute does not infringe upon the court's authority to regulate court matters. Rather, it leaves to the discretion of the court whether, and in what amount, interim attorney fees may be awarded. We see no direct conflict between the statute and the rule and, thus, no violation of the separation of powers clause in the Illinois Constitution.

[18] ¶ 34 Finally, James argues that the disgorgement order violates the first amendment, in that it infringes upon a client's access to the courts and the right to retain counsel. However, we find that James lacks standing to make this argument because he is not the person whose rights are allegedly being infringed. See *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 798, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) ("constitutional adjudication requires a review of the application of a statute to the conduct of the party before the Court"); *People ex rel. Shockley v. Hoyle*, 338 Ill.App.3d 1046, 1055, 273 Ill.Dec. 850, 789 N.E.2d 1282 (2003) (a party lacks standing to assert the alleged deprivation of another individual's constitutional rights).

¶ 35 Conclusion

¶ 36 For the foregoing reasons, we affirm the judgment of the appellate court affirming the circuit court's turnover

In re Marriage of Earlywine, 2013 IL 114779 (2013)

996 N.E.2d 642, 374 Ill.Dec. 947

order. We also affirm the vacation of the contempt order. See *In re Marriage of Beyer*, 324 Ill.App.3d 305, 321–22, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001) (where a refusal to comply with a court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate a contempt order on appeal).

¶ 37 Appellate court judgment affirmed.

¶ 38 Circuit court judgment affirmed in part and vacated in part.

All Citations

2013 IL 114779, 996 N.E.2d 642, 374 Ill.Dec. 947

Footnotes

- 1 See also *Beyer*, 324 Ill.App.3d at 319, 257 Ill.Dec. 406, 753 N.E.2d 1032 (interim fees pursuant to section 501(c–1) apply to marital and nonmarital property); David H. Hopkins, "Leveling the Playing Field" in *Divorce: Questions and Answers About the New Law*, 85 Ill. B.J. 410, 413 (1997) ("Questions about disgorgement can also arise if a third party—a parent, for example—is funding the divorce litigation for one of the parties. Consistent with the basic principles of these reforms, attorney's fees paid by parents for one spouse might sometimes be ordered disgorged in favor of the other spouse's counsel at an interim fee award hearing. When that possibility exists, it should be considered at the outset, and perhaps the initial retainer should be higher than usual to account for this risk.").
- 2 It is important to note that interim fees are, by definition, temporary. As such, they may be accounted for, as debts or otherwise, upon the final division of the marital estate. See 750 ILCS 5/501(c–1)(2) (West 2010) ("[a]ny assessment of an interim award * * * shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award"); 750 ILCS 5/508 (West 2010); *In re Marriage of Johnson*, 351 Ill.App.3d 88, 97, 285 Ill.Dec. 841, 812 N.E.2d 661 (2004) ("By definition, a disgorgement order is never a final adjudication of the attorney's right to fees—it merely controls the timing of payment, with no effect on whether, or how much, the attorney is entitled to collect at the conclusion of his services"); *Attorney Fees in Domestic Relations Cases: The 2009 Amendments to "Leveling of the Playing Field,"* 98 Ill. B.J. 136, 137 (2010) ("Less judicial caution was appropriate for granting interim fees in pre-decree divorce cases because the trial court could adjust (or 'true up') the ultimate division of the marital estate at the end of the case to account for attorney fee payments by each party.").

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In re Marriage of Squire, 2015 IL App (2d) 150271 (2015)
53 N.E.3d 71, 403 Ill.Dec. 17

KeyCite Yellow Flag - Negative Treatment
Disagreed With by In re Marriage of Goessel, Ill.App. 3 Dist., January 24, 2017

2015 IL App (2d) 150271
Appellate Court of Illinois,
Second District.

In re MARRIAGE OF Michael
SQUIRE, Petitioner–Appellee,
and
Catherine D. Squire, Respondent (The
Stogsdill Law Firm, P.C., Appellant).

No. 2–15–0271.
|
Dec. 16, 2015.

Synopsis

Background: Husband initiated dissolution proceeding. The Circuit Court, Du Page County, Neal W. Cerne, J., entered order finding wife's attorneys in contempt of interim fee order requiring disgorgement of fees to husband's attorneys under "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act. Wife's attorneys appealed.

Holdings: The Appellate Court, Burke, J., held that:

[1] earned retainer fees were subject to disgorgement to level the playing field;

[2] evidence supported trial court's award of fees to husband; and

[3] vacation of contempt finding against wife's attorneys was warranted.

Affirmed in part, vacated in part, and remanded.

West Headnotes (7)

[1] **Divorce**
 ~~¶~~ Construction and operation
Divorce

~~¶~~ Decisions Reviewable

Appellate Court had jurisdiction to consider appeal by wife's attorneys in dissolution proceedings of trial court's order finding attorneys in contempt of interim order requiring disgorgement of funds to husband's attorneys under "leveling of the playing field" provisions of Illinois Marriage and Dissolution of Marriage Act, though the trial court incorporated the contempt order into its dissolution judgment and that judgment was not appealed; order finding attorneys in contempt and imposing sanction was final and appealable, and trial court retained jurisdiction to enforce the contempt order, such that trial court's incorporation of contempt order in dissolution judgment was appropriate under its enforcement power, but it did not nullify the original contempt order or eliminate right to appeal. S.H.A. 750 ILCS 5/501(c-1)(3); Sup.Ct.Rules, Rule 304(b)(5).

Cases that cite this headnote

[2] **Divorce**

~~¶~~ Mootness

Failure by wife's attorneys in dissolution proceedings to appeal trial court's dissolution judgment, which incorporated order finding attorneys in contempt of interim order requiring them to disgorge fees to husband's attorneys under "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act, did not render moot subsequent appeal of contempt order by wife's attorneys; dissolution order expressly reserved issue of final apportionment of attorney fees pending outcome of appeal by wife's attorneys, and thus, reversing the interim fee order would provide wife's attorneys with relief. S.H.A. 750 ILCS 5/501(c-1)(3).

1 Cases that cite this headnote

[3] **Action**

~~¶~~ Moot, hypothetical or abstract questions

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An issue is moot where intervening events preclude a reviewing court from granting effective relief.

Cases that cite this headnote

[4] Attorney and Client

⚡ Retaining fee

Earned retainer fees that wife had borrowed from her mother and paid to her attorneys in dissolution proceedings were subject to disgorgement as contribution to husband's attorney fees under provision in Illinois Marriage and Dissolution of Marriage Act that "retainers or interim payments" could be used to level the playing field, though wife's attorneys alleged that funds had been billed against and deposited into law firm's general account; statute did not limit types of retainers to which it applied, broad construction was necessary to effectuate statute's purpose, and that source of funds was wife's mother rather than marital estate did not matter. S.H.A. 750 ILCS 5/501(c-1)(3).

2 Cases that cite this headnote

[5] Divorce

⚡ Temporary and pendente lite awards

Divorce

⚡ Payment of costs and allowances

"Available," as used in "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act allowing the trial court to allocate available funds for each party's counsel, simply means that the funds exist somewhere. S.H.A. 750 ILCS 5/501(c-1) (3).

1 Cases that cite this headnote

[6] Divorce

⚡ Financial condition and resources in general

Divorce

⚡ Temporary and pendente lite awards

Evidence supported trial court's finding in dissolution proceedings that wife was

advantaged spouse and husband was disadvantaged spouse, so as to support interim award of attorney's fees to husband under "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act to enable him to participate adequately in the litigation, though husband earned six-figure salary and wife was unemployed; husband's monthly outlays exceeded his income while wife was able to borrow large amounts from her mother, statute mandated practical approach rather than mere comparison of gross incomes, and it did not matter that source of income was from relative rather than marital estate. S.H.A. 750 ILCS 5/501(c-1)(3).

Cases that cite this headnote

[7] Divorce

⚡ Temporary and pendente lite awards

Divorce

⚡ Enforcement and contempt

Vacation of contempt finding against wife's attorneys in dissolution proceedings for failing to comply with trial court's order requiring disgorgement of funds to husband's attorneys under "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act was warranted, where wife's attorneys sought "friendly" contempt finding only as means to appeal underlying fee order, and wife's attorneys never willfully disregarded trial court's authority. S.H.A. 750 ILCS 5/501(c-1) (3).

Cases that cite this headnote

Attorneys and Law Firms

*73 Anthony Sammarco, of Stogsdill Law Firm, P.C., of Wheaton, for appellant.

Alison G. Turoff and Vincent J. Stark, both of Kamerlink, Stark, McCormack, Powers & McNicholas, LLC, of Chicago, for appellee.

OPINION

Justice BURKE delivered the judgment of the court, with opinion.

****19 ¶ 1** In this marriage-dissolution action, The Stogsdill Law Firm (Stogsdill), which represents respondent Catherine D. Squire, appeals the trial court's order requiring it to pay \$60,000 to the attorneys for petitioner Michael Squire pursuant to the "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1) (West 2014)). Stogsdill contends that (1) this provision does not apply to an earned retainer, (2) the trial court's order finding that the payment was necessary to level the playing field is against the manifest weight of the evidence, and (3) we should vacate the contempt finding. We vacate the contempt finding but otherwise affirm.

¶ 2 The parties were married in 1993 and had three children together, two of whom are still minors. Petitioner sought to dissolve the marriage in 2013. On June 2, 2014, he filed a petition for interim and prospective attorney fees pursuant to sections 501(c-1) and 508 of the Act, 750 ILCS 5/501(c-1), 508 (West 2014). Petitioner alleged that he lacked funds to pay his attorneys whereas respondent had access to significant funds to pay her lawyers. The petition requested that respondent contribute to petitioner's attorney fees in order to "level the playing field."

¶ 3 The following facts are largely undisputed. The parties had few assets but significant debts. Although petitioner earned a six-figure income, his monthly expenses, which included debt-service payments from the parties' bankruptcy, exceeded his monthly income. He had paid his attorneys \$2,500 and had no additional funds with which to pay them. By the time of the hearing on the contribution petition, he owed his attorneys approximately \$53,000.

¶ 4 Respondent was unemployed. However, she had borrowed approximately \$130,000 from her mother to pay her attorneys. Approximately \$10,000 of that amount went to her previous attorney. The rest was paid to Stogsdill as a retainer.

¶ 5 In response to the petition, Stogsdill argued strenuously that it had already earned the retainer and deposited the money in its general account. Thus, it contended, it could not be required to disgorge fees that were already its property.

¶ 6 The court granted the interim-fee petition. It found that the parties had not been overly litigious, but that they were not "financially secure." Thus, although petitioner earned a "reasonable salary," his net income was insufficient to meet his ****20 *74** obligations and basic living expenses. On the other hand, respondent could borrow money from her mother to pay her attorneys. Citing *In re Marriage of Earlywine*, 2013 IL 114779, 374 Ill.Dec. 947, 996 N.E.2d 642, the court held that it did not matter that the fees already belonged to Stogsdill, or came from a source other than the marital estate. The court ordered Stogsdill to pay petitioner's counsel \$60,000 within 14 days.

¶ 7 The trial court subsequently denied respondent's motions to reconsider and to reopen the proofs and held Stogsdill in "friendly contempt." It ordered Stogsdill to pay the \$60,000 by March 19, 2015, and to pay a \$100 daily fine for each day thereafter that Stogsdill failed to pay. Stogsdill filed a notice of appeal the same day.

¶ 8 Thereafter, the court conducted a trial on the underlying dissolution petition. On May 29, 2015, the court issued an order dissolving the parties' marriage and resolving most of the ancillary issues. The order expressly incorporated the interim attorney-fee order and the order holding Stogsdill in contempt, but reserved the issue of a final apportionment of attorney fees pending this appeal.

¶ 9 On appeal, Stogsdill renews its contention that it cannot be required to disgorge fees that it has already earned. It contends that the statute refers to "available" funds and that fees that it has earned and deposited into its general account are not "available." It further contends that *Earlywine* involved a different type of retainer from that at issue here.

¶ 10 Petitioner filed a motion to dismiss the appeal for lack of jurisdiction or, alternatively, to find it moot. Petitioner argued that, since Stogsdill filed its notice of appeal, the trial court had entered a final judgment of dissolution that expressly incorporated the contempt order and the interim fee order. No one had appealed from that judgment. Petitioner thus argued that both the

contempt order and the interim fee order were superseded by the final judgment such that those orders ceased to exist and, because Stogsdill has not appealed the final judgment, there is no order from which it can appeal. We denied the motion.

¶ 11 In his appellee's brief, petitioner reasserts that either we lack jurisdiction or the appeal is moot. With the benefit of full briefing and additional factual context, we adhere to our previous ruling.

[1] ¶ 12 We first find that we have jurisdiction. Stogsdill appealed from an order finding it in contempt of court and imposing a sanction. Such an order is final and appealable. Ill. S.Ct. R. 304(b)(5) (eff. Feb. 26, 2010); *In re Marriage of Knoerr*, 377 Ill.App.3d 1042, 1044-45, 316 Ill.Dec. 665, 879 N.E.2d 1053 (2007) (citing *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 414-15, 259 N.E.2d 282 (1970)). However, the trial court retained jurisdiction to enforce the order. *In re Marriage of Allen*, 343 Ill.App.3d 410, 412, 278 Ill.Dec. 288, 798 N.E.2d 135 (2003) ("Although the trial court loses jurisdiction to amend a judgment after 30 days from entry, it retains indefinite jurisdiction to enforce the judgment."). Thus, the trial court's incorporating the contempt order in the dissolution judgment was appropriate under its enforcement power, but it did not nullify the original contempt order or eliminate Stogsdill's right to appeal.

[2] [3] ¶ 13 Further, we adhere to our position that the appeal is not moot. An issue is moot where "intervening events preclude a reviewing court from granting effective relief." *Holby v. Montes*, 231 Ill.2d 153, 157, 324 Ill.Dec. 481, 896 N.E.2d 267 (2008). Petitioner asserts that, after Stogsdill filed its notice of appeal, the trial **21 *75 court entered a final judgment dissolving the parties' marriage and incorporating the interim fee order, and no one has appealed from that judgment. Petitioner reasons that we cannot provide Stogsdill effective relief, because, even if we vacated the interim fee order, Stogsdill would have to pay over the same amount pursuant to the final judgment, from which he did not appeal. We disagree.

¶ 14 Contrary to petitioner's representation, the trial court did not enter a final dissolution judgment. Rather than carrying forward the interim order as the final order on the issue of contribution to attorney fees, the dissolution order expressly reserves the issue of a final apportionment of attorney fees pending the outcome of this appeal. See *In re*

Marriage of Dering, 117 Ill.App.3d 620, 628, 72 Ill.Dec. 785, 453 N.E.2d 90 (1983) (order in dissolution action reserving attorney-fee issues was not final and appealable) (citing *In re Marriage of Leopando*, 96 Ill.2d 114, 70 Ill.Dec. 263, 449 N.E.2d 137 (1983)). Far from finally deciding the issue and precluding an appeal as petitioner seems to suggest, the court's order reserves the issue to await our decision. Thus, reversing the interim fee order would provide Stogsdill with relief.

[4] ¶ 15 Turning to the merits, we conclude that the trial court did not err in ordering Stogsdill to disgorge a portion of its retainer. Stogsdill contends that the trial court could not require it to disgorge fees that it had already earned, i.e., billed against. Resolution of this issue requires us to interpret section 501(c-1)(3) of the Act. 750 ILCS 5/501(c-1)(3) (West 2014). That section provides in relevant part:

"In any proceeding under this subsection (c-1), the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to pay reasonable amounts. * * * If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties." *Id.*

¶ 16 Our primary goal in construing a statute is to give effect to the intent of the legislature. *People v. Collins*, 214 Ill.2d 206, 214, 291 Ill.Dec. 686, 824 N.E.2d 262 (2005). To ascertain that intent, "we may properly consider not only the language of the statute, but also the purpose and necessity for the law, and evils sought to be remedied, and goals to be achieved." *Id.* (quoting *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 280, 271 Ill.Dec. 881, 786 N.E.2d 139 (2003)). However, the statutory language remains the best indicator of the legislature's intent. *Earlywine*, 2013 IL 114779, ¶ 24, 374 Ill.Dec. 947, 996 N.E.2d 642.

¶ 17 In *Earlywine*, the court considered whether an advance-payment retainer was subject to disgorgement pursuant to the leveling-of-the-playing-field provisions.

The court noted that, in contrast to a general retainer or a security retainer, an advance-payment retainer is a present payment to a lawyer in exchange for his or her commitment to provide legal services in the future. *Id.* ¶ 16 (quoting *Dowling v. Chicago Options Associates, Inc.*, 226 Ill.2d 277, 287, 314 Ill.Dec. 725, 875 N.E.2d 1012 (2007)). Ownership of an advance- **22 *76 payment retainer passes to the lawyer immediately upon payment and, accordingly, the funds must be deposited into the lawyer's general account rather than the client's trust account, due to the prohibition against commingling funds. *Id.*

¶ 18 The court held that an advance-payment retainer was subject to disgorgement. *Id.* ¶ 29. Further, it did not matter that the funds in question came from the husband's parents rather than the marital estate. *Id.* ¶ 31.

¶ 19 Stogsdill argues that *Earlywine* does not control here, because the retainer at issue was not an advance-payment retainer. Stogsdill suggests that an advance-payment retainer, although approved by the supreme court, is essentially an accounting device to shield the funds from the client's creditors, whereas here Stogsdill had earned its retainer by performing legal services.

¶ 20 Petitioner responds that section 501(c-1)(3) does not limit the types of retainers to which it applies. The statute's plain language says that "retainers or interim payments" may be used for the purpose of leveling the playing field. 750 ILCS 5/501(c-1)(3) (West 2014). *Earlywine* held that a broad construction of this provision was necessary to effectuate its purpose. The court observed:

"In enacting section 501(c-1), the legislature did not specify what types of 'retainers' previously paid to an attorney are subject to disgorgement. However, the policy underlying the interim fee provisions was clearly spelled out by the legislature. As part of the 'leveling of the playing field' amendments, the following italicized language was added to the underlying purposes of the Act:

"This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

* * *

(5) make reasonable provision for spouses and minor children during and after litigation, including provision for timely awards of interim fees

to achieve substantial parity in parties' access to funds for litigation costs[.]" (Emphasis in original.) *Earlywine*, 2013 IL 114779, ¶ 25, 374 Ill.Dec. 947, 996 N.E.2d 642 (quoting 750 ILCS 5/102(5) (West 2010)).

¶ 21 Contrary to Stogsdill's argument, *Earlywine* did not intend to limit its holding to advance-payment retainers. Moreover, accepting Stogsdill's position would completely frustrate the purpose of the statute. The "advantaged spouse" and his or her attorney could effectively block access to funds for the other spouse by the way they categorized their retainer agreement. Moreover, the attorney representing the advantaged spouse would have a strong incentive to earn the fees at an early stage of the litigation. The attorney could file voluminous pleadings and motions early in the case, thus "earning" the retainer, while leaving the other spouse to respond to a mountain of paperwork with little chance of obtaining resources to do so properly.

[5] ¶ 22 Stogsdill focuses on the word "available" in section 501(c-1)(3) and argues that the funds here were not "available" because Stogsdill had already earned the retainer and deposited the funds into its general account. However, *Earlywine* refutes this argument. The court noted that the retainer in question became the law firm's property immediately upon payment and was deposited into the firm's general account, but held that the funds were nevertheless subject to disgorgement. From this, it is clear that "available" as used in the statute simply means that the funds exist somewhere.

*77 **23 [6] ¶ 23 Stogsdill alternatively argues that the trial court's order is against the manifest weight of the evidence. Stogsdill focuses on the unusual circumstances that the husband, who earned a six-figure income, was considered the disadvantaged spouse while the wife, who was unemployed, was considered the advantaged spouse. This was so because the husband's monthly outlays exceeded his income while the wife was able to borrow large amounts from her mother. These findings seem to be based on essentially undisputed evidence. In any event, Stogsdill points to no evidence to call them into question. Moreover, the statute, by directing the court to consider whether "the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to

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53 N.E.3d 71, 403 Ill.Dec. 17

pay reasonable amounts" (750 ILCS 5/501(c-1)(3) (West 2014)), seems to mandate such a practical approach rather than a mere comparison of gross incomes as Stogsdill seems to suggest. Finally, it does not matter that the source of the funds is a relative rather than the marital estate. *Earlywine*, 2013 IL 114779, ¶ 30, 374 Ill.Dec. 947, 996 N.E.2d 642. Thus, the trial court's order is supported by the evidence.

[7] ¶ 24 Stogsdill requests that we vacate the contempt finding. Stogsdill argues that it sought the contempt finding only as a means to appeal the underlying fee order, that it never willfully disregarded the court's authority, and thus that it is appropriate to vacate the contempt finding. We agree.

¶ 25 In *Earlywine*, the court affirmed the appellate court's vacation of the contempt order where it was clear that the contempt was merely a good-faith effort to secure a

definitive interpretation of the issue. *Id.* ¶ 36 (citing *In re Marriage of Beyer*, 324 Ill.App.3d 305, 321-22, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001)). Thus, we vacate the contempt finding.

¶ 26 We thus affirm the order requiring Stogsdill to pay petitioner's counsel \$60,000, but vacate the order finding Stogsdill in contempt, and remand the cause.

¶ 27 Affirmed in part and vacated in part; cause remanded.

Justices HUTCHINSON and ZENOFF concurred in the judgment and opinion.

All Citations

2015 IL App (2d) 150271, 53 N.E.3d 71, 403 Ill.Dec. 17

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2016 IL App (1st) 143076
Appellate Court of Illinois,
First District, Third Division.

In re MARRIAGE OF Heather
ALTMAN, Petitioner-Appellee,
and
Jeffrey BLOCK, Respondent-Appellee
(Steven D. Gerage, Contemnor-Appellant).

No. 1-14-3076.

|
July 27, 2016.

Synopsis

Background: Wife petitioned for interim attorney fees in pending divorce action. The Circuit Court, Cook County, David Haracz, J., ordered husband's former attorney to disgorge fees already earned, to be paid to wife's attorney. When attorney failed to comply, the Circuit Court entered a contempt order against attorney. Attorney appealed.

Holdings: The Appellate Court, Mason, J., held that:

[1] wife's retirement account could not be considered in determining parties' relative ability to pay their interim attorney fees, and

[2] funds earned by husband's former attorney, and not merely in the attorney's trust account as a retainer, were not "available" for disgorgement.

Affirmed in part, reversed in part, and remanded with directions.

Pucinski, J., concurred in part and dissented in part, with opinion.

West Headnotes (21)

[1] Divorce

⚡ Briefs

Even though wife failed to file an appellate brief, Appellate Court would address merits

of attorney's appeal of trial court's contempt finding against him, after he failed to comply with trial court's interim attorney fees order by not disgorging fees paid to him by husband, where trial court found that parties lacked financial ability or access to assets or income to pay for reasonable attorneys fees and costs, and it stood to reason the parties were financially unable to participate in the appeal.

1 Cases that cite this headnote

[2] Divorce

⚡ Nature, scope and effect of decision

A court order awarding interim attorney fees in a divorce proceeding is not an appealable interlocutory order. S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

[3] Divorce

⚡ Finality of determination

Divorce

⚡ Scope, Standards and Extent, in General

When a party appeals from a contempt sanction imposed for violating an interim fee order in a divorce proceeding, the contempt finding is final and appealable and presents to the reviewing court the propriety of the underlying order.

Cases that cite this headnote

[4] Divorce

⚡ Counsel fees, costs and allowances

Construction of the meaning of the Marriage and Dissolution of Marriage Act's "leveling of the playing field" provisions, pertaining to interim attorney fees, is reviewed by the Appellate Court de novo. S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

[5] Statutes

⚡ Intent

A93

In construing a statute, the goal of the court is to effectuate the legislature's intent.

Cases that cite this headnote

[6] **Statutes**

⇒ Purpose and intent

Statutes

⇒ Presumptions, inferences, and burden of proof

In order to effectuate a legislature's intent, a court interpreting a statute may consider the reason and necessity for the statute, and the evils it was intended to remedy, and will assume the legislature did not intend an absurd or unjust result.

Cases that cite this headnote

[7] **Statutes**

⇒ Language and intent, will, purpose, or policy

Any inquiry into legislative intent when interpreting a statute must begin with the language of the statute, which is the surest and most reliable indicator of legislative intent.

Cases that cite this headnote

[8] **Statutes**

⇒ Absent terms; silence; omissions

Statutes

⇒ Exceptions, Limitations, and Conditions

Under the guise of statutory construction, a court may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute.

Cases that cite this headnote

[9] **Statutes**

⇒ Plain language; plain, ordinary, common, or literal meaning

If the language of a statute is clear, its plain and ordinary meaning must be given effect without resorting to other aids of construction.

Cases that cite this headnote

[10] **Divorce**

⇒ Temporary and pendente lite awards

Marriage and Dissolution of Marriage Act permits pre-decree assessments of attorney fees in favor of a petitioning party. S.H.A. 750 ILCS 5/501(c-1)(3).

Cases that cite this headnote

[11] **Divorce**

⇒ Temporary and pendente lite awards

Purpose of interim awards of attorney fees in divorce actions is to address the problem of the economically disadvantaged spouse, where one spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to participate adequately in the litigation. S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

[12] **Divorce**

⇒ Financial condition and resources in general

Divorce

⇒ Temporary and pendente lite awards

Where one spouse has access to assets that enable that party to pay an attorney and the other spouse does not, the Marriage and Dissolution of Marriage Act operates to effect the legislature's goal to level the playing field by equalizing the parties' litigation resources; an interim fee order may direct a spouse to pay the other spouse's attorney fees. S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

[13] **Attorney and Client**

A94

⊖ Contracts for division, and apportionment

Divorce

⊖ Need and Ability to Pay

Divorce

⊖ Temporary and pendente lite awards

Where both spouses in a divorce action lack the ability to pay their attorneys, the Marriage and Dissolution of Marriage Act allows a court to allocate "available funds," including retainers or interim payments already paid to one party's lawyer, between the parties. S.H.A. 750 ILCS 5/501(c-1).

Cases that cite this headnote

[14] Divorce

⊖ Resources of wife in general

Divorce

⊖ Temporary and pendente lite awards

Wife's nonmarital retirement account could not be considered in determining parties' relative ability to pay their interim attorney fees in divorce action, where wife's retirement account, a nonmarital asset, would not be distributed among the parties in final property disposition, and there was no evidence wife had accessed the account for any purpose related to the divorce litigation, or that she had the ability to do so without significant financial penalties. S.H.A. 750 ILCS 5/501(c-1)(1)(A).

Cases that cite this headnote

[15] Exemptions

⊖ Exceptions from exemptions in general

Although child support and maintenance obligations are exceptions that may invade a retirement account, which would otherwise be protected from collection, judgments for attorney fees are not. 735 ILCS 5/12-1006(a); 750 ILCS 28/15(d).

Cases that cite this headnote

[16] Exemptions

⊖ Pension and retirement funds and accounts

Exemptions

⊖ Exceptions from exemptions in general

Retirement plans are exempt from collection of a judgment for attorney fees, even if the fees are incurred to enforce delinquent child support or spousal maintenance obligations in a divorce action. 735 ILCS 5/12-1006(a); 750 ILCS 28/15(d).

Cases that cite this headnote

[17] Attorney and Client

⊖ Deductions and forfeitures

Funds earned by husband's attorney for services already rendered, and not merely a retainer in attorney's trust account, were not "available" for disgorgement pursuant to statute leveling the playing field among parties in a divorce; the use of the word "available" in the statute suggested some of the funds paid to an attorney would not be subject to disgorgement, attorneys practicing in small firms would be unable to disgorge fees already earned and spent, and it would be absurd to attempt to collect previously paid fees from a former attorney who had since withdrawn. S.H.A. 750 ILCS 5/501(c-1)(3).

1 Cases that cite this headnote

[18] Attorney and Client

⊖ Retaining fee

No matter what form a retainer paid to an attorney representing one of the spouses in a divorce action takes, a retainer is subject to statutory provisions regarding payment of spouses' attorney fees in divorce actions. S.H.A. 750 ILCS 5/501(c-1)(3).

Cases that cite this headnote

[19] Divorce

⊖ Calculation and Apportionment in General

Divorce

A95

⚖ Hearing and determination

A trial court may determine the reasonableness of the attorney fees incurred by either party in a divorce action either by conducting an evidentiary hearing on the interim fee petition or in the context of a final fee award. S.H.A. 750 ILCS 5/501(c-1)(1), 5/508.

Cases that cite this headnote

[20] Divorce

⚖ Nature of violation

Husband's former attorney was not in contempt of court for failure to disgorge fees earned in representation of husband during divorce proceedings, even though trial court had ordered the disgorgement pursuant to statute, where Appellate Court concluded such disgorgement was unwarranted. S.H.A. 750 ILCS 5/501(c-1)(3).

1 Cases that cite this headnote

[21] Divorce

⚖ Division and distribution in general

Remand was warranted in divorce case for trial court to determine whether allocation of proceeds of former husband's retirement account was moot.

Cases that cite this headnote

Attorneys and Law Firms

*916 Lake Toback, of Chicago (Michael G. DiDomenico and Sean M. Hamann, of counsel), for appellant.

No brief filed for appellees.

Paul L. Feinstein and Grund & Leavitt PC (Jamie R. Fisher and David Adams, of counsel), for amicus curiae.

OPINION

Presiding Justice MASON delivered the *917 judgment of the court, with opinion. *

**139 ¶ 1 At issue in this appeal are the "leveling of the playing field" provisions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1) (West 2012)) providing for interim attorney fee awards, and, in particular, we are asked to resolve whether, in cases where both parties lack the financial ability or access to assets or income to pay for reasonable attorney fees and costs, (i) one spouse can be required to utilize a nonmarital retirement account to pay attorney fees and (ii) funds already paid to a party's attorney for past services rendered are "available" to be allocated within the meaning of the Act. We agree with the trial court's conclusion that, under the circumstances presented here, a spouse cannot be required to access a nonmarital retirement account to pay interim attorney fees, but determine that sums paid to a law firm for services already rendered are not "available" to be allocated, and, therefore, we reverse the order holding respondent's former counsel in contempt for failing to comply with an order directing him to disgorge sums paid to him by respondent for past services rendered.

¶ 2 Petitioner, Heather Altman, and respondent, Jeffrey Block, were married on September 5, 2005. The parties had triplets born of the marriage who were five years old at the time these proceedings were commenced. Altman originally sought an order of protection against Block on May 14, 2013, and, shortly thereafter, filed her petition for dissolution of marriage. The two proceedings were consolidated.

¶ 3 Both parties were represented by counsel. Altman has been represented throughout by the firm of Bradford & Gordon, LLC. Block was originally represented by Scott Tzinberg, who was granted leave to withdraw on October 3, 2013. Stephen Gerage was then granted leave to appear as substitute counsel. Gerage was granted leave to withdraw on August 14, 2014, and, since that date, Block has proceeded *pro se*.

¶ 4 The record indicates that the proceedings have been "extremely contentious" and the parties "overly litigious," as characterized by the circuit court. There have been numerous pleadings, affidavits and motions filed by both parties relative to the order of protection filed by Altman. Block also sought his own order of

A96 4

protection and further requested that Altman submit to random drug testing as a result of her alleged abuse of prescription drugs. Additionally, both parties have litigated issues regarding temporary custody, visitation and parenting time, and several orders have been entered relative thereto, including, due to problems concerning interaction between Altman and Block, an order that pickups and drop-offs of the children occur at a police station. The court eventually had to order Block to leave the police station parking lot within 10 minutes of dropping off or picking up the children as Altman claimed that he would sit in the parking lot for an extended period of time in an attempt to confront her on these occasions, and she was required to wait in the police station—either alone or with the children—until he left. A children's representative was ultimately appointed to represent the children and has been required to broker disputes relating to what school and summer camps the children should be enrolled in and parenting time over the summer and holidays.

***918 **140 ¶ 5** Substantial discovery was conducted, including interrogatories, notices to produce, subpoenas, and enforcement actions related thereto concerning all issues in this case. The issues of temporary maintenance, child support and household expenses were also hotly contested. Both parties filed various motions regarding these issues. On March 13, 2014, after further motion practice, the court directed Block to liquidate a marital retirement account and, based on Altman's claim that Block had been using this marital asset to fund not only the litigation, but also expenses unrelated to the support of his children and household expenses, directed that the proceeds be held in escrow by Altman's counsel pending further order.

¶ 6 The financial aspect of the case was further complicated as a result of Block's claim that he was laid off from his employment as a principal of a business, where he earned more than \$160,000 per year. In August 2013, Altman filed an emergency petition seeking to require Block to contribute to the parties' household and living expenses. Altman's petition represented that at the end of May 2013, Block was terminated from his employment. The record is not clear as to when Altman learned of Block's termination. Altman is essentially a full-time mother who earns under \$30,000 per year as a rabbi. After a multi-day evidentiary hearing,¹ the trial court set temporary child support of \$1412.12 per month based

on Block's representation that he was currently earning roughly \$4441 per month.

¶ 7 Included in the record is Altman's motion to reconsider that order based on her claim that Block falsified his income and utilized sham entities to hide his true income and assets from Altman and the court. Altman's motion attached documents purporting to show that from May 2013 to January 2014, Block earned income of at least \$215,000, but paid only \$475 in child support. True to form, Block, by then representing himself, filed a counter-motion to reconsider claiming that the court improperly calculated his child support obligation and requesting that it be set at a lower amount. These motions were pending at the time Gerage appealed the contempt finding and so their disposition is not contained in the record.

¶ 8 On February 13, 2014, nine months after Altman first sought an order of protection and after numerous motions and hearings in the consolidated proceedings, some of which are referenced above, Altman filed a petition requesting interim attorney fees in the amount of \$36,864.30 for fees already incurred and \$25,000 for prospective attorney fees and costs. An amended petition was filed on May 13, 2014. By this time, Altman alleged she had incurred fees of \$63,598.68, had paid \$9500 and therefore owed her attorneys \$54,098.68. Altman requested that Block be ordered to pay the fees, or, in the alternative, Gerage be disgorged of the sums that had been previously paid. On June 26, 2014, the children's representative likewise sought an award of fees in the amount of \$5784 for past services and \$2500 in prospective fees.

¶ 9 It was also disclosed that Altman had access to a nonmarital retirement account valued at approximately \$100,000. In response to the interim fee petition, Block contended that Altman should be required to access that account to fund her attorney fees. Block's response represented that he had paid Gerage \$41,500 for services rendered and that he owed his lawyer \$17,112.50. Block also represented that he had paid Tzinberg \$25,000 and claimed to owe him an additional \$18,542.

***919 **141 ¶ 10** Following the hearing on Altman's fee petition, the circuit court issued an order on July 16, 2014, indicating that it took into consideration evidence of the financial circumstances of the parties presented during the prior evidentiary hearings on various motions regarding

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child support and maintenance. The court found that both parties lacked sufficient access to assets or income to pay reasonable attorney fees and costs and that the case presented a classic scenario for invocation of the Act's "leveling of the playing field" provisions. The court recited that Block had paid his attorneys a total of \$66,500, Altman had paid her attorney a total of \$9,500, and, as of June 30, 2014, there was a balance due to Bradford of \$62,000. The court found that Bradford was holding \$35,000 in his client trust account (the remaining proceeds of Block's retirement account), which represented the balance of the parties' marital assets. The order allocated \$33,284 of the \$35,000, with \$25,000 to Bradford, and \$8,284 to the children's representative. The court failed to allocate the remaining \$1716 held in the account. In addition, the court ordered that Gerage disgorge a total of \$16,000 in fees paid for services already rendered and ordered this amount to be paid to Bradford within seven days. The division of the remaining marital assets, plus the disgorgement, resulted in each party's attorney being allocated a total of \$50,500.

¶ 11 After Gerage failed to comply with the order, Altman filed a petition for rule to show cause, which ultimately resulted in the contempt order from which Gerage appeals. We granted leave to the Illinois Chapter, American Academy of Matrimonial Lawyers, to appear as *amicus curiae*.²

¶ 12 ANALYSIS

[1] ¶ 13 At the outset, we note that no appellee's brief has been filed in this case. This is not surprising, of course, given the trial court's determination that both parties lack the financial ability or access to assets or income to pay for reasonable attorney fees and costs. It would stand to reason that they are likewise financially unable to participate in this appeal. Nonetheless, we will address the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133, 345 N.E.2d 493 (1976) (in the absence of an appellee's brief, a reviewing court should address an appeal on the merits where the record is simple and the claimed errors are such that the court may easily decide the issues raised by the appellant); see also *In re Marriage of Earlvine*, 2013 IL 114779, ¶ 13, 374 Ill.Dec. 947, 996 N.E.2d 642.

[2] [3] ¶ 14 "[A] court order awarding interim attorney fees under section 501(c-1) of the Act is not an appealable interlocutory order." *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45, 353 Ill.Dec. 124, 955 N.E.2d 591; 750 ILCS 5/501(c-1) (West 2012). "However, when a party appeals from a contempt sanction imposed for violating an interim fee order, the contempt finding is final and appealable and presents to the reviewing court the propriety of the underlying order." *Radzik*, 2011 IL App (2d) 100374, ¶ 45, 353 Ill.Dec. 124, 955 N.E.2d 591. Gerage timely appealed from the court's contempt sanction imposed for his failure to comply with the order of disgorgement of \$16,000.

¶ 15 On appeal, Gerage contends that the circuit court erred: (1) in determining that both parties lacked access to income or property to pay fees given the existence **142 *920 of Altman's retirement account that she could have accessed in order to pay attorney fees; (2) in interpreting section 501(c-1)(3) to include earned fees already paid to a party's lawyer in the definition of "available funds"; and (3) by failing to allocate 100% of funds held by Bradford. Gerage further argues that if this court upholds the trial court's interpretation of section 501(c-1)(3), the result is unconstitutional in that it violates his substantive and procedural due process rights and impairs contract rights. Finally, Gerage requests that the order of contempt be vacated because he had no other avenue for challenging the court's interim fee order.

[4] ¶ 16 The issues Gerage raises regarding the propriety of the order directing him to disgorge \$16,000 and pay that amount to Altman's lawyers require us to construe the meaning of the Act's "leveling of the playing field" provisions. Thus, we review these issues *de novo*. *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶ 15, 365 Ill.Dec. 802, 979 N.E.2d 406.

[5] [6] [7] [8] [9] ¶ 17 In construing a statute, the goal of the court is to effectuate the legislature's intent. *People v. Pullen*, 192 Ill.2d 36, 42, 248 Ill.Dec. 237, 733 N.E.2d 1235 (2000). To this end, a court may consider the reason and necessity for the statute and the evils it was intended to remedy, and will assume the legislature did not intend an absurd or unjust result. *Id.* Any inquiry into legislative intent, however, must begin with the language of the statute, which is the surest and most reliable indicator of legislative intent. *Id.* Under the guise of construction, a court may not supply omissions,

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remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute. *Superior Structures Co. v. City of Sesser*, 292 Ill.App.3d 848, 852, 226 Ill.Dec. 927, 686 N.E.2d 710 (1997). If the language of the statute is clear, its plain and ordinary meaning must be given effect without resorting to other aids of construction. *In re Marriage of Mitchell*, 181 Ill.2d 169, 173, 229 Ill.Dec. 508, 692 N.E.2d 281 (1998); *In re Marriage of Beyer*, 324 Ill.App.3d 305, 309–10, 257 Ill.Dec. 406, 753 N.E.2d 1032 (2001).

[10] [11] ¶ 18 Section 501(c-1) of the Act permits predecree assessments of attorney fees in favor of a petitioning party. *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 27, 371 Ill.Dec. 249, 989 N.E.2d 1177. The purpose of such interim awards is to “address the problem of the ‘economically disadvantaged spouse,’ where one spouse uses his or her greater control of assets or income as a litigation tool, making it difficult for the disadvantaged spouse to participate adequately in the litigation.” (Internal quotation marks omitted.) *In re Marriage of Rosenbaum-Golden*, 381 Ill.App.3d 65, 74, 319 Ill.Dec. 27, 884 N.E.2d 1272 (2008). This provision was enacted as part of the “leveling of the playing field” amendments in 1997, changing the petition methods and court procedures for interim fee awards in dissolution of marriage actions. *Id.* at 73, 319 Ill.Dec. 27, 884 N.E.2d 1272; see also *Levinson*, 2013 IL App (1st) 121696, ¶ 27, 371 Ill.Dec. 249, 989 N.E.2d 1177.

[12] [13] ¶ 19 Subsection (3) of section 501(c-1) contemplates interim awards where one party is able to pay and the other is not and where both parties are unable to pay:

“In any proceeding under this subsection (c-1), the court * * * shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney’s *921 fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney’s **143 fees and costs lacks sufficient access to assets or income to pay reasonable amounts. * * * If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court * * * shall enter an order that allocates available funds

for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3) (West 2012).

Where one spouse has access to assets that enable that party to pay an attorney and the other spouse does not, section 501(c-1) operates to effect “the legislature’s goal * * * to level the playing field by equalizing the parties’ litigation resources.” *Beyer*, 324 Ill.App.3d at 315, 257 Ill.Dec. 406, 753 N.E.2d 1032. In that instance, an interim fee order may direct a spouse to pay the other spouse’s attorney fees. But where both spouses lack the ability to pay attorneys, the statute allows a court to allocate “available funds,” including retainers or interim payments, already paid to a party’s lawyer.

[14] ¶ 20 The first issue raised by Gerage concerns the trial court’s determination that Altman lacked access to income or property to pay attorney fees. In particular, Gerage maintains that Altman could have utilized her 403(b) retirement account³ to pay her attorneys. In the trial court, Block claimed that the account had a value in excess of \$100,000 and, therefore, Altman had access to an asset that could be used to pay her attorney fees. We disagree.

[15] [16] ¶ 21 Section 12-1006(a) of the Illinois Code of Civil Procedure exempts retirement plans, including individual retirement accounts, from “judgment, attachment, execution, distress for rent, and seizure for the satisfaction of debts.” 735 ILCS 5/12-1006(a) (West 2012). Although child support and maintenance obligations are statutory exceptions to this provision (see 750 ILCS 28/15(d) (West 2012)), judgments for attorney fees are not. *Jakubik v. Jakubik*, 208 Ill.App.3d 119, 123, 152 Ill.Dec. 931, 566 N.E.2d 808 (1991). This is true even if the fees were incurred to enforce delinquent support or maintenance obligations. *Id.* at 126, 152 Ill.Dec. 931, 566 N.E.2d 808 (“Illinois’s public policy favors the payment of child support and maintenance obligations from exempt property to promote the support of the family, not the support of attorneys. Indeed, payment of attorney fees from sources held exempt for family obligations could deplete such resources so as to leave no assets available to satisfy the support obligation itself.”).

¶ 22 Consistent with *Jakubik*, we have previously determined that one spouse cannot be ordered to liquidate

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and distribute the proceeds of an individual retirement account to satisfy an interim attorney fee award. *Radzik*, 2011 IL App (2d) 100374, ¶ 62, 353 Ill.Dec. 124, 955 N.E.2d 591. But the question here is somewhat different. Gerage does not contend that Altman could be ordered to liquidate her retirement account to pay her attorneys (or him, for that matter); rather, he contends that Altman's retirement account should have been considered an asset that was available to her, thus precluding a **144 *922 finding that she lacked access to assets to pay reasonable attorney fees.

¶ 23 On this point, Gerage cites our supreme court's decision in *Earlywine*, 2013 IL 114779, 374 Ill.Dec. 947, 996 N.E.2d 642. Both parties in *Earlywine* represented that they lacked funds to pay their attorneys, but the husband's parents had paid \$8750 on his behalf to his attorney. (We discuss in more detail below the significance of the case as it pertains to the issue of disgorgement of earned fees.) The attorney to whom the funds had been paid, like counsel here, was held in contempt when he refused to turn over half the funds to the wife's counsel. On appeal, he argued that the source of the funds—nonmarital funds advanced by his client's parents—was relevant. The supreme court disagreed, stating that “the statute does not distinguish between marital property and nonmarital property for the purpose of disgorgement of attorney fees. The statute contemplates that retainers paid ‘on behalf of’ a spouse may be disgorged.” *Id.* ¶ 30. Gerage reads *Earlywine* as making every asset—no matter the source—fair game in assessing a party's ability to pay attorney fees.

¶ 24 But context matters and we believe the court's analysis in *Radzik* applies here. In *Radzik*, prior to the order directing him to turn over the proceeds of his individual retirement account to his wife to satisfy the interim fee award, the husband had not accessed or borrowed against the account to pay his lawyers. Finding this significant, the court commented:

“While the IRA is an asset that will be distributed in the final disposition of the marital estate, respondent was not during the litigation drawing any funds from the IRA. In other words, where the IRA benefitted *neither* party in the litigation, forcing its liquidation and distribution did not serve to counter respondent's use of an asset because, by virtue of the account's very nature, respondent could have no expectation of accessing it.” *Radzik*, 2011 IL App (2d) 100374, ¶ 63, 353 Ill.Dec. 124, 955 N.E.2d 591.

¶ 25 Applied here, *Radzik*'s reasoning compels us to reject Gerage's argument that the existence of Altman's nonmarital retirement account was relevant for purposes of assessing her ability to pay fees. First, unlike the IRA in *Radzik*, Altman's retirement account is a nonmarital asset that will not be distributed in the final property disposition in this case. Second, and more importantly, there is no evidence that Altman has accessed the account for any purpose related to the litigation or that she has any ability to do so, at least not without significant financial penalties. See 750 ILCS 5/501(c-1)(1)(A) (West 2012) (requiring court to consider, *inter alia*, “alleged non-marital property within access to a party” in assessing interim fees). Finally, given the policy reasons underlying the exception of individual retirement accounts from the claims of creditors, including attorneys, and the evidence of record in this case reflecting Block's persistent efforts to avoid or reduce his child support obligations, we would question the wisdom of any finding that Altman should be required to invade this asset to pay her attorneys.

¶ 26 As support for his position, Gerage points to the trial court's order directing Block to liquidate the balance of a marital retirement account and place the funds in escrow subject to further order. But this just illustrates the distinction the *Radzik* court recognized. Block chose to utilize this asset to fund the litigation, among other things. Because Block elected to access this asset, the trial court rightly exercised control over the proceeds to “level the playing field.” See **145 *923 *Radzik*, 2011 IL App (2d) 100374, ¶ 64, 353 Ill.Dec. 124, 955 N.E.2d 591 (“[W]hile the IRA is not currently ‘income’ *** because respondent receives no periodic payment therefrom [citation], that would change if respondent voluntarily and prematurely cashes out the IRA.”). Altman has not accessed her retirement account for any purpose and there is no evidence that she is receiving periodic payments from that account. Therefore, we reject Gerage's claim that the trial court erred in determining that Altman lacked access to assets that would have enabled her to pay attorney fees.

[17] ¶ 27 We next address whether funds paid to an attorney for past services rendered are “available” within the meaning of the Act so that a court may order a law firm to disgorge not only unearned funds held in a client trust or an advance payment retainer account, but also funds that the firm has already earned and deposited into its operating account or paid to third parties. Gerage

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contends that the plain language of section 501(c-1)(3) and, in particular, the use of the modifier "available" before "funds" necessarily means that some funds are "unavailable." Gerage posits that once a fee is earned, title to those funds, as property, has passed to the attorney and the funds are no longer "available" within the meaning of the statute.

¶ 28 *Amicus* agrees and contends that no reasonable reading of the statute permits a court to order an attorney to disgorge funds earned, received, taxed, and spent and direct him to pay those funds to "legal strangers." *Amicus* points to the statute's language that defines "available funds" to include "retainers or interim payments, or both, previously paid" and argues that the legislature contemplated that funds held by a lawyer to secure future services are subject to disgorgement, while funds deducted from a retainer or interim payments for services already rendered are not.

¶ 29 *Earlywine* addressed a related, but not identical issue. In *Earlywine*, the trial court found that neither the husband nor wife had the resources to pay their respective attorney fees and ordered the husband's attorney to disgorge to the wife's attorney half the fees held by him in an advance payment retainer account. The attorney argued that under *Dowling v. Chicago Options Associates, Inc.*, 226 Ill.2d 277, 314 Ill.Dec. 725, 875 N.E.2d 1012 (2007), and Rule 1.15 of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010), the advance payment retainer became his property upon payment and the funds were placed in his general account. The terms of the advance payment retainer provided that it was specifically designed to override the "leveling of the playing field" provisions of the Act. See *Earlywine*, 2013 IL 114779, ¶ 6, 374 Ill.Dec. 947, 996 N.E.2d 642.

[18] ¶ 30 Our supreme court concluded that divorce cases were not among the narrow categories of cases where advance payment retainers were necessary and appropriate. "Shielding assets so that one spouse may easily hire an attorney has the direct effect of making it difficult for the other spouse to hire his or her own attorney. This would defeat the purpose and goals of the Act, which is to enable parties to have equitable access to representation." *Id.* ¶ 29. Thus, *Earlywine* stands for the proposition that no matter what form the retainer takes, it is subject to the provisions of section 501(c-1). Because the advance payment retainer had been placed in

the lawyer's general account, *Earlywine* did not address any issues relating to whether the lawyer had earned fees by virtue of services rendered.

*924 **146 ¶ 31 The Second District of this court did address the issue presented here in *In re Marriage of Squire*, 2015 IL App (2d) 150271, 403 Ill.Dec. 17, 53 N.E.3d 71. In that case, the wife had borrowed \$130,000 from her mother to pay her attorneys. Ten thousand dollars of that amount had been paid to the wife's former attorney and the rest was paid to her current attorney, Stogsdill Law Firm, as a retainer. Although the husband earned a six-figure income, his monthly expenses, including debt-service payments from the couple's bankruptcy, exceeded his income. The wife was unemployed. Under these circumstances, the trial court ordered Stogsdill to pay half of the retainer to the husband's lawyer and entered a contempt finding when he failed to comply. *Id.* ¶¶ 3-7.

¶ 32 On appeal, Stogsdill contended that the fees the firm had earned and deposited into its general account were not "available" within the meaning of section 501(c-1)(3). Relying on the statute's reference to the use of "retainers or interim payments" to "level the playing field," the Second District disagreed. The court found that accepting Stogsdill's position would frustrate the purposes of the statute in that the attorney holding the retainer "would have a strong incentive to earn the fees at an early stage of the litigation" and "could file voluminous pleadings and motions early in the case, thus 'earning' the retainer, while leaving the other spouse to respond to a mountain of paperwork with little chance of obtaining resources to do so properly." *Id.* ¶ 21. Relying on *Earlywine*'s refusal to recognize a law firm's ownership of an advance payment retainer in the context of marriage dissolution proceedings, *Squire* found that it did not matter that the firm had already deducted earned fees from the retainer. *Id.* ¶ 22. The court concluded: "it is clear that 'available' as used in the statute simply means that the funds exist somewhere." *Id.*

¶ 33 We respect our colleague's decision in *Squire* and the dissent's adoption of its reasoning, and, if "leveling the playing field" was the sole consideration in deciding this issue, we would come to the same conclusion. But the legislature chose the word "available" to define those funds, whether in the form of a retainer or interim payments, that could be subject to disgorgement. If the

legislature meant that all funds "paid" to one spouse's lawyer were subject to disgorgement when neither spouse was able to pay attorney fees, it could have easily said so. But it seems to us a tortured reading of the statute to say that even though the firm has earned the fees, paid itself (as it was entitled to do), and used that income to pay salaries, overhead and litigation expenses for items such as experts and court reporters, it can nonetheless be required to refund those fees, not to its client, but to a third party.

[19] ¶ 34 Further, *Squire* does not address, we assume because Stogsdill did not raise, many of the considerations urged by Gerage and *amicus*. It is not speculation to predict that some lawyers, particularly solo practitioners and those in small law firms, may be unable to comply with orders to disgorge funds that they have earned over several months and that have been transferred into (and out of) their operating accounts, at least not without serious financial hardship. Here, for example, Altman's lawyers waited nine months after these proceedings were commenced before they filed their initial interim fee petition. Our review of the record reveals that the activity by both party's lawyers during this period of time was intense and, we must assume, time-consuming. It must have been obvious to Bradford that Block, who was at least **147 *925 initially employed earning a six-figure salary, was using marital assets to pay his lawyers, while Altman was only able to come up with \$9500. At the same time, in the absence of an interim fee petition, Tzinberg and later Gerage may have assumed that Altman had decided to use her substantial retirement account to fund the litigation. Because of Altman's delay in seeking interim fees, it cannot be said that Block's attorneys were paying themselves as their peril while on notice of the possibility that the court would at some future date order those fees disgorged. Where, as here, the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly.⁴

¶ 35 Gerage also argues that the trial court's interpretation of the statute should have resulted in a disgorgement order against Tzinberg, Block's former lawyer. If fees paid to a lawyer are subject to disgorgement, notwithstanding that those fees have been earned, paid and passed through the lawyer's operating account, it is logical to extend section 501(c-1)(3) to all attorneys who have represented the client because, under *Squire*'s reasoning, "the funds exist somewhere," *Squire*, 2015 IL App (2d)

150271, ¶ 22, 403 Ill.Dec. 17, 53 N.E.3d 71. Indeed, to enforce the disgorgement provisions of section 501(c-1)(3) only against the party's current lawyer could encourage "churning" by the first lawyer, secure in the knowledge that the statute's reach will not extend to him or her after withdrawal. But it would be an anomaly, to say the least, that a lawyer, having been granted leave to withdraw from a case, could be called upon months or years later, to write a check to the opposing party's counsel. It is just such an absurd result that our construction of the statute avoids. *Bowman v. Ottney*, 2015 IL 119000, ¶ 17, 400 Ill.Dec. 640, 48 N.E.3d 1080.

[20] ¶ 36 We recognize that we are addressing only interim fee awards and that, at least in theory, accounts will be "trued up" when a final dissolution order is entered. See *In re Marriage of DeLarco*, 313 Ill.App.3d 107, 113, 245 Ill.Dec. 921, 728 N.E.2d 1278 (2000) (interim fees may be deemed to be advances from the parties' marital estate and a court can order any portion of an interim award constituting an overpayment to be repaid at conclusion of case). But when a disgorgement order is specifically predicated on a trial court's finding that *both* parties lack financial ability or access to assets or income for reasonable attorney fees, we must ask how realistic it is to assume that the attorneys will ever be paid. We simply do not believe the legislature intended through section 501(c-1)(3) that the financial burden of leveling the playing field should be borne, in substantial part, by lawyers who must refund, under pain of contempt, fees they have earned. For these reasons, we conclude that funds earned by and paid to a party's lawyer in the normal course of representation for past services rendered are not "available funds" within the meaning of section 501(c-1)(3) and thus reverse the disgorgement order to the extent it required Gerage to disgorge fees he had **148 *926 already earned. Further, because we conclude that this aspect of the disgorgement order was improper, we reverse the order holding Gerage in contempt for failing to comply.⁵

[21] ¶ 37 Finally, Gerage contends that the trial court erred in failing to allocate the entire retainer account. There is no explanation in the record for the court's failure to allocate the remaining \$1716 in the account. We recognize that a substantial period of time has elapsed since this issue was addressed by the trial court and circumstances may have rendered the question moot. But,

if not, the trial court should on remand allocate this sum between the parties.

¶ 38 Affirmed in part, reversed in part and remanded with directions.

Justice LAVIN concurred in the judgment and opinion.

Justice PUCINSKI concurred in part and dissented in part, with opinion.

¶ 39 Justice PUCINSKI, concurring in part and dissenting in part.

¶ 40 While I agree with my colleagues that under the circumstances presented, a spouse cannot be required to access a nonmarital retirement account to pay interim attorney fees, I respectfully disagree with the majority's statement that it simply does not believe the legislature intended through section 501(c-1)(3) that the financial burden of "leveling the playing field" should be borne, in substantial part, by lawyers who must refund, under pain of contempt, fees they have earned.

¶ 41 The most compelling evidence that the legislature intended section 501(c-1) to allow for allegedly earned fees to be available funds and used for interim fee awards is the express language of section 501 itself, which states that: "If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court * * * shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties." 750 ILCS 5/501(c-1)(3) (West 2012); *Kaufman, Litvin & Feinstein v. Edgar*, 301 Ill.App.3d 826, 835, 235 Ill.Dec. 183, 704 N.E.2d 756 (1998).

¶ 42 Further, section 501(c-1) must reasonably be understood in view of the concomitant changes to section 508(a). Section 508(a), when read as an integrated whole, expressly indicates that "interim attorney's fees and costs" may be awarded "in accordance with subsection (c-1) of section 501." This construction further agrees with the amended language of section 102, which defines the goal of interim awards broadly as "substantial parity in parties' access to funds for litigation costs" both "during and after litigation." (Internal quotation marks omitted.)

Beyer, 324 Ill.App.3d at 313-14, 257 Ill.Dec. 406, 753 N.E.2d 1032. As amended, section 102 now reads: "This Act shall be liberally construed and applied to promote its underlying purposes, which are to: * * * make reasonable provision for spouses and minor children during and after litigation, including provision for timely awards of interim fees to achieve substantial parity in the parties' access to funds for litigation costs[.]" 750 ILCS 5/102 (West 1998); *Beyer*, 324 Ill.App.3d at 313, 257 Ill.Dec. 406, 753 N.E.2d 1032.

¶ 43 The fee shifting that takes place in an interim fee award order is a temporary **149 *927 reallocation of the parties' marital assets. Further, Gerage has the opportunity to make a claim for all his reasonable attorney fees due at a contribution hearing under section 503. 750 ILCS 5/503 (West 2012). This temporary shifting is in accord with the language of the statute, which is intended to "level the playing field." Neither the interim attorney fees award nor the disgorgement order affects an attorney's claim for a final setting of attorney fees. 750 ILCS 5/508 (West 2012). See *In re Marriage of DeLarco*, 313 Ill.App.3d 107, 245 Ill.Dec. 921, 728 N.E.2d 1278 (2000) (a matter of discretion, a trial court will award attorneys only fees it deems reasonable).

¶ 44 In *Squire*, the trial court citing *Earlywine*, held that it did not matter that the fees already belonged to respondent's attorney. *Squire*, 2015 IL App (2d) 150271, ¶ 6, 403 Ill.Dec. 17, 53 N.E.3d 71 (citing *Earlywine*, 2013 IL 114779, ¶ 25, 374 Ill.Dec. 947, 996 N.E.2d 642). The trial court granted the interim fee petition and ordered respondent's attorney to pay petitioner's attorney. The appellate court affirmed also citing *Earlywine* and finding that *Earlywine* did not intend to limit its holding to certain retainers. *Id.* ¶ 21. The court found that in *Earlywine*, our supreme court noted that the retainer in question became the law firm's property immediately upon payment and was deposited into the firm's general account, but held that the funds were nevertheless subject to disgorgement. From this, the court in *Squire*, held that it is clear that "available" as used in the statute simply means that the funds exist somewhere. *Id.* ¶ 22.

¶ 45 In accord with *Earlywine*, and *Squire*, and in light of the Act's public policy of including provisions for timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs and the fact that it is to be liberally construed, I find the inclusion of any

fees paid to an attorney to be considered "available funds" whether earned or unearned, as that determination has not yet been made. *Earlywine*, 2013 IL 114779, ¶¶ 22–23, 374 Ill.Dec. 947, 996 N.E.2d 642; *Squire*, 2015 IL App (2d) 150271, ¶ 22, 403 Ill.Dec. 17, 53 N.E.3d 71. As section 503 allows for a claim to be made for contribution and that a disgorgement order is temporary in nature, the attorney has, by statute the right to recoup all reasonable fees he or she may be owed. 750 ILCS 5/503 (West 2012).

¶ 46 Under section 508, the court must make a determination of reasonableness and necessity in a final judgment. 750 ILCS 5/508 (West 2012). Until then, there has been no final determination of the attorney's earned fees and there has been no determination of the reasonableness or necessity of the fees that Gerage allegedly earned.

¶ 47 The majority found that where the petitioning law firm delays in filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly. The majority, in a footnote, indicates that if the question here were just a matter of equity, they would be inclined to uphold the disgorgement order given Gerage's and Tzinberg's conduct in aiding Block's "scorched earth" approach to litigating this case. The majority indicates that the summary proceeding envisioned in connection with an interim fee award is not designed to address or resolve such issues. I find that the proceeding is specifically designed for such issues, as the purpose of the statute is to "level the playing field" and would argue that this is a matter of equity.

All Citations

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Footnotes

- * This case was recently reassigned to Justice Mason. The author apologizes to the parties for the delay in resolving this appeal.
- 1 The transcript of the hearing is not contained in the record on appeal.
- 2 *Amicus* take no position with respect to the first issue raised by Gerage, *i.e.*, that Altman's retirement account should have been considered an asset available to pay her attorneys.
- 3 A 403(b) plan is a United States tax-advantaged retirement savings plan for public education organizations, some non-profit employers, cooperative hospital service organizations, and self-employed ministers.
- 4 Were the question here purely a matter of equity, we would be tempted to uphold the disgorgement order given Gerage's (as well as Tzinberg's) conduct in aiding Block's "scorched earth" approach to litigating this case. But the summary proceeding envisioned in connection with an interim fee award is not designed to address or resolve such issues. A trial court may, of course, determine the reasonableness of the fees incurred either by conducting an evidentiary hearing on the interim fee petition (750 ILCS 5/501(c–1)(1) (West 2012)), or in the context of a final fee award. 750 ILCS 5/508 (West 2012).
- 5 Based on the result we reach, we need not address the constitutional issues Gerage and *amicus* contend are posed by the interpretation of section 501(c–1)(3) adopted by the trial court.

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No 4

GOESEL WITHDRAWALS

<u>Date</u>	<u>Withdrawal Amount</u>	<u>To Where</u>
1/8/2014	\$1,000.00	Earnest money
1/17/2014	\$2,500.00	Earnest money
1/29/2014	\$350.00	Appraisal fee (Frankfort home)
2/3/2014	\$10,000.00	Attorneys fees
2/11/2014	\$409.18	Florida mortgage
2/14/2014	\$80.00	Cash
2/19/2014	\$113.50	Nicor utility bill
2/19/2014	\$200.00	Home equity loan payment
3/3/2014	\$116.66	Home equity loan payment
3/11/2014	\$409.18	Florida mortgage
3/17/2014	\$3,239.00	Last mortgage payment made
3/25/2014	\$250.00	Credit card payment
3/27/2014	\$1,000.00	Credit card payment
4/7/2014	\$5,000.00	Attorneys fees
4/9/2014	\$2,400.00	Security deposit
4/9/2014	\$1,920.00	Rent
4/11/2014	\$409.18	Florida mortgage
4/22/2014	\$75.00	Frankfort water bill
4/22/2014	\$200.00	Credit card payment
4/30/2014	\$10,000.00	Attorneys fees
5/2/2014	\$220.00	Nancy Goesel
5/2/2014	\$500.00	Credit card payment
5/5/2014	\$10,000.00	Attorneys fees
5/6/2014	\$1,382.28	Attorneys fees
5/6/2014	\$2,400.00	Rent
5/12/2014	\$409.18	Florida mortgage
5/16/2014	\$250.00	Credit card payment
5/19/2014	\$2,500.00	Credit card payment
5/23/2014	\$750.00	Credit card payment
6/6/2014	\$2,400.00	Rent
6/9/2014	\$1,250.00	Cash
6/9/2014	\$10,000.00	Attorneys fees
6/9/2014	\$572.48	Costco
6/9/2014	\$33,639.99	Attorneys fees (\$23,639.99 to Bobeck; \$10,000 to Laura)
6/11/2014	\$23,459.27	Purchase vehicle
6/11/2014	\$409.18	Florida mortgage
6/12/2014	\$900.00	Cash
6/12/2014	\$5,000.00	Credit card payment
6/12/2014	\$3,000.00	Credit card payment
6/13/2014	\$84.53	Costco
6/17/2014	\$2,274.95	Anthony Gaetto
6/17/2014	\$5,000.00	Credit card payment
6/19/2014	\$468.38	Costco
6/23/2014	\$12,000.00	Credit card payment

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6/23/2014	\$10,000.00	Credit card payment
6/23/2014	\$10,000.00	Attorneys fees
6/23/2014	\$7,200.00	Prepaid rent (July - September)
6/23/2014	\$10,000.00	Attorneys fees

Total
\$195,741.94

Attorneys fees
\$100,022.27 (\$33,369.99 paid directly not in bank account)

Credit card payments
\$40,450.00

Mortgage
\$3,239.00

Rent
\$16,320.00

Florida mortgage
\$2,045.90

Vehicle purchase
\$23,459.27

Cash
\$2,230.00

Other
\$7,975.50

Per attached bank statement Respondent has \$37,574.28
There is \$26,740.27 in checks to clear (\$3,281.00 to Father, \$23,459.27 for vehicle purchase)

Respondent has \$10,834.01 left in account
Respondent has \$25,606.11 check from Fidelity not yet cashed
Respondent has \$36,440.12 total

Respondent has approx. \$35,125.70 in outstanding debts (see attached)

Respondent has approx. \$1,314.42 left

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GOESEL DEPOSITS

<u>Date</u>	<u>Deposit Amount</u>	<u>From Where</u>
1/6/2014	\$1,200.00	Goesel Chiropractic
1/14/2014	\$2,480.50	Goesel Chiropractic
1/20/2014	\$500.00	Goesel Chiropractic
1/29/2014	\$9,900.00	T. Rowe Price
2/10/2014	\$500.00	Goesel Chiropractic
2/26/2014	\$1,000.00	Goesel Chiropractic .
3/10/2014	\$4,500.00	T. Rowe Price - Roth IRA
3/17/2014	\$31,600.00	Roth IRA
3/31/2014	\$1,000.00	Redeposit from refunded earnest money
4/29/2014	\$2,000.00	Goesel Chiropractic
5/14/2014	\$500.00	Goesel Chiropractic
5/15/2014	\$5,079.63	T. Rowe Price (\$5,642.75 = \$563.12 withholding, \$5,079.63 deposit)
5/30/2014	\$1,000.00	Goesel Chiropractic
6/3/2014	\$73,900.00	Fidelity (\$110,000 = \$33,000 withholding, \$3,100 cash, \$73,900 deposit)
6/12/2014	\$1,671.78	1st paycheck at O'Brien Chiropratic
6/17/2014	\$39,500.00	Met Life (\$102,600 = \$60,000 withholding, \$2,600 surrender charge, \$500 cash, \$39,500 deposit)
	<u>Total</u>	
	\$176,331.91	

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122046



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For checking and savings accounts, transactions are updated during TCF's nightly processing. Therefore, all your transactions may not be shown and the balance shown may not be fully available for immediate withdrawal. Debit card authorizations and pending withdrawals and transfers reduce the amount available for immediate withdrawal. Check deposits and other pending deposits may not all be included in the amount available for immediate withdrawal. All pending transactions may not be shown. Transactions may not be posted to your account in the order shown. Go to "Help" and then "Glossary" for a further explanation of terms.

TCF Free Checking - 4770923328

ANDREW P GOESL

321 FRONT ST

UNIT 2401

LEMONT IL 60439-7249

Account Balance:

\$37,574.28

Total Pending Items:

\$0.00

Current Balance including Pending Transactions:

\$37,574.28

Balance As Of

08/25/2014 01:19 PM CDT

Year-To-Date Interest:

\$0.00

Last Year's Interest:

\$0.00

Change Account View

View Account:

TCF Free Checking - 4770923328

Choose one:

View From 01/01/2014 to 08/25/2014

Display the last days of transactions


Transactions pending...

Date	Transaction	Description	Status	Amount	Image
No Pending Transactions					

Transactions between 01/01/2014 and 08/25/2014

Date	Transaction	Description	Status	Amount	Balance	Image
06/23/2014	Check 9007	CHECK	Posted	\$-10,000.00	\$37,574.28	View Image
06/23/2014	Check 9008	CHECK	Posted	\$-7,200.00	\$47,574.28	View Image
06/23/2014	Check 1021	CHECK	Posted	\$-10,000.00	\$54,774.28	View Image
06/23/2014	ACH Withdrawal	CK#1020 CAPITAL ONE ARC CH	Posted	\$-10,000.00	\$64,774.28	
06/23/2014	ACH Withdrawal	CK#1019 CAPITAL ONE ARC CH	Posted	\$-12,000.00	\$74,774.28	
08/19/2014	Check 1025	CHECK	Posted	\$-488.38	\$86,774.28	View Image
08/17/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-5,000.00	\$87,242.66	
08/17/2014	Check 9005	CHECK	Posted	\$-2,274.95	\$92,242.66	View Image
08/17/2014	Deposit	DEPOSIT	Posted	\$39,500.00	\$94,517.61	View Image
08/13/2014	Check 1016	CHECK	Posted	\$-84.53	\$55,017.61	View Image
08/12/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-3,000.00	\$55,102.14	
08/12/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-5,000.00	\$58,102.14	
08/12/2014	Check 1018	CHECK	Posted	\$-800.00	\$53,102.14	View Image
08/12/2014	Deposit	DEPOSIT	Posted	\$1,671.78	\$64,002.14	View Image
08/11/2014	ACH Withdrawal	Nationstar Nationstar	Posted	\$-409.18	\$62,330.36	
08/09/2014	Check 1013	CHECK	Posted	\$-572.48	\$62,738.54	View Image
08/09/2014	Check 1012	CHECK	Posted	\$-10,000.00	\$63,312.02	View Image
08/09/2014	Check 1015	CHECK	Posted	\$-1,250.00	\$73,312.02	View Image
08/08/2014	Check 9004	CHECK	Posted	\$-2,400.00	\$74,562.02	View Image
08/04/2014	Check 1011	CHECK	Posted	\$-41.00	\$76,962.02	View Image
08/03/2014	Deposit	DEPOSIT	Posted	\$73,900.00	\$77,003.02	View Image
05/30/2014	Deposit	DEPOSIT	Posted	\$1,000.00	\$3,103.02	View Image
05/23/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-750.00	\$2,103.02	
05/19/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-2,500.00	\$2,853.02	
05/16/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-250.00	\$5,353.02	
05/15/2014	ACH Deposit	057: HIGH YIELD INVEST0057	Posted	\$5,079.63	\$5,603.02	
05/14/2014	Deposit	DEPOSIT	Posted	\$500.00	\$523.39	View Image
05/12/2014	ACH Withdrawal	Nationstar Nationstar	Posted	\$-409.18	\$23.39	
05/08/2014	Check 9003	CHECK	Posted	\$-2,400.00	\$432.57	View Image
05/06/2014	Check 9002	CHECK	Posted	\$-1,382.28	\$2,832.57	View Image
05/05/2014	Check 9001	CHECK	Posted	\$-10,000.00	\$4,214.85	View Image
05/02/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-500.00	\$14,214.85	
05/02/2014	Check 1010	CHECK	Posted	\$-220.00	\$14,714.85	View Image
04/30/2014	Check 9000	CHECK	Posted	\$-10,000.00	\$14,934.85	View Image
04/29/2014	Deposit	DEPOSIT	Posted	\$2,000.00	\$24,934.85	View Image
04/22/2014	ACH Withdrawal	CAPITAL ONE ONLINE PMT	Posted	\$-200.00	\$22,934.85	

04/22/2014	<u>Check 1009</u>	CHECK	Posted	\$-75.00	\$23,134.85	View Image
04/11/2014	<u>ACH Withdrawal</u>	Nationstar Nationstar	Posted	\$-409.18	\$23,208.85	
04/09/2014	<u>Check 1008</u>	CHECK	Posted	\$-1,820.00	\$23,819.03	View Image
04/09/2014	<u>Check 1007</u>	CHECK	Posted	\$-2,400.00	\$25,539.03	View Image
04/07/2014	<u>Check 1005</u>	CHECK	Posted	\$-5,000.00	\$27,939.03	View Image
04/01/2014	<u>Check 1006</u>	CHECK	Posted	\$-35.00	\$32,939.03	View Image
03/31/2014	<u>Deposit</u>	DEPOSIT	Posted	\$1,000.00	\$32,974.03	View Image
03/27/2014	<u>ACH Withdrawal</u>	CAPITAL ONE ONLINE PMT	Posted	\$-1,000.00	\$31,974.03	
03/25/2014	<u>ACH Withdrawal</u>	CAPITAL ONE ONLINE PMT	Posted	\$-280.00	\$32,974.03	
03/17/2014	<u>Check 1004</u>	CHECK	Posted	\$-3,239.00	\$33,224.03	View Image
03/17/2014	<u>Deposit</u>	DEPOSIT	Posted	\$31,600.00	\$38,463.03	View Image
03/11/2014	<u>ACH Withdrawal</u>	Nationstar Nationstar	Posted	\$-409.18	\$4,863.03	
03/10/2014	<u>ACH Deposit</u>	158: RETIRE2035 INVEST0158	Posted	\$4,500.00	\$5,272.21	
03/03/2014	<u>Check 1031</u>	CHECK	Posted	\$-116.88	\$772.21	View Image
02/28/2014	<u>Deposit</u>	DEPOSIT	Posted	\$1,000.00	\$888.87	View Image
02/20/2014	<u>Service Charge - Fee</u>	NSF FEE-ITEM PAID	Posted	\$-37.00	\$-111.13	View Image
02/19/2014	<u>Check 1002</u>	CHECK	Posted	\$-200.00	\$-74.13	View Image
02/19/2014	<u>Check 1001</u>	CHECK	Posted	\$-113.50	\$125.87	View Image
02/14/2014	<u>Other Withdrawal</u>	WITHDRAWAL	Posted	\$-80.00	\$239.37	
02/11/2014	<u>ACH Withdrawal</u>	Nationstar Nationstar	Posted	\$-408.18	\$318.37	
02/10/2014	<u>Deposit</u>	DEPOSIT	Posted	\$500.00	\$728.55	View Image
02/03/2014	<u>Check 101</u>	CHECK	Posted	\$-10,000.00	\$228.55	View Image
01/29/2014	<u>Check 102</u>	CHECK	Posted	\$-350.00	\$10,228.55	View Image
01/29/2014	<u>ACH Deposit</u>	158: RETIRE2035 INVEST0158	Posted	\$9,900.00	\$10,578.55	
01/27/2014	<u>Other Deposit</u>	CHECK PRINT CHARGE REV	Posted	\$19.95	\$678.55	
01/24/2014	<u>Service Charge or Fee</u>	CHECK PRINTING CHARGE	Posted	\$-19.95	\$658.60	
01/23/2014	<u>ACH Withdrawal</u>	TROWEPRISE CD VERIFY	Posted	\$-.05	\$678.55	
01/23/2014	<u>ACH Deposit</u>	TROWEPRISE CD VERIFY	Posted	\$0.02	\$678.60	
01/23/2014	<u>ACH Deposit</u>	TROWEPRISE CD VERIFY	Posted	\$0.03	\$678.58	
01/20/2014	<u>Deposit</u>	DEPOSIT	Posted	\$500.00	\$678.65	View Image
01/17/2014	<u>Check 103</u>	CHECK	Posted	\$-2,500.00	\$178.65	View Image
01/14/2014	<u>Service Charge or Fee</u>	CHECK IMAGE FEE	Posted	\$-1.95	\$2,678.55	
01/14/2014	<u>Deposit</u>	DEPOSIT	Posted	\$2,480.50	\$2,880.50	View Image
01/08/2014	<u>Check 104</u>	CHECK	Posted	\$-1,000.00	\$200.00	View Image
01/08/2014	<u>Deposit</u>	OPENING DEPOSIT	Posted	\$1,200.00	\$1,200.00	View Image

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DATE	NAME
Relevant to 6/27/14	
The following are already <u>past due</u> and <u>not satisfied</u> :	
Outstanding	
①	Frankfort office Condo Assn Dues - 9 months \$1899.00
②	Credit Cards outstanding \$9336.45
③	Frankfort office Condo - 1st Install Taxes \$3734.25
④	Makana Mortgage - 4 month arrears \$12956.00
⑤	Florida Homeowners + Flood Insurance \$1050-
⑥	3 months - 2nd Mortgage \$400-
⑦	Attorney fees unit 2017 office Condo Sale in 2013 \$1850 Demetrius Karos
⑧	Rent for Anthony Gaetto 4 months, 1 week \$3400
⑨	Create Trust Document for Cole Giesel \$500 Estate Planning Consultant
Total: \$35125.70	
The Remaining (unspent) moneys:	
(25,606.11)	
①	25 K Check from Fidelity
②	approx 10K remaining in Andrew's Checky
Approx 35,606.11	

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Attorneys at Law

EDWARD R. JAQUAYS

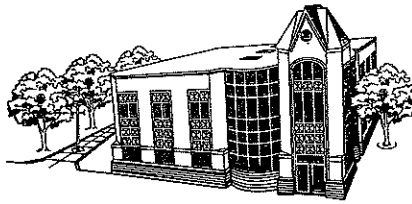
MARTIN RUDMAN

VINCENT J. CERRI

MARK ELLIS

DANA R. JAKUSZ

NATHANIEL TATE



The Law Offices of
EDWARD R. JAQUAYS

*"Trial Attorneys Who Will
 Fight to Protect Your Rights"*

**FREEDOM
 COURT**

Five West Jefferson Street
 Joliet, Illinois 60432-4301

TEL: 815-727-7600

FAX: 815-727-1701

E-MAIL: info@jaquayslawoffices.com

June 30, 2017

Ms. Barbara Trumbo
 Clerk of the Appellate Court
 Appellate Court - Third District
 State of Illinois
 1004 Columbus Street
 Ottawa, Illinois 61350

**RE: Christine Goesel v. Andrew Goesel v. Laura A. Holwell
 Appeal from the Circuit Court of the Twelfth Judicial Circuit,
 Will County, Illinois: Circuit Court No. 2013 D 107
 Appellate Case # 3-15-0101
 Illinois Supreme Court Case #122046**

Dear Ms. Trumbo:

This is to confirm telephone conversation between your office and mine this date, wherein you indicated that certified copies of all Briefs filed with your court in the above-referenced matter, will be sent to the Illinois Supreme Court at your earliest convenience.

Should you need any additional information, please do not hesitate to contact my office ask to speak with me, or my legal assistant, Kara, directly.

Thank you in advance for your assistance in this regard.

Very truly yours,

MARK ELLIS

ME/ka

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APPENDIX II**TABLE OF CONTENTS OF RECORD ON APPEAL**

PAGE NUMBER	FILE DATE	DESCRIPTION
C0000001 - C0000001		PLACITA
C0000002 - C0000002	01/18/2013	ORDER
C0000003 - C0000007	01/18/2013	PETITION FOR DISSOLUTION OF MARRIAGE
C0000008 - C0000008	01/18/2013	SUMMONS
C0000009 - C0000009	01/18/2013	REASSIGNMENT OF CASE
C0000010 - C0000010	01/18/2013	REASSIGNMENT OF CASE
C0000011 - C0000011	01/18/2013	ORDER
C0000012 - C0000013	01/18/2013	MOTION FOR SUBSTITUTION OF JUDGE AS A MATTER OF RIGHT
C0000014 - C0000014	01/18/2013	APPEARANCE FOR ANDREW GOESEL
C0000015 - C0000016	01/18/2013	ORDER
C0000017 - C0000018	01/18/2013	MOTION FOR SUBSTITUTION OF JUDGE AS A MATTER OF RIGHT
C0000019 - C0000019	01/18/2013	SUMMONS
C0000020 - C0000020	01/18/2013	SUMMONS (COPY)
C0000021 - C0000022	02/25/2013	ORDER PARENTING RULES
C0000023 - C0000024	02/25/2013	ORDER
C0000025 - C0000025	03/27/2013	ORDER
C0000026 - C0000026	04/11/2013	PROOF OF SERVICE
C0000027 - C0000027	05/30/2013	ORDER
C0000028 - C0000028	05/30/2013	PROOF OF SERVICE

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000029 - C0000029	05/30/2013	PROOF OF SERVICE
C0000030 - C0000033	05/30/2013	RESPONDENTS RESPONSE TO PETITIONERS MOTION FOR LEAVE TO AMEND EMERGENCY PETITION FOR ORDER OF PROTECTION
C0000034 - C0000037	05/30/2013	RESPONDENTS RESPONSE TO PETITIONER'S PETITION FOR DISSOLUTION OF MARRIAGE
C0000038 - C0000038	06/06/2013	ORDER
C0000039 - C0000039	06/12/2013	NOTICE OF FILING
C0000040 - C0000043	06/12/2013	PETITION TO SET A FAMILY BUDGET
C0000044 - C0000046	06/12/2013	PETITION TO APPOINT NEW THERAPEUTIC VISITATION FACILITATOR
C0000047 - C0000047	07/16/2013	ORDER
C0000048 - C0000048	07/30/2013	NOTICE OF MOTION
C0000049 - C0000052	07/30/2013	MOTION TO COMPEL COMPLIANCE WITH DISCOVERY
C0000053 - C0000054	07/30/2013	EXHIBIT(S)
C0000055 - C0000055	08/07/2013	ORDER
C0000056 - C0000056	08/19/2013	ORDER
C0000057 - C0000057	08/26/2013	ORDER
C0000058 - C0000058	09/25/2013	NOTICE OF MOTION
C0000059 - C0000061	09/25/2013	MOTION TO APPOINT CHILD'S REPRESENTATIVE

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000062 - C0000062	10/02/2013	ORDER
C0000063 - C0000063	10/02/2013	NOTICE OF FILING
C0000064 - C0000064	10/02/2013	CERTIFICATION OF SERVICE
C0000065 - C0000065	10/04/2013	NOTICE OF FILING
C0000066 - C0000066	10/04/2013	CERTIFICATE OF MAILING
C0000067 - C0000067	10/10/2013	ADDITIONAL APPEARANCE FOR ANDREW GOESEL
C0000068 - C0000068	10/10/2013	NOTICE OF EMERGENCY MOTION
C0000069 - C0000072	10/10/2013	MOTION TO DISQUALIFY
C0000073 - C0000073	10/10/2013	NOTICE OF MOTION
C0000074 - C0000076	10/10/2013	MOTION TO COMPEL
C0000077 - C0000077	10/10/2013	NOTICE OF MOTION EMERGENCY
C0000078 - C0000081	10/10/2013	MOTION TO DISQUALIFY
C0000082 - C0000082	10/10/2013	NOTICE OF MOTION
C0000083 - C0000085	10/10/2013	MOTION TO COMPEL COMPLIANCE WITH COURT ORDERS
C0000086 - C0000087	10/10/2013	ORDER
C0000088 - C0000088	10/16/2013	YEAR OLD STATUS DOCUMENT
C0000089 - C0000089	10/16/2013	DV - LETTER TO DEFENDANT FOR STATUS
C0000090 - C0000090	10/18/2013	EMERGENCY NOTICE OF MOTION

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000091 - C0000104	10/18/2013	MOTION TO STRIKE AND DISMISS MOTION TO DISQUALIFY PURSUANT TO SECTION 2-615, 2-619, AND 2-619.1 OF THE ILLINOIS CODE OF CIVIL PROCEDURE
C0000105 - C0000108	10/18/2013	EXHIBIT(S)
C0000109 - C0000109	10/21/2013	APPEARANCE FILED FOR MINOR CHILDREN
C0000110 - C0000110	10/21/2013	ORDER
C0000111 - C0000112	10/21/2013	ORDER
C0000113 - C0000130	10/21/2013	RESPONSE TO MOTION TO STRIKE AND DISMISS MOTION TO DISQUALIFY
C0000131 - C0000150	10/21/2013	EXHIBIT(S)
C0000151 - C0000151	10/31/2013	EMERGENCY NOTICE OF MOTION
C0000152 - C0000155	10/31/2013	EMERGENCY MOTION TO QUASH SUBPOENA
C0000156 - C0000159	10/31/2013	EXHIBIT(S)
C0000160 - C0000160	10/31/2013	NOTICE OF EMERGENCY MOTION
C0000161 - C0000164	10/31/2013	EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER TO PREVENT TEMPORARY REMOVAL OF CHILDREN AND OTHER RELIEF
C0000165 - C0000168	10/31/2013	AFFIDAVIT
C0000169 - C0000170	10/31/2013	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000171 - C0000171	10/31/2013	NOTICE OF MOTION

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000172 - C0000175	10/31/2013	MOTION TO COMPEL PETITIONER TO SEEK APPROPRIATE EMPLOYMENT
C0000176 - C0000177	10/31/2013	EXHIBIT (S)
C0000178 - C0000178	10/31/2013	NOTICE OF MOTION
C0000179 - C0000183	10/31/2013	PETITION FOR TEMPORARY RESTRAINING ORDER AND OTHER RELIEF
C0000184 - C0000186	10/31/2013	ORDER
C0000187 - C0000187	11/04/2013	ORDER
C0000188 - C0000189	11/08/2013	NOTICE OF FILING, AND NOTICE OF SUBPOENA DEPOSITION-RECORDS ONLY
C0000190 - C0000192	11/08/2013	SUBPOENA FROM BMO HARRIS BANK
C0000193 - C0000195	11/08/2013	SUBPOENA FROM FIRST MIDWEST BANK
C0000196 - C0000198	11/08/2013	SUBPOENA FOR A J SMITH FEDERAL SAVINGS BANK
C0000199 - C0000202	11/08/2013	SUBPOENA FOR RICHARD I HABER C P A
C0000203 - C0000203	11/20/2013	ORDER GAL FEES
C0000204 - C0000204	11/20/2013	ORDER MEDIATION
C0000205 - C0000205	11/26/2013	NOTICE OF MOTION
C0000206 - C0000210	11/26/2013	PETITION FOR TEMPORARY MAINTENANCE AND CHILD SUPPORT
C0000211 - C0000211	12/02/2013	NOTICE OF MOTION

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000212 - C0000226	12/02/2013	MOTION FOR PARTIAL SUMMARY JUDGMENT
C0000227 - C0000228	12/02/2013	EXHIBIT(S)
C0000229 - C0000229	12/05/2013	ORDER
C0000230 - C0000230	12/17/2013	NOTICE OF MOTION
C0000231 - C0000233	12/17/2013	MOTION TO COMPEL DISCOVERY AND OTHER RELIEF
C0000234 - C0000241	12/17/2013	PETITION FOR RULE TO SHOW CAUSE
C0000242 - C0000245	12/17/2013	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000246 - C0000266	12/24/2013	RESPONSE TO PETITIONER'S MOTION
C0000267 - C0000286	12/24/2013	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000287 - C0000288	12/24/2013	NOTICE TO PRODUCE
C0000289 - C0000289	12/24/2013	PROOF OF SERVICE
C0000290 - C0000291	12/24/2013	ORDER
C0000292 - C0000292	01/03/2014	ORDER
C0000293 - C0000302	01/03/2014	FINANCIAL DISCLOSURE STATEMENT
C0000303 - C0000317	01/03/2014	ANSWER AMENDED ANSWER TO FINANCIAL DISCLOSURE STATEMENT
C0000318 - C0000318	01/03/2014	GOESEL CHIROPRACTIC HEALTH (IMPOUNDED)
C0000319 - C0000319	01/03/2014	CERTIFICATION OF SERVICE

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000320 - C0000320	01/03/2014	NOTICE OF FILING
C0000321 - C0000321	01/08/2014	ORDER
C0000322 - C0000324	01/08/2014	NOTICE OF INTENT TO CLAIM DISSIPATION OF ASSETS
C0000325 - C0000329	01/08/2014	MOTION TO RECONSIDER
C0000330 - C0000332	01/08/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000333 - C0000333	01/17/2014	ORDER
C0000334 - C0000335	01/17/2014	ORDER
C0000336 - C0000336	01/17/2014	NOTICE OF FILING
C0000337 - C0000340	01/17/2014	RESPONSE TO MOTION TO COMPEL COMPLIANCE WITH DISCOVERY AND OTHER RELIEF
C0000341 - C0000344	01/17/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0000345 - C0000346	01/21/2014 NOTICE	NOTICE OF FILING AND OF SUBPOENA DEPOSITION -- RECORDS ONLY
C0000347 - C0000349	01/21/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000350 - C0000350	01/23/2014	ORDER
C0000351 - C0000351	01/27/2014	NOTICE OF MOTION
C0000352 - C0000352	02/03/2014	NOTICE OF MOTION
C0000353 - C0000355	02/03/2014	PETITION FOR RULE TO SHOW CAUSE
C0000356 - C0000356	02/03/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000357 - C0000357	02/06/2014	ORDER
C0000358 - C0000358	02/06/2014	ORDER
C0000359 - C0000360	02/10/2014	SUBPOENA FOR JANICE BOBACK
C0000361 - C0000362	02/10/2014	SUBPOENA FOR LAURA HOLWELL
C0000363 - C0000364	02/10/2014	NOTICE OF FILING AND NOTICE OF SUBPOENA DEPOSITION – RECORDS ONLY
C0000365 - C0000367	02/10/2014	AMENDED SUBPOENA IN A CIVIL MATTER
C0000368 - C0000368	02/18/2014	NOTICE OF FILING
C0000369 - C0000372	02/18/2014	ANSWER TO MOTION TO DISQUALIFY
C0000373 - C0000373	02/20/2014	NOTICE OF FILING
C0000374 - C0000374	02/20/2014	EMERGENCY NOTICE OF MOTION
C0000375 - C0000378	02/20/2014	EMERGENCY MOTION TO SIGN LISTING AGREEMENT
C0000379 - C0000380	02/20/2014	AFFIDAVIT
C0000381 - C0000392	02/20/2014	EXHIBIT(S)
C0000393 - C0000393	02/20/2014	NOTICE OF FILING
C0000394 - C0000394	02/20/2014	NOTICE OF MOTION
C0000395 - C0000398	02/20/2014	EMERGENCY MOTION TO SIGN LISTING AGREEMENT
C0000399 - C0000400	02/20/2014	AFFIDAVIT
C0000401 - C0000412	02/20/2014	EXHIBIT (S) A B

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000413 - C0000413	02/20/2014	NOTICE OF FILING
C0000414 - C0000414	02/20/2014	NOTICE OF MOTION
C0000415 - C0000418	02/20/2014	PETITION FOR ADJUDICATION OF INDIRECT CIVIL CONTEMPT
C0000419 - C0000424	02/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000425 - C0000425	02/20/2014	NOTICE OF FILING
C0000426 - C0000426	02/20/2014	NOTICE OF MOTION
C0000427 - C0000430	02/20/2014	MOTION TO SUPPORT MINOR CHILDREN
C0000431 - C0000436	02/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000437 - C0000437	02/20/2014	ORDER
C0000438 - C0000440	02/20/2014	ORDER
C0000441 - C0000441	02/20/2014	NOTICE OF FILING
C0000442 - C0000444	02/20/2014	OBJECTION TO DISSIPATION INTERROGATORIES
C0000445 - C0000445	02/24/2014	NOTICE OF FILING FILED BY NANCY DONLON
C0000446 - C0000447	02/24/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000448 - C0000448	02/25/2014	NOTICE OF MOTION EMERGENCY COPY
C0000449 - C0000452	02/25/2014	EMERGENCY MOTION TO COMPEL COMPLIANCE WITH SUBPOENAS
C0000453 - C0000459	02/25/2014	EXHIBIT(S)A-E (COPY)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000460 - C0000460	02/25/2014	ORDER
C0000461 - C0000461	02/25/2014	NOTICE OF FILING
C0000462 - C0000467	02/25/2014	RESPONSE TO EMERGENCY MOTION TO SIGN LISTING AGREEMENT
C0000468 - C0000471	02/27/2014	EMERGENCY MOTION TO DISQUALIFY LAURA HOLWELL AS ATTORNEY OF RECORD FOR RESPONDENT PURSUANT TO ILLINOIS SUPREME COURT RULE OF PROFESSIONAL CONDUCT 3.7
C0000472 - C0000473	02/28/2014	ORDER
C0000474 - C0000474	03/03/2014	ORDER
C0000475 - C0000475	03/04/2014	ORDER
C0000476 - C0000476	03/04/2014	ORDER
C0000477 - C0000477	03/10/2014	NOTICE OF FILING
C0000478 - C0000478	03/10/2014	APPEARANCE FILED FOR CHRISTINE GOESEL
C0000479 - C0000480	03/21/2014	NOTICE OF MOTION
C0000481 - C0000486	03/21/2014	MOTION TO CONDUCT JOB SEARCH TO SEEK APPROPRIATE EMPLOYMENT AND FOR OTHER RELIEF
C0000487 - C0000489	03/21/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000490 - C0000490	03/27/2014	ORDER
C0000491 - C0000491	03/28/2014	ORDER
C0000492 - C0000492	03/28/2014	ORDER SIGNED - RULE ISSUES
C0000493 - C0000493	04/08/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000494 - C0000495	04/08/2014	RESPONSE TO MOTION TO RECONSIDER
C0000496 - C0000499	04/08/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0000500 - C0000502	04/08/2014	RESPONSE TO MOTION TO SUPPORT MINOR CHILDREN
C0000503 - C0000503	04/15/2014	NOTICE OF FILING
C0000504 - C0000504	04/15/2014	PROOF OF SERVICE
C0000505 - C0000505	04/16/2014	ORDER
C0000506 - C0000507	04/30/2014	ORDER
C0000508 - C0000508	05/01/2014	COPY OF NOTICE OF FILING
C0000509 - C0000511	05/01/2014	STATEMENT OF GAL FEES
C0000512 - C0000512	05/05/2014	ORDER
C0000513 - C0000513	05/08/2014	NOTICE OF MOTION
C0000514 - C0000516	05/08/2014	MOTION TO SET CHILD REPRESENTATIVES FEES
C0000517 - C0000519	05/08/2014	EXHIBIT(S)
C0000520 - C0000520	05/08/2014	NOTICE OF MOTION
C0000521 - C0000527	05/08/2014	PETITION FOR RULE TO SHOW CAUSE
C0000528 - C0000529	05/08/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000530 - C0000530	05/12/2014	NOTICE OF FILING
C0000531 - C0000531	05/12/2014	PROOF OF SERVICE
C0000532 - C0000532	05/12/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000533 - C0000537	05/12/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000538 - C0000538	05/13/2014	NOTICE OF FILING
C0000539 - C0000543	05/13/2014	RESPONSE TO EMERGENCY MOTION TO FREEZE 503(G) ACCOUNT
C0000544 - C0000544	05/14/2014	ORDER
C0000545 - C0000545	05/14/2014	ORDER RULE TO SHOW CAUSE
C0000546 - C0000546	05/14/2014	NOTICE OF ISSUANCE OF SUBPOENAS
C0000547 - C0000548	05/14/2014	NOTICE OF DEPOSITION
C0000549 - C0000550	05/16/2014	AMENDED NOTICE OF DEPOSITION
C0000551 - C0000551	05/20/2014	EMERGENCY NOTICE OF MOTION
C0000552 - C0000555	05/20/2014	MOTION TO CONTINUE
C0000556 - C0000556	05/20/2014	AFFIDAVIT
C0000557 - C0000557	05/20/2014	NOTICE OF FILING
C0000558 - C0000558	05/20/2014	PROOF OF SERVICE
C0000559 - C0000563	05/20/2014	AFFIDAVIT OF SERVICE
C0000564 - C0000569	05/20/2014	AFFIDAVIT OF SERVICE
C0000570 - C0000570	05/20/2014	NOTICE OF FILING-PROOF OF SERVICE
C0000571 - C0000571	05/20/2014	PROOF OF SERVICE
C0000572 - C0000572	05/21/2014	NOTICE OF ISSUANCE OF SUBPOENA

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000573 - C0000575	05/22/2014	NOTICE OF MOTION (COPY OF)
C0000576 - C0000580	05/22/2014	MOTION EMERGENCY MOTION FOR SANCTIONS
C0000581 - C0000583	05/22/2014	AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION FOR SANCTIONS
C0000584 - C0000591	05/22/2014	EXHIBIT(S)A - E
C0000592 - C0000592	05/22/2014	ORDER
C0000593 - C0000594	05/22/2014	AMENDED NOTICE OF DEPOSITION
C0000595 - C0000595	05/22/2014	ORDER
C0000596 - C0000596	05/22/2014	ORDER
C0000597 - C0000597	05/28/2014	NOTICE OF FILING
C0000598 - C0000598	05/28/2014	PROOF OF SERVICE
C0000599 - C0000600	05/29/2014	AMENDED NOTICE OF DEPOSITION
C0000601 - C0000601	05/30/2014	NOTICE
C0000602 - C0000605	05/30/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0000606 - C0000606	05/30/2014	NOTICE OF MOTION
C0000607 - C0000608	05/30/2014	MOTION TO SET PLEADING FOR HEARING
C0000609 - C0000609	05/30/2014	NOTICE OF FILING
C0000610 - C0000611	05/30/2014	AMENDED NOTICE OF INTENT TO CLAIM DISSIPATION OF ASSETS
C0000612 - C0000612	05/30/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000613 - C0000617	05/30/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0000618 - C0000618	05/30/2014	NOTICE OF MOTION
C0000619 - C0000624	05/30/2014	MOTION TO RECONSIDER ORDER
C0000625 - C0000636	05/30/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000637 - C0000637	05/30/2014	NOTICE OF MOTION
C0000638 - C0000642	05/30/2014	MOTION TO APPOINT EVALUATOR
C0000643 - C0000654	05/30/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000655 - C0000655	06/02/2014	NOTICE OF FILING
C0000656 - C0000656	06/02/2014	PROOF OF SERVICE
C0000657 - C0000657	06/05/2014	APPEARANCE FILED FOR ANDREW GOESEL
C0000658 - C0000658	06/06/2014	NOTICE OF MOTION FILED
C0000659 - C0000664	06/06/2014	MOTION FOR SANCTIONS
C0000665 - C0000681	06/06/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000682 - C0000682	06/06/2014	CITATION TO APPEAR
C0000683 - C0000684	06/06/2014	NOTICE OF MOTION EMERGENCY (ORIGINAL)
C0000685 - C0000686	06/06/2014	EMERGENCY MOTION TO RESET DEPOSITION DATES AND FOR OTHER RELIEF
C0000687 - C0000687	06/06/2014	AFFIDAVIT OF HOWARD LEVINE (ORIGINAL)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000688 - C0000688	06/06/2014	APPEARANCE FILED FOR ANDREW GOESEL
C0000689 - C0000689	06/06/2014	NOTICE OF FILING (ORIGINAL)
C0000690 - C0000694	06/06/2014	RESPONSE TO MOTION FOR SANCTIONS
C0000695 - C0000697	06/06/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000698 - C0000699	06/06/2014	ORDER
C0000700 - C0000700	06/06/2014	ORDER
C0000701 - C0000701	06/09/2014	CITATION TO APPEAR
C0000702 - C0000702	06/12/2014	NOTICE OF MOTION
C0000703 - C0000705	06/12/2014	MOTION TO DISMISS
C0000706 - C0000707	06/12/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000708 - C0000708	06/12/2014	NOTICE OF MOTION
C0000709 - C0000715	06/12/2014	PETITION FOR INTERIM FEES
C0000716 - C0000718	06/12/2014	AFFIDAVIT
C0000719 - C0000719	06/12/2014	NOTICE OF MOTION
C0000720 - C0000723	06/12/2014	PETITION FOR INDIRECT CIVIL CONTEMPT
C0000724 - C0000724	06/12/2014	NOTICE OF MOTION.
C0000725 - C0000728	06/12/2014	MOTION TO COMPEL
C0000729 - C0000729	06/12/2014	NOTICE OF FILING
C0000730 - C0000734	06/12/2014	RESPONSE TO MOTION TO APPOINT DR ALAN CHILDES

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000735 - C0000739	06/12/2014	RESPONSE TO MOTION TO RECONSIDER
C0000740 - C0000741	06/16/2014	SUMMONS RETURNED SERVED FOR ANDREW GOESEL
C0000742 - C0000742	06/17/2014	NOTICE OF MOTION
C0000743 - C0000747	06/17/2014	PETITION EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF
C0000748 - C0000749	06/17/2014	AFFIDAVIT (ORIGINAL)
C0000750 - C0000751	06/17/2014	ORDER
C0000752 - C0000752	06/17/2014	ORDER RULE
C0000753 - C0000753	06/18/2014	NOTICE OF FILING - PROOF OF SERVICE
C0000754 - C0000754	06/18/2014	PROOF OF SERVICE
C0000755 - C0000755	06/19/2014	NOTICE OF FILING
C0000756 - C0000757	06/19/2014	RESPONSE TO MOTION TO WITHDRAW
C0000758 - C0000760	06/19/2014	PETITION TO SET SPECIFIC VISITATION SCHEDULE
C0000761 - C0000761	06/20/2014	NOTICE OF MOTION
C0000762 - C0000763	06/20/2014	MOTION TO WITHDRAW
C0000764 - C0000764	06/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000765 - C0000765	06/20/2014	NOTICE OF MOTION
C0000766 - C0000773	06/20/2014	AMENDED PETITION FOR INTERIM ATTORNEY FEES

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000774 - C0000775	06/20/2014	AFFIDAVIT OF EDWARD R JAQUAYS
C0000776 - C0000777	06/24/2014	EMERGENCY NOTICE OF MOTION
C0000778 - C0000782	06/24/2014	EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
C0000783 - C0000784	06/24/2014	AFFIDAVIT
C0000785 - C0000788	06/24/2014	PETITION FOR PROSPECTIVE ATTORNEY S FEES
C0000789 - C0000790	06/24/2014	AFFIDAVIT
C0000791 - C0000791	06/24/2014	AFFIDAVIT
C0000792 - C0000795	06/24/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000796 - C0000796	06/27/2014	ORDER
C0000797 - C0000798	06/27/2014	ORDER
C0000799 - C0000799	07/01/2014	AFFIDAVIT OF SERVICE
C0000800 - C0000800	07/14/2014	NOTICE OF MOTION
C0000801 - C0000804	07/14/2014	PETITION FOR ADJUDICATION OF CIVIL CONTEMPT
C0000805 - C0000806	07/14/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000807 - C0000807	07/15/2014	AFFIDAVIT OF SERVICE
C0000808 - C0000810	07/16/2014	MOTION TO RECONSIDER
C0000811 - C0000812	07/16/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000813 - C0000817	07/16/2014	RESPONSE TO AMENDED PETITION
C0000818 - C0000819	07/16/2014	NOTICE OF FILING
C0000820 - C0000820	07/17/2014	NOTICE OF FILING
C0000821 - C0000824	07/17/2014	RESPONSE TO PETITION FOR FEES AND COSTS
C0000825 - C0000827	07/17/2014	RESPONSE TO EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER
C0000828 - C0000828	07/21/2014	NOTICE OF FILING
C0000829 - C0000834	07/21/2014	RESPONSE TO SECTION 5 2-1203(A) AND (B) MOTION TO RECONSIDER COURT ORDER ENTERED ON JUNE 24, 2014 AND FOR OTHER RELIEF
C0000835 - C0000835	07/21/2014	UPDATED FINANCIAL DISCLOSURE (IMPOUNDED)
C0000836 - C0000836	07/21/2014	FINANCIAL DISCLOSURE STATEMENT (IMPOUNDED)
C0000837 - C0000837	07/21/2014	ORDER
C0000838 - C0000838	07/21/2014	ORDER
C0000839 - C0000840	07/21/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000841 - C0000841	07/21/2014	ORDER
C0000842 - C0000842	07/22/2014	NOTICE OF MOTION
C0000843 - C0000846	07/22/2014	MOTION TO ESCROW MINOR CHILDS PERSONAL INJURY SETTLEMENT PROCEEDS
C0000847 - C0000847	07/22/2014	SUPPORTING DOCUMENT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000848 - C0000848	07/23/2014	NOTICE OF MOTION
C0000849 - C0000855	07/23/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0000856 - C0000856	07/25/2014	NOTICE OF FILING
C0000857 - C0000862	07/25/2014	RESPONSE TO SECTION 5 2-1203(A) AND (B) MOTION TO RECONSIDER COURT ORDER ENTERED ON JUNE 24, 2014 AND FOR OTHER RELIEF
C0000863 - C0000863	07/29/2014	NOTICE OF FILING
C0000864 - C0000864	07/29/2014	UPDATED FINANCIAL DISCLOSURE (IMPOUNDED)
C0000865 - C0000865	07/29/2014	ORDER
C0000866 - C0000866	07/29/2014	NOTICE OF FILING
C0000867 - C0000869	07/29/2014	RESPONSE AND AFFIRMATIVE DEFENSE TO PE...
C0000870 - C0000870	07/30/2014	ORDER
C0000871 - C0000871	07/30/2014	ORDER
C0000872 - C0000872	07/31/2014	ORDER
C0000873 - C0000874	08/04/2014	ORDER
C0000875 - C0000875	08/04/2014	ORDER
C0000876 - C0000876	08/05/2014	NOTICE OF FILING
C0000877 - C0000878	08/05/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000879 - C0000880	08/13/2014	NOTICE OF MOTION

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000881 - C0000882	08/13/2014	MOTION TO DISMISS COUNT I OF MOTION FOR LEAVE TO AMEND PREVIOUSLY FILED AMENDED PETITION FOR INTERIM ATTORNEY FEES AND COSTS AND OTHER RELIEF TO CONFORM TO PROOFS
C0000883 - C0000885	08/13/2014	RESPONSE TO COUNT II OF MOTION FOR LEAVE TO AMEND PREVIOUSLY FILED AMENDED PETITION FOR INTERIM ATTORNEY FEES AND COSTS AND OTHER RELIEF TO CONFORM TO PROOFS
C0000886 - C0000895	08/13/2014	SUPPORTING DOCUMENTS
C0000896 - C0000896	08/13/2014	ORDER
C0000897 - C0000897	08/15/2014	NOTICE OF MOTION
C0000898 - C0000899	08/15/2014	MOTION TO MODIFY COURT ORDER
C0000900 - C0000900	08/18/2014	ORDER
C0000901 - C0000901	08/20/2014	ORDER
C0000902 - C0000902	08/22/2014	NOTICE OF MOTION
C0000903 - C0000904	08/22/2014	MOTION TO SET PENDING MATTERS FOR HEARING
C0000905 - C0000905	08/28/2014	ORDER
C0000906 - C0000906	09/03/2014	ORDER
C0000907 - C0000908	09/04/2014	NOTICE OF MOTION
C0000909 - C0000909	09/04/2014	MOTION TO WITHDRAW
C0000910 - C0000910	09/04/2014	AFFIDAVIT

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000911 - C0000912	09/10/2014	NOTICE OF FILING
C0000913 - C0000914	09/10/2014	RESPONSE TO MOTION TO MODIFY COURT ORDER
C0000915 - C0000915	09/15/2014	ORDER
C0000916 - C0000916	09/15/2014	ADDITIONAL APPEARANCE FOR LAURA HOLWELL
C0000917 - C0000917	09/22/2014	AFFIDAVIT OF SERVICE
C0000918 - C0000918	09/26/2014	REGARDING FEES OWED
C0000919 - C0000924	09/29/2014	ORDER DECISION AND ORDER
C0000925 - C0000925	09/29/2014	ORDER
C0000926 - C0000926	10/01/2014	NOTICE OF MOTION
C0000927 - C0000937	10/01/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL
C0000938 - C0000938	10/02/2014	NOTICE OF MOTION
C0000939 - C0000941	10/02/2014	PETITION FOR INJUNCTIVE RELIEF
C0000942 - C0000943	10/02/2014	AFFIDAVIT
C0000944 - C0000944	10/06/2014	NOTICE OF MOTION
C0000945 - C0000947	10/06/2014	MOTION TO WITHDRAW
C0000948 - C0000948	10/06/2014	NOTICE OF WITHDRAWAL
C0000949 - C0000950	10/07/2014	ORDER AGREED
C0000951 - C0000951	10/07/2014	ORDER
C0000952 - C0000953	10/07/2014	ORDER TEMPORARY RESTRAINING ORDER

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000954 - C0000954	10/07/2014	ORDER
C0000955 - C0000955	10/10/2014	EMERGENCY NOTICE OF MOTION
C0000956 - C0000957	10/10/2014	EMERGENCY MOTION TO DETERMINE TAX EXEMPTIONS
C0000958 - C0000958	10/14/2014	ORDER
C0000959 - C0000960	10/15/2014	ORDER
C0000961 - C0000962	10/16/2014	ORDER
C0000963 - C0000964	10/16/2014	CITATION NOTICE
C0000965 - C0000966	10/16/2014	CITATION NOTICE
C0000967 - C0000967	10/17/2014	NOTICE OF EMERGENCY MOTION
C0000968 - C0000970	10/17/2014	EMERGENCY MOTION TO QUASH CITATION
C0000971 - C0000971	10/17/2014	AFFIDAVIT
C0000972 - C0000977	10/17/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000978 - C0000978	10/17/2014	ORDER
C0000979 - C0000979	10/17/2014	ORDER QUASHING CITATIONS
C0000980 - C0000980	10/21/2014	NOTICE OF FILING
C0000981 - C0000981	10/21/2014	AFFIDAVIT
C0000982 - C0000982	10/24/2014	NOTICE OF MOTION
C0000983 - C0000987	10/24/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000988 - C0000994	10/24/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000995 - C0000995	10/29/2014	NOTICE OF MOTION
C0000996 - C0001002	10/29/2014	PETITION
C0001003 - C0001006	10/29/2014	AFFIDAVIT
C0001007 - C0001070	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001071 - C0001071	10/29/2014	NOTICE OF MOTION
C0001072 - C0001102	10/29/2014	MOTION TO RECONSIDER
C0001103 - C0001175	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001176 - C0001176	10/29/2014	NOTICE OF FILING
C0001177 - C0001184	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001185 - C0001185	10/30/2014	ORDER
C0001186 - C0001186	10/30/2014	ORDER RULE TO SHOW CAUSE
C0001187 - C0001187	11/03/2014	NOTICE OF MOTION
C0001188 - C0001195	11/03/2014	MOTION TO DISMISS
C0001196 - C0001206	11/03/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001207 - C0001207	11/05/2014	NOTICE OF MOTION
C0001208 - C0001211	11/05/2014	MOTION TO SET MOTION TO RECONSIDER FOR HEARING AND OTHER RELIEF
C0001212 - C0001212	11/10/2014	ORDER
C0001213 - C0001213	11/10/2014	NOTICE OF MOTION AMENDED

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001214 - C0001214	11/17/2014	ORDER
C0001215 - C0001215	11/17/2014	NOTICE OF FILING
C0001216 - C0001218	11/17/2014	NOTICE OF INTENT TO CLAIM DISSIPATION OF ASSETS
C0001219 - C0001219	11/20/2014	NOTICE OF MOTION
C0001220 - C0001223	11/20/2014	MOTION FOR 137 SANCTIONS
C0001224 - C0001229	11/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001230 - C0001230	11/20/2014	NOTICE OF FILING
C0001231 - C0001237	11/20/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL
C0001238 - C0001238	11/20/2014	NOTICE OF FILING
C0001239 - C0001269	11/20/2014	RESPONSE TO MOTION TO RECONSIDER SEPTEMBER 29, 2014 ORDER
C0001270 - C0001270	11/20/2014	ORDER
C0001271 - C0001271	12/05/2014	NOTICE OF MOTION
C0001272 - C0001273	12/09/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0001274 - C0001277	12/09/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND FOR OTHER RELIEF
C0001278 - C0001279	12/09/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0001280 - C0001280	12/12/2014	ORDER
C0001281 - C0001281	12/12/2014	ORDER

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001282 - C0001282	12/15/2014	PROOF OF SERVICE
C0001283 - C0001284	12/17/2014	SUPPLEMENTAL PETITION FOR PROSPECTIVE ATTORNEYS FEES AND COSTS
C0001285 - C0001286	12/17/2014	AFFIDAVIT OF HOWARD LEVINE
C0001287 - C0001308	12/17/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001309 - C0001309	12/18/2014	NOTICE OF MOTION
C0001310 - C0001312	12/18/2014	MOTION TO SUPPLEMENT SIX COUNT MOTION TO RECONSIDER SEPTEMBER 29, 2014 ORDER
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C0001402 - C0001402	12/19/2014	AFFIDAVIT OF SERVICE
C0001403 - C0001403	12/19/2014	NOTICE OF FILING
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C0001459 - C0001459	01/08/2015	ORDER RULE TO SHOW CAUSE
C0001460 - C0001460	01/13/2015	NOTICE OF MOTION
C0001461 - C0001463	01/13/2015	MOTION TO ISSUE RULE
C0001464 - C0001465	01/13/2015	MOTION TO CLARIFY
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C0001467 - C0001470	01/13/2015	PETITION FOR ATTORNEYS FEES
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C0001477 - C0001478	01/14/2015	MOTION TO UPDATE APPRAISAL
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 No. 122046

IN THE SUPREME COURT OF ILLINOIS

In re MARRIAGE of)	Appeal from the Appellate Court
	)	Case #3-15-0101
CHRISTINE GOESEL,	)	Third Appellate District
Petitioner-Appellant,	)	2017 IL App (3d) 150101
)	
and)	
)	
ANDREW GOESEL,	)	Appeal from the Circuit Court of
Respondent,	)	Will County, Illinois, Twelfth Judicial
	)	Circuit. Circuit No. 2013 D 107
	)	Judge Dinah Archambeault, presiding
(Laura A. Holwell, Contemnor-Appellee))	

NOTICE OF ELECTRONIC FILING

TO: Gina L. Colaluca
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 Chicago, IL 60603

Andrew Goesel
 227 Laurel Hollow Drive
 Nokomis, FL 34275-4014

PLEASE TAKE NOTICE that on the 3RD day of JULY, 2017, there was electronically filed with the Office of the Supreme Court of Illinois: **BRIEF, ARGUMENT AND APPENDIX FOR PETITIONER-APPELLANT**

By: /s/ Mark Ellis
MARK ELLIS, Attorney for Petitioner-Appellant

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 MARTIN RUDMAN
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 Carolyn Taft Grosboll
 SUPREME COURT CLERK

STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS

PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that she served copies of both this Notice and 3 copies of Appellant's Brief, Argument and Appendix upon the named individuals as indicated hereinbelow, via U.S. First Class mail, with proper postage prepaid, by mailing said envelopes at or before the hour of 2:00 p.m. on this 3rd day of July, 2017.

TO: Gina L. Colaluca
 Attorney at Law
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 Chicago, IL 60603
 email: gina@holwelllaw.com

Andrew Goesel
 227 Laurel Hollow Drive
 Nokomis, FL 34275-4014

 /s/ Mark Ellis

CERTIFICATE

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 in this instrument are true and correct.

 /s/ Mark Ellis

MARK ELLIS, Attorney at Law

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