2011 IL App (1st) 102520-U

FIFTH DIVISION
December 23, 2011

1-10-2520

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from
In re THE MARRIAGE OF*:*	)	the Circuit Court
	)	of Cook County
ROBERT A. STONE, Petitioner-Appellee,	)	
	)	90 D 00265
and	)	
	)	Honorable Raul Vega,
ROBERTA A. STONE, Respondent-Appellant.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

O R D E R

HELD: Where hearing showed 41-year-old son was emancipated, circuit court did not err in denying mother's petition to increase father's support payments and granting father's cross-petition to terminate payments altogether; and court did not abuse its discretion in denying mother's petition for attorney fees.

¶ 1 These post-divorce proceedings began when Roberta A. Stone petitioned the circuit court of Cook County to increase support payments which her ex-husband Robert A. Stone was tendering to the couple's adult son pursuant to the couple's marital settlement agreement. Roberta appeals from several rulings: (1) a directed finding that the hearing did not substantiate her allegations that the couple's son was "disabled" and "not emancipated," (2) the denial of her petition to increase the support payments and the granting of the ex-husband's cross-petition to terminate the payments, and (3) the denial of her petition for contribution to her attorney fees.

¶ 2 Robert and Roberta were married in 1962 and divorced in 1993 by a judgment order which incorporated a marital settlement agreement. The Stones' 1993 agreement stated the couple's three children "are presently adults and emancipated, except with respect to [our eldest child,] Michael as more fully set forth below." Michael was born on January 6, 1969, his brother Daniel followed, and their sister Jennifer was the Stones' youngest child. When the Stones divorced, although it was not specified in their settlement agreement, 24-year-old Michael was receiving Social Security disability benefit payments but living independently in his own apartment. Further within the agreement, under the subheading "Section 513 with Respect to Michael," Robert agreed to pay Michael's non-insured health care expenses and for gas and electric service at the apartment, but not his phone service. Continuing, the Stones agreed, "The parties shall provide Michael with $60 per week, cash or food certificates, so that Michael may purchase his own groceries and supplies at a local grocery store," and that Robert would be responsible for $50 of that amount and Roberta would be responsible for the remaining $10. Section 513 of the Illinois Marriage and Dissolution of Marriage Act provides in relevant part:

> "The court may award sums of money out of the property and income of either or both parties ***, as equity may require, for the support of the child or children of the parties who have attained majority in the following instances:
>
> (1) When the child is mentally or physically disabled and not otherwise emancipated, an application for support may be made before or after the child has attained majority.

> * * *
>
> (b) In making awards *** pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and necessary, including:
>
> (1) The financial resources of both parents.
>
> (2) The standard of living the child would have enjoyed had the marriage not been dissolved.
>
> (3) The financial resources of the child.
>
> (4) The child's academic performance." 750 ILCS 750 § 5/513 (West 2006).

See *In re Marriage of Kennedy*, 170 Ill. App. 3d 726, 525 N.E.2d 168 (1988) (indicating section 513 codified common law that a parent may be ordered to pay child support for an adult child who is mentally or physically disabled, such as "an invalid *** who is unable to support herself" or one is "stricken with polio *** and ['incapable of self-support']").

¶ 3 About fourteen years after the divorce, in 2007, Roberta filed the petition now at issue to increase the $50 payments that Robert was tendering to Michael. Roberta alleged her 38-year-old son was "a disabled adult" who "suffers from borderline personality disorder with psychotic features and has been diagnosed with severe learning disabilities." She also alleged, "While Michael currently resides in his own apartment, he is unable to maintain employment for long periods of time and relies on his siblings to help manage his personal affairs." She further alleged that a substantial change in circumstances had occurred since 1993, in that both

Michael's expenses and Robert's income had increased and she asked the judge to increase Robert's support payments to whatever "amount [the judge] deemed appropriate." In a combined answer and cross-petition to terminate the payments, Robert countered that Michael was an independent, emancipated adult who was not in the custody of either parent, had a paying job, and handled his own affairs, and that Robert's income had declined to about 10% of what it was in 2003 due to poor business conditions and Robert's own health issues at the age of 70. Discovery regarding the petitions ensued.

¶ 4 As the parties prepared for a hearing on the cross-petitions, in late 2007, the circuit court judge granted Roberta's petition for a $20,000 contribution toward her attorney fees, and in early 2009, granted her second petition for fees but reduced her request from $71,347 to $31,750.

¶ 5 Nine days of proceedings were conducted during 2009 and 2010 and included testimony from the parties, their sons Michael and Daniel, and Roberta's mental health expert witness. The evidence concerned Michael's abilities and limitations, his financial resources, and whether the parties were able to contribute to his support. Because the evidence of his emancipation is dispositive to this appeal, we will not be addressing the issue of the family's financial circumstances and have omitted that evidence from the following summary unless it also concerned Michael's lack of independence.

¶ 6 Robert testified that Michael had difficulty with math and reading, was diagnosed at the age of three-and-a-half with learning disabilities, and attended both special education and mainstream classes. In 1988, he was very often frustrated, depressed from time to time, and anxious from time to time. He was admitted to Evanston Hospital for two months and diagnosed with borderline personality disorder, and rehospitalized later that year, although Robert attributed the second instance to Michael "pulling a prank with a coworker." Michael had a high school education only and his employment history consisted of hourly-wage jobs, such as grooming dogs and transporting patients within a hospital. He had been fired from the hospital because he raced down a hallway with a coworker. During Robert's testimony, Roberta introduced three documents as evidence that Michael was disabled. The first document were notes Robert made in 1988 indicating Michael could not remain on the family's health insurance policy unless he was continuing on to college or was "not capable of self-sustaining employment" and needed vocational training. The notes indicated Robert asked Michael's psychiatrist to write a letter in support of an application for continuing health insurance. The second document was an application to continue Social Security disability benefits which Robert and Michael had completed together in August 1988. The third document was a letter written by the family's internist in support of Michael's application to ride public transportation at a reduced fare "because of his emotional disability with diagnosis of psychotic features and learning disorders."

¶ 7 Michael testified that he was "[n]ot the best" reader, considered his math skills to be "[p]retty bad," and used a digital watch to tell the time of day. He attended special education and regular classes at New Trier High School until graduating in 1988, and he had received some work training which he did not complete. He was hospitalized while a senior in high school because he attempted suicide. He had "[n]ot really" wanted to move out of his parents' house when he was 21 years old, but he had to "[b]ecause [his] father wanted to get [Michael] on

Social Security," "because of [his father's] financial situation," and because Michael "couldn't get it [(support from Social Security)] while living at home, so [he] had to get [his own] apartment." His mother and father helped him complete the agency's application process. After his parents divorced in 1993, his mother lived in the house alone, but Michael did not move back in. When he testified in 2009, he was 40 years old and living in his own apartment on Elm Street in Winnetka, Illinois, with his dog Jango, and had been receiving Social Security disability, Medicaid, and Medicare benefits for 19 years and maintained his eligibility for benefits by periodically speaking with a doctor associated with the agency. He was unemployed and his last job had been part-time at a dog daycare center in Highland Park, Illinois, called Rover's Place, where he was paid $8 an hour to supervise the dogs and clean up. His hours had been gradually increased to 15 hours per week. However, his employment ended after a couple of months because some of the other employees were "messing with [him] and trying to upset [him]." He asked the manager to ask the owner to make the problem stop, but the manager told Michael, " 'Just mess with them back,' " which Michael did, and then the situation escalated, the manager called the police, and Michael was fired even though he "felt like [the manager] should have fired some of the others involved." Michael's work history consisted of a series of part-time hourly-wage jobs at pet supply stores, pet daycare centers, a movie theater, and a video store. He worked at Petco for about a year, but kidney stones forced him to take a leave of absence, and when he asked to extend the leave, the management "started going at [him]," so Michael "just didn't go back" to the job. He took about nine months off work to deal with the kidney stones, then started working at the movie theater in Wilmette, until the manager expected him to change the lettering on the marquee late at night without anyone holding the ladder. Michael was afraid to go up the ladder, so after he left the theater that day, he "didn't go back." His next job was a pet supply store in Wilmette, where he stocked the shelves and cleaned up. After a month they asked him to learn about the ingredients in the food products, which has hard for him to do, so they proposed moving him to a store in the city which he thought was unsafe and he "just didn't want to be coming home late from the city," so he quit that job as well. His quit his next job after three months, because his boss at Wilmette Pet Center was verbally abusive to the employees. All of his jobs had been part-time and did not offer health insurance. When asked why he did not take full-time employment, Michael responded, "Well, I wanted to be able to keep my Social Security, and I don't – I don't know if I could handle a full-time job." His Social Security benefits had been retroactively reduced when the agency found out that he worked "too much and made too much money" at a Blockbuster video store between 1994 and 1997. The agency was still recouping its overpayment by withholding funds from his current payments.

¶ 8 Michael testified that before his mother moved to California, he spoke with her daily, and saw her three or four times a week because she took him to and from the grocery store and doctor's appointments and they went out with her friends. She also bought him clothes, gave him quarters for the laundromat, and gave him $40 or $50 in cash here and there. When he was recuperating from the kidney stones, they would jointly call the grocery store so she could help him pick out healthier foods, and she paid for what they ordered. After his mother moved away, his brother Danny became "almost like a parent," took Michael to the doctor and the vet, helped with "anything" Michael needed, and did "so much stuff" that Michael could not "think of everything" that Danny did. The brothers saw each other every one or two weeks. While Michael was unemployed, Danny was helping Michael pay his rent, phone bill, and cable bills. His father paid the utility bills and sent Michael a check every month for $225. Michel received $675.60 per month from Social Security by direct deposit. He kept all of his funds in a checking account at a bank in Winnetka. He used an ATM machine to check his account balance and withdraw $20 or $40 as needed. He had resided in his current apartment for over a year and found it and other apartments by looking in the paper or following leads from Danny or Danny's wife. Usually Danny would help him look at units and scrutinized the leases before Michael signed them. Michael's previous apartment was a $900 coach house that he was asked to leave because he did not follow his landlord's advice to break a window after being locked out, and instead, the next day, Danny called a locksmith and then sent the locksmith's bill to the landlord, who was outraged. The apartments Michael rented were older and had problems, such as a leak that caused the kitchen ceiling to collapse, a drafty door which the landlord would not replace so Michael "had to put tape over the door in the winter," low water pressure, only "coolish to warm water," cracks in the walls and ceilings, and traffic noise. He did not have a washer and dryer in his unit and had to walk a flight of stairs and to a different building to do the laundry. He wanted to live closer to his brother's place in Highland Park, although he had not in the past. Most of his furniture was second hand and he could not afford to replace it. Danny and his mother bought him clothes, Danny bought him gym shoes, and Michael purchased clothes from the thrift stores, could not afford to eat out, and did not pay his own travel expenses when he visited his mother and sister in California. For the previous three or four months, Michael had been seeing a therapist, Dr. Pechter, and taking Lexapro as prescribed by Dr. Robin Shapiro. He testified, "No one tells me what to do," that no one supervised him, that he went wherever he wanted to go, he took care of himself and his dog, did his own shopping, cooked, did laundry, and traveled by himself, including using public transportation to get to and from work and taking a trip to Florida to see his grandparents.

¶ 9 Roberta testified that she wanted Michael to get treatment for emotional problems dating to his high school years, but he was over the age of 21 so it was up to him whether he saw a physician, and "basically he doesn't go." Other than periodically seeing a doctor to maintain his eligibility for Social Security benefits, the only individuals he had consulted since 1993 regarding any disability were Dr. Mark Feld, who was an internist, and "someone in Northbrook" during the past six to eight months. Michael's physical, mental and emotional conditions had not improved since 1993. He relied on his mother and brother for emotional support. Roberta corroborated Michael's testimony about his independence, lack of supervision, and ability to care for himself, and acknowledged that his ability to earn income had not changed since 1993. Roberta had never initiated proceedings to declare her son legally disabled and never asked a court to appoint a guardian or custodian. After declaring bankruptcy, she could not send Michael the same amount of support each month. She gave him cash, used her charge card on his behalf, and her bank records showed that between 2005 and 2008, she wrote 11 checks directly to Michael or to pay for things he needed. The marital home had been a 5,000 square foot "very nice" five-bedroom property on a half-acre in Glencoe with new furniture, weekly maid service, and professional landscaping; while living there the family routinely took luxury vacations, and for the 15 years that it was Michael's home, he had new clothes, money for entertainment, and a cash allowance. However, when they moved Michael to his own apartment, they furnished it with used furniture and he no longer enjoyed the same standard of living. She also acknowledged that when she sold the marital home for $635,000 and inherited $140,000 from her father, she did not give or set aside any of the funds for Michael. She had spent all of it and was supported by part-time employment and her two youngest children. In April 2005, she sent a letter to her ex-husband asking him to contribute more to Michael's needs, and when that was unsuccessful, she initiated these proceedings in 2007. She acknowledged that at the time of the divorce, Robert "challenged the assertion that Michael was, in fact, disabled." She had room for Michael in her two-bedroom condominium in California, but thought "because of his issues and his problems it's best that he live alone" and that he remain in the Chicago area because of its good public transportation system.

¶ 10 Dr. Heidi Sobel, Ph.D., a licensed clinical psychologist at Rush University Medical Center, testified that she reviewed some of Michael's school, medical, and Social Security records, interviewed his brother, mother, a prior therapist, and a prior psychiatrist, and tested him to determine his psychological state and ability to function independently. School and therapy records from 1983 indicated Michael had low-average intelligence, low- to below-average academic skills, a learning disorder with regard to math, social anxiety, no real social relationships, and was suspicious of others, manipulative, easily frustrated, impulsive, and dishonest. Records from Evanston Hospital dating to 1987 indicated he was diagnosed with borderline personality disorder and depressive disorder and his interpretations of reality were "personalized and often inaccurate." The therapist who saw Michael off and on while he was a child, Dr. Klein, stated Michael's problems interfered with his ability to hold jobs for lengthy periods. The psychiatrist who saw Michael twice in 2006, Dr. Feld, had prescribed Seroquel for "mood problems, sleep problems and anxiety" but Michael stopped taking the medication because of side effects. On cross-examination, Dr. Soebel said that the written records she reviewed "weren't complete" and "were very limited." She also acknowledged that while her report indicated Michael was admitted to the hospital in 1987 due to an overdose of medication; the hospital's records indicated his "emergency psychiatric hospitalization was precipitated by his behavior this morning," which included writing a note about taking his life or someone else's or both, and that his distress may have been caused by "a conversation yesterday in which [the school counselor] tried to set limits, telling the patient that [the school counselor] cannot be available to him after school hours." Dr. Soebel also acknowledged that her report indicated Michael liked the program in Evanston, and "In June 1988, he dishonestly stated that he had attempted suicide in order to return to the program," but was instead sent to Illinois State Psychiatric Institute, which he did not like and that that was the last time he ever threatened suicide. Michael had been released from the State program without any restrictions. His then-social worker indicated that he made positive gains and was functioning better at home, in school, and in general. Dr. Soebel also acknowledged that although she diagnosed Michael with borderline personality disorder, Michael's most recent treater, Dr. Feld, did not, and that she was unaware of what Dr. Klein concluded. The diagnostic manual Dr. Soebel used stated, "Adolescents and young adults with identity problems, especially when accompanied by substance abuse, may transiently display behaviors that misleadingly give the impression of borderline personality disorder." On redirect, Dr. Soebel added that the diagnostic manual also stated one of the criteria for diagnosing borderline personality disorder was, "A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of ideation and evaluation."

¶ 11 Dr. Soebel's testing indicated Michael's "processing speed" and "working memory" were "borderline" which meant that he would work slowly and inefficiently and have difficulty recalling multi-part verbal instructions. His reading and math skills tested at the sixth, seventh, and eighth grade levels and his low average verbal comprehension affected his ability to express himself verbally.

¶ 12 Dr. Soebel's evaluation also indicated Michael was dependent on others, his expectations might be unreasonable and lead to disappointment, he resented authority, acted immaturely, acted impulsively, was argumentative, manipulative, and he worried, ruminated, felt lonely and hopeless, and might blame others for his problems. He had poor coping skills and difficulty interacting with others. He cut off close contact with his father and sister, and sometimes his brother, but he might call his mother six times in one day. His impulsiveness would cause him to quit jobs. He was unlikely to independently seek treatment and likely to terminate it prematurely. He would become anxious if demands were increased and was overwhelmed when his boss at the dog care center asked him to start bathing dogs. His psychological and cognitive problems limited him to unskilled jobs and kept him from working full time.

¶ 13 On cross-examination, Dr. Sobel acknowledged that Michael functioned independently from day-to-day and made his own decisions regarding therapy, medication, money, and employment. Michael had not been hospitalized for a mental health condition since he was in his teens and had never had a custodian or legal guardian. He reported that his brother Daniel was less available to him after he started having children in 2005, that he had less contact with his mother after she moved to California in 2008, and that he felt " 'he does not have a family at times.' " Dr. Soebel obtained his prior records and performed her evaluation once he had given her written informed consent and she considered him capable of giving consent and signing his own apartment leases. Most of the evaluations she performed on adults had been while she was a supervised graduate student and that her dissertation and career as a licensed professional had been largely devoted to child and adolescent psychology. Her lectures and published articles also focused on children and adolescents. She had treated no more than three adults with borderline personality disorder, and this was when she was a doctoral fellow between 1997 and 2000. Once she was licensed, she had "seen *** a very small number of adults" and less than 5% of her practice was devoted to adults. When she testified in late 2010, it had been more than five years since she treated any adult who had major depression, generalized anxiety, or post traumatic stress disorder. In addition to clinical work, she was an assistant professor, but her teaching and supervision was "generally child psychology." She had expertise diagnosing autism or a similar disorder, as well as attention deficit hyperactivity disorder, but Michael had not been diagnosed with either condition. She had no experience "with any actual disability termination hearings at the Social Security Administration" and Michael's case was the first time she became "involved in a disability termination and court proceeding." She had some experience in "psychological evaluations related to legal issues" but only one of those evaluations concerned an adult. When she evaluated Michael in 2008, she recommended that he undergo treatment and be evaluated for medication, but she had not referred him to anyone for that care, none of the Stones asked her for more specific information, and as far as she knew her report was being used only for the legal proceedings. Her goals for Michael included minimizing dependency, increasing his autonomy and social confidence, and preventing him "from slipping into a totally ineffectual state as he seeks to rely increasingly on a supportive environment."

¶ 14 Daniel testified that after their mother moved to Los Angles in 2000, he assumed greater responsibility for Michael's general welfare and established a parent-child type relationship with him. Until recently, Daniel mistakenly thought legal guardianship was an all-or-nothing responsibility that would render him liable if Michael did something inappropriate, but he learned he could have limited guardianship over his brother's finances and medical issues. Daniel's testimony about Michael's personality, mental health, and personal relationships was consistent with the description given by his mother and Dr. Soebel, and Daniel believed his brother's emotional state had been deteriorating since 2000. Michael was seeing a therapist, taking Trazodone to improve his sleep and Lexapro for depression, but nine months of treatment had not improved his condition.

¶ 15 Daniel corroborated his mother's testimony about the marital home and the family's lifestyle at the time. Michael had been moving from one apartment to the next because he was "constantly unhappy with life" and "frequently has conflicts with people around him and *** he needs to make a change." Daniel had inspected each unit and reviewed the leases before Michael rented the apartments and committed to pay $700 to $900 per month. The apartment that Michael was renting in 2000 in Highland Park when Daniel became more involved in his care was small and run down, had inadequate heat, and constant flooding in the laundry room in the basement, and Michael had been banned from the nearby Walgreen's for shining a laser into its windows. He left that apartment six years later because the landlord wanted to raise the rent and Michael felt his efforts as the building's unofficial janitor were unappreciated. Daniel helped him pick out an apartment in Wilmette which was "very run down," had sloping floors, leaking windows, a tiny bathroom, and a laundry room in the cellar that was accessible only from an exterior door at the back of the building. Michael was asked to move after about a year because he "has a difficult time handling situations" and when a neighbor would not clean up after her dog, he retaliated by falsely reporting her to the police as a unfit mother. Daniel then gave Michael "the go-ahead" to move into a coach house in Winnetka which was "by far the worst apartment/landlord he has had." The unit had sloping floors, a giant hole in the floor to the cellar, gaps around the windows, kitchen cabinets that were falling apart, very little hot water pressure, and a leaky sink. When the landlord failed to fix the issues as she had promised, Daniel got an attorney involved to break the lease and Michael moved to his current apartment in Winnetka. Daniel had previewed the apartment and given his approval, but this was another "run down" unit with old appliances, very little hot water pressure, inadequate heat, and a leaky back door. It took the landlord "months and months" to fix a leak in the kitchen ceiling.

¶ 16 Daniel also testified that Michael's employment was unpredictable and inadequate. Daniel met privately with the owner of Rover's Place to discuss Michael's "issues," but Michael was, nevertheless, fired for "get[ing] back" at a coworker who teased him. Since then, Michael had been unemployed for more than a year. He was typically unemployed more than he was employed, had left only one of his jobs voluntarily, and had been fired from all the others because of "constant run-ins" and the fact that "eventually his bosses find it [to be] too much trouble [to keep him]." Because Daniel prepared Michael's income tax returns, he knew that Michael drew more in Social Security benefits than he earned through employment. In 2005, for instance, his wages were $5,617 and his disability benefits were $6,886. Daniel compiled a spreadsheet indicating Michael's monthly income was about $619, his expenses were $1,893, and that Daniel had given him at least $56,000 since 2000 for rent, food, clothing, small appliances, household items, pet care, utilities, hair care, and family vacations. Michael had self-esteem issues even before he began going bald, so at least $20,000 of those funds had been spent on a hair transplant in 2004 that was unsuccessful and on hair replacement products and services including $100 per month for Propecia (prescription hair regrowth medication) and products and services from The Hair Club for Men to disguise his hair loss. The $56,000 also included a $2,500 retainer to his mother's lawyers to petition for increased support from his father, which Michael had not paid and was under no obligation to pay. Daniel also frequently gave Michael $20 or $40 in cash but was inconsistent about recording these amounts on the spreadsheet. Daniel was the custodian of $40,000 that Michael inherited from their grandfather in 2004 and those funds were reserved for Michael's future needs. Daniel compiled a spreadsheet in mid

2009 indicating that despite receiving $619 per month in Social Security disability benefits, Michael incurred a monthly shortfall of $1,893, and that if he had "an improved life" in which he provided for his own needs, had a bigger, better apartment with its own washer and dryer, a healthier diet, visited his family in California four times a year, and was putting $1,100 into a "rainy day/emergency fund," his monthly shortfall was actually $4,143.

¶ 17 On cross-examination, Daniel acknowledged that Michael had been living on his own for more than 20 years, signed all of his own leases, functioned on his own from day-to-day unless a problem arose, was not under anyone's control, did not have daily supervision, cared for his dog, shopped alone, banked alone, took public transportation alone in Chicago and its suburbs, and "does what he wants to do." Michael also decided where and how much he would work and Daniel had intervened only once to help Michael get a job. Although Michael was currently unemployed, while operating under the same disabilities he currently had, Michael worked full-time at Blockbuster for three years, part time at the hospital for at least a year, and part time at Petco for a year. Daniel frequently gave Michael $20 or $40 in cash instead of by check and "trust[ed] him to spend it appropriately." Michael had given a speech to 120 guests at Daniel's wedding in 2000. Although Michael had been living with second-hand furniture in a series of "run down" apartments, Daniel's efforts to "solve that problem" were limited to complaining to the landlords, bringing Michael some space heaters, and helping Michael break the lease for the worst of the units, which was the coach house in Winnetka.

¶ 18 As we summarized above, after Roberta rested her case, Robert moved for a directed finding that she had not met her burden of showing Michael was "disabled" and "not emancipated," and the judge granted Robert's motion. The judge also denied Roberta's petition to increase support, granted Robert's cross-petition to terminate support, and denied Roberta's third petition for attorney fees.

¶ 19 On appeal, Roberta first argues that the directed finding was in error and that her petition should have been granted and Robert's cross-petition should have been denied because the hearing showed Michael's circumstances had not improved since 1993. She contends that when the marriage was dissolved, it was undisputed that Michael was disabled, not emancipated, and for these reasons receiving support pursuant to section 5/513 of the statute. 750 ILCS 5/513 (West 2006). She emphasizes the 1993 marital settlement agreement said the three Stone children "are presently adults and emancipated, except with respect to Michael as more fully set forth below [in this agreement]." Therefore, she argues, all that she had to show in the current proceedings was that a substantial change in circumstances had occurred, in that there was an increase in the supporting parent's financial resources and an increase in the child's needs. See e.g., *In re Marriage of Falat*, 201 Ill. App. 3d 320, 327, 559 N.E.2d 33, 38 (1990). She contends that she met this burden. Robert counters that the record indicated Michael's current circumstances predated the divorce, that Roberta attempted to re-open the 1993 judgment despite the principle of *res judicata*, and that she herself did not see a need to help Michael. He also contends the granting of his cross-petition is unreviewable because the proceedings were not on the record and Roberta has failed to present a bystander's report of what occurred.

¶ 20 We do not find Roberta's argument persuasive. There were no factual statements in the settlement agreement indicating, that even in 1993, Michael was disabled or otherwise unemancipated. The statement that Roberta relies on is in the "recitals" section of the settlement agreement and ordinarily recitals are considered preliminary explanations of the circumstances leading to the execution of an agreement. *First Bank & Trust Co. of Illinois v. Village of Orland Hills*, 338 Ill. App. 3d 35, 44-45, 787 N.E.2d 300, 308 (2003). Recitals are not considered binding obligations and are not an operative part of a contract. *First Bank & Trust*, 338 Ill. App. 3d at 45, 787 N.E.2d at 308. However, even read together, the recital and operative terms of this settlement agreement simply provide for Michael's parents to voluntarily give him the nominal amount of less than $250 per month in financial assistance. None of the statements suggest that Michael was under the care, custody, and control of a parent even though he was an adult, and that he was, thus, unemancipated. *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 480, 930 N.E.2d 1024, 1031 (2010) (indicating emancipation occurs when the child "has actually moved beyond the care, custody, and control of a parent"). It was, therefore, incumbent on Roberta to prove in the recent proceedings that Michael met the statutory criteria that would entitle him to his parents' current support.

¶ 21 When ruling on a motion for a directed verdict in a bench trial, the judge must consider all of the available evidence, including any favorable to the opponent, must determine the credibility of the witnesses, draw reasonable inferences from the testimony, and generally consider the quality and weight of the evidence. *Geske v. Geske*, 343 Ill. App. 3d 881, 884, 799 N.E.2d 829, 832 (2003). On appeal, the trial judge's decision will not be disturbed unless it is contrary to the manifest weight of the evidence. *Geske*, 343 Ill. App. 3d at 884, 799 N.E.2d at 832.

¶ 22 After carefully reviewing the record, we find that the trial judge's conclusions were not against the manifest weight of the evidence. The record the parties compiled does not indicate that Michael is currently "mentally or physically disabled and not otherwise emancipated" within the meaning of section 513(a)(1). 750 ILCS 5/513(a)(1) (West 2006). The facts were largely undisputed. However, to the extent there was disagreement, the trial judge was in the best position to resolve the conflicts in the evidence. *Geske*, 343 Ill. App. 3d at 887, 799 N.E.2d at 834. The judge heard and observed Michael as he testified, and also had the benefit of receiving testimony from Michael's father, and from his mother and brother, who interact with him frequently. The trial judge also heard from a mental health expert who offered her impressions about Michael's abilities and needs based on interviews with him, his mother and brother, and two prior treaters, and the school and health records that the family made available to her.

¶ 23 The trial judge was not bound by the mental health expert's conclusions about Michael's abilities and needs, and remarked that he was "not really impressed with the testimony of Ms. Stone's expert witness, Ms. Hollie Soebel." A trial judge is free to evaluate expert testimony and accept or reject it in whole or in part. *Villareal v. Peebles*, 299 Ill. App. 3d 556, 561-62, 701 N.E.2d 145, 149 (1998). The trial judge is not required to accept the opinion of one expert, even when there is no contrary expert opinion. *Villareal*, 299 Ill. App. 3d at 562, 701 N.E.2d at 149. The expert's opinions are only as valid as the bases or reasons supporting them. *In re Violetta B.*, 210 Ill. App. 3d 521, 568 N.E.2d 1345 (1991). The record shows that Dr. Soebel's expertise was with school-aged children, that she did not usually treat adults with the diagnoses she applied to Michael and she lacked current experience in those treatment areas, and that she based her conclusions on limited, incomplete, or out-of-date school and health care records. Furthermore, the fact that Michael receives Social Security disability benefits is an indication that he satisfies the agency's criteria for being disabled from employment, but it does not indicate he meets the Illinois statutory criteria of being disabled or otherwise unemancipated.

¶ 24 The record establishes that Michael does not have a legal guardian and he functions autonomously, without supervision from day-to-day, albeit with some emotional support and guidance in business matters from his mother and brother. He resides alone in an apartment and has done so for about 20 years. His mother moved to California in 2000 and has not felt it is necessary to remain in his vicinity, and his brother lives in a neighboring suburb with a wife and children, although both brothers indicated they would like to begin living closer together. Michael has decided where he will live and signed his own leases and the mental health expert his mother hired to evaluate Michael for purposes of this proceeding, Dr. Soebel, considered Michael to be capable of giving informed consent to her evaluation and release of his prior records. In addition, Michael has been doing his own shopping, basic cooking, and cleaning during the 20 years or so that he has lived independently. His brother believed he was capable of caring for a pet, suggested that Michael adopt Jango several years ago, and gave no indication that Michael's caretaking was inadequate. Michael manages his money, uses an automated teller machine card, writes checks, spends money on what he wants, and, despite having limited funds, he does not overdraw his bank account. He also has a valid driver's license, even though he does not own a car or currently drive, and he independently navigates the Chicago-area public transportation system to get to work and do his shopping. Michael also chooses when, where, and how often he works, and was employed near-full-time in the past, until he realized that working too many hours would reduce the income he was receiving from the Social Security Administration. It has been up to Michael whether he undergo job skills training, see a mental health professional, or take medication for his "issues," and he has not been in any training program, or any form of regular mental health care or treatment since he moved out of his parent's house as a young man.

¶ 25 Roberta contends it is improper to take into account that Michael has not participated in significant therapy or treatment for his conditions in at least 19 years despite Dr. Soebel's recent recommendations. Roberta contends the trial judge improperly imposed an affirmative obligation on Michael to "somehow mitigate the circumstances *** or 'fix' his disabilities," much like a divorce court may decide to cut off maintenance to a party who has failed to attend school or gain work experience in order to become self-sufficient. See *In re Marriage of Courtright*, 229 Ill. App. 3d 1089, 595 619 (1992) (affirming trial judge's decision to end rehabilitative maintenance due to wife's failure to put forth good faith effort to become self- sufficient). We do not find any indication in the record that the trial judge imposed an affirmative obligation on Michael to undergo training or treatment or penalized him for failing to do so. Instead, this evidence indicates Michael "actually moved beyond the care, custody, and control" of his parents (*In re Marriage of Baumgartner*, 237 Ill. 2d at 480, 930 N.E.2d at 1031) and has been and is an autonomous, emancipated adult in control of his education, his employment, and his mental healthcare.

¶ 26 Roberta also contends that Michael and the child described in *In re Marriage of Kennedy*, 170 Ill. App. 3d at 732-33, 525 N.E.2d 171-172, operate under similar circumstances, and that we should similarly conclude that Michael is disabled to the extent that he is entitled to ongoing child support. Each case, however, is decided on its own facts, and we do not construe *Kennedy* as a checklist for determining whether a child is mentally disabled within the meaning of section 513 of the Act. 750 ILCS 750 § 5/513 (West 2006). Furthermore, although Michael and the *Kennedy* child share some characteristics, the *Kennedy* child's circumstances were so extensive and extreme that the petitioning parent had custody of the adult child (*Kennedy*, 170 Ill. App. 3d at 728, 525 N.E.2d at 168), in contrast to Michael's autonomy during at least 19 years of his adult life, during which his mother has moved to the west coast and his brother has been living in a different community. We also note that the *Kennedy* adult child (1) was attending "a school designed for emotionally disturbed, behaviorally disordered and learning disabled children" and was incapable of "function[ing] in regular public schools because of *** [his] need for individual therapy and behavioral modification;" (2) was reading and spelling at the third-grade level; (3) had a need to act out his anxieties, (4) had a short attention span and was easily distractible, (5) had low verbal comprehension; and (6) had some visual motor problems. *Kennedy*, 170 Ill. App. 3d at 733, 525 N.E.2d at 171-72. The *Kennedy* child's life was clearly different from the life that Michael has been leading.

¶ 27 Our careful review of the record indicates the manifest weight of the evidence supports the trial judge's conclusion "that Michael is, without any caveat, emancipated."

Accordingly, we decline to disturb that conclusion. The denial of Roberta's petition for modification of support is affirmed and the grant of Robert's cross-petition for termination of support is affirmed.

¶ 28 With respect to her attorney fees, Roberta argues that Robert should have been ordered to contribute more to her attorney fees because of the profound disparity in the parties' finances and her lack of resources, and that the judge's remarks reveal that he wanted to punish her for going to trial rather than settling her case. Roberta emphasizes that during the final fee petition hearing, the judge (1) said, "Couldn't she have settled this case a long time ago with a much better outcome and much more benefit for their son Michael[?]" and (2) then suggested that some judges conclude during pretrial negotiations that a party is being unreasonable by not settling and that although judges "don't come out and say" at the time that the party is going to "get whacked" with "pay[ing] 100 percent of [their own] fees going forward," that is what the judge decides to do.

¶ 29 Robert responds that Roberta failed to overcome the presumption that one pays one's own fees, failed to show a disparity in resources, and has misstated the judge's reasons for denying her fee petition. Robert contends that the quotations are taken out of the context of a lengthy hearing and that Roberta's editing erroneously suggests that the judge ruled at the end of the hearing without time for reflection. Robert quotes the judge's ruling:

> "On the petition for fees filed by Mrs. Stone; denied. The Court has already awarded her $40,000 in fees, approximately, give or take a few dollars either way. The court feels that with $40,000, approximately, this case could

> have been tried and put on and resolved. The fact that fees ran up to the point they did doesn't make them reasonable. I don't think fees here are reasonable.
>
> Furthermore, I don't think fees – that I'm going to order Mr. Stone to pay more fees on top of paying [his own attorney] Finkel fees. So the motion for fees is denied. She keeps the money I gave – that I awarded to her as interim fees and not another penny. On your petition for fees; totally denied. Not one penny."

¶ 30 Attorney fees are the primary responsibility of the party who incurred them, although a court may shift fees from one party to the other. *In re Marriage of Krivi*, 283 Ill. App. 3d 772, 780, 670 N.E.2d 1162, 1168 (1996). The awarding of attorney fees and the proportion to be paid are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 507, 919 N.E.2d 480, 490 (2009). A fee award is dependent upon "the relative financial abilities of the parties, the nature of the controversy, the question at issue, the significance or importance of the subject matter, the degree of responsibility involved, the standing or skill of the person employed, and the time and labor involved." *Lundahl*, 396 Ill. App. 3d at 507, 919 N.E.2d at 490. The party seeking attorney fees also bears the burden of showing that the fees incurred were both reasonable and necessary for the proper performance of the legal services in the case. *Krivi*, 283 Ill. App. 3d at 780, 670 N.E.2d at 1168; *Lundahl*, 396 Ill. App. 3d at 508, 919 N.E.2d at 490.

¶ 31 We find that the judge did not abuse his discretion in denying Roberta's final fee petition. Our review of the record indicates that the judge took the relevant facts and legal principles into consideration. We do not construe the judge's remarks to be an indication that he penalized Roberta for taking her case to hearing. The record indicates the judge determined that the relative financial abilities of the parties meant Robert should contribute approximately $40,000 to Roberta's attorney fees. The judge also concluded, however, that this interim award was a sufficient amount to help Roberta try her case and that any further charges were unreasonable. "The fact that [her] fees ran up to the [much higher] point they did doesn't make them reasonable."

¶ 32 Based on the foregoing reasons, we affirm the judgment of the circuit court.

¶ 33 Affirmed.