

2011 IL App (2d) 110226-U  
No. 2-11-0226  
Order filed December 23, 2011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re PARENTAGE OF ETHAN B.	)	Appeal from the Circuit Court
	)	of De Kalb County.
	)	
	)	
	)	No. 08-F-150
	)	
(Brandon S. Berth, Petitioner-Appellee, v.	)	Honorable
Sarah J. McKenna, Respondent (K.O.	)	Melissa S. Barnhart,
Johnson, Appellant)).	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Birkett concurred in the judgment.

**ORDER**

*Held:* (1) The trial court did not lack subject matter jurisdiction to order an attorney to turn over a client file to the client's new attorney, as such jurisdiction did not require that the order be statutorily authorized (which in any event it was) or that the new attorney file a written motion; (2) the trial court did not err in denying fees that an attorney incurred in withdrawing from the case: although the attorney was required by rule to take certain steps in withdrawing, and although the fee agreement provided for those fees, the attorney did not further establish that the fees he sought were fair, just, and reasonable.

¶ 1 The appellant in this case is attorney K.O. Johnson. On appeal, he argues that (1) the trial court was without subject matter jurisdiction to order Johnson to turn over a client file to another

attorney after Johnson withdrew from the case; and (2) the trial court erred in denying him attorney fees and costs incurred in the preparation and presentation of his motion to withdraw. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 Johnson represented petitioner, Brandon S. Berth, for a period of time in the underlying cause of action, which was brought by Berth against respondent, Sarah J. McKenna, under the Uniform Child-Custody Jurisdiction and Enforcement Act (750 ILCS 36/101 *et seq.* (West 2008)), seeking modification of a child custody determination and a declaration of parentage.

¶ 4 On January 14, 2011, Johnson moved to withdraw as Berth's attorney and petitioned for attorney fees and costs. The petition sought, *inter alia*, fees and costs incurred in the preparation and presentation of Johnson's motion to withdraw. Johnson attached to the petition a copy of the "Paternity Hourly Fee Agreement" (the Fee Agreement) signed by Berth. The Fee Agreement provided: "If attorney is terminated, or quits, the fees costs and expenses for the Motion to Withdraw are billed, because said Motion to Withdraw and procedures are required by Supreme Court Rule 13." The Fee Agreement also provided: "In the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge." See 750 ILCS 5/508(f)(3) (West 2010).

¶ 5 On January 31, 2011, the trial court granted Johnson's motion to withdraw and continued the matter for a hearing on Johnson's petition for fees. On that same day, attorney Diane E. Elliott (who had previously represented Berth while working in Johnson's law office until November 14, 2010), entered her appearance on behalf of Berth.

¶ 6 A hearing on Johnson's fee petition took place on February 14, 2011. Elliott was present on behalf of Berth and objected to certain fees sought by Johnson, including fees related to Johnson's motion to withdraw. Johnson attempted to get into evidence an exhibit consisting of copies of "public record[s]" of various fee petitions filed by various local judges when they were practicing attorneys, which, according to Johnson, included entries for fees related to withdrawing from a case. Johnson argued that the exhibit established that the local custom and practice was to bill for withdrawing from a case. The trial court denied admission of the exhibit. Elliott argued that "it has been the custom and practice of this Court to not allow the attorney to bill the client the motion to withdraw and the acts associated with that." The court sustained Elliott's objection and deducted \$253.50 from Johnson's bill.

¶ 7 In addition, at the hearing on Johnson's fee petition, Elliott asked that Johnson be ordered to turn over to her Berth's original client file. She stated that Johnson had given her a copy on CD only. In response, Johnson argued that, although section 508 of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/508 (West 2010)) required withdrawing counsel to turn over the original client file to substitute counsel, the Illinois Parentage Act of 1984 (the Parentage Act) (750 ILCS 45/1 *et seq.* (West 2010)), which, according to Johnson, governed the present case, contained no similar requirement. The court rejected Johnson's argument and ordered Johnson to provide Elliott with the original file within 14 days.

¶ 8 On February 23, 2011, Johnson moved for reconsideration of the court's rulings. Johnson argued that Berth never filed a pleading requesting the return of his client file and that the court did not have subject matter jurisdiction to order its return. Johnson further argued that the court erred in refusing to allow into evidence Johnson's exhibit concerning fee petitions of other attorneys. He made no argument concerning the reasonableness of the fees he sought.

¶9 On February 28, 2011, the trial court denied Johnson’s motion for reconsideration. The court stated:

“As to the motion to turn over the file, as you are well aware, Mr. Johnson, most of [section] 508 [of the Marriage Act] applies in paternity actions. Most of everything we do under custody, under parentage, under visitation, UCCJA, all of those things apply whether you’re proceeding in an F case or a D case. To now come in and argue and say, well, it was in my agreement and in my letter that Mr. Berth signed and then to say but it doesn’t apply I think is disingenuous to this Court.”

The court ordered Johnson to turn over Berth’s file to Elliott by March 2, 2011.

¶10 Thereafter, on that same day, Johnson filed an emergency motion, asking the court to find that there was no just reason to delay enforcement or appeal of the court’s order. Then, on March 2, 2011, Johnson filed another motion for reconsideration, seeking reconsideration of the court’s denial of Johnson’s prior motion for reconsideration. Johnson also asked the court to stay its judgment pending appeal.

¶11 On March 7, 2011, the trial court (1) denied Johnson’s motion for reconsideration of the February 28, 2011, order; (2) denied Johnson’s motion for stay pending appeal; and (3) found that there was no just reason to delay enforcement or appeal of the orders entered on February 14, 2011, February 28, 2011, and March 7, 2011.

¶12 Defendant timely appealed. Although there is no response brief, we may decide the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶13

## II. ANALYSIS

¶14

### A. Client File

¶ 15 Johnson argues that the trial court did not have subject matter jurisdiction to order him to turn over Berth's file to Elliott. Although Johnson concedes that section 508(f) of the Marriage Act "clearly and unequivocally" states that "[i]n the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge" (750 ILCS 5/508(f)(3) (West 2010)), he argues that the Marriage Act is inapplicable and that "there is no equivalent paragraph in the Parentage Act."

¶ 16 We first note that, to the extent that Johnson argues that the trial court's order was entered without subject matter jurisdiction because it was statutorily unauthorized, his argument is without merit. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). The trial court had subject matter jurisdiction upon the filing of Berth's initial pleading stating a cognizable claim, regardless of the absence of statutory authority for its order or of a written motion by Elliot for the turnover. See *id.*

¶ 17 In any event, the trial court's order was statutorily proper. Section 17 of the Parentage Act provides that, in a parentage action, the court may order reasonable attorney fees and costs "to be paid by the parties in accordance with the *relevant* factors specified in Section 508 of the [Marriage Act]." (Emphasis added.) 750 ILCS 45/17 (West 2010). This court recently recognized that the determination of which factors of the Marriage Act are relevant as applied to proceedings brought under the Parentage Act can be "complicated." *In re Parentage of Rocca*, 408 Ill. App. 3d 956, 959 (2011). Here, however, it seems clear that consideration of the provisions of section 508(c) of the Marriage Act, which govern hearings for attorney fees and costs against an attorney's own client,

are relevant to the court's ruling. 750 ILCS 5/508(c) (West 2010). (We also note that Johnson filed his petition for attorney fees "pursuant to the [Marriage Act], including §508.")

¶ 18 Section 508(c) provides in relevant part:

"(c) Final hearings for attorney's fees and costs against an attorney's own client, pursuant to a Petition for Setting Final Fees and Costs of either a counsel or a client, shall be governed by the following:

\* \* \*

"(3) The determination of reasonable attorney's fees and costs either under this subsection (c) \*\*\* is within the sound discretion of the trial court. The court shall first consider the written engagement agreement and, if the court finds that the former client and the filing counsel, pursuant to their written engagement agreement, entered into a contract which meets applicable requirements of court rules and addresses all material terms, then the contract shall be enforceable in accordance with its terms, subject to the further requirements of this subdivision (c)(3). Before ordering enforcement, however, the court shall consider the performance pursuant to the contract. Any amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were reasonable and necessary." 750 ILCS 5/508(c)(3) (West 2010).

¶ 19 Section 508(f) governs the requirements of the written engagement agreement referenced in section 508(c)(3) and provides:

"(f) Unless the Supreme Court by rule addresses the matters set out in this subsection (f), a written engagement agreement within the scope of subdivision (c)(2) shall have appended to it verbatim the following Statement:

\* \* \*

(3) \*\*\* In the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge.” 750 ILCS 5/508(f)(3) (West 2010).

¶ 20 Based on the foregoing statutory language, we find that the trial court, in considering Johnson's petition for attorney fees (filed pursuant to section 508 of the Marriage Act) and Elliott's request for turnover of Berth's original file (raised within the context of Johnson's petition for fees), properly considered the relevant factors contained in section 508 of the Marriage Act (as directed by section 17 of the Parentage Act), specifically the provisions of section 508(c)(3) and, in turn, section 508(f)(3). In ruling on Johnson's petition and on Elliott's request, the trial court referenced the applicability of section 508 and Johnson's Fee Agreement, wherein Johnson provided for the turnover of the file to substitute counsel upon his withdrawal. Therefore, the trial court properly ordered the turnover of Berth's file to Elliott.

¶ 21 Citing *In re the Minor Child Stella*, 339 Ill. App. 3d 610, 615 (2003), Johnson argues that attorney fee provisions found in the Marriage Act do not apply to parentage actions. However, *Stella* did not hold as Johnson suggests. Rather, *Stella* held that “section 17 of the Parentage Act does not give the courts express authority to order disgorgement under subsection 501(c-1)(3) of the [Marriage Act].” *Id.* at 617. Accordingly, it does not aid Johnson.

¶ 22 B. Attorney Fees

¶ 23 Johnson next argues that the trial court erred in disallowing the expenses on his fee petition that he incurred for preparing and presenting a motion to withdraw.

¶ 24 As noted above, section 508(c)(3) of the Marriage Act provides that the “determination of reasonable attorney’s fees and costs either under this subsection (c) \*\*\* is within the sound discretion of the trial court.” 750 ILCS 5/508(c)(3) (West 2010). It further provides that “[a]ny amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were *reasonable and necessary*.” (Emphasis added.) *Id.*

¶ 25 Johnson argues that he is entitled to fees for withdrawing from the case because Illinois Supreme Court Rule 13 (eff. July 1, 1982) requires an attorney to follow certain steps when withdrawing from a case and also because the fees were provided for in the Fee Agreement. We note, however, that the fact that the steps are “compulsory” does not necessarily mean that they are billable. Moreover, Johnson’s reliance on the mere existence of the Fee Agreement does not establish that the fees are reasonable and thus recoverable. In a suit for attorney fees due under a retainer agreement, the contract terms are not fully controlling; there exists an independent requirement that the fees sought be reasonable by the standards of legal ethics. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 598 (2000). An attorney-plaintiff has the burden to show “by a preponderance of the evidence, \*\*\* that the amount of fees sought is fair, just and reasonable.” *Id.* Here, although Johnson makes general assertions about the actions that are necessary by an attorney in withdrawing from a case, he makes no argument that the specific fees he seeks here are reasonable, in whole or in part.

¶ 26 Last, we address Johnson’s argument that the court erred in disallowing his exhibit (which purportedly included various fee petitions filed by various local judges when they were practicing attorneys). According to Johnson, this exhibit established local custom and practice on the granting of withdrawal fees. However, the exhibit is not in the record (although Johnson claims in the fact section of his brief that it was attached to his motion for reconsideration of the February 14, 2011,

order). Without a copy of the exhibit, we cannot determine whether it was properly excluded from consideration and we will presume that the trial court's order was in conformity with the law. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-91 (1984).

¶ 27 Accordingly, based on the foregoing, we affirm.

¶ 28 Affirmed.