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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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TRUEMPER AND TITINER, LTD.,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—L—686
	)	
PAMELA S. WILLIAMS,	)	Honorable
	)	Robert B. Spence,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Burke concurred in the judgment.

**ORDER**

*Held:* We affirmed the trial court's award of attorney fees to plaintiff.

Plaintiff, Truemper and Titiner, Ltd., represented defendant, Pamela S. Williams, in defendant's dissolution of marriage proceedings. Several months after plaintiff withdrew as defendant's counsel, plaintiff filed suit against defendant for attorney fees. The trial court granted plaintiff fees of \$58,996.79. Defendant appeals, arguing that: (1) the trial court abused its discretion by admitting the engagement agreement into evidence over her objection of lack of foundation; (2) plaintiff did not meet its burden of proof to obtain an award of attorney fees and costs, because it did not prove that it provided plaintiff with the statutorily-required statement of client's rights and

responsibilities; and (3) the trial court erred in finding that fees for services related to her bankruptcy action were reasonable and necessary. We affirm.

## I. BACKGROUND

Defendant filed a petition for dissolution of marriage in 2004. She and plaintiff entered into a written engagement agreement on December 22, 2005. Plaintiff's representation continued until August 4, 2008, when plaintiff was granted leave to withdraw as counsel.

On November 26, 2008, plaintiff filed a two-count complaint against defendant. Plaintiff filed an amended complaint on March 5, 2009. Count I was based upon an "account stated," and count II sought an award of attorney fees and costs pursuant to section 508(e) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(e) (West 2008)). Plaintiff requested a judgment of \$72,713.79 for the unpaid balance of attorney fees and costs. Plaintiff attached to the complaint billing records and a one-page engagement agreement which states that the "Client has read and fully understands this Agreement and the STATEMENT OF CLIENT'S RIGHT AND RESPONSIBILITIES attached hereto." The statement of client's rights was not attached to the exhibit.

A bench trial took place on January 13 and February 10, 2010. At the beginning of the trial, plaintiff voluntarily withdrew count I and proceeded on just count II. The only witnesses to testify were William Truemper, who was a principal of plaintiff, and defendant.

Truemper testified that he agreed to represent defendant in December 2005, and the terms of the representation were reduced to writing in an engagement agreement. Truemper identified the agreement as plaintiff's exhibit 1, and he stated that the agreement had attached to it the statement of client's rights and responsibilities "which is right out of the statute" and was referred to at the

bottom of the engagement letter. Truemper testified that the agreement was signed by himself and defendant, and it was the effective agreement during the entire course of representation.

Plaintiff sought to admit the engagement agreement into evidence, and the defense objected based on a lack of foundation. The defense argued that it was an incomplete document because it had no attachments, and there was no indication that the attachment was provided to defendant and initialed by her. The trial court allowed the exhibit into evidence over the objection.

When asked on cross-examination if the letter was the first page of the agreement, Truemper responded: “Well, it’s the only page. There was a statement of client’s rights and responsibilities which was attached to it, but that’s a statutory document.” When asked if the client’s rights and responsibilities was made part of the agreement, Truemper replied, “I just think that the agreement refers that it’s attached. I don’t know that it says it’s part of it.”

Regarding defendant’s bankruptcy proceedings, Truemper testified as follows. The trial court in the dissolution proceeding was taking the position that it did not have the statutory authority to order property to be sold until the judgment of dissolution. Defendant had debts that needed to be paid, and she wanted to sell property. Truemper suggested that the bankruptcy court may have the power to liquidate certain of her properties to pay off debts. He referred her to an attorney named Ruddy. Ruddy thought that by filing chapter 13 bankruptcy, the bankruptcy court would obtain jurisdiction over the property and could order it sold to pay debts. There was also a concern that defendant’s husband may have been contracting for debt under defendant’s name. Ruddy believed that if defendant filed for bankruptcy, they would at least identify her debts in the event defendant’s husband fraudulently obtained debt in defendant’s name and the creditor sought payment after the

dissolution. Ultimately, it would have been Ruddy's determination whether to recommend that defendant file for bankruptcy.

Truemper agreed that he was told that the bankruptcy case was dismissed, but he did not recall why it was dismissed. He believed that some relief had been obtained, in that one of the properties was sold, and certain debts were paid. Truemper billed for one court appearance on the bankruptcy case where he had to address relevant issues from the dissolution case. His remaining charges related to the bankruptcy were for keeping abreast of the bankruptcy case's progress because it was related to the divorce in that it dealt with marital assets and liabilities.

Defendant testified that exhibit 1 was the agreement that she entered into with plaintiff. Regarding the bankruptcy, she testified that only one property (Montgomery Road property) was sold during the pendency of her bankruptcy proceedings, which lasted two years and two months. Truemper never discussed with her the possibility of appointing a receiver to take control of business assets controlled by her ex-husband.

In an order dated March 2, 2010, the trial court found as follows. Defendant signed a retainer agreement with plaintiff on December 22, 2005. She agreed to pay \$200 per hour for attorney fees for both court and non-court matters, as well as all costs. Plaintiff charged \$200 per hour for Truemper's services and a lower rate for his associate. These charges were reasonable considering the skill and standing of the attorneys, the nature of the case and issues involved, and the usual and customary charges for attorneys of their experience. Plaintiff charged \$50 per hour for paralegal work, which was a reasonable fee and was included as a proper litigation expense. Truemper personally approved billing statements prepared by plaintiff's computer system, including time billed by both himself and his associate. Copies of billing statements were admitted into evidence and

detailed the amount of time each attorney spent on defendant's case. During the time she was represented by plaintiff, defendant did not object to any billing statements. Plaintiff's representation of defendant ended on August 4, 2008. The "attorney fees billed for services related to the bankruptcy action were reasonable and necessary, in that they were directly related to preventing waste of marital assets." Expert witness fees were reasonable and necessary.

The trial court found that plaintiff's fees as billed were reasonable and necessary with exceptions totaling \$13,717, which resulted from certain charges occurring prior to the retention agreement or having insufficient documentation. The trial court entered judgment in plaintiff's favor for \$58,996.79.

Defendant filed a posttrial motion to modify a factual finding in the judgment, and the trial court granted the motion on March 19, 2010. Defendant then timely appealed.

## II. ANALYSIS

Defendant first argues that the trial court erred in overruling her objection to the admission of plaintiff's exhibit 1, the engagement agreement. Defendant argues that there was an inadequate foundation for the document because it was incomplete, in that it did not have attached the statement of client's rights and responsibilities referenced in the document. Defendant also argues that the exhibit did not have any indication that the attachment was provided to her and initialed by her. Defendant further contends that the allegation in the complaint that the parties entered into the engagement agreement attached to the complaint operates as a judicial admission against plaintiff and estops it from contradicting the allegation.

A written engagement agreement is required to have "appended to it verbatim" a statement of client's rights and responsibilities, which provides in relevant part:

“ ‘STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

(1) WRITTEN ENGAGEMENT AGREEMENT. *The written engagement agreement, prepared by the counsel, shall clearly address the objectives of representation and detail the fee arrangement, including all material terms. If fees are to be based on criteria apart from, or in addition to, hourly rates, such criteria (e.g., unique time demands and/or utilization of unique expertise) shall be delineated. The client shall receive a copy of the written engagement agreement and any additional clarification requested and is advised not to sign any such agreement which the client finds to be unsatisfactory or does not understand.*

(2) REPRESENTATION. *Representation will commence upon the signing of the written engagement agreement. The counsel will provide competent representation, which requires legal knowledge, skill, thoroughness and preparation to handle those matters set forth*

*in the written engagement agreement. \*\*\**

(3) COMMUNICATION. \*\*\*

(4) ETHICAL CONDUCT. \*\*\*

(5) FEES. \*\*\* *The counsel will prepare and provide the client with an itemized billing statement detailing hourly rates (and/or other criteria), time spent, tasks performed, and costs incurred on a regular basis, at least quarterly. The client should review each billing statement promptly and address any objection or error in a timely manner.\*\*\**

(6) DISPUTES.’ ” (Emphases added) 750 ILCS 5/508(f) (West 2008).

In order to admit a document into evidence, a party must lay a proper foundation. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, \_\_\_ (2010). To authenticate a

document, the party must provide evidence that the document is what the party claims it is. *Id.* A party often establishes the identity of a document by the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that the document is what the proponent claims it to be. *Id.* The admission of evidence is within the trial court's discretion, and its decision regarding admissibility will not be reversed absent an abuse of discretion. *Village of Woodridge v. Board of Education of Community High School District 99*, 403 Ill. App. 3d 559, 570 (2010). A trial court abuses its discretion only where no reasonable person would take the same view. *Id.*

Regarding defendant's argument about a judicial admission, the language of section 508(f) clearly contemplates that the written engagement agreement is something distinct from the statement of client's rights and responsibilities, as the statute refers to counsel preparing a written engagement agreement and the parties signing that agreement. Thus, plaintiff's allegation in its complaint that the one-page document attached constituted the engagement agreement is not inconsistent with its position at trial that the document also had the statutory statement of client's rights and responsibilities attached to it.

We further conclude that the trial court acted within its discretion by allowing the engagement agreement into evidence. Truemper identified the document as one he and defendant signed to memorialize plaintiff's representation of her in the dissolution proceeding, an assertion admitted to in defendant's answer to the complaint and affirmed by defendant in her testimony. Truemper also testified that the statutory statement of client's rights and responsibilities was attached to it. Truemper's testimony is consistent with the language of the engagement agreement, which states that the client has read and fully understands the attached statement of client's rights and responsibilities. There is no requirement in section 508(f) or in the engagement agreement itself that

the client initial the statutory statement. Accordingly, plaintiff laid an adequate foundation to admit the engagement agreement into evidence.

In a related vein, defendant next argues that plaintiff failed to establish its burden of proof required to obtain an award of attorney fees and costs under section 508, because plaintiff failed to prove that the statutorily-mandated statement of client's rights and responsibilities was attached to the engagement agreement.

Plaintiff sought fees pursuant to section 508(e) of the Marriage Act. Actions for attorney fees and costs under that section must comply with section 508(c)(3). 750 ILCS 5/508(e) (West 2008). Section 508(c)(3) states, among other things, that if the trial court finds that the parties, "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." 750 ILCS 5/508(c)(3) (West 2008); *cf.* 750 ILCS 5/508(c)(2) (West 2008) (final hearing under subsection (c) requires that the written engagement agreement meet the requirements of subsection (f) [requiring statement of client's rights and responsibilities]). Defendant argues that one of the "applicable requirements" for enforcement of the engagement agreement under section 508(c)(3) is that the agreement had the statement of client's rights and responsibilities attached. *See also Kaufman, Litwin & Feinstein v. Edgar*, 301 Ill. App. 3d 826, 835 (1998) ("An attorney must follow the requirements of section 508(f) if he wishes to seek fees from his client *in the dissolution case* pursuant to section 508" (emphasis added)).

Assuming, *arguendo*, that proof of a statement of client's rights and responsibilities is required to obtain a judgment in an independent proceeding under section 508(e), the trial court's implicit finding that Truemper provided defendant with that statement is not against the manifest

weight of the evidence. *See West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 185 (2010) (a reviewing court will not overturn a trial court’s factual findings unless they are against the manifest weight of the evidence).<sup>1</sup> Truemper and defendant both testified that the engagement letter represented their agreement. The engagement agreement states that the “Client has read and fully understands this Agreement and the STATEMENT OF CLIENT’S RIGHTS AND RESPONSIBILITIES attached hereto.” Defendant signed the agreement, thereby indicating she had in fact read an attached statement of client’s rights and responsibilities. Truemper also specifically testified that the engagement letter had a statement of client’s rights and responsibilities attached to it, and that the statement was “right out of the statute.” Defendant did not provide any testimony to the contrary. Accordingly, a finding that defendant was provided with the required statutory statement is not against the manifest weight of the evidence.

Last, defendant argues that the trial court erred in finding that the fees billed for services related to the bankruptcy action, totaling \$3,776.50, were reasonable and necessary. The determination of reasonable attorney fees and costs relating to a dissolution action is within the trial court’s sound discretion. 750 ILCS 5/508(c)(3) (West 2008); *Hupe v. Hupe*, 305 Ill. App. 3d 118, 122 (1999) (attorney fee awards are within the trial court’s discretion and will not be reversed unless the trial court abuses its discretion). “Any amount awarded by the court must be found to be fair compensation for the services, pursuant to contract, that the court finds were reasonable and necessary.” 750 ILCS 5/508(c)(3) (West 2008).

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<sup>1</sup>Defendant argues that questions regarding burden of proof are questions of law reviewed *de novo*, citing *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 627 (2006). However, that standard is applicable to questions regarding which party has the burden of proof (*Id.*), which is not the question presented here.

Defendant notes that section 503(e) of the Marriage Act (750 ILCS 5/503(e) (West 2008)) states that “[e]ach spouse has a species of common ownership in the marital property.” She argues that the bankruptcy court could not determine what property was included in her bankruptcy estate until the dissolution of marriage proceedings were concluded and the marital property was equitably divided. Defendant argues that, therefore, the filing of her bankruptcy petition and related proceedings served no purpose that could not have been served by the voluntary sale by herself and her husband of the Montgomery Road property outside of the bankruptcy court. Defendant argues that the bankruptcy court had to wait until the state court divided the marital property to sell any property that her husband did not want to sell.

Plaintiff maintains that defendant’s argument ignores the fact that decisions on how she proceeded in the bankruptcy court were made by defendant and Ruddy, without plaintiff’s involvement. As such, plaintiff argues, it cannot be responsible for the outcome in the bankruptcy proceedings, and the outcome has no bearing on whether its fees in monitoring the bankruptcy proceeding to prepare the dissolution case for trial were fair, reasonable, and necessary.

We conclude that the trial court acted within its discretion when awarding plaintiff fees for its work in connection with the bankruptcy proceedings. Truemper testified that he thought that the bankruptcy court may have the power to liquidate certain of defendant’s properties to pay off debts, and he referred her to attorney Ruddy to advise her on a potential bankruptcy filing. He testified that he did not participate in or bill for any work on bankruptcy proceedings other than for making one court appearance for issues in connection with the dissolution case, and for keeping up-to-date on the progress of the case. We agree with plaintiff that because Truemper referred defendant to attorney Ruddy for the bankruptcy work, the decision of whether to file for bankruptcy was between

Ruddy and defendant. Further, it was not an abuse of discretion for the trial court to conclude that Truemper's billings for keeping up-to-date on the bankruptcy case were reasonable and necessary, as the potential disposition of assets in the bankruptcy case was relevant to the dissolution proceedings.

### III. CONCLUSION

For the reasons stated, we affirm the judgment of the Kane County circuit court.

Affirmed.