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).

2011 IL App (4th) 110178-U

Filed 11/21/11

NO. 4-11-0178

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
CONSTANCE E. SULLIVAN,	)	Circuit Court of
Petitioner-Appellee,	)	Morgan County
and	)	No. 07D128
LEE A. SULLIVAN,	)	
Respondent-Appellant.	)	Honorable
	)	Tim P. Olson,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, rejecting respondent's arguments that (1) the trial court erred by denying his motion to (a) strike part of petitioner's amended petition and for judgment on the pleadings and (b) quash documents, (2) the court abused its discretion by limiting discovery, and (3) the court erred by awarding petitioner attorney fees.

¶ 2 In September 2008, the trial court dissolved the marriage of petitioner, Constance E. Sullivan, and respondent, Lee A. Sullivan. In July 2010, Constance filed an amended petition for attorney fees, requesting that the court order Lee to pay the attorney fees she incurred in responding to his unsuccessful appeal of the court's dissolution order.

¶ 3 In September 2010, Lee filed a "motion to strike part of amended petition and for judgment on the pleadings" and a "motion to quash documents." Following a hearing on the parties' respective motions conducted later that month, the trial court (1) denied Lee's motions,

(2) granted Lee 7 days to file (a) an answer to Constance's amended petition for attorney fees and (b) any requests for discovery, (3) ordered Lee to comply with Constance's previously filed supplemental discovery requests within 28 days, and (4) ordered the parties to file a financial affidavit within 7 days. At the conclusion of the November 2010 hearing on Constance's amended petition, the court ordered Lee to pay Constance's attorney $6,000.

¶ 4 Lee appeals, arguing that (1) the trial court erred by denying his motion to (a) strike part of amended petition and for judgment on the pleadings and (b) quash documents, (2) the court abused its discretion by limiting discovery during his first appearance, and (3) the court erred by awarding Constance attorney fees. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In September 2008, the trial court dissolved the parties' marriage. Lee appealed, and this court affirmed. *In re Marriage of Sullivan*, No. 4-09-0145 (Dec. 31, 2009) (unpublished order under Supreme Court Rule 23).

¶ 7 In January 2010, Constance filed a petition for attorney fees under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2010)), which she amended on July 22, 2010. Constance's amended petition claimed that because Lee's appeal was "without merit and wholly unjustified," the trial court should order him to pay the attorney fees and costs she incurred in responding to his unsuccessful appeal. That same day, Constance also filed a notice of hearing, in which she verified that she mailed a copy of the notice to Lee's attorney, Alan W. Applebee, to inform him of the August 19, 2010, hearing on her amended petition. Constance later filed a demand to appear at hearing, verifying that she had mailed that demand to Applebee two weeks prior to the August 2010 hearing.

¶ 8 At the August 19, 2010, hearing on Constance's amended petition for attorney fees, the trial court (1) ordered Constance to send a notice of hearing to Lee because neither Lee nor Applebee appeared at the hearing and (2) continued the matter until September 29, 2010. Four days later, Constance filed the following documents: (1) two separate certificates of service, verifying that on August 20, 2010, she served Lee by mailing to his home (a) her amended petition for attorney fees and (b) a supplemental request for document production and supplemental interrogatories; (2) a notice of hearing; and (3) a demand to appear at hearing, informing Lee about the September 2010 hearing.

¶ 9 Five days before the September 2010 hearing, Lee filed a "motion to strike part of amended petition and for judgment on the pleadings" pursuant to section 2-615(a) of the Code of Civil Procedure (735 ILCS 5/2-615(a) (West 2010)), and a "motion to quash documents." In his motion to strike part of the amended petition and for judgment on the pleadings, Lee contended that the trial court should (1) strike certain portions of Constance's amended petition as "vague" or "immaterial" conclusions and (2) dismiss Constance's amended petition because section 508(b) of the Act, upon which Constance based her amended petition, was not applicable. In his motion to quash documents, Lee contended that Constance's filings, specifically, her notice of hearing, demand to appear at hearing, and supplemental requests for document production and interrogatories were improper because they were simultaneously mailed with her amended petition for attorney fees, prior to the effective date of service.

¶ 10 At the September 2010 hearing, the trial court first addressed Applebee's oral argument that the procedural posture of the case was improper, as follows:

"THE COURT: *** The reason we're here today is be-

cause this Court noticed probably a little bit of procedural error. And that is, [Applebee] was served with the original petition *** for a hearing that *** was to take place on–

[APPLEBEE]: I believe it was July [*sic*].

THE COURT: Right. And you didn't show up. *** And [the Court] looked at the file [and] thought *** this is post judgment. Appeal's over. Technically, [Applebee was] no longer the attorney of record ***[. So the Court assumed] that's probably why you weren't here because you hadn't entered your appearance even though you [received] notice of the hearing ***. ***

***

To be procedurally safe, [the Court] directed [Constance's counsel] to send notice to [Lee], which he did, and that's why we're here today. So [the Court] is not going to find *** that's improper procedure because *** [the Court] noticed that you had not entered your appearance."

¶ 11 Thereafter, the trial court granted Constance's oral motion to correct a typographical error on her amended petition by interlineation to reflect that her claim was based on section 508(a), instead of section 508(b) of the Act. In response, Lee stated that he had "no problems with amendment by interlineation." Following argument, the court (1) denied Lee's motions; (2) granted Lee 7 days to file (a) an answer to Constance's amended petition for attorney fees, if he so desired, and (b) any requests for discovery; (3) ordered Lee to comply with Constance's

previously filed supplemental discovery requests within 28 days; (4) ordered the parties to file a financial affidavit within 7 days; and (5) scheduled a November 2010 hearing on Constance's amended petition for attorney fees.

¶ 12 On October 6, 2010, Lee filed a motion to reconsider, arguing, in part, that the trial court's scheduling orders regarding the timing of (1) filing financial affidavits, answers, and discovery requests and (2) complying with Constance's requests for supplemental discovery were unreasonable. Following an October 14, 2010, hearing, the court denied Lee's motion and ordered Lee to comply with the court's order within four days.

¶ 13 At the November 2010 hearing, the parties stipulated, in pertinent part, to the admission of their respective financial affidavits. Lee, who testified at the hearing from his counsel's table, stated that he was 85 years old and had suffered three heart attacks and a stroke, which left him partially paralyzed on his left side. Lee's financial affidavit showed that his monthly net income totaled $4,505, which was comprised of $1,606 in net salary from his employment as a engineering consultant, $2,046 in social security benefits, and $853 from a retirement annuity that was scheduled to end in May 2011 due to the financial depletion of that account. Lee claimed (1) monthly expenses of $4,070 and (2) savings of approximately $11,500.

¶ 14 Lee testified further that (1) he had yet to pay any attorney fees in connection with his appeal and (2) Applebee had yet to bill him for his fees. (The record reflects that Applebee then provided Lee a document while at counsel's table). After the trial court admonished Applebee to refrain from giving Lee documents, Lee testified that the document Applebee provided was a statement of account, dated July 30, 2010, that listed a "balance forward" of $9,075 for "legal services rendered." Lee acknowledged that prior to that moment, he had not

received a bill from Applebee or known how much he owed Applebee. On redirect examination, Lee stated that Applebee had previously hand-delivered bills to him that he failed to recall.

¶ 15 Constance, who was then 60 years old, testified that after suffering a stroke in 1998, she was unable to work. Constance's financial affidavit reflected that (1) she received a net monthly income of $2,158 from a retirement annuity and social security benefits and (2) her monthly expenses were $2,860, which Constance stated had since increased by $128. Constance acknowledged that she recently stopped receiving maintenance from Lee and as a result, was financing the resulting monthly deficit on credit cards. Constance stated that she paid her attorney $3,500 to defend against Lee's appeal, which she financed through one of her six credit cards that had a current balance of $3,080.

¶ 16 Constance acknowledged that (1) in July 2009, she purchased a new home that she financed with a 15-year mortgage and (2) at the time Lee filed his appeal, he had paid her approximately $20,000 in accordance with the terms of their marital settlement agreement.

¶ 17 Constance's counsel, Robert V. Bonjean, Jr., testified that he charged $200 per hour for his services. Bonjean's "affidavit of legal services rendered" detailed that from March 2009 through November 2010, he spent 31.75 hours on Constance's behalf responding to Lee's appeal. Bonjean listed fees of $6,350, which did not include an additional $203 for filing fees and transcript costs.

¶ 18 Following the close of evidence and argument, the trial court made the following findings: (1) Bonjean's rate of $200 per hour and the number of hours he billed for his services were reasonable, (2) Lee's appeal was not frivolous but instead "wasn't substantial enough to warrant any kind of modification [to] the Court's orders," and (3) Constance did not have the

ability to pay the legal fees at issue. The court then took under advisement the issue of whether Lee had the ability to pay Constance's attorney fees.

¶ 19 In December 2010, the trial court entered a written order, finding, in pertinent part, that because Lee (1) was employed, (2) had a greater income than Constance, and (3) had $11,000 in uncommitted funds, he had the ability to pay $6,000 of the attorney fees Constance incurred as a result of his unsuccessful appeal.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Lee argues that (1) the trial court erred by denying his motion (a) to strike part of amended petition and for judgment on the pleadings and (b) to quash documents, (2) the court abused its discretion by limiting discovery during his first appearance, and (3) the court erred by awarding Constance attorney fees. We address Lee's contentions in turn.

¶ 23 A. The Trial Court's Denial of Lee's Motion To Strike Amended Petition and for Judgment on the Pleadings

1. *A Section 2-615 Motion and the Standard of Review*

¶ 24 Section 2-615 of the Code of Civil Procedure provides, in part, that a pleading or portion thereof may be stricken because it is substantially insufficient in law. 735 ILCS 5/2-615(a) (West 2010); *Keating v. 68th and Paxton, L.L.C.*, 401 Ill. App. 3d 456, 463, 936 N.E.2d 1050, 1057 (2010). In evaluating a 2-615 motion, the trial court accepts as true all well-pleaded facts and reasonable inferences to be drawn from those facts and determines whether the allegations are sufficient to state a cause of action upon which relief may be granted. *Keating*, 401 Ill. App. 3d at 463, 936 N.E.2d at 1057. Because a section 2-615 motion raises issues of law, we review *de novo* a trial court ruling granting or denying such a motion. *Winters v.*

Wangler, 386 Ill. App. 3d 788, 793, 898 N.E.2d 776, 780 (2008).

¶ 25 2. *Sections 508(a) and 508(b) of the Act*

¶ 26 Sections 508(a) and 508(b) of the Act provides, in pertinent part, the following:

> "(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** Awards may be made in connection with the following:
>
> * * *
>
> (3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.
>
> * * *
>
> (b) In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(a), (b) (West 2010).

¶ 27 3. *Lee's Motion To Strike Amended Petition and for Judgment on the Pleadings*

¶ 28 Lee argues that the trial court erred by denying his motion to strike part of amended petition and for judgment on the pleading. Specifically, Lee contends that (1) certain

portions of Constance's amended petition were "vague" or "immaterial" conclusions and (2) Constance's amended petition was based on section 508(b) of the Act, which was inapplicable. Thus, Lee asserts that "[b]y failing to strike the conclusory allegations and then granting leave to amend by interlineation *** the court permitted the amended petition to stand although it clearly failed to state a cause of action." We disagree.

¶ 29 To the extent that Lee contends that the trial court erred by granting Constance leave to correct–by interlineation–a typographical error to her amended petition for attorney fees to reflect that it was based on section 508(a), instead of section 508(b) of the Act, we reject this contention as inconsistent with this State's policy. See *Grove v. Carle Foundation Hospital*, 364 Ill. App. 3d 412, 417, 846 N.E.2d 153, 157 (2006) ("Illinois law supports a liberal policy of allowing amendments to the pleadings so as to enable parties to fully present their alleged cause or causes of action"). In this case, the record shows that at the September 2010 hearing Lee did not object but instead, expressed his acquiescence to Constance's motion for leave to amend by interlineation. In this regard, Lee's contention is unpersuasive.

¶ 30 We also reject Lee's assertion that the trial court "totally ignored" his claim that Constance's amended petition contained conclusory allegations that should have been stricken. The record shows that the court specifically addressed Lee's claim regarding the disputed portions of Constance's petition, as follows:

> "[Y]ou may be right in some respects. There may be surplusage in [Constance's amended petition for attorney fees]. But the fact of the matter is, the way [the court reads] the law, and the way domestic law is practiced statewide, the petition on file

> puts you *** and [Lee] on notice as to what [Constance] is seeking. [Constance is] seeking attorney fees for defending an appeal. That's it. Nothing more. Nothing less."

¶ 31 Here, even if the trial court had excised the language Lee claimed was conclusory from Constance's amended petition for attorney fees, the remaining allegations claimed that (1) in November 2008, Lee filed an appeal in the instant case; (2) in December 2009, this court affirmed the court's judgment; (3) Constance incurred attorney fees defending against Lee's unsuccessful appeal; and (4) Constance was entitled to pursue reimbursement of those legal expenses pursuant to section 508(a) of the Act.

¶ 32 Accordingly, because we agree with the trial court's aforementioned assessment that the factual allegations contained within Constance's amended petition for attorney fees were sufficient to state a cause of action, we reject Lee's argument that the court erred by denying his motion to strike part of amended petition and for judgment on the pleadings.

¶ 33 B. The Trial Court's Denial of Lee's Motion To Quash Documents

¶ 34 Lee next argues that the trial court erred by denying his motion to quash documents. Specifically, Lee contends that "the conduct of mailing both the notice of trial and two discovery demands before he was served" with Constance's amended petition for attorney fees "must be viewed as reprehensible and a stark attempt to deny [him] discovery and a fair hearing" sanctionable under Supreme Court Rule 219 (eff. July 1, 2002). We disagree.

¶ 35 The purpose of discovery rules is to protect the accused against surprise, unfairness, and inadequate preparation. *People v. Taylor*, 409 Ill. App. 3d 881, 908, 949 N.E.2d 124, 149 (2011). The standard of review for a discovery violation is whether the trial court

abused its discretion. *People v. Lowry*, 354 Ill. App. 3d 760, 769, 821 N.E.2d 649, 659 (2004). "Although the judgment of the trial court is given great weight, a reviewing court will find an abuse of discretion when a defendant is prejudiced by the discovery violation and the trial court fails to eliminate the prejudice." *Taylor*, 409 Ill. App. 3d at 908, 949 N.E.2d at 149.

¶ 36 In support of his contention, Lee provides the following time line to illustrate what he asserts was Constance's "abusive" tactic:

"August 20, 2010	Date of mailing [documents at issue]
August 24, 2010	Effective Date of Service
August 21, 2010	28 days later–last day to answer and produce per the discovery demands
August 29, 2010	Scheduled trial–8 days later"

¶ 37 Despite Lee's claims of prejudice based on the aforementioned time line, the record shows that at the September 2010 hearing, the trial court provided Lee an explanation of the steps it took at the August 2010 hearing to remedy what the court characterized was a "bit of procedural error." In denying Lee's motion to quash documents, the court sought to "reset" the proceedings from that day forward, as follows:

> "THE COURT: *** [The court] will call it on [its] motion, which [the court has] the authority to do for a management conference from this day forward, which resolves all issues. That's it. So, [the parties] are all here. And so [the court is] not striking the notice of hearing. [The court is] not going to *** quash the demands. All [the court is] going to do is find that [the parties]

> have them and you will respond to them as I order from this day forward. ***."

Thereafter, the court (1) declined to impose discovery sanctions, (2) granted Lee 7 days to file (a) an answer to Constance's amended petition for attorney fees, if he so desired and (b) any requests for discovery, (3) ordered Lee to comply with Constance's previously filed discovery requests within 28 days, (4) ordered the parties to file a financial affidavit within 7 days, and (5) scheduled a November 2010 hearing on Constance's amended petition for attorney fees.

¶ 38 In this case, the trial court's actions contradict Lee's assertion to this court, that "[t]he record shows that Constance[,] through her attorney[,] attempted to harass and wrongfully obtain an unfair advantage over Lee that the *** court then condoned." Here, the court appropriately eliminated any prejudice to respondent by (1) implementing the aforementioned discovery schedule and (2) rescheduling the hearing on Constance's amended petition for attorney fees to November 2010. Accordingly, we reject Lee's claim that the court abused its discretion by denying his motion to quash documents.

¶ 39 C. The Trial Court's Discovery Orders

¶ 40 Lee next argues that the trial court abused its discretion by limiting discovery during his first appearance. Specifically, Lee contends that the court's scheduling orders effectively denied him "full discovery by seriously precluding the time for taking discovery." We disagree.

¶ 41 "A trial court is granted considerable discretion in ruling on matters pertaining to discovery, and this court will not reverse such a ruling absent an abuse of that discretion." *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 516, 935 N.E.2d 1158,

1170 (2010).

¶ 42 For the reasons we have previously expressed in affirming the trial court's denial of Lee's motion to quash documents, we conclude that the court's September 2010 order pertaining to the timing of (1) filing financial affidavits, answers, and discovery requests and (2) complying with Constance's requests for supplemental discovery–which we note occurred 51 days before the November 2010 hearing on Constance's amended petition for attorney fees–was not unreasonable.

¶ 43 Here, having considered the totality of the procedural posture of this case, Lee's claim that he was denied "full discovery" was not caused by the trial court's efforts to accommodate the parties while, simultaneously, effectively and efficiently disposing of Constance's amended petition. Instead, any delay in obtaining discovery was caused by Lee's failure to comply with the court's order at the conclusion of the hearing on his motion to reconsider, mandating, in part, that he file his discovery requests before October 18, 2010.

¶ 44 D. The Trial Court's Award of Attorney Fees

¶ 45 Lee also argues that the trial court erred by awarding Constance attorney fees. We disagree.

¶ 46 Section 508 of the Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. 750 ILCS 5/508 (West 2010); *In re Marriage of Reimer*, 387 Ill. App. 3d 1066, 1076, 902 N.E.2d 132, 140 (2009). " '[T]he trial court's decision to award fees is a matter of discretion and will not be disturbed on appeal absent an abuse of discretion.' " *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214, 902 N.E.2d 777, 787 (2009) (quoting *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656, 879 N.E.2d 445,

451 (2007)). An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199, 951 N.E.2d 524, 531-32 (2011).

¶ 47 We first note that Lee contests neither the amount of attorney fees the trial court awarded nor the reasonableness of those fees. Instead, Lee contends that the court erred by finding that (1) Constance did not have the ability to pay her attorney fees and (2) he had the ability to pay $6,000 of Constance's attorney fees. *Cf. In re Marriage of Haken*, 394 Ill. App. 3d 155, 163, 914 N.E.2d 739, 745 (2009) (where this court rejected the inability–ability to pay standard and instead analyzed the award of attorney fees by considering the "relative financial resources of the parties" as mandated by section 508(a)).

¶ 48 In support of his argument, Lee contends that the trial court failed to acknowledge (1) his age, (2) "his health and financial situation," (3) that he was indebted to his counsel for $9,075, (4) Constance had purchased a new residence, or (5) that Constance's income was more than what many single parents earn. In this regard, Lee asserts that the record clearly shows he does not have substantially greater current income and that his health is failing.

¶ 49 However, as we have previously stated, our review of the trial court's decision to award Constance attorney fees involves determining whether it was *unreasonable* to grant such fees given the evidence presented, which does not include reweighing that evidence. Here, the parties presented and the court considered the appropriate evidence–to include the evidence Lee asserts the court failed to specifically mention in its order–regarding the parties' financial resources to pay the attorney fees at issue. Given our standard of review, we conclude that the court's finding that (1) Constance was financially incapable of paying her attorney fees and (2)

Lee's financial situation afforded him the opportunity to defray $6,000 of Constance's legal expenses was not an abuse of its discretion.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the trial court's judgment.

¶ 52 Affirmed.