NOTICE
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2011 IL App (4th) 110468-U

Filed 11/30/11

NO. 4-11-0468

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
JACQULYN BENTLEY,	)	Circuit Court of
Petitioner-Appellant,	)	McLean County
and	)	No. 09D243
RALPH BENTLEY,	)	
Respondent,	)	
and	)	Honorable
DREW QUITSCHAU,	)	James E. Souk,
Intervenor-Appellee.	)	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 the trial court's denial of the plaintiff's motion to quash notice of attorney's lien her attorney filed pursuant to the Attorneys Lien Act, concluding that (1) the Illinois Marriage and Dissolution of Marriage Act does not preclude such a filing, (2) the timing and sufficiency of service did not render the notice void, and (3) the imposition of sanctions was not warranted.

¶ 2 In April 2009, petitioner, Jacqulyn Bentley, retained intervenor, Drew Quitschau, to represent her in a divorce suit. Following the trial court's September 2010 order dissolving her marriage to respondent, Ralph Bentley, and subsequent order resolving the remaining ancillary issues between them, Jacqulyn retained different counsel to appeal the court's judgment.

¶ 3 In January 2011, Quitschau filed a motion to withdraw as Jacqulyn's counsel based on Jacqulyn's failure to pay his fee. Shortly thereafter, Quitschau filed a "notice of attorney's lien for fees" under section 1 of the Attorneys Lien Act (770 ILCS 5/1 (West 2010)).

¶ 4 In March 2011, Jacqulyn's appellate counsel filed an "amended motion to quash and adjudicate notice of attorney's lien for fees," arguing that Quitschau's lien was unenforceable and requesting sanctions for Quitschau's "vexatious misconduct and willful violation" of Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), which prohibits attorneys from certifying a pleading for an improper purpose. Following a hearing conducted later that month, the trial court granted Quitschau's motion to withdraw and took Jacqulyn's amended motion under advisement. In April 2011, the court denied Jacqulyn's amended motion to quash.

¶ 5 Jacqulyn appeals, arguing that the Attorneys Lien Act is not applicable in proceedings governed by the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/101 through 802 (West 2010)). Alternatively, Jacqulyn argues that even if the Attorneys Lien Act applies, Quitschau's notice is void because he failed to serve his attorney's lien (1) before Jacqulyn terminated his representation and (2) on the trustee of Ralph's estate by certified mail. Jacqulyn also argues that the trial court erred by refusing to impose sanctions pursuant to Illinois Supreme Court Rule 137. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 A. The Circumstances That Prompted Jacqulyn's Amended Motion To Quash

¶ 8 In April 2009, Jacqulyn retained Quitschau to represent her in her divorce, and shortly thereafter, Quitschau filed a petition for dissolution of marriage. During the pendency of those proceedings, the trial court appointed a guardian *ad litem* to represent Ralph and a trustee for Ralph's estate because of his deteriorating mental health. In September 2010, the court dissolved Jacqulyn's marriage to Ralph. In October 2010, the court resolved the remaining ancillary issues, ordering, in part, that Ralph pay Jacqulyn $200,000 by November 2010.

¶ 9 On December 23, 2010, attorney Jack C. Vieley informed Quitschau by letter that Jacqulyn, whom Vieley referred to as Quitschau's former client, had retained him to appeal the trial court's judgment. On January 5, 2011, Quitschau filed a motion to withdraw as Jacqulyn's counsel, based on her failure to pay his fees. Six days later, Quitschau filed a notice of attorney's lien for fees pursuant to section 1 of the Attorneys Lien Act, asserting a lien of $15,431 against the $200,000 payment the court ordered Ralph to pay Jacqulyn. Quitschau certified that he mailed his notice to Jacqulyn, Vieley, and Ralph's attorney. In March 2011, Jacqulyn filed an amended motion to quash, arguing that Quitschau's lien was unenforceable and requesting sanctions for Quitschau's vexatious misconduct and willful violation of Rule 137.

¶ 10 B. The Hearing on Jacqulyn's Amended Motion To Quash and the Trial Court's Judgment

¶ 11 At the March 23, 2011, hearing on Jacqulyn's amended motion to quash, Jacqulyn argued that Quitschau's notice of attorney's lien for fees was unenforceable because Quitschau attempted to perfect his lien after his representation had ended. Specifically, Jacqulyn contended that on December 23, 2010, she went to Quitschau's office and told his receptionist that she was firing Qutischau. Shortly thereafter, Quitschau attempted to perfect his notice of attorney's lien, which Jacqulyn asserted was unenforceable because Quitschau was no longer her attorney. Jacqulyn also contended that Quitschau's notice was invalid because he failed to serve Ralph or Ralph's trustee with notice of his attorney's lien.

¶ 12 Quitschau responded that Jacqulyn did not personally inform him that she no longer required his representation, recounting that six days after Jacqulyn had purportedly fired him, he had a telephone conversation with her and thereafter, drafted letters to Ralph's counsel,

attempting to negotiate payment of the $200,000 Ralph owed her. Quitschau also recounted that after December 23, 2010, he received correspondences from Vieley, asking for his assistance and cooperation with Jacqulyn's pending appeal. Quitschau claimed that he was still Jacqulyn's attorney in that he had neither withdrawn his representation nor had Vieley assumed his representation of Jacqulyn. With regard to Jacqulyn's claim that service of process was improper, Quitschau informed the trial court that while he initially mailed his notice of attorney's lien to Jacqulyn, Vieley, and Ralph's counsel, on March 2, 2011, he (1) personally served Jacqulyn with his notice and (2) sent his notice to Ralph's guardian *ad litem* by certified mail. (Quitschau testified at a later hearing that he had faxed his notice to Ralph's trustee, at the trustee's request, while he was Jacqulyn's counsel.)

¶ 13 Following arguments, the trial court granted Quitschau's motion to withdraw as Jacqulyn's counsel and took Jacqulyn's amended motion under advisement. In April 2011, the court entered an order, denying Jacqulyn's amended motion to quash.

¶ 14 C. The Hearing on Jacqulyn's Motion To Reconsider

¶ 15 In April 2011, Jacqulyn filed a motion to reconsider the trial court's denial of her motion to quash, which the court denied following a May 2011 hearing. In so doing, the court provided the following rationale for its determination:

> "I looked this matter over carefully. The sequence of events that occurred here was a little convoluted, to say the least, but *** based on everything that [the court has] ever considered about *** the attorney-client relationship is *** that[] once it exists and once you are the attorney of record in a court proceeding

> for a person, that you remain, at least pursuant to the ethical standards of our profession, you remain that person's attorney, whether they are utilizing you or in the process of getting rid of you, you remain that person's attorney until you are allowed to be withdrawn as attorney by the Court. Now why that did not occur earlier, [the court] does not know.
>
> [The Court] also believe[s] that to discharge an attorney, you have to complete the process. *** [The Court does not] believe you can discharge an attorney by leaving a message with a receptionist, and [the Court does not] believe you can discharge an attorney by having another attorney write a letter and say this is your former client."

¶ 16 This appeal followed.

¶ 17 II. THE TRIAL COURT'S DENIAL OF JACQULYN'S AMENDED MOTION TO QUASH

¶ 18 A. Jacqulyn's Claims Regarding the Attorneys Lien Act

¶ 19 Jacqulyn argues that the Attorneys Lien Act is not applicable in proceedings governed by the Dissolution Act. Alternatively, Jacqulyn argues that even if the Attorneys Lien Act applies, Quitschau's notice is void because he failed to serve his attorney's lien (1) before Jacqulyn terminated his representation and (2) on the trustee of Ralph's estate by certified mail. We address Jacqulyn's arguments in turn.

¶ 20 1. *The Attorneys Lien Act*

¶ 21 Section 1 of the Attorneys Lien Act, provides, in part, as follows:

> "Attorneys at law shall have a lien upon all claims, demands and causes of action, including all claims *** for the amount of any fee which may have been agreed upon by and between such attorneys and their clients, or, in the absence of such agreement, for a reasonable fee, for the services of such suits, claims, demands or causes of action, plus costs and expenses. ***.
>
> To enforce such lien, such attorneys shall serve notice in writing, which service may be made *by registered or certified mail, upon the party* against whom their clients may have such suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claims, demands or causes of action. Such lien shall attach to any verdict, judgment or order entered and to any money or property which may be recovered, on account of such suits, claims, demands or causes of action, from and after the time of service of the notice." (Emphasis added.) 770 ILCS 5/1 (West 2010).

¶ 22 2. *Jacqulyn's Claim That the Attorneys Lien Act Is not Applicable*

¶ 23 Jacqulyn argues that the Attorneys Lien Act is not applicable in proceedings governed by the Dissolution Act. Citing *Pressney v. Pressney*, 339 Ill. App. 371, 374, 90 N.E.2d 119, 121 (1950), Jacqulyn contends that "Illinois law consistently holds that the Attorneys Lien

Act has no application in divorce suits." We disagree.

¶ 24 In *Pressney*, 339 Ill. App. at 373, 90 N.E.2d at 120, the plaintiff in a divorce suit sought to discharge her current attorneys and substitute another attorney. The trial court (1) denied the plaintiff's request to discharge her attorneys; (2) allowed substitute counsel to appear as associate counsel; and (3) set the amount the plaintiff's current attorneys could charge at $1,650, directing that the amount be deducted from the previously agreed-upon settlement the plaintiff was to receive from the respondent. *Id.* at 373-74, 90 N.E.2d at 120. The plaintiff appealed the court's order that mandated the $1,650 payment from her settlement. *Pressney*, 339 Ill. App. at 372, 90 N.E.2d at 120. In reversing the court's order, the First District held, as follows:

> "Upon termination of the relation of attorney and client the latter has the right to substitute another for the person discharged, and the court cannot rightly continue a discharged lawyer as attorney *** against the will of the client. If [the discharged attorneys] are entitled to further compensation for services, their remedy is by an action at law. *The statute creating an attorney's lien on claims, demands, etc., placed in the hands of an attorney for suit or collection [citation] has no application to suits for divorce*. [Citation.] It is only when the court enters an order for attorneys' fees to enable a party to prosecute or defend a suit for divorce that section 15 of the Divorce Act [citation] authorizes the court to direct payment of such fees to the attorney instead of the

> party for whose benefit the payment is directed. No such order was entered in this case." (Emphasis added.) *Pressney*, 339 Ill. App. at 374-75, 90 N.E.2d at 121.

Contrary to Jacqulyn's assertions, the over 60-year-old holding in *Pressney* is not the law in this State, and this court is surprised to see it cited, given (1) the enactment of the Dissolution Act pursuant to Public Act 80-923, effective October 1, 1977 (Pub. Act 80-923, § 508, eff. Oct. 1, 1977 (1977 Ill. Laws 2675, 2691)), which replaced the Divorce Act (see *Nerini v. Nerini*, 140 Ill. App. 3d 848, 852, 488 N.E.2d 1379, 1382 (1986)), and (2) the supreme court's decision in *Nottage v. Jeka*, 172 Ill. 2d 386, 667 N.E.2d 91 (1996)).

¶ 25 Section 508 of the Dissolution Act, entitled, "Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs" provides for a final hearing on attorney fees and costs against an attorney's own client. Specifically, section 508(c)(1) provides, in part, the following:

> "(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:
>
> > (1) No petition of a counsel of record may be filed against a client unless the filing counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel. ***." 750 ILCS 5/508(c)(1)

(West 2010).

See *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 11 ("[An] attorney has standing pursuant to section 508(c) to pursue an action for fees himself as a party in interest and section 508(c) promotes judicial economy by eliminating the need for an attorney to bring a separate suit to collect fees from his client"). (We note that at the March 2011 hearing on Jacqulyn's amended motion to quash, Quitschau explained to the trial court that he did not proceed under the Dissolution Act because he believed that his lien would preclude further legal action.)

¶ 26 In *Nottage*, 172 Ill. 2d at 392, 667 N.E.2d at 93, the issue before the supreme court was whether the Dissolution Act "is the sole means by which an attorney may recover a fee from a client in a domestic relations matter[.]" In holding that the Dissolution Act was not an exclusive remedy, the supreme court reasoned that "[a] consideration of the statutory language, as well as of the practical difficulties that would result from the appellate court's holding, persuades us that the legislature did not intend that result." *Id*. See *In re Marriage of Lucht*, 299 Ill. App. 3d 541, 543, 701 N.E.2d 267, 269 (1998) (reinforcing the supreme court's holding in *Nottage*).

¶ 27 As a result of the supreme court holding in *Nottage*, the legislature enacted section 508(e) of the Dissolution Act through Public Act 89-712, effective June 1, 1997 (Pub. Act 89-712, § 5, eff. June 1, 1997 (1989 Ill. Laws 4054, 4063-64)). See *Haber v. Reifsteck*, 359 Ill. App. 3d 867, 869, 835 N.E.2d 187, 189 (2005) (recognizing the legislature's codification of the supreme court's holding in *Nottage*). Section 508(e) provides as follows:

> "Counsel may pursue an award and judgment against a former client for legal fees and costs in an independent proceeding

in the following circumstances:

> (1) While a case under this Act is still pending, a former counsel may pursue such an award and judgment at any time subsequent to 90 days after the entry of an order granting counsel leave to withdraw; and
>
> (2) After the close of the period during which a petition (or praecipe) may be filed under subdivision (c)(5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue such an award and judgment in an independent proceeding.

In an independent proceeding, the prior applicability of this Section shall in no way be deemed to have diminished any other right of any counsel (or former counsel) to pursue an award and judgment for legal fees and costs on the basis of remedies that may otherwise exist under applicable law ***." 750 ILCS 5/508(e) (West 2010).

¶ 28 In this case, Quitchau was not limited to the remedies of the Dissolution Act to collect his fee from Jacqulyn but, instead, could have pursued an independent proceeding as permitted by section 508(e) of the Dissolution Act. As we address below, this independent action included the filing of a notice of lien pursuant to the Attorneys Lien Act provided such notice was filed prior to his withdrawal as Jacqulyn's counsel. To the extent that our prior cases

hold otherwise, we reject the holdings in those cases. Accordingly, we reject Jacqulyn's claim that the Attorneys Lien Act is not applicable in proceedings governed by the Dissolution Act.

¶ 29 3. *Jacqulyn's Alternative Claims Regarding the Attorneys Lien Act*

¶ 30 a. Jacqulyn's Claim Regarding the Timing of Service

¶ 31 Alternatively, Jacqulyn argues that even if the Attorneys Lien Act applies, Quitschau's notice is void because he failed to serve his attorney's lien before Jacqulyn terminated his representation. We disagree.

¶ 32 To perfect a lien for attorneys fees pursuant to the Attorneys Lien Act, such a lien must be filed before the attorney is terminated. *Muller v. Jones*, 243 Ill. App. 3d 711, 715, 613 N.E.2d 271, 274 (1993).

¶ 33 In this case, the evidence presented showed the following time line of events: (1) on December 23, 2010, (a) Jacqulyn informed Quitschau's receptionist that she was firing Quitschau and (b) Vieley informed Quitschau by correspondence that he had been retained by Jacqulyn to appeal the trial court's dissolution judgment; (2) on December 29, 2010, Jacqulyn spoke with Quitschau by phone, which resulted in Quitschau's continued efforts to obtain the settlement Ralph owed Jacqulyn; (3) on January 5, 2011, Quitschau filed a motion to withdraw, citing Jacqulyn's failure to pay his legal fees; (4) on January 11, 2011, Quitschau filed a notice of attorney's lien for fees pursuant to section 1 of the Attorneys Lien Act, asserting a lien of $15,431 against the $200,000 payment the trial court ordered Ralph to pay Jacqulyn; (5) on March 2, 2011, Quitschau served his notice to Jacqulyn, personally, and to Ralph's guardian *ad litem* by certified mail; and (6) on March 24, 2011, the court granted Quitchau's motion to withdraw as Jacqulyn's counsel.

¶ 34 Despite the numerous events that occurred in the aforementioned time line, Jacqulyn anchors her contention that Quitschau ceased to be her attorney on December 23, 2010, only on (1) her December 23, 2010, conversation with Quitschau's receptionist and (2) Vieley's reference to Jacqulyn as Quitschau's "former client" in his December 23, 2010, correspondence. We are not persuaded.

¶ 35 Here, the record is devoid of any evidence that Jacqulyn affirmatively terminated Quitschau as counsel prior to March 23, 2011. Instead, as the trial court noted, the record shows that (1) on December 23, 2010, Jacqulyn was simultaneously represented by Quitschau and Vieley; and (2) Quitschau's representation did not end until March 24, 2011, when the trial granted Quitschau's motion to withdraw. During that time, Quitschau appropriately served his notice of attorney's lien on the appropriate parties. Accordingly, we reject Jacqulyn's argument that Quitschau's notice is void because he failed to serve his attorney's lien before she terminated his representation.

¶ 36 b. Jacqulyn's Claim Regarding the Sufficiency of Service

¶ 37 Consistent with her alternative argument, Jacqulyn also argues that Quitschau's notice is void because he failed to serve his attorney's lien on the trustee of Ralph's estate by certified mail. We disagree.

¶ 38 "Because an attorney lien is a creature of statute, courts strictly construe the statute authorizing the lien, both as to establishing the lien and enforcing it." *Progressive Universal Insurance Co. of Illinois v. Taylor*, 375 Ill. App. 3d 495, 501, 874 N.E.2d 910, 915 (2007). Thus, "an attorney who mails a notice of lien by ordinary mail, instead of by registered or certified mail, has no lien." *Id*.

¶ 39 The traditional duty of a nonattorney guardian *ad litem* who is appointed in circumstances where the individual lacks the capacity to engage in reasoned decision-making, is to act in the individual's best interest. *In re B.K.*, 358 Ill. App. 3d 1166, 1171, 833 N.E.2d 945, 949-50 (2005). A guardian *ad litem* is an officer of the court and in that capacity, the guardian ensures that the rights of the alleged incapacitated person are fully protected. *In re Serafin*, 272 Ill. App. 3d 239, 245, 649 N.E.2d 972, 976 (1995).

¶ 40 As previously explained, enforcement of a lien pursuant to the Attorneys Lien Act mandates that an attorney serve notice in writing, "by registered or certified mail, upon the *party* against whom their clients may have such suits, claims or causes of action[.]" (Emphasis added.) 770 ILCS 5/1 (West 2010). In this case, Quitschau's notice of attorney's lien concerned the $200,000 payment the trial court mandated Ralph pay to Jacqulyn pursuant to the court's dissolution judgment. See *People v. Phillip Morris, Inc.*, 198 Ill. 2d 87, 97, 759 N.E.2d 906, 912-13 (2001) (a lien pursuant to the Attorneys Lien Act is a lien upon the proceeds of the litigation or settlement of the claim). Thus, because Ralph's mental acuity was compromised, the appropriate party was Ralph's guardian *ad litem*. Here, the record shows that Quitschau sent his notice by certified mail to Ralph's guardian *ad litem*, who, as an officer of the court, was Ralph's court-appointed representative. Accordingly, we conclude that Quitschau satisfied the service requirements under the Attorneys Lien Act.

¶ 41 B. Jacqulyn's Claim Regarding Sanctions

¶ 42 Jacqulyn also argues that the trial court erred by refusing to impose sanctions pursuant to Illinois Supreme Court Rule 137. We note, however, that Jacqulyn premises this argument on her previous claims–that is, that the trial court should have imposed sanctions

because Quitschau filed and continued litigating a notice of attorney's lien that (1) was not applicable to divorce suits and (2) was neither timely filed nor sufficiently served upon the appropriate party. Because this court has considered and rejected those arguments, we also reject her argument in this regard.

¶ 43 III. CONCLUSION

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

¶ 45 Affirmed.