

No. 1-11-1627

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).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

<i>In re MARRIAGE OF</i>)	
)	Appeal from the
HORACE GRANT,)	Circuit Court of
)	Cook County,
Petitioner,)	County Department,
)	Domestic Relations Division.
and)	
)	
DONNA GRANT-WEAVER,)	No. 89 D 13200
)	
Respondent-Appellant,)	
)	
v.)	
)	
DEBRA DIMAGGIO,)	The Honorable
)	Veronica B. Mathein,
Petitioner-Appellee.)	Judge Presiding.

PRESIDING JUSTICE Harris delivered the judgment of the court.
Justices Quinn and Connors concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court's judgment is affirmed where the orders it entered pursuant to DiMaggio's fee petition were not void. Also, where no transcript of the proceedings are in the record, a presumption exists that the trial court ruled properly and with sufficient factual basis.

¶ 2 Respondent, Donna Grant-Weaver, appeals the order of the circuit court denying her motion to reconsider the court's judgment against her for \$47,427 in attorney fees in favor of petitioner Debra DiMaggio. On appeal, Grant-Weaver contends (1) the agreed order and the trial court's January 13, 2009, order are void because the parties failed to submit the controversy to arbitration or other means of alternative dispute resolution (ADR) as required by the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2006)); (2) the September 26, 2008, agreed order signed by her and DiMaggio is void and unenforceable because she was coerced into entering the agreement; (3) DiMaggio's second fee petition filed on March 9, 2010, was untimely; and (4) the amount of fees awarded was unreasonable. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered a judgment against Grant-Weaver for \$47,427 in fees and costs on March 23, 2011. Grant-Weaver filed a motion to reconsider on April 22, 2011, and the trial court denied the motion on May 18, 2011. Grant-Weaver filed her notice of appeal on June 14, 2011. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 The marriage between Grant-Weaver and Horace Grant was dissolved on April 6, 1994. DiMaggio represented Grant-Weaver after the dissolution in proceedings to enforce child support. DiMaggio was subsequently fired and the trial court granted DiMaggio's petition to

withdraw as Grant-Weaver's attorney on July 10, 2007.

¶ 7 On September 5, 2007, DiMaggio filed a petition for \$47,627 in attorney fees pursuant to section 508 of the Act. The trial court held a pretrial conference on July 9, 2008 in which recommendations were made as to the fee petition. A transcript of the proceedings is not contained in the record on appeal. On September 26, 2008, the parties entered into an agreed order in which Grant-Weaver agreed to pay DiMaggio \$25,000 as "full satisfaction of all attorney's fees and costs pursuant to Debra DiMaggio's Verified Petition." The amount "is in accordance with the recommendation made by [the trial judge] on July 9, 2008, as to fees which were found to be reasonable." The agreed order further provided that "[i]n the event [Grant-Weaver] fails to pay the amount reflected in paragraph 1 above, the Law Offices of Debra DiMaggio reserves the right to seek payment for the additional sums requested" in the September 5, 2007, petition.

¶ 8 On October 1, 2008, DiMaggio filed a petition alleging two counts. Count I was a petition for rule to show cause and for adjudication of indirect civil contempt. Count II requested additional attorney fees and costs as a result of Grant-Weaver's conduct in failing to make payments pursuant to the agreed order. Grant-Weaver filed a response, stating that she is "attempting to resolve the payment issues" and "that she entered into the September 26, 2008 agreement, knowing the recommendations that were made a [*sic*] pre-trial and understanding that not agreeing to pay same would likely lead to a judgment." On October 8, 2008, the trial court issued an order against Grant-Weaver on the petition for her failure to pay DiMaggio \$25,000 in accordance with the agreed order. On November 17, 2008, count I of the petition was withdrawn

and the trial court continued the matter for a hearing on count II and DiMaggio's motion for default.

¶ 9 On January 13, 2009, after a hearing, the trial court ordered that Grant-Weaver pay DiMaggio \$47,627 within three business days. Grant-Weaver's counsel objected to the order. The order also stated that since DiMaggio's fees and costs were incurred, in part, to collect child support arrearages the sum "shall NOT be dischargeable in bankruptcy for any reason." (Emphasis in original).

¶ 10 On February 6, 2009, DiMaggio filed a second petition for rule to show cause, for adjudication of indirect civil contempt, and for other relief. Lake Tobak, the attorney of record for Grant-Weaver, filed a motion to withdraw which the trial court granted on March 8, 2009. Grant-Weaver obtained the services of Rinella and Rinella, Ltd. On February 20, 2009, the trial court entered an order against Grant-Weaver on DiMaggio's second petition for rule to show cause.

¶ 11 The trial court continued the proceedings on DiMaggio's petition to November 19, 2009. After a hearing, the court issued an order of adjudication of indirect civil contempt and for confinement against Grant-Weaver with bond set at \$25,000. The \$25,000 bond was paid on behalf of Grant-Weaver and the trial court continued the matter for status to January 14, 2010, regarding DiMaggio's fee petition to be filed pursuant to section 508(b) as well as "the remainder of the fees owing pursuant to the order entered on" January 13, 2009. The trial court granted DiMaggio leave to file a section 508(b) petition for attorney fees.

¶ 12 On December 9, 2009, DiMaggio filed a third petition for rule to show cause against

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Grant-Weaver for her failure to pay \$47,627 pursuant to the January 13, 2009, order. On or before January 15, 2010, Grant-Weaver filed a motion to dismiss DiMaggio's petition for rule to show cause and petition for additional attorney fees.

¶ 13 The matter was continued regarding all matters and Rinella and Rinella's motion to withdraw as Grant-Weaver's counsel. On March 8, 2010, DiMaggio filed a second petition for final fees and costs pursuant to section 508(b). In the petition, DiMaggio alleged that she incurred \$14,590 in additional fees and costs for pursuing Grant-Weaver's compliance with the September 26, 2008, and January 13, 2009, orders. On June 1, 2010, the trial court entered an order against Grant-Weaver on the rule to show cause petition for failure to pay the remaining \$22,627.50 from the January 13, 2009, order.

¶ 14 On June 29, 2010, the trial court issued a body attachment order against Grant-Weaver with bond set at \$22,627. The court also issued an order finding Grant-Weaver in default for failing to appear, and granting DiMaggio \$14,590 on her petition for additional attorney fees. The order stated that the \$14,590 be paid within 10 days in addition to the \$22,627, and shall not be dischargeable in bankruptcy. On September 20, 2010, the trial court quashed the body attachment order and continued the matter of DiMaggio's petitions for final attorney fees and for additional attorney fees. On October 29, 2010, an order was entered striking the petition for rule to show cause. However, later that day DiMaggio appeared in court and obtained an order of continuance on the matter.

¶ 15 On December 17, 2010, DiMaggio filed a fourth petition for rule to show cause. Grant-Weaver filed a response to the fourth petition, alleging that the engagement agreement between

the parties is void and unenforceable due to a defect "specifically with regard to the time of payment." The order required payment by September 24, 2008, which was two days before the date of the order. Grant-Weaver also alleged that she "felt compelled, and unduly influenced, to sign [the agreed order] knowing that she was financially incapable of paying DiMaggio the amount in the purported agreement under the terms of said agreement."

¶ 16 On March 23, 2011, the trial court entered an order denying DiMaggio's motion for default and converting its January 13, 2009, order that Grant-Weaver pay DiMaggio \$47,427 into a judgment. Grant-Weaver filed a motion to reconsider on April 22, 2011. In the motion, she alleged that: (1) the trial court erred by failing to submit the attorney fees controversy to mediation, arbitration or other alternative dispute resolution procedure as required by section 508 of the Act; (2) the trial court erred in failing to reduce its order to pay attorney fees to a judgment; (3) the trial court erred in accepting the agreed order of September 26, 2008, because Grant-Weaver did not enter into the agreement freely, voluntarily and without influence, the order contained an error, and it did not provide for final fees. In support of the motion, counsel attached the affidavit of Grant-Weaver in which she states "[t]hat upon information and belief, the contents of the Motion to Reconsider and Vacate Orders and Judgment, are true and accurate."

¶ 17 At the hearing on the motion to reconsider, the court denied Grant-Weaver's request "to vacate all prior orders" because the agreed order was signed by the parties and "there's absolutely no requirement of this Court to require that the parties go to any kind of mediation or arbitration if there's an agreement relative to fees, which there was." The trial court also explained its

decision to convert the pay order to a judgment. It noted that Grant-Weaver had been subjected to "many petitions for rule for her failure to pay" and it wanted "to stop the bleeding" and keep Grant-Weaver from having to go to jail. The trial court further reasoned that if it had "a continue to pay order, [Grant-Weaver] could have been subject to endless petitions for rule, and the case would never have been over." The judgment required payment of 9% interest and the court ordered the full amount initially requested by DiMaggio because Grant-Weaver "didn't comply with the compromised amount." The trial court denied the motion to reconsider on May 18, 2011, and Grant-Weaver filed this timely appeal.

¶ 18

ANALYSIS

¶ 19 On appeal, Grant-Weaver makes various challenges to the September 26, 2008, agreed order and January 13, 2009, order. DiMaggio argues that this court does not have jurisdiction to address these issues because an agreed order is not appealable and the January 2009 order was a final judgment.

¶ 20 Initially, we note that the September 2008 agreed order was effectively superceded by the January 13, 2009, order, which finally determined and disposed of the rights of the parties pursuant to DiMaggio's original fee petition. See *Gibson v. Belvidere National Bank and Trust Co.*, 326 Ill. App. 3d 45, 48 (2001). Although the agreed order provides that Grant-Weaver's payment of \$25,000 would constitute "full satisfaction" of all of DiMaggio's fees and costs, it also left open the possibility that DiMaggio could seek the full amount of \$47,627 in the future if Grant-Weaver fails to comply with the order. DiMaggio subsequently sought the full amount. The January 13, 2009, order granted her that amount and became the final judgment as to the

original fee petition. *Id.* Since the January 2009 order superceded the September 2008 agreed order, Grant-Weaver's claims that the agreed order must be vacated are essentially moot.

¶ 21 Even considering Grant-Weaver's contentions, we find no reason to set aside the agreed order. In general, agreed orders are not appealable. An agreed order represents "a recitation of an agreement between the parties and is subject to the rules of contract interpretation." *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. They are not "judicial determination[s] of the parties' rights." *In re Haber*, 99 Ill. App. 3d 306, 309 (1981). As such, "an order entered by agreement of the parties is not subject to appellate review." *Olsen v. Staniak*, 260 Ill. App. 3d 856, 861 (1994). Instead, agreed orders are "conclusive on the parties and can be amended or set aside *** only upon a showing that the order resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence." *Haber*, 99 Ill. App. 3d at 309. Coercion includes "the imposition, oppression, undue influence, or the taking of undue advantage of the stress of another, whereby that person is deprived of the exercise of her free will." *In re Marriage of Flynn*, 232 Ill. App. 3d 394, 401 (1992). For an agreement to be unconscionable, it "must be improvident, totally one-sided or oppressive." *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 182 (1996).

¶ 22 Grant-Weaver argues that the agreement is unconscionable. She points to the payment terms of the order. She contends that the trial court and DiMaggio knew she was not in a financial position to make the \$25,000 payment. She argues that in the conference and court room, Grant-Weaver told DiMaggio "that she did not have the money to comply with the court's

recommendation, and that it would force her to file bankruptcy to seek relief from it." Grant-Weaver further argues that she never would have waived her right to contribution, which she purportedly waived in the agreed order.

¶ 23 It appears from the record that the trial court held a pretrial conference regarding DiMaggio's original fee petition, and in that proceeding it determined an amount constituting reasonable fees in the matter. However, the record on appeal contains no transcript of the proceedings nor is there a bystander's report or agreed statement concerning the proceedings. Grant-Weaver, as the appellant, has the burden to present a complete record on appeal to support her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Without a complete record, this court presumes that the trial court entered its order in conformity with the law and it had a sufficient factual basis. *Id.* "[P]articularly when the judgment order states that the court was fully advised in the premises, a reviewing court will indulge in every reasonable presumption favorable to judgment, order or ruling from which an appeal is taken." *Mars*, 205 Ill. App. 3d at 1066.

¶ 24 The agreed order states that the cause was heard on DiMaggio's verified fee petition and "a pre-trial having been conducted and recommendations having been made, both parties being in agreement and the Court being otherwise fully advised," ordered Grant-Weaver to pay \$25,000 as "full satisfaction" of all attorney fees. Nothing in the record overcomes the presumption that the trial court's order was proper. Without a transcript of the proceedings or other acceptable report, Grant-Weaver has nothing but her bare allegations to support her argument. Even her affidavit does not sufficiently support her position since it states only "[t]hat upon information and belief,

the contents of the Motion to Reconsider and Vacate Orders and Judgment, are true and accurate."

¶ 25 Grant-Weaver also argues that we should vacate the agreed order because the trial court unduly influenced her to sign the agreement. As discussed above, she did not provide transcripts of the proceedings in the record. Instead, in support of her point she included a letter sent by her former attorneys in which they encouraged her to accept the conditions of the agreed order. The letter informs her that

"The judge recommended that you settle the outstanding attorney's fees of \$48,000.00 for \$25,000.00, which apparently Debra D. is willing to accept. I have little doubt that if you go to a hearing you will do substantially worse than what the Judge is ordering. In fact, the Judge said as much. Accordingly we urge and recommend you to settle this matter for \$25,000.00. If you choose not to accept this recommendation, there is a real likelihood that the Judge will order you to pay substantially more than the amount they are willing to settle for."

A fair reading of the letter, however, merely reveals an attempt by counsel and the court to encourage Grant-Weaver to settle the matter for an amount much less than that claimed and originally requested by DiMaggio. We find no coercion or undue influence by the trial court or counsel.

¶ 26 DiMaggio also argues that this court lacks jurisdiction to consider issues stemming from the January 13, 2009, order because it was a final judgment and Grant-Weaver did not appeal

from that order nor did she file a post-trial motion directed at that order.¹ Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008) provides:

"The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order."

¶ 27 Grant-Weaver, however, argues that the January 13, 2009, order is void. Whether an order or judgment is void is an issue of jurisdiction. *People v. Davis*, 156 Ill. 2d 149, 155 (1993). The *Davis* court noted three "elements of jurisdiction": (1) personal; (2) subject matter; and (3) "the power to render the particular judgment or sentence." *Id.* at 156. Our supreme court has made clear that a void judgment is one rendered by a court that lacked jurisdiction and therefore lacked the inherent power to enter the order. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002). Such judgments may be directly or indirectly attacked at any time. *Davis*, 156 Ill. 2d at 155. In contrast, a voidable judgment is one entered in error by a court that has jurisdiction and is not subject to collateral attack. *Id.* Therefore, a mere error in the court's determination of the facts or law does not render the order void. *Id.* at 157.

¶ 28 Grant-Weaver did not appeal the January 13, 2009, order. However, she argues that the

¹For the same reasons we discussed above regarding the agreed order, the January 13, 2009, order was also superceded by the trial court's March 23, 2011, order entering a judgment against Grant-Weaver for \$47,427.

trial court did not first submit the fee controversy to alternative dispute resolution procedures as required by section 508(c)(4)(A) of the Act. This section states that "[n]o final hearing under this subsection (c) is permitted unless any controversy over fees and costs *** has first been submitted to mediation, arbitration, or any other court approved alternative dispute resolution procedure" and this requirement "is mandatory unless the client and the counsel both affirmatively opt out of such procedures." 750 ILCS 5/508(c)(4)(A) (West 2008). Since the jurisdiction of the trial court in dissolution proceedings is conferred by statute, she argues the trial court below lacked jurisdiction to issue the order and the January 13, 2009, order is void and may be attacked at any time.

¶ 29 As support, she cites *In re Marriage of Milliken*, 199 Ill. App. 3d 813 (1990). In *Milliken*, the trial court ruled on a petition for reimbursement of payment for debts not established in the dissolution decree. *Id.* at 814. The *Milliken* court reasoned that the trial court's subject matter jurisdiction in a dissolution proceeding "is limited to that conferred by statute. [Citation]." *Id.* at 817. Since the petition at issue did not seek enforcement of the dissolution decree, but rather sought an impromptu modification, the *Milliken* court held that the trial court lacked subject matter jurisdiction to issue an order for payment pursuant to the petition. *Id.*

¶ 30 *Milliken* is distinguishable, however, in that the issue before us does not involve the improper modification of a dissolution decree. Instead, the subject matter of the January 2009 order involved attorney fees, an issue explicitly addressed in section 508 of the Act. *In re Marriage of Baniak*, 2011 IL (1st) 092017, is instructive. In *Baniak*, the petitioner argued on appeal that the trial court lacked subject matter jurisdiction to consider counsel's request for fees

because his petition was filed more than 30 days after the judgment for dissolution of marriage in violation of the Act. *Id.* at ¶ 14. The *Baniak* court found that in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35 (2002), our supreme court held that "a court's power to act comes from Article VI of the state constitution, not the legislature" and the constitution empowers the court "to hear all justiciable matters." *Id.* at ¶ 15. It reasoned that since section 508 provides for attorney fees, the awarding of those fees within a dissolution proceeding "is a justiciable matter." *Id.* at ¶ 16. Therefore, the trial court had subject matter jurisdiction to consider the fee petition despite the alleged filing error. *Id.*

¶ 31 Likewise, the January 2009 order is not void because the trial court below had jurisdiction to consider DiMaggio's petition for attorney fees pursuant to section 508. Grant-Weaver's contention that the trial court erred in entering the order before submitting the controversy to alternative dispute resolution procedures is merely a claim of error in the court's application of the law. We find, however, that no error occurred. The record contains "Notice of Alternative Dispute Resolution Procedures" that DiMaggio filed with her fee petition "[p]ursuant to the Circuit Court of Cook County General Order 03 D 8." According to the materials, if at a preliminary hearing the trial court finds a controversy over fees and costs, it shall "advise the parties of the alternative dispute resolution procedures available in Cook County and their right to jointly opt out of those procedures and have the Petition determined by the Court." As discussed above, Grant-Weaver did not provide a transcript of the hearing in which this issue would have been discussed and we have no reason not to presume that the trial court followed the law and ruled properly.

¶ 32 Grant-Weaver's contentions that the trial court's January 13, 2009, order is void because she did not waive her right to contribution, and the orders were not reduced to a judgment and erroneously included that her obligation would not be dischargeable in bankruptcy, fail for the same reasons. These claims of error do not render the order void. See *Baniak*, 2011 IL (1st) 092017, ¶ 16. Furthermore, Grant-Weaver provides little or no citation to authority to support her arguments in violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). We need not consider those contentions that do not meet the requirements of Rule 341(h)(7). *Palm v. 2800 Lake Shore Drive Condominium Association*, 401 Ill. App. 3d 868, 881-882 (2010).

¶ 33 Grant-Weaver contends that the trial court's order of June 29, 2010, in which she is ordered to pay DiMaggio \$14,590 in additional fees within 10 days, is also void. Without citation to case authority to support her arguments, Grant-Weaver alleges that the order is void because DiMaggio filed her second petition for fees more than 30 days after she was granted leave to withdraw as Grant-Weaver's attorney, and the trial court failed to perfect the payment order "by entering a judgment thereon." She further argues that such improper use of the Act by the trial court and DiMaggio resulted in "misuse [] of petitions for rules to show cause, and wrongful requests and grants of orders for body attachments and incarceration." Grant-Weaver raises these arguments for the first time in her motion to reconsider. New legal arguments brought for the first time in a motion to reconsider are waived on appeal. *Gonzalez v. Pollution Control Board*, 2011 IL App (1st) 093021, ¶ 7.

¶ 34 Nonetheless, for the reasons stated above, the June 29, 2010 order is not void. Furthermore, we find no error. DiMaggio filed her second fee petition pursuant to section 508(b)

of the Act to recover fees and costs incurred in pursuing Grant-Weaver's compliance with the trial court's September 26, 2008, and January 13, 2009, orders. Section 508(b) provides

"[i]n 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."

Nothing in the record indicates that DiMaggio filed the petition, or the trial court entered its orders, for an improper purpose. Furthermore, the plain language of section 508(b) does not require that a fee petition be filed within 30 days of an attorney's withdrawal. Such a requirement would prove nonsensical in a case as we have here, where the petition sought fees incurred well after the attorney's withdrawal. Courts must construe statutes in a manner that avoids "absurd, unreasonable, or unjust results. [Citation.]" *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 558-559 (2009).

¶ 35 Grant-Weaver's final contention² is that the \$47,427 in fees and costs awarded in the trial court's March 23, 2011, judgment is unreasonable. This amount was based on the trial court's January 13, 2009, order to pay DiMaggio fees pursuant to her petition. She argues that the total amount of fees awarded to DiMaggio, including the \$25,000 bond she paid, was \$74,627. She

²In her reply brief, Grant-Weaver raises for the first time the argument that her \$25,000 payment should have constituted an accord and full satisfaction of the attorney fees and costs sought by DiMaggio in her original petition. Points raised for the first time in a reply brief are waived on appeal. See Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008); *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d 490, 502 (2010).

contends that this amount exceeds what DiMaggio actually claimed and exceeds the amount the trial court found reasonable. Grant-Weaver in her brief does not clearly outline how she arrived at that amount. More importantly, as we previously discussed Grant-Weaver did not provide transcripts of any fee petition hearings conducted by the trial court. If the record does not include a transcript of the proceedings, where the order states that the court was "advised in the premises" and evidence in the record otherwise supports a claim for fees, we will presume that the trial court properly considered evidence presented to it in determining the fee amount. *Clay v. County of Cook*, 325 Ill. App. 3d 893, 900 (2001).

¶ 36 In the case at bar, the January 13, 2009, order states that the court entered its order after "having conducted a third pre-trial conferences [*sic*], having reviewed the pleadings in detail and having heard argument, and duly advised in the premises." The record contains DiMaggio's petitions for fees in which she details her extensive experience in family law, her memberships in professional organizations, and her hourly fees which are customary and reasonable for her services in Cook County, Illinois. As in *Clay*, we "presume that the award of attorney fees was adequately supported by the evidence presented to and considered by the trial court." *Id.*

¶ 37 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 38 Affirmed.