

2013 IL App (2d) 121111-U  
No. 2-12-1111  
Order filed June 20, 2013

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

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF RALPH PICKER,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellee,	)	
	)	
and	)	No. 07-D-1504
	)	
JAN A. PICKER,	)	Honorable
	)	Donna-Jo Vorderstrasse,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly dismissed respondent's fee petition, which she filed beyond the 30-day deadline that had been set out in an agreed order, and respondent forfeited any argument to the contrary.
- ¶ 2 In a postdissolution-of-marriage proceeding, respondent, Jan A. Picker, appeals an order dismissing as untimely her amended petition for attorney fees and costs against petitioner, Ralph Picker. We affirm.
- ¶ 3 On August 17, 2007, the trial court entered a judgment dissolving the parties' marriage. The parties continued to contest numerous matters. On September 22, 2010, the court entered an agreed

order modifying the judgment in various respects. On July 19, 2011, Alan H. Shifrin & Associates, LLC (Shifrin), filed its appearance as petitioner's new counsel. The parties continued to file petitions for contempt, to modify the judgment, and for other relief.

¶ 4 On March 23, 2012, Kendrick L. Scott filed "the additional appearance of [petitioner] in the above-entitled cause and myself as an attorney therein." Shifrin had not yet moved to withdraw.

¶ 5 On March 28, 2012, the trial court entered an "Agreed Order." The order resolved contested matters involving maintenance, the sale of the former marital home and another home in Arizona, and certain matters of personal property and payments due respondent under the September 22, 2010, order. Paragraph 9 of the Agreed Order stated, "Petitioner's Petition to Modify Maintenance is hereby withdrawn without prejudice." Paragraph 10 stated, "All other pending petitions referenced in the preamble above are resolved by this order." Paragraph 11 stated, "Counsel for [respondent] has 30 days to file a petition for contribution to attorney fees and costs."

¶ 6 On April 24, 2012, Shifrin petitioned for fees from petitioner only, stating that petitioner had discharged Shifrin by an e-mail on April 9, 2012 (a copy of the e-mail was attached).

¶ 7 On May 3, 2012, respondent's counsel, Beermann, Pritikin, Mirabelli & Swerdlove, LLP (Beermann), filed a "Notice of Motion," addressed to Shifrin, stating that, on May 23, 2012, it would present for hearing a petition for contribution to attorney fees and costs. Beermann sent no such notice to petitioner or Scott. On May 3, 2012, Beermann filed the fee petition. On May 23, 2012, the trial court granted Beermann leave to file an amended fee petition; gave petitioner 28 days to file a response; and set the amended petition for hearing on July 6, 2012. On June 4, 2012, Beermann filed its amended fee petition.

¶ 8 On June 28, 2012, Scott filed his “Supplemental Appearance” as petitioner’s attorney and also filed a “Motion to Strike and Dismiss a Fee Petition Filed Herein by [Beermann] on May 3, 2012.” The motion alleged as follows. Paragraph 11 of the Agreed Order of March 28, 2012, had allowed Beermann 30 days to file a petition for fees and costs, but the original petition had been filed after the 30 days had expired. On May 3, 2012, unbeknownst to petitioner, Beermann sent a notice to Shifrin, who no longer represented petitioner, stating that Beermann would appear in court on May 23, 2012, to present the fee petition. No notice was sent to either Scott or petitioner. The notice sent was defective for these reasons and also because it had been sent more than 30 days after the Agreed Order was entered. Scott requested that the trial court “[s]trike and [d]ismiss the Petition for Contribution to Attorneys Fees and Costs, have it removed from the file, and hold it for naught.”

¶ 9 On July 24, 2012, respondent responded to Scott’s motion. She asserted that, when Beermann sent Shifrin the “Notice of Motion” on May 3, 2012, it was unaware that Shifrin was no longer representing petitioner, as the court had never allowed Shifrin to withdraw. Further, before May 3, 2012, Scott had never formally filed an appearance. Respondent admitted that no notice had been sent to Scott, but she asserted that, because he had filed his appearance on June 27, 2012, she had not been obligated to serve him notice.

¶ 10 In reply, petitioner argued that, by the time that respondent had filed her original fee petition, the trial court could not hear it, because the 30-day window set by the Agreed Order had closed.

¶ 11 On September 10, 2012, the trial court granted petitioner’s motion “to strike and dismiss the fee petition filed herein,” based on “noncompliance with the Agreed Order of 3-28-12 regarding filing time for attorney fee petition.” On October 5, 2012, respondent filed a notice of appeal.

¶ 12 On appeal, respondent contends first that the judgment erroneously “ruled on a pleading which had been superseded.” Respondent notes that the court ruled on petitioner’s motion to “Strike and Dismiss a Fee Petition Filed Herein by [Beermann] on May 3, 2012.” She observes that, by the time petitioner filed this motion, she had already filed the amended petition, which superseded the one filed May 3, 2012. She contends that the trial court erred in granting petitioner’s motion “to dismiss a fee petition that had already been superseded” and was thus a nullity.

¶ 13 Respondent’s characterization of the judgment, if accepted, appears to defeat her claim to relief. If the trial court’s order did no more than “dismiss” the original May 3, 2012, petition, then the amended petition remained pending in the trial court when respondent filed her notice of appeal. If that was so, then we would lack jurisdiction to hear this appeal, because the September 10, 2012, order was not final as to all claims and did not include language allowing for an immediate appeal (see Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)). Moreover, were we to determine we had jurisdiction to entertain the appeal, we would have to dismiss it as moot, since the only relief that we could grant would be to reinstate the original petition. That would accomplish nothing, and respondent herself would not want such “relief,” given that she contends that the original petition is a nullity.

¶ 14 However, we need not confront such an absurdity. Although petitioner’s motion bore a curious and inapt title, a reasonable construction of the motion, read as a whole, is as one to dismiss whatever fee petition was pending at the time. This is especially so because the motion argued in part that, because respondent had waited more than 30 days after the entry of the Agreed Order to file any petition for fees, any such petition was untimely. It is axiomatic that if the original petition was untimely, the amended petition was untimely as well.

¶ 15 More importantly, we interpret the judgment on appeal as dismissing respondent’s amended petition for fees. We must construe a trial court’s order reasonably, in light of the record, so as to effectuate the court’s apparent intent. *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1069 (2003). Therefore, we assume that the trial court did not intend to enter a useless or absurd order, and we interpret the judgment as dismissing respondent’s amended fee petition. We now consider respondent’s remaining arguments.

¶ 16 Respondent cites and discusses several opinions (*In re Marriage of Berto*, 344 Ill. App. 3d 705 (2003); *Macaluso v. Macaluso*, 334 Ill. App. 3d 1043 (2002); *Gray v. Starkey*, 41 Ill. App. 3d 555 (1976)) to argue that the trial court had jurisdiction to hear her fee petition, because the Agreed Order “did not trigger the 30-day time limit” of section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(a) (West 2010)). We find respondent’s assertion mystifying, since section 508(a) has no “30-day time limit.” Section 508(a) does not require a party in a postdissolution proceeding to file a petition for contribution within 30 days (although section 508(c) of the Act (750 ILCS 5/508(c)(5) (West 2010)) does impose such a time limit for an attorney’s petition to recover fees from his or her client).

¶ 17 We note that jurisdiction is not at issue. The question on appeal is whether the trial court erred in dismissing respondent’s amended petition because she failed to file any petition for contribution within the time frame set forth in the Agreed Order.<sup>1</sup>

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<sup>1</sup>Respondent also contends that the amended petition was not subject to the time constraints of section 503(j) of the Act (750 ILCS 5/503(j) West 2010)). Petitioner concedes this. See *Blum v. Koster*, 235 Ill. 2d 21, 46-47 (2009). As petitioner notes, however, the conclusion that section 503(j) does not apply here has no impact on whether the amended petition was properly dismissed

¶ 18 Curiously, respondent’s appellate brief does not address this issue at all. While arguing that the trial court dismissed only the original petition and discussing inapplicable jurisdictional matters, the brief says nothing about the rationale of the judgment that the petition(s) were not timely. Because respondent’s brief fails even to argue that the trial court’s interpretation of the Agreed Order was erroneous, much less cite authority to support any such argument, she has forfeited any contention to that effect. “Points not argued [in the appellant’s brief] are waived and shall not be raised in the reply brief, oral argument, or on petition for rehearing.” Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); see *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 31 (points unsupported by citation to pertinent authority are forfeited).

¶ 19 Respondent does address the crucial issue in her reply brief, but, under the plain language of Rule 341(h)(7), just quoted, that does not avoid forfeiture. Moreover, in replying to petitioner’s argument that an agreed order is a binding contract (see, e.g., *In re M.M.D.*, 213 Ill. 2d 105, 114 (2004)), respondent contends that his case authority does not address a mere “scheduling order” as opposed to “a contract regarding substantive rights”; yet *respondent* cites no authority distinguishing “scheduling orders” in agreed orders from other types of provisions. Finally, in her reply brief, respondent, citing only the most general authority, contends that enforcing the 30-day provision would violate public policy. Not only is this argument forfeited (see Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)), but it makes little sense. Respondent does not explain why she could not have followed the plain, conventional and reasonable provision to which she agreed. Any “inequity” of which she complains was by her consent.

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as tardy under the Agreed Order.

¶ 20 The trial court applied the plain language of the Agreed Order to dismiss the tardy amended petition for contribution, and respondent has raised no coherent or persuasive argument why the court erred. Therefore, the judgment of the circuit court of Lake County is affirmed.

¶ 21 Affirmed.