

No. 1-13-1604

**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  
FIRST JUDICIAL DISTRICT

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SUE PRIMER "I DO",	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
STEPHEN B. TOWNE,	)	No. 10 M1 183967
	)	
Defendant-Appellant	)	
	)	
(Carol Towne and Andrea Towne Sanger,	)	Honorable
	)	Daniel J. Kubasiak,
Defendants).	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Without an official record of the relevant circuit court hearing on defendant's petition for fees, costs and expenses pursuant to the Family Expenses Statute, we could not say that the circuit court abused its discretion in formulating its award to defendant; circuit court judgment affirmed.

¶ 2 Following a hearing on defendant Stephen B. Towne's petition for costs, fees, and expenses after his dismissal from a claim brought by plaintiff Sue Primer "I Do," a wedding planner, the circuit court awarded defendant \$3,323.69. In his *pro se* appeal, defendant contends that the award was inadequate. We must affirm the circuit court judgment because defendant has not provided this court with a transcript or a bystander's report to support his claim of error.

¶ 3 Defendant and codefendant Carol Towne (Carol) of Dallas, Texas, are the parents of codefendant Andrea Towne Sanger (Andrea). On January 21, 2008, Carol entered into a contract with plaintiff, Sue Primer "I Do," a wedding planner, for wedding planning services for Andrea's wedding in Chicago in November 2008. The contract included a \$3,000 fee for plaintiff's services, with half to be paid upfront and the remaining half, plus any additional costs and approved expenditures, to be paid within 30 days of receipt of an itemized bill. Carol paid the upfront fee but refused to pay the final statement because of disputed charges. On September 8, 2010, plaintiff filed a suit against Carol, Andrea, and defendant under the Rights of Married Persons Act (Act), also known as the Family Expenses Statute (750 ILCS 65/15 (West 2008)). Plaintiff's complaint named defendant as a party defendant because Carol was his wife and Andrea his daughter and, as the "services, goods and expenses incurred by [plaintiff] were \*\*\* for the benefit of the entire family," defendant allegedly was liable for damages under the Act.

¶ 4 Defendant filed a motion to dismiss for lack of personal service and because he was not a party to the contract. Defendant also argued that the wedding planning services for his 27-year-old daughter was not a "family expense" under the Act because family expenses for a non-resident child who has reached majority cease to be an obligation of the parent. On July 18, 2011, defendant's motion was granted on the basis that the wedding planning services did not

qualify as "family expenses" as defined in the Act. Defendant was dismissed from the suit.

¶ 5 On July 29, 2011, defendant filed a Motion for Expenses in the amount of \$2,609.20, and on August 26, 2011 in a supplemental motion he requested \$933 a total reimbursement of \$3,542.20 for reimbursement of his expenses incurred in defending plaintiff's suit against him in violation of section 15(a)(3) of the Act (750 ILCS 65/15(a)(3) (West 2008). On August 26, 2011, the court entered an order granting judgment for plaintiff and against Carol in the amount of \$3,507.02 plus costs. However, the court denied defendant's motion for costs and expenses.

¶ 6 Defendant appealed to this court, contending the circuit court erred in failing to award him the fees and costs he incurred in defending the underlying action. We agreed. In an unpublished order on June 29, 2012, we held that section 15(a)(3) of the Act clearly mandated that any creditor who maintains an action in violation of section 15(a) for an expense other than a family expense against a spouse other than the spouse who incurred the expense, shall be liable to the other spouse for his costs, expenses and attorney's fees in defending the action. We reversed the circuit court's denial of fees defendant incurred in defending the underlying action and remanded for determination of the proper amount to be awarded. *Sue Primer "I DO" v. Towne*, No. 1-11-2843 (2012) (unpublished order under Supreme Court Rule 23).

¶ 7 Upon remand, defendant sought reimbursement in the amount of \$4,135.82, representing the expenses he had originally submitted to the circuit court plus \$593.62 in expenses incurred in his prior appeal to this court. The briefs of the parties indicate that on April 24, 2013, a hearing was held in the circuit court on defendant's motion for reimbursement. On that date, the circuit court entered an order stating in pertinent part:

3. "The court having considered the proof submitted by Defendant and considering the objections of Plaintiff, and giving significant weight to the costs, expenses and attorney's fees incurred after the Order of the Appellate Court, Defendant's Motion for Costs, Expenses and Attorney's Fees incurred in defending the action, are approved, pursuant to 750 ILCS 65/15(a)(3), in the amount of \$3,323.69."

¶ 8 On appeal, defendant challenges the reimbursement amount awarded to him by the circuit court's order, while plaintiff responds that the circuit court exercised sound discretion in arriving at the amount awarded. Defendant interprets the order to mean that the court improperly restricted his reimbursement to expenditures incurred after this court's order of June 29, 2012, contrary to our mandate in our decision in defendant's first appeal. Defendant's interpretation of the circuit court's order is not persuasive; while the order gives "significant weight" to the amounts expended after this court's decision in the first appeal, it does not restrict the award to that time period. On the contrary, the \$4,135.82 requested by defendant on remand did not include any expenditures after this court issued its decision on June 29, 2012. Thus, the \$3,323.69 awarded by the circuit court could not have included *any* costs, expenses or fees incurred after we issued our initial decision. As we noted in that decision, under section 15(a)(3) of the Act, a reimbursement award is mandatory and not discretionary. See *North Shore Community Bank and Trust Co. v. Kollar*, 304 Ill. App. 3d 838, 847-48 (1999). Where a party is entitled as a matter of law to recoup fees and costs, the amount of the award is within the discretion of the trial court, and absent an abuse of discretion, this court may not reverse the

award. See *Taghert v. Wesley*, 343 Ill. App. 3d 1140, 1147-48 (2003).

¶ 9 We hold that defendant's claim is defeated under the principles of *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984). The burden was on defendant as appellant to provide a complete record on appeal. *Id.* at 391. We find that a hearing transcript or a bystander's report, indicating the competent evidence the circuit court heard in reaching a decision and fashioning an award to defendant, is necessary to review the issue raised by defendant on appeal. In its absence, there is no basis for holding that the circuit court abused its discretion or that its award circumvented our mandate in the first appeal, as we are unable to ascertain just which of defendant's expenditures were allowed and which were rejected. We must presume that the court's decision was in conformity with the law and had a sufficient basis in fact. *Id.* at 392; *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010). Without an adequate record, we will not speculate as to what error may have occurred below. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757 (2006).

Accordingly, we affirm the judgment of the circuit court.

¶ 10 Affirmed.