

No. 1-13-0611

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 DISTRICT

IN RE THE MARRIAGE OF PACCAGNINI,)	Appeal from the Circuit Court
)	of Cook County.
AUGUSTINA PACCAGNINI,)	
)	
Petitioner-Appellee,)	
)	No. 09 D 2564
v.)	
)	
DEWEY PACCAGNINI,)	
)	Honorable John Thomas Carr
Respondent-Appellant.)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it ordered a former husband to contribute payment for his former wife's attorney fees in a dissolution action. The trial court improperly sanctioned the husband's attorney for failing to appear at certain case management conferences.

¶ 2 This appeal has two issues that arise from dissolution of marriage proceedings. The first issue is whether the trial court erred when it ordered the respondent-husband to pay \$25,000 of the

petitioner-wife's attorney fees. The second issue is whether the trial court erred when it ordered the respondent's attorney to pay \$2,000 as a sanction for failing to appear at certain court appearances. For the following reasons, we affirm the trial court's contribution award and we reverse and vacate the sanction entered against the attorney.

¶ 3

BACKGROUND

¶ 4 Petitioner Augustina Paccagnini and Respondent Dewey Paccagnini married on April 6, 2005. The parties had two children together prior to marrying. On March 9, 2009, petitioner filed for dissolution of the marriage. After more than two years of litigation, the parties entered into a dissolution settlement. Under the settlement, respondent agreed to pay \$2,500 a month in maintenance for 24 months. Respondent also agreed to pay petitioner's car lease for 24 months and pay the children's private school and extra-curricular activity expenses. Respondent also agreed to pay the parties' past due obligation to the IRS which was \$20,744.32. The parties agreed upon a visitation schedule and custody arrangement, neither of which is at issue here. The agreement also provided that petitioner's attorney was granted leave to file a petition for attorney fees.

¶ 5 Respondent worked for an automobile insurance company and made more than \$100,000 per year during the marriage. During the course of the proceedings, he experienced some reduction in income, but still produced the lion's share of the parties' total income. Petitioner worked as a receptionist at a hair salon and at a food stand. Petitioner mostly took care of the children and earned approximately \$650.00 per month. When compared to respondent, petitioner has a less prominent work history and less marketable employment skills.

¶ 6 The evidence adduced during the proceedings was that the parties entrusted respondent's

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mother to handle the majority of their finances and the finances were handled rather poorly.

Respondent would deposit his paychecks into his mother's account and she would pay the parties' bills and other expenses. Respondent's mother bought the home that the parties shared and they paid rent that was used to make mortgage payments. The home was purchased prior to the parties' marriage.

¶ 7 During the course of the dissolution proceedings, the parties' relationship became rather hostile. Petitioner filed a third-party action against respondent's mother alleging that marital property was being concealed. Respondent's mother attempted to have petitioner ejected from the house for failing to pay rent. Respondent contended that petitioner was interfering with his visitation rights. Petitioner secured an order of protection against respondent following respondent being convicted for domestic battery for an incident that occurred during the time the parties were married. Petitioner sought and was granted interim relief for the payment of a variety of expenses and respondent frequently did not comply with the court's deadlines, resulting in two separate incarcerations.

¶ 8 After the dissolution judgment was entered, petitioner filed a petition for contribution for the payment of her attorney fees. Petitioner and her attorney supplied affidavits averring that \$60,552.75 in attorney fees were incurred. Petitioner sought \$53,052.75 in attorney fees, presumably because respondent had already paid \$7,500.00 of her attorney fees. The court held an evidentiary hearing and heard evidence concerning the accrual of fees. The trial court awarded petitioner's attorney \$20,000 in fees that were incurred for issues related to maintenance and child support and \$5,000 pursuant to 750 ILCS 5/508(b) for fees incurred as a result of respondent failing to comply with court orders in a timely manner.

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¶ 9 The trial judge also granted petitioner's attorney leave to file a fee petition against respondent's attorney for his failure to appear at multiple court conferences. Respondent's attorney failed to appear at case management conferences on November 18, 2011, November 30, 2011, December 6, 2011, and December 13, 2011. A rule to show cause was issued on the December 6, 2011 court date and a body attachment was entered and stayed until December 23, 2011 at which time respondent's attorney appeared. No formal finding of contempt was ever entered, but the trial judge entered an order on petitioner's attorney's petition for rule to show cause indicating that respondent's attorney was required to pay a \$2,000 sanction to petitioner's attorney for failing to appear in court on five occasions.

¶ 10 Respondent appeals the order requiring him to pay contribution in attorney fees arguing that petitioner failed to show that he had the ability and that she had an inability to pay the fees, and that the requested fees were unreasonable. Respondent's attorney appeals the sanction against him arguing that it was entered in error because it was procedurally infirm and because he received inadequate notice of the court conferences at which he failed to appear.

¶ 11 ANALYSIS

¶ 12 *Respondent's Appeal of Fees Awarded*

¶ 13 Under the Marriage and Dissolution of Marriage Act, the trial court may order a party to pay a reasonable amount of the other party's costs and attorney's fees in consideration of the financial resources of the parties. 750 ILCS 5/508(a). The allowance of attorney fees in a divorce proceeding generally must be based on a finding that one spouse is financially unable to pay fees while other is able to do so. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 113. When a party petitions for fees at the conclusion of dissolution proceedings, the court is to

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consider the request under the same criteria used to determine the proper division of marital property or a request for maintenance. 750 ILCS 5/503(j)(2). The determination of reasonable attorney's fees and costs is within the sound discretion of the trial court. 750 ILCS 5/508(c)(3). A trial court's order with regard to attorney fees in dissolution proceedings will not be overturned on appeal unless it is shown to be an abuse of discretion. *In re Marriage of Florence*, 260 Ill. App. 3d 116, 124 (1994).

¶ 14 Respondent contends that petitioner failed to show that he had the ability to pay the fees that were assessed by the trial court. The trial court held a hearing on the fee issue. No transcript of that hearing is included in the record on appeal. However, there is evidence in the record that respondent made more than \$100,000 a year during the entirety of the parties' marriage and that respondent's mother had possession of the money earned by respondent. The trial court also heard evidence that respondent had a greater ability to earn income going forward. In the face of this evidence, respondent offered no evidence to show his inability to pay. Tellingly, even in its brief before this Court, respondent does not point to any record evidence demonstrating an inability to pay. In her affidavit attached to her petition for fees, petitioner averred that she "ha[d] insufficient income and assets with which to pay the attorney's fees . . . incurred on [her] behalf." She continued, "I work minimum wage jobs part time and I do not generate enough income. I cannot even pay the expenses as they come due and have to borrow monies." Meanwhile, petitioner averred that respondent liquidated two I.R.A.s, was gainfully employed, and had been keeping his finances secret while diverting his money to his mother. The trial judge had the opportunity to observe the parties and to gain an intimate knowledge of their finances during the pendency of the case and, after considering the evidence presented, awarded fees to petitioner.

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On the record before us, there is nothing that would indicate that the trial judge abused his discretion by awarding fees to petitioner.

¶ 15 Respondent also argues that the fees requested by petitioner were unreasonable. The statute provides that the fees awarded must be reasonable. See 750 ILCS 5/508(a). In determining whether the fees charged in a marital dissolution action are reasonable, the trial court considers not only the number of hours the attorney spent on the case but the following factors as well: (1) skill and standing of the attorneys; (2) the difficulty of the issues; (3) the amount and importance of the subject matter in the field of family law; (4) the degree of responsibility involved in the management of the case; (5) the usual and customary charge in the community; and (6) the benefits to the client. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 103.

¶ 16 As respondent acknowledges, this case endured for nearly four years. During the proceedings there were dozens of court appearances, extensive filings such as motions to compel and motions for interim fees. Petitioner's attorney submitted an extensive billing record for the matter along with the petition for fees. The billing records set forth in detail: the services performed, by whom they were performed, the time expended on each task, and the hourly rate charged. There is nothing in the record that demonstrates that the services performed or the fees charged were unreasonable. Moreover, the trial judge considered petitioner's request for over \$53,000 and awarded just \$25,000. It is apparent that the trial court considered the circumstances and made a reasoned decision.

¶ 17 Respondent does not make any specific objection to the rate charged or the services performed as unreasonable, but instead argues that petitioner's attorney unnecessarily prolonged a relatively simply divorce case to increase attorney fees. It is true that unnecessarily increasing the

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cost of litigation is a relevant factor in the allocation of attorney fees. *Id.* at ¶ 117. However, sitting in review, respondent's position is one we simply cannot accept. It is apparent that petitioner attained a benefit from the services performed by her attorney. Again, the trial court was intimately familiar with the parties and the proceedings and is in the best position to determine what fees were reasonably incurred. All indications from the record are that petitioner's attorney assessed reasonable charges for reasonable services. Accordingly, we find no abuse of discretion in the award of contribution of attorney fees.

¶ 18 *Respondent's Attorney's Appeal Of Sanctions Imposed*

¶ 19 Respondent's attorney appeals the trial court's imposition of a \$2,000 sanction as a result of his failure to appear in court on four or five occasions. The trial court did not indicate under what rule or statute it imposed the sanction, but its orders indicate that the sanction was imposed on petitioner's rule to show cause.

¶ 20 As a general matter a party may not recover attorney fees unless there is specific contractual or statutory authority for awarding such fees. *Hallmark Personnel, Inc. v. Pickens-Kane Moving & Storage Co.*, 82 Ill. App. 3d 18, 24 (1980). We have upheld the imposition of a financial sanction against an attorney for failing to appear in court following a finding that the attorney was in contempt. See *Davis v. Sprague*, 186 Ill. App. 3d 249, 254-55 (1989). Here, however, the trial court made no contempt finding or any finding that the attorney's conduct was willful or contumacious. The only authority that petitioner invokes to support the trial court's imposition of a sanction concerns the general principle that the court's contempt power gives it the inherent authority to control its docket. However, the trial court never found respondent's attorney in contempt and the attorney was not afforded any of the procedures that

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must be afforded to an alleged contemnor. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 629-30 (2010). The attorney was not even personally served with the rule to show cause petition and was not afforded a hearing or any meaningful opportunity to be heard. The record reveals that respondent's attorney was not absent from any key proceedings in the case, but simply failed to appear at certain case management conferences. For the most part, he communicated his expected absence with petitioner's attorney and there is no evidence of any willful wrongdoing. Under the circumstances presented here, where the trial court failed to set forth the legal basis for the imposition of the sanction, the \$2,000 fine against respondent's counsel cannot stand.

¶ 21 CONCLUSION

¶ 22 Accordingly, we affirm the trial court's judgment on the contribution of attorney fees in the dissolution action, and we reverse and vacate the sanction entered against respondent's attorney.

¶ 23 Affirmed in part, vacated in part.