

SIXTH DIVISION
March 4, 2016

No. 1-15-1109

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

PASULKA & ASSOCIATES, P. C.,) Appeal from the
) Circuit Court
Plaintiff-Appellee,) of Cook County.
)
v.) No. 2013 L 1334
)
HELENA L. RAFEYAN,)
) Honorable
Defendant-Appellant.) Raymond Mitchell,
) Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court did not err in finding that defendant was judicially estopped from challenging the reasonableness of a particular portion of her divorce attorneys' fees, or by refusing to admit certain evidence regarding them. The defendant forfeited all other challenges to the judgment below by failing to cite authority in support of them, in violation of Ill. Sup. Ct. R. 341(h)(7).

¶ 2 Plaintiff Pasulka & Associates, P. C. is a law firm which represented defendant Helena L. Rafeyan in connection with the dissolution of her marriage. After the divorce proceedings concluded, Rafeyan failed to pay fees for which Pasulka billed her. Pasulka filed this lawsuit to collect the fees, based on breach of an alleged oral contract between the parties.

¶ 3 This case proceeded to a bench trial at which the defendant represented herself *pro se*. At the last minute, Pasulka requested a continuance, explaining that her attorney of record had not been in touch with her for some time. The court denied this request, explaining that everyone involved had known for months that the attorney had abandoned the case and that the trial date had been set long in advance. Also before trial, Pasulka presented a motion *in limine* regarding a petition for interim attorney fees from Rafeyan's husband's profit-sharing account which Rafeyan had filed in the divorce action. Pasulka contended that Rafeyan could not contest the reasonableness of those particular fees because, during the course of the divorce case, she had admitted that they were reasonable. The petition eventually resulted in the entry of an order requiring Rafeyan's husband to contribute a substantial sum toward his wife's attorney fees. The court reserved ruling on the motion *in limine* pending the presentation of any testimony related to those particular fees.

¶ 4 The following evidence was presented at trial. David Pasulka testified regarding the nature and scope of the work the firm performed for Rafeyan at her request. He authenticated detailed time and billing records showing the firm's work on Rafeyan's divorce case, and those exhibits were admitted into evidence without objection. He also identified the fee petition which was the subject of the motion *in limine*. The petition asserted that the fees sought were reasonable. It was verified by Rafeyan under oath. Pasulka testified that the petition ultimately resulted in a court order requiring Rafeyan's husband to transfer \$97,796.80 from his retirement account to pay the fees covered by the petition. That sum was split among various attorneys who had represented Rafeyan in the divorce action, and to Rafeyan herself, for additional taxes that she would incur because of the fee award. Pasulka concluded that Rafeyan owed his law firm over \$118,000. He reached this figure by taking the total amount billed, \$201,339.35, deducting

the amount already paid pursuant to the divorce court's interim fee order, and applying various small adjustments. He also stated that the firm had done an additional \$51,903.75 worth of legal work which was "no charged."

¶ 5 Pasulka explained that the divorce judge had tried to settle the case, and had recommended what he believed were several fair proposals, but Rafeyan rejected them. She returned them to Pasulka with a note stating "in spite of this advice, I wish to proceed to trial and have considered the further expense of attorneys' fees to try this case." The divorce trial lasted four days. The divorce judge asked the parties to prepare proposed judgments and opinions for her review. Rafeyan liberally annotated these proposals with her own comments, one of which read "Thank you, once again for all your hard work let's roll the dice." During the same period between the conclusion of the divorce trial and the issuance of the judgment of dissolution of marriage, she and her son sent tokens of appreciation to the attorneys.

¶ 6 Pasulka explained that the divorce court entered a judgment of dissolution of marriage which was revised slightly after it considered additional motions filed by Rafeyan's husband. The judgment provided that each party was responsible for his/her own attorney fees. Rafeyan wanted her own attorneys to also file a motion for reconsideration, but they advised against it and they eventually withdrew from the case.

¶ 7 Rafeyan cross-examined Pasulka regarding various interactions they had during the course of the divorce case. When she began to question Pasulka about the interim fee petition, the court stated: "the interim petitions [sic], for lack of a better word, that ship has sailed" and insisted that Rafeyan move on to another point. Rafeyan continued to ask questions about the distribution of attorney fees from the profit-sharing account, but the court stopped her, noting that the proceeds from the distribution had already been applied to her outstanding balance.

Accordingly, the court resolved the issues presented by the motion *in limine* by determining that these fees were not relevant to the fees sought in the case now before it.

¶ 8 Rafeyan testified on her own behalf and submitted over 40 exhibits, asserting in general terms that she did not dispute the services listed on the bills, but merely the charges. Among other things, she explained that she had copied the entire court file and tried to compare the filed pleadings to the billing. She asserted that a few particular time entries were duplicative or unexplained. She also presented testimony from a second attorney who was of counsel to the Pasulka firm and performed work on her behalf.

¶ 9 After the trial, the court issued a detailed order finding that Pasulka had demonstrated that it had a valid contract with Rafeyan and that Pasulka's fees were reasonable. It specifically found that none of Rafeyan's complaints about Pasulka's billing were supported by the record and that Rafeyan presented "no defense." It entered a judgment against Rafaeyan and in favor of Pasulka for \$118,241.85.

¶ 10 Rafeyan then obtained counsel who raised several contentions of error in a post-trial motion, which the court denied in a second detailed written order. In that order, the court explained that it had denied Rafeyan's request for a continuance because the case had been set for some time and Rafeyan was fully aware that her attorney had abandoned the case several months before the scheduled trial date. The court also reiterated that the interim fee petition was not relevant because the case before it was only about *other* unpaid fees. It stated that "given the procedural posture" of the interim fee petition in the divorce case, Rafeyan was "judicially estopped from taking a contrary position relative to the interim fees in this proceeding." Even so, the court noted that it gave Rafeyan "broad latitude at trial and permitted many questions on the topic." Finally, the court rejected Rafeyan's contention that the evidence did not support the

reasonableness of the fees, stating that “[h]er attorneys deserve to be paid” and that it was “abundantly clear from the record” that Rafeyan rejected her attorneys’ advice and “elected to ‘roll the dice’ ”, a strategy which substantially increased the expense of the divorce case.

¶ 11 On appeal, Rafeyan raises four points of error regarding the trial court’s judgment, which largely overlap with the issues she raised in her post-trial motion. She contends that the court erred by: (1) finding she was judicially estopped from challenging the reasonableness of the portion of Pasulka’s fees covered by the interim fee petition; (2) denying Rafeyan the right to dispute and cross-examine Pasulka’s witnesses regarding the reasonableness of those particular fees; (3) denying Rafeyan’s motion for a continuance; and (4) finding that the remaining portion of Pasulka’s fees, those not included in the interim fee petition, were reasonable.

¶ 12 We first address Rafeyan’s contentions regarding the trial court’s application of the doctrine of judicial estoppel. “Judicial estoppel is an equitable doctrine invoked by the court at its discretion.” *Seymour v. Collins*, 2015 IL 118432, ¶ 36. It applies when “litigants take a position, benefit from that position, and then seek to take a contrary position in a later proceeding.” *Id.* The purpose of this doctrine is to “protect the integrity of the judicial process by prohibiting parties from ‘deliberately changing positions’ according to the exigencies of the moment.” *Id.*, 2015 IL 118432, ¶ 36 quoting *New Hampshire v. Maine*, 532 U.S. 742, 743 (2001).

¶ 13 In general, five prerequisites must be met before judicial estoppel applies. “The party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it.” *Id.* ¶ 37. It is not necessary that the position taken in the first proceeding even

be expressed through a statement under oath. *Id.* ¶ 38. We review a trial court's application of judicial estoppel for an abuse of discretion. *Id.* ¶ 48. A court abuses its discretion only when its decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Id.* ¶ 41.

¶ 14 Here, it is clear that Rafeyan became judicially estopped from later challenging the reasonableness of the portion of Pasulka's fees covered by the interim fee petition once she had asserted in her divorce proceeding, under oath, that those fees were reasonable. By doing so, she fulfilled all five requirements for a finding of judicial estoppel. She took two factually inconsistent positions in separate judicial proceedings, intending for the trier of fact to accept the truth of the facts alleged, and succeeded in the first proceeding and received some benefit from it. Accordingly, we cannot find that the trial court abused its discretion by refusing to allow Rafeyan to assert contradictory positions in the two cases at issue.

¶ 15 The sole two cases on which Rafeyan relies, *In re Marriage of Angiuli*, 134 Ill. App. 3d 417 (1985), and *In re Marriage of Bennett*, 131 Ill. App. 3d 1050 (1985), are inapposite. *Angiuli* merely held that partial payment on a statement of account is not conclusive upon a client with respect to the reasonableness of the balance. 134 Ill. App. 3d at 422. In *Bennett*, the court simply found that estoppel could not be established by a mere waiver by a client. 131 Ill. App. 3d at 1054-55. Neither addresses the issue presented here, which involves the client taking opposite positions regarding the reasonableness of her attorneys' fees in two different lawsuits. It necessarily follows from our resolution of the estoppel issue that the trial court could not have erred by limiting the scope of Rafeyan's examination regarding the fees included in the interim fee petition.

¶ 16 The argument section of Rafeyan’s appellate brief addressing the remaining two issues contains not a single reference to a statute, court rule, or judicial precedent. Rafeyan simply argues that the trial court was wrong regarding these three issues, but fails to explain what legal authorities dictate reversal. In response, Pasulka invokes Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), which provides that the argument section of an appellant’s brief “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities.” We agree with Pasulka that Rafeyan has forfeited these arguments by failing to cite authority in support of her position. See *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009) (issue on appeal forfeited for failure to cite authority).

¶ 17 Forfeiture aside, we cannot discern that the trial court abused its discretion by denying a last-minute continuance under the facts presented. See, e.g., *K & K Iron Works, Inc. v. Marks Realty, LLC*, 2014 IL App (1st) 133668, ¶ 28 (trial court did not abuse its discretion in denying continuance even though counsel withdrew on the day of trial). Additionally, the trial court’s finding that the fees were duly incurred and were reasonable for the services performed was not against the manifest weight of the evidence. The evidence that the parties had an attorney-client relationship and that Pasulka performed services pursuant to that relationship was undisputed. The evidence amply demonstrated the nature of the services rendered, the amount of time expended, and the result obtained for the client. Rafeyan failed to show that any particular time entry or task was incorrect or duplicative. See, e.g., *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 598 (2000) (setting forth elements of a *prima facie* case for breach of an attorney fee contract).

¶ 18 For these reasons, we affirm the judgment of the circuit court.

¶ 19 Affirmed.