2016 IL App (2d) 150489-U
No. 2-15-0489
Order filed April 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF NORIKO ARAKAWA OGRIN, Petitioner-Appellee, v. DANIEL LAWRENCE OGRIN, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 02-D-2185 Honorable Charles D. Johnson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err: (1) denying respondent's motion to dismiss petitioner's petition for reimbursement of educational costs; (2) closing discovery in its September 2, 2014, order; and (3) ruling that petitioner was entitled to retroactive educational costs.

¶ 2 Respondent, Daniel Ogrin, appeals the trial court's orders granting petitioner, Noriko Arakawa's (formerly Ogrin and hereinafter, "petitioner"), petition for reimbursement of

educational costs for their son, Michael Ogrin ("Michael").[1] Respondent contends that the petition was insufficient because it lacked adequate factual allegations. Respondent also contends the trial court's order closing all discovery was improper because it prevented him from obtaining all facts related to educational expenses incurred by petitioner. Finally, respondent contends that the court was incorrect in ruling petitioner was entitled to reimbursement of education costs incurred pre-petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 24, 2003, the trial court entered a judgment for dissolution of marriage in the circuit court of Lake County, Illinois. Both of the parties' children were attending college at the time the judgment for dissolution of marriage was entered. Relevant here, the judgment stated as follows:

> "The future college expenses for the children shall be governed by 750 ILCS 5/513. All accounts earmarked for payment of college expenses shall be depleted prior to either party incurring an obligation pursuant to this paragraph. The educational expenses shall include, but shall not be limited to: room and board, dues, tuition, transportation, books, fees, registration and application costs, dental expenses and living expenses during the school year and periods of recess. That the obligation of the parties in this paragraph is contingent upon the children remaining in undergraduate studies on a full-time basis and carrying a "C" average."

[1] Petitioner alleged in her petition that she expended resources for the educational expenses of the parties' daughter, Samantha Ogrin. The costs of Samantha's education are not relevant to this appeal as the ruling of the trial court is based upon expenses incurred for Michael's education.

¶ 5 On October 16, 2013, petitioner filed a petition for reimbursement of educational costs. In her petition, petitioner alleged that she had spent over $45,000 for Michael's educational costs from April 2004 through the date of filing. Petitioner sought enforcement of the parties' judgment for dissolution of marriage through section 5/513 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"). 750 ILCS 5/513 (West 2008). Petitioner alleged that respondent had been unwilling to contribute any resources towards educational expenses and she asked the court for reimbursement of fifty percent of her expenditures. Checking account and credit card statements detailing petitioner's expenses related to Michael's education costs were attached to the petition.

¶ 6 On December 19, 2013, respondent filed a motion to dismiss petitioner's petition pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2010). In his motion, respondent claimed the petition lacked specific information regarding the details of Michael's educational institution. The motion also claimed that the petition was missing evidence of petitioner's payments to Michael's educational institution and evidence of respondent's ability to contribute financially toward Michael's education.

¶ 7 On March 20, 2013, petitioner filed a response to respondent's motion to dismiss. Petitioner's response stated that facts in her original petition for reimbursement of educational costs were sufficient under Illinois law but provided answers to the questions posed in respondent's motion to dismiss that were alleged to be lacking. Additionally, petitioner claimed that voluminous amounts of evidence were provided to respondent in excess of the attachments to her original petition, including evidence of Michael's attendance at Ohio State University from 2004 to the date of the petition.

¶ 8 The trial court conducted a complete hearing on respondent's motion to dismiss on May 15, 2014. The trial court denied respondent's motion and ordered the parties to issue discovery and set a hearing for July 23, 2014. On July 23, 2014, petitioner provided respondent again with evidence of payments regarding Michael's educational costs as well as evidence of his attendance at Ohio State University. That same day, respondent filed his answer to petitioner's petition for reimbursement of educational costs. Respondent's answer alleged that Michael had become emancipated sometime in 2007. Respondent also claimed that he had income insufficient to contribute towards the educational expenses of his son. The trial court continued the hearing until September 2, 2014, and ordered respondent to provide any and all documentation evidencing payments made towards his children's educational costs.

¶ 9 On September 2, 2014, petitioner provided respondent and the court with the same documentation detailing Michael's proof of attendance at Ohio State University along with bank and credit card statements evidencing proof of payment towards Michael's educational costs. Respondent did not issue any discovery to petitioner or the court. In its order of September 2, 2014, the trial court noted that it had been fully advised regarding petitioner's petition and ordered discovery closed after receiving all evidence from petitioner and no further discovery from respondent.

¶ 10 On January 8, 2015, the trial court issued an order noting that it had heard full and complete arguments from both petitioner and respondent's counsel. The court's order continued the matter until February 13, 2015. In its order of February 13, 2015, the trial court noted that it had heard final arguments on January 8, 2015 and was fully informed on the matter. The trial court granted petitioner's petition for reimbursement of educational costs and ordered respondent to pay petitioner $10,000 within 60 days, up and through April 14, 2015. Petitioner, her

attorney, and respondent were present for the February 13, 2015, hearing but respondent's attorney was absent.

¶ 11 On February 17, 2015, respondent filed a motion to vacate the February 13, 2015, order. Respondent's motion stated that counsel was unable to attend the February 13 hearing due to medical issues. The trial court granted respondent's motion to vacate and set hearing for April 17, 2015. On April 17, 2015, the court conducted a full hearing on the matter for a final time. Respondent's counsel was given the opportunity to present oral argument. After hearing respondent's argument and fully considering all facts and evidence, the trial court again ruled in favor of petitioner's petition for reimbursement of educational costs and ordered respondent to pay petitioner $10,000 within 60 days, up and through October 14, 2015. Respondent timely filed notice of this appeal.

¶ 12 II. ANALYSIS

¶ 13 Respondent presents three issues for review in his appeal. Respondent argues that: (1) the trial court erred in denying his motion to dismiss petitioner's petition for reimbursement of educational costs; (2) the trial court erred in closing discovery through the order of September 2, 2014; and (3) the trial court erred in granting petitioner's petition for reimbursement of educational costs.

¶ 14 Respondent first argues that petitioner's original petition for reimbursement of educational costs was lacking because it did not allege facts which showed all conditions were met pursuant to Section 513(b) of the IMDMA (750 ILCS 5/513(b) (West 2008)).

¶ 15 The appellate court reviews the denial of a motion to dismiss pursuant to section 2-615 (735 ILCS 5/2-615 (West 2010)) *de novo*. *Loman v. Freeman*, 229 Ill.2d 104, 109 (2008). When we review a section 2–615 motion for dismissal, the "proper inquiry is whether the well-

pleaded facts of the [initial pleading], taken as true and construed in a light most favorable to the [party filing the initial pleading], are sufficient to state a cause of action upon which relief may be granted." *Id*.

¶ 16 Petitioner's petition sought to enforce the parties' judgment for dissolution of marriage, specifically paragraph F, which stated that "[f]uture college expenses for the children shall be governed by 750 ILCS 5/513." Section 513(a)(2) of the IMDMA states:

> "The court may also make provision for the educational expenses of the child or children of the parties, whether of minor or majority age, and an application for educational expenses may be made before or after the child has attained majority, or after the death of either parent. The authority under this Section to make provision for educational expenses extends not only to periods of college education or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 19. The educational expenses may include, but shall not be limited to, room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, and living expenses during the school year and periods of recess, which sums may be ordered payable to the child, to either parent, or to the educational institution, directly or through a special account or trust created for that purpose, as the court sees fit." 750 ILCS 5/513(a)(2) (West 2008).

¶ 17 Section 513(b) of the IMDMA provides:

> "In making awards under paragraph (1) or (2) of subsection (a), or pursuant to a petition or motion to decrease, modify, or terminate any such award, the court

shall consider all relevant factors that appear reasonable and necessary, including:

(1) The financial resources of both parents.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

(3) The financial resources of the child.

(4) The child's academic performance." 750 ILCS 5/513(b) (West 2008).

¶ 18 Respondent's argument that the court erred in denying his motion to dismiss petitioner's petitioner because it did not allege facts which showed all conditions were met pursuant to Section 513(b) of the IMDMA (750 ILCS 5/513(b) (West 2008)) is without merit. Nothing in the language of Section 513 requires petitioner to allege any specific facts to properly give rise to each of the factors enumerated in the statute. Rather, Section 513 sets forth factors to be considered by the trial court in making an award. Petitioner, nevertheless, is required to plead facts in her petition that are sufficient to state a cause of action upon which relief may be granted to survive respondent's Section 2-615 (735 ILCS 5/2-615 (West 2010)) motion for dismissal. See *Loman*, at 109. Petitioner's petition alleged that she incurred $44,621.95 in educational and living expenses, as well as $1,930.63 in medical expenses. She attached verified checking account and credit card statements to her petition to reflect these expenses. Petitioner alleged that respondent has refused to contribute any money toward these educational expenses, nor has he met his obligations under the Judgment for Dissolution of Marriage for the payment of educational expenses. She also alleged that she was entitled to reimbursement pursuant to Section 513 of the IMDMA, as dictated in the Judgment for Dissolution of Marriage. Petitioner's petition contained facts sufficient to state a cause of action upon which relief may be

granted and the trial court did not err in denying respondent's motion to dismiss her petition. See *Id*.

¶ 19 Respondent next argues that the trial court abused its discretion in closing discovery through its order on September 2, 2014. Discovery orders are subject to an abuse of discretion standard of review. *Garvy v. Seyfarth Shaw* LLP, 2012 IL App. (1st) 110115, ¶ 29. "An abuse of discretion exists where the trial court's decision is arbitrary or fanciful, or where no reasonable person would agree with the court's position." *Seymour v. Collins,* 2014 IL App (2d) 140100, ¶ 21.

¶ 20 Illinois Supreme Court Rule 201(c)(1) states that a trial court may "at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." Ill. S. Ct. R. 201(c)(1) (eff. July 1, 2014). Rule 201(c)(2) provides that "on its own initiative without notice, the court may supervise all or any part of any discovery procedure." Ill. S. Ct. R. 201(c)(2) (eff. July 1, 2014).

¶ 21 Here, petitioner filed her petition for reimbursement of educational costs on October 16, 2013. She attached bank and credit card statements detailing her expenditures toward educational expenses. On February 20, 2014, a status on the case took place and, based on respondent's motion, petitioner tendered to respondent all documentation including bank statements, proof of college attendance, and voluminous receipts providing proof of payments made by petitioner toward Michael's education. Following the denial of respondent's motion to dismiss, the parties were ordered to issue discovery. On July 23, 2014, petitioner tendered the same documentation to respondent and the trial court that was tendered on February 20, 2014. Respondent was ordered by the trial court on July 23, 2014, to tender any documents that proved

he made any payments on behalf of his children's education costs. Respondent never tendered any such documents. On September 2, 2014, petitioner again provided respondent and the trial court with documentation evidencing payment toward educational expenses and college attendance. Respondent did not issue any discovery or request any further documentation from petitioner. The court noted in its order of September 2, 2014, that discovery was closed.

¶ 22 Respondent fails to identify in his brief how the trial court abused its discretion by closing discovery on September 2, 2014. His argument merely states that an abuse of discretion exists if the ruling prevents the ascertainment of the truth or substantially affects a crucial issue in the case. Here, respondent had approximately eleven months from the date of petitioner's original petition to request any and all documentation he desired from petitioner. He also had eleven months to provide petitioner and the trial court with any documentation reflecting his contributions toward his son's education. He failed to do any of this. The trial court's close of discovery did nothing to prevent an ascertainment of the truth or affect a crucial issue in the case. We therefore reject respondent's argument that the trial court abused its discretion in closing discovery on September 2, 2014.

¶ 23 Respondent's final contention is that the trial court erred in granting petitioner's petition for reimbursement of educational expenses. Respondent argues that our supreme court's holding in *In re Marriage of Petersen* 2011 IL 110984, prohibits the trial court from awarding educational costs that pre-dated the filing of petitioner's petition for reimbursement of educational expenses. We disagree.

¶ 24 In *Peterson*, the parties were subject to a judgment of dissolution of marriage which stated in relevant part:

> "The Court expressly reserves the issue of each party's obligation to contribute to the college or other education expenses of the parties' children pursuant to Section 513 of the Illinois Marriage and Marriage Dissolution Act." *Peterson*, at ¶ 4.

At the time of the judgment, the Peterson children had not yet begun college. Janet Petersen filed a petition to allocate the college expenses five years after the couples' oldest son started college and three years after their second son began college. *Id*. at ¶ 5. Our supreme court found that the original judgment decree did nothing more than maintain the status quo between the parties with respect to the issue of college expenses by not making an award at that time. *Id*. at ¶ 17. Because Kevin Petersen had no concrete obligation to provide for educational expenses under the judgment decree, Janet's petition requested a change to the status quo between the parties and altered Kevin's obligations. *Id*. at ¶ 18. The supreme court found that Janet's action brought her within the purview of section 510 of the IMDMA (750 ILCS 5/510(a) (West 2006)) which limits retroactive modification of a judgment decree to payments that date back to the filing date of the original petition. *Id*. Therefore, Janet could not be awarded educational expenses that predated the filing of her petition to allocate college expenses. *Id*.

¶ 25 Here, unlike in *Petersen*, petitioner's petition for reimbursement of college expenses sought to enforce obligations that each party already had pursuant to the judgment for dissolution of marriage. Petitioner's petition does not alter or modify any of the obligations set forth in the judgment. The status quo remains unchanged. Michael was already attending college when the judgment for dissolution of marriage was entered and the language states that once any funds that existed for college were depleted, the parties then incurred an obligation pursuant to Section 513 of the IMDMA. 750 ILCS 5/513 (West 2008). Thus, the holding in *Petersen* is inapplicable

to the instant case and the trial court was not prohibited from awarding petitioner $10,000 in retroactive educational expenses.

¶ 26 Finally, respondent argues that Michael was emancipated in 2007 because he was not in college for a semester, was working at a job, had become an Ohio resident, and purchased a motorcycle. What constitutes an emancipation is a question of law, but whether there has been an emancipation is a question of fact. *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1092 (1992). In determining whether an emancipation has occurred by any means other than reaching the age of majority, the supreme court identified the factors to be considered by the trial court, including but not limited to: "whether the minor has voluntarily left the protection and influence of the parental home, or whether the minor has otherwise moved beyond the care and control of the custodial parent; whether the minor has assumed responsibility for his or her own care, or whether the minor continues to need support; whether the minor, if self-emancipated, has become dependent on his or her parents again, thereby reverting to being unemancipated." *In re Marriage of Baumgartner*, 237 Ill. 2d. 468, 486 (2010). The rules of law governing emancipation do not point to specific facts or a bright-line standard. Rather, the unique facts and circumstances of each case must be evaluated. *Id*. at 481.

¶ 27 Here, petitioner provided the trial court with voluminous amounts of documentation which showed Michael was financially dependent on her throughout his time in college. Petitioner provided evidence to the trial court that Michael stopped attending school for a semester to assist petitioner with his educational expenses. The trial court was fully informed on all matters including all issues pertaining to Michael in 2007 and beyond and awarded petitioner $10,000 in reimbursement for educational costs. Under these circumstances, we find no abuse of discretion in the trial court's findings regarding Michael's emancipation. See *In re Marriage of*

Thurmond, 306 Ill. App. 3d 828, 834 (1999) (A trial court's decision to award educational expenses in connection with dissolution of marriage will not be reversed absent an abuse of discretion).

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 30 Affirmed.