

2014 IL App (2d) 130323-U
Nos. 2-13-0323 & 2-13-0420 cons.
Order filed January 24, 2014

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
SECOND DISTRICT

IN RE THE MARRIAGE OF)	Appeal from the Circuit Court
LIANA MIREA,)	of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 10-D-1267
)	
GEORGE NICOLAE, JR.,)	Honorable
)	John W. Demling,
Respondent-Appellant.)	Judge, Presiding.

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GEORGE NICOLAE, JR.,)	
)	
Respondent-Appellant)	Honorable
)	John W. Demling,
(Sullivan Taylor & Gumina, PC, Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial properly denied respondent maintenance, properly finding that he waived it in a valid premarital agreement and in any event was self-sufficient; (2) the trial court did not abuse its discretion in awarding fees to respondent's attorney, as respondent did not offer significant evidence to counter his attorney's detailed evidence establishing the reasonableness of the requested fees.

¶ 2 Respondent, George Nicolae, Jr., appeals *pro se* from a judgment of the circuit court of Du Page County granting a dissolution of marriage to petitioner, Liana Mirea, and barring both him and petitioner from receiving any maintenance (appeal No. 2-13-0323). Respondent also appeals from a postdissolution order awarding attorney fees to his former attorney (appeal No. 2-13-0420). The appeals have been consolidated. Because the trial court did not err in ruling that a provision of the premarital agreement barred the parties from receiving any maintenance, because the trial court did not abuse its discretion in otherwise denying respondent maintenance, and because the trial court did not abuse its discretion in awarding attorney fees, we affirm.

¶ 3 I. BACKGROUND

¶ 4 No. 2-13-0323

¶ 5 The evidence at trial established that petitioner was 49 years old and respondent was 69 years old. The parties were married on June 18, 1992, and had no children during the marriage.

¶ 6 The parties had a marital home that was valued between \$150,000 and \$170,000. There was an outstanding mortgage on the home in the amount of about \$270,000. The home was in foreclosure on the date of trial. Ultimately, respondent was awarded the home and is obligated to pay the loan on the home.

¶ 7 Before the marriage, respondent purchased a building that was sold in 1996. Respondent received net proceeds from the sale of about \$1,134,000. Of that amount, he gave \$300,000 to each of his two children. The remainder was used for various marital expenses. Petitioner, as the selling agent, received a commission of \$72,000.

¶ 8 Respondent, who has a Ph.D. in chemistry, has a consulting business from which he earned about \$2,000 in the year before the trial. He also receives social security. He has two bank accounts totaling about \$2,000 and a seven-year-old vehicle. Petitioner agreed to his receiving an escrow account, related to repairs on the home, that was worth about \$6,600.

¶ 9 Respondent suffers from health problems, including heart and back issues, and needs expensive medication for his heart condition. He owes a personal acquaintance about \$10,000 on a loan he used to help pay his attorney fees related to the dissolution proceeding.

¶ 10 Petitioner, who has a master's degree in chemistry and a real estate broker's license, earns about \$105,000 per year. She sends about \$200 monthly to her elderly, retired parents in Romania. She has no other significant assets and has a negative monthly cash flow.

¶ 11 Before they were married, the parties entered into an agreement. That agreement provided, in pertinent part, that, “[t]o the extent permitted by law, maintenance is waived by both parties and if not permitted by law, permitted to the legal minimum.” On June 3, 2010, petitioner filed a petition for dissolution of marriage. On July 16, 2010, an order was entered in which the parties agreed that they would execute a loan modification agreement related to the marital home, that they would maintain the status quo as to the marital home, and that petitioner would continue to pay the mortgage, real estate taxes, and insurance “without prejudice, until further order of the court.”

¶ 12 In August 2010, petitioner moved to Virginia to begin new employment. On January 19, 2011, respondent filed a petition for a rule to show cause, alleging that petitioner was not making the mortgage payments. On February 17, 2011, petitioner filed a motion to modify her obligation under the July 16, 2010, order and a petition to sell the marital home.

¶ 13 While the dissolution proceeding was pending, petitioner filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Virginia. The dissolution proceeding was accordingly stayed. The stay was lifted in late 2012.

¶ 14 On July 25, 2012, the bankruptcy court issued a memorandum opinion and order that found, among other things, that petitioner's obligation to make the payments on the home loan pursuant to the July 16, 2010, order was nondischargeable. It did so because it characterized the July 16, 2010, order, for purposes of federal bankruptcy law, as a "domestic support obligation." All of petitioner's other debts, except for a student loan of about \$8,000, were discharged, including her debt under the home loan.

¶ 15 The trial court, in the dissolution proceeding, ruled that the July 25, 2012, bankruptcy order left it to determine the enforceability of the July 16, 2010, order. Subsequently, on July 26, 2013, the bankruptcy court denied respondent's motion to enforce its order of July 25, 2012, stating that the issue of any "domestic support obligation" on the part of petitioner was a matter for the state court.

¶ 16 On December 4, 2012, after the bankruptcy stay had been lifted, the trial court set the case for trial on February 15, 2013. Before the trial began, respondent's attorney was allowed to withdraw, and respondent proceeded *pro se*.

¶ 17 On February 20, 2013, the trial court granted the petition for dissolution of marriage. In doing so, it ruled that, under the July 16, 2010, order, petitioner was responsible to pay the lender for five months of unpaid mortgage payments. The court otherwise terminated, as of February 17, 2011, petitioner's obligation to make any further mortgage payments pursuant to the July 16, 2010, order.

¶ 18 The trial court found that the premarital agreement was valid and enforceable and, accordingly, that the parties waived maintenance under the agreement. Alternatively, the court found that the parties were self-sufficient and, irrespective of the premarital agreement, were barred from receiving any maintenance. Respondent filed this timely appeal.

¶ 19 No. 2-13-0420

¶ 20 During the course of the dissolution proceeding, the law firm representing respondent, Sullivan Taylor & Gumina, PC (STG), was given leave to withdraw. On September 26, 2011, STG filed a petition for attorney fees pursuant to section 508(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(c) (West 2010)). Because of the bankruptcy stay and continuances in the dissolution proceeding, the petition for attorney fees was not heard until April 1, 2013.

¶ 21 At the April 1, 2013, hearing, Maureen Sullivan, an STG partner and respondent's primary attorney, testified that she had practiced law for over 30 years and that almost all of her practice had been focused on family law. According to Sullivan, the issues related to this case were difficult and required extensive research. Her representation included reviewing many documents, investigating two businesses, analyzing the premarital agreement, filing and responding to numerous motions and petitions, and conducting a pretrial conference. The case was further complicated by bankruptcy filings by both petitioner and respondent.

¶ 22 STG submitted detailed billing records, supporting documents, and the fee agreement. The fee agreement provided for an hourly rate of \$350 for Sullivan's work. According to Sullivan, the rate was consistent with the fair and reasonable rate for attorneys with similar experience in Du Page County. During her representation, respondent incurred attorney fees of \$36,679.55 and paid \$14,050. Thus, STG sought \$22,629.55 in unpaid attorney fees.

¶ 23 Respondent testified that Sullivan failed to help him get certain repair work done on the marital home, that she failed to pursue forgery charges against petitioner, and that she did not seek an emergency motion regarding petitioner's failure to make the mortgage payments under the July 16, 2010, order.

¶ 24 Sullivan countered that she had obtained an agreed order that facilitated repairs on the home, that she did not have the capacity to prosecute petitioner for forgery, and, that when respondent notified her of petitioner's failure to pay the mortgage, she had filed a petition for a rule to show cause. Respondent replied that STG should be denied attorney fees because Sullivan missed a court date (after STG had withdrawn), because he had told Sullivan that he would not be able to pay the attorney fees, and because Sullivan billed for her services in anticipation of being paid by petitioner.

¶ 25 The trial court found that the issues were not simple and required expertise by the attorneys. The court found that the work performed by Sullivan, as reflected in the billing statements, was reasonable and necessary and that the rate charged was reasonable and consistent with the rates charged by attorneys in the area for that type of work. Accordingly, the court granted STG's petition and awarded attorney fees of \$22,629.55. Respondent then filed this timely appeal.

¶ 26

II. ANALYSIS

¶ 27 Initially, we address an issue regarding respondent's brief. STG filed a motion to strike all, or portions, of respondent's brief, relying on Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). STG also requests in its brief that we disregard respondent's arguments, because the brief violates Rule 341(h) in several respects. Similarly, petitioner contends in her brief that respondent's brief violates Rule 341(h), that certain portions of his brief should be stricken, that

his appeal should be dismissed, and that respondent should be fined and ordered to pay reasonable attorney fees. Respondent has replied to STG's motion to strike and to the contentions in the appellees' briefs.

¶ 28 Rule 341(h) governs the contents of an appellant's brief. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. Its provisions are requirements and not mere suggestions. *Hall*, 2012 IL App (2d) 111151, ¶ 7. The failure to comply with the rules regarding appellate briefs has consequences. *Hall*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly identify and dispose of the issues raised. *Hall*, 2012 IL App (2d) 111151, ¶ 7. A brief that does not substantially conform to the pertinent rules may justifiably be stricken. *Hall*, 2012 IL App (2d) 111151, ¶ 7. *Pro se* litigants are required to follow and comply with the rules as to appellate briefs. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2011).

¶ 29 Striking an appellate brief, in whole or in part, however, is a harsh sanction. *Hall*, 2012 IL App (2d) 111151, ¶ 15. We will strike a brief only when the violations of the rules hinder our effective review. *Hall*, 2012 IL App (2d) 111151, ¶ 15.

¶ 30 Here, respondent's brief undoubtedly violates Rule 341(h) in several respects, and is littered with extraneous matters, nonappealable issues, and inappropriate arguments. We do not condone respondent's lack of compliance with the rule. However, because we are able to effectively review the issues properly raised, we will not strike any portion of his brief. Nor will we impose any sanctions. Therefore, we deny the motion to strike filed by STG, deny the requests in the appellees' briefs to strike portions of respondent's brief, and deny the request to impose any other sanctions. Having said that, we will not consider any inappropriate matters in

respondent's brief. We will limit our review to the issues properly before us: the trial court's denial of maintenance to respondent and the award of attorney fees to STG.

¶ 31 No. 2-13-0323

¶ 32 Respondent challenges the trial court's ruling that petitioner was not obligated to pay him maintenance. In so ruling, the court initially found that the premarital agreement was valid and enforceable and that, under its terms, the parties waived maintenance.

¶ 33 Premarital agreements are contracts, and thus the rules governing contract interpretation apply. *In re Marriage of Best*, 387 Ill. App. 3d 948, 949 (2009). When a contract is unambiguous, a court must decide the intent of the parties solely from the plain language of the contract. *In re Marriage of Best*, 387 Ill. App. 3d at 949. Construction of a contract presents a question of law, which is subject to *de novo* review. *In re Marriage of Best*, 387 Ill. App. 3d at 949.

¶ 34 In this case, the pertinent terms of the premarital agreement stated that “[t]o the extent permitted by law, maintenance is waived by both parties and if not permitted by law, permitted to the legal minimum.” That provision, although awkwardly phrased, unambiguously reflected an intent by the parties to waive any maintenance. Respondent offers no reasoned argument as to how that provision was unclear or ambiguous. Additionally, the evidence at trial did not show that the parties intended anything other than waiving maintenance in the event that their marriage was dissolved. The trial court did not err in finding that the parties agreed to waive maintenance.

¶ 35 The next question is whether the agreement was valid and enforceable. A premarital agreement must be in writing and signed by the parties and is enforceable without consideration. See 750 ILCS 10/3 (West 2010). The agreement at issue here met those requirements.

¶ 36 The parties may contract in such an agreement to modify or eliminate any spousal support (see 750 ILCS 10/4(a)(4) (West 2010)), as they did here. Finally, although a premarital agreement is not enforceable if the party who challenges it proves the existence of certain circumstances (see 750 ILCS 10/7 (West 2010)), respondent here did not establish any of the relevant circumstances. Thus, we agree with the trial court that the premarital agreement was valid and enforceable.

¶ 37 We also agree with the trial court that petitioner did not waive the maintenance provision of the premarital agreement when she agreed, via the July 16, 2010, order, to make temporarily the mortgage payments. As the court explained, her agreement to do so was nothing more than a “temporary payment of expenses” by one of the parties. Those payments cannot be described as maintenance,¹ let alone be considered a waiver of the maintenance provision. The court did not err in so ruling.

¶ 38 As for the trial court’s ordering petitioner to retroactively make the five monthly mortgage payments, that ruling was related to her prior agreement to make temporarily those payments. It was not based on any finding that petitioner waived the maintenance provision in the premarital agreement. Because the trial court correctly ruled that the parties had a valid, enforceable agreement that waived any maintenance, it did not err in denying maintenance to respondent.

¹ This conclusion is not affected by the bankruptcy court’s characterization of petitioner’s agreement to make payments on the home loan, under the July 16, 2010, order, as a “domestic support obligation.” That characterization was based solely on federal bankruptcy law (see 11 U.S.C. § 101(14A) (2006)) and was not binding on the trial court as to a question of state law.

¶ 39 Alternatively, the trial court ruled that, irrespective of the premarital agreement, the parties were barred from receiving any maintenance. It did so because it found that each party was self-sufficient.

¶ 40 A decision regarding maintenance is within the trial court's discretion, and we will not reverse unless it is clear that the trial court abused that discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would take the view of the trial court. *In re Marriage of Schneider*, 214 Ill. 2d at 173. The party challenging a maintenance ruling must show an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d at 173.

¶ 41 In deciding what, if any, maintenance to award, the trial court must consider the factors listed in section 504(a) of the Act. See 750 ILCS 5/504(b) (West 2010). No single factor is dispositive, and a trial court may consider other factors also. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. The benchmark for determining maintenance is the parties' reasonable needs in light of the standard of living established during the marriage. *In re Marriage of Culp*, 341 Ill. App. 3d 390, 394 (2003).

¶ 42 The evidence here showed that both parties, although not entirely equal in terms of their incomes, assets, needs, present and future earning capacities, ages, and physical conditions, had the ability to maintain their standard of living. Respondent has not shown that the trial court ignored any of the relevant factors under section 504(a). Nor has he demonstrated that the court otherwise abused its discretion in balancing the various factors and in not requiring petitioner to pay any maintenance. Thus, we affirm that part of the judgment that denied respondent maintenance.

¶ 43

No. 2-13-0420

¶ 44 We next address respondent's challenge to the award of attorney fees to STG. Generally, a trial court's order regarding attorney fees in a postdissolution proceeding will not be disturbed absent an abuse of discretion. *In re Marriage of Devick*, 335 Ill. App. 3d 734, 742 (2002). Specifically, section 508(c)(3) of the Act provides that the determination of reasonable attorney fees is within the trial court's sound discretion. 750 ILCS 5/508(c)(3) (West 2010).

¶ 45 In our case, STG presented the fee agreement, detailed billing records, and the testimony of Sullivan, respondent's primary attorney. Sullivan's testimony, in particular, established the typical rate for someone of her experience when working on a case of this type. Further, she testified about the complexities of this case, especially in light of the multiple bankruptcy proceedings. The billing records also reflected the many motions and responses that were prepared in the case, the research performed, and the discovery materials reviewed.

¶ 46 On the other hand, respondent offered no significant counter evidence. He merely testified to a few matters upon which he disagreed with how Sullivan acted or failed to act. Those primarily involved the repair of the marital home, petitioner's failure to make the mortgage payments, and Sullivan's failure to pursue forgery charges against petitioner. Sullivan, however, refuted those assertions by offering reasonable explanations for her actions or inactions. Moreover respondent did not substantiate any of his other challenges regarding the attorney fees.

¶ 47 The trial court, having heard the testimony and reviewed the evidence, including the billing records, was in the best position to determine the reasonableness of the attorney fees and to decide what amount, if any, to award STG. Respondent has not shown on appeal that the court's decision in that regard was an abuse of discretion.

¶ 48

III. CONCLUSION

¶ 49 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County as to both the denial of maintenance to respondent and the award of attorney fees to STG.

¶ 50 Affirmed.