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2013 IL App (3d) 120058-U

Order filed January 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ROBIN S. CONRAD,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-12-0058
and)	Circuit No. 06-D-1286
)	
JEFFREY T. CONRAD,)	Honorable
)	Robert J. Baron,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court erred in granting the wife's petition for contribution of attorney fees pursuant to section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(a) (West 2010)) without conducting a hearing. (2) The cause is remanded for a full hearing on the petition for contribution of fees, including the ancillary fees incurred in the defense of the criminal action filed against the wife for interfering with visitation.
- ¶ 2 Respondent, Jeffrey Conrad, appeals from an order of the circuit court instructing him to contribute to petitioner, Robin Conrad's, attorney fees. The trial court granted Robin's petition for

contribution without conducting a hearing and awarded Robin \$23,750 in fees, including \$5,617 in ancillary fees Robin incurred defending visitation interference charges filed against her in Du Page County. We remand to allow the trial court to conduct a hearing on the petition for contribution of fees, including the fees incurred in defending the criminal case.

¶ 3 Jeffrey and Robin were divorced by judgment of dissolution entered on March 9, 2007. The judgment included a joint parenting agreement that specified the terms of visitation.

¶ 4 On March 3, 2010, Robin filed a petition for contribution toward attorney fees pursuant to section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(a) (West 2010)). In the petition, Robin requested contribution toward the fees she incurred during postjudgment litigation from April 1, 2009, to the time of the filing of the petition, claiming that she lacked the funds and assets to pay the fees and that Jeffrey had the assets and funds to pay them. She requested \$34,635.60 in fees, including \$7,739 in ancillary fees she incurred in the defense of a visitation interference action brought against her in Du Page County and instigated by Jeffrey.

¶ 5 On July 12, 2010, the trial court set the petition for hearing and allowed Jeffrey 21 days to file a response. Prior to the hearing, Jeffrey filed a *pro se* motion to strike Robin's petition, claiming that the fees were excessive and without basis, that portions of the fees were not related to the postjudgment dissolution litigation, and that a portion of the fees requested had already been awarded to Robin. The motion proceeded to a hearing, at which the trial court denied Jeffrey's request to strike and gave Robin leave to amend.

¶ 6 On March 1, 2011, Robin filed an amended petition for contribution, which included a request for fees she incurred subsequent to her initial petition. The fees again included her attorney's work on the criminal interference with visitation charges filed against her in Du Page County. The

petition was presented to the court and a briefing schedule was set. In response, Jeffrey filed another motion to strike, objecting to the petition and renewing his argument that the fees related to the criminal charges in Du Page County were unrelated to the postjudgment dissolution proceedings. He also filed an answer to the amended petition.

¶ 7 On May 11, 2011, Jeffrey filed a motion to set a hearing on Robin's petition for contribution. The trial judge held a hearing on that motion on May 13, 2011. During the hearing, Jeffrey twice stated, "I'd like to have [the petition] set for hearing." The judge set a briefing schedule for supplementary submissions by both parties and indicated that he would issue a written ruling or set a hearing date "if a hearing was necessary."

¶ 8 Robin filed a reply to Jeffrey's answer. In her reply, Robin noted that the misdemeanor complaint in Du Page County was based on an incident report filed by Jeffrey. The complaint specifically alleged that Robin, "in violation of the visitation provisions of a court order issued in Will County (06D1286) relating to the custody of his four daughters ***, detained the children with the intent to deprive Jeffrey Conrad of his rights to visitation concerning his daughters." The reply also indicated that the charges against Robin were eventually dismissed.

¶ 9 Jeffrey filed another motion to strike the petition. The motion to strike proceeded to a hearing on July 8, 2011. The trial court's order following the hearing denied the motion to strike and ordered Robin to provide Jeffrey with all documents in support of her petition for contribution. The court stated that after receiving the documents, Jeffrey would be given 21 days to answer and Robin would have 21 days thereafter to reply. At that point, Jeffrey again made an oral request that the court set a hearing on the petition for contribution of fees. The trial court ruled that it would set a hearing if the court deemed it necessary.

¶ 10 After briefing was completed, the trial court entered a minute order granting Robin’s petition. The court instructed Robin to prepare a written order for entry by the court and ordered Jeffrey to update his financial affidavit to set a payment schedule. In the final order, the court found that Robin was entitled to a contribution toward fees in the amount of \$23,750. The court held that \$5,617 of the award was for “ancillary fees incurred by the Petitioner in defending the criminal charges brought against her by the Respondent in Du Page County.”

¶ 11 I

¶ 12 Jeffrey first argues that the trial court erred in granting Robin’s petition for contribution of attorney fees without conducting a hearing pursuant to section 508(a) of the Act.

¶ 13 Section 508(a) provides:

"The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2010).

The language used in the statute is clear. See *In re Marriage of Mathis*, 2011 IL App (4th) 110301 (where the language of a statute is unambiguous, it must be applied). The trial court is to provide a hearing for petitions requesting attorney fees under section 508(a) if a party requests such a hearing. *In re Marriage of Grunsten*, 304 Ill. App. 3d 12 (1999); *Hogan v. Hogan*, 58 Ill. App. 3d 661 (1978).

¶ 14 However, the right to a hearing under section 508(a) is not absolute. Where a party does not specifically request a hearing before the court on attorney fees, the right to a hearing is waived and the trial court is within its discretion to base its ruling on the submitted fee petition, affidavits and responses. *In re Marriage of Blazis*, 261 Ill. App. 3d 855 (1994).

¶ 15 In this case, Jeffrey contested the petition to contribute fees throughout the postjudgment proceedings. In addition, he filed a written motion to set the matter for hearing and made several oral requests for a hearing before the trial court. Nevertheless, the trial court failed to hold a hearing to determine the financial ability of the parties to pay the attorney fees or the reasonableness of those fees. Although a hearing is not necessary in every case, particularly where a judge is familiar with the procedural history, the party contesting the petition for fees is entitled to a hearing on the merits when he or she makes a request for one. See *Hogan*, 58 Ill. App. 3d at 668. Here, a request was made. Thus, the trial court erred in failing to conduct a hearing. We therefore reverse the trial court's order awarding fees to Robin and remand to allow the trial court to conduct an evidentiary hearing on her petition for contribution.

¶ 16

II

¶ 17 Jeffrey also claims that the trial court erred in ordering him to contribute to certain fees listed in Robin's petition. Among other things, he argues that the court erred in including the fees Robin incurred in defending the criminal interference with visitation charges filed against her in Du Page County. We note that this issue may likely recur on remand, and therefore we will address it here. See *People v. Mabry*, 209 Ill. App. 3d 976 (1991) (where issue is likely to recur on remand, a reviewing court may exercise discretion to resolve the issue on appeal).

¶ 18 Ancillary fees may be considered and awarded in response to a section 508(a) petition. Section 508(a)(6) provides that attorney fees and costs may be awarded in connection with "ancillary litigation incident to, or reasonably connected with, a proceeding under this Act." 750 ILCS 5/508(a)(6) (West 2010). Courts have awarded ancillary fees where the fees are reasonably related to the divorce matter. See *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146 (2004) (domestic

violence litigation between parties constituted ancillary litigation justifying an award of fees); *In re Marriage of Davis*, 292 Ill. App. 3d 802 (1997) (husband filed bankruptcy; wife permitted to recover legal fees incurred in defending creditor lawsuit filed against her because she co-signed loan); *In re Marriage of Kent*, 267 Ill. App. 3d 142 (1994) (wife allowed to recover attorney fees for resisting ex-husband's bankruptcy petition to discharge his obligation under parties' marital settlement agreement). Whether one spouse's attorney fees should be paid by the other spouse is a decision which lies within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. *Blazis*, 261 Ill. App. 3d at 870.

¶ 19 Here, the trial court's award of ancillary fees relating to the criminal matter in Du Page County is within the court's discretion. The criminal complaint directly referenced the divorce case and required the Du Page County court to interpret the visitation terms of the joint parenting agreement incorporated in the dissolution judgment. Thus, the fees Robin incurred in defending the Du Page County case are reasonably related to the divorce matter and are subject to contribution under subsection 508(a)(6) of the Act.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Will County is reversed and remanded.

¶ 22 Reversed and remanded.