

No. 1-12-2973

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**

In Re MATTER OF:)	Appeal from the
)	Circuit Court of
JODI ANN SCHNEIDER,)	Cook County
)	
Petitioner-Appellant,)	
)	No. 06 CH 06157
v.)	
)	
EARL SCHNEIDER,)	Honorable
)	Barbara Meyer,
Respondent-Appellee.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly granted Earl's motion to strike Jodi's amended fee petition where she filed the petition under section 508(a) of the Act, but her complaint for specific performance of a contractual obligation, on which the petition is based, was not brought pursuant to the Act.

¶ 2 Petitioner, Jodi Ann Schneider (Jodi), appeals the order of the circuit court denying her motion to reconsider its judgment granting respondent, Earl Schneider's (Earl) motion to strike and dismiss Jodi's petition for attorney fees and costs. On appeal, Jodi contends the trial court erred in granting Earl's motion to strike because her petition falls within section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(a) (West 2010)). For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court granted Earl's motion to strike and dismiss Jodi's petition for contribution of attorney fees on June 25, 2012. Jodi filed a motion for rehearing, reconsideration and/or to vacate the order, which the trial court denied on September 14, 2012. Jodi filed her notice of appeal on October 5, 2012. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 On September 15, 2000, Earl filed to dissolve his marriage to Jodi. The trial court entered judgment for dissolution of marriage on March 4, 2002. The parties remained married under Orthodox Jewish law, however, which grants a husband a divorce only when he petitions a rabbinical court to issue the "get" and his wife then physically accepts the get. Earl refused to give Jodi the get so on March 28, 2006, Jodi filed suit in Cook county for specific performance alleging that Earl had a contractual obligation to give her the get. Earl filed an amended motion to dismiss and Jodi filed a motion for summary judgment. On September 19, 2008, the trial court entered an order denying Earl's amended motion and granting Jodi's motion for summary

judgment. The trial court also awarded Jodi attorney fees and directed her to prepare a petition for those fees.

¶ 7 Jodi filed numerous amended petitions for attorney fees, and in response Earl filed numerous motions to strike and dismiss her petitions arguing that the trial court lacked jurisdiction to consider the fee petitions. On June 3, 2009, the trial court held a hearing on Jodi's petition which she filed pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)). The trial court found that "the entire proceeding is sanctionable and [Earl's] actions were done solely to harass and cause distress to [Jodi.]" It awarded fees in the amount of \$54,516.22. Earl filed a motion to stay enforcement of the order and Jodi filed a petition for interim fees and costs "to level the playing field" and respond to Earl's latest pleadings. Earl also filed a motion to reconsider and vacate the trial court's June 3, 2009, order. The trial court denied Earl's motion to reconsider on July 13, 2009, and he filed an appeal. This court affirmed the trial court, finding that its award of fees pursuant to Rule 137 was not an abuse of discretion because the fact Earl "raised the same baseless argument repeatedly in response to Jodi's every filing, even after the trial court's judgment on the merits" served no purpose other than to harass and cause unnecessary delay and expense. See *Schneider v. Schneider*, 408 Ill. App. 3d 192, 203 (2011).

¶ 8 On March 30, 2012, Jodi filed an amended petition for attorney fees and costs. Earl filed a motion to strike and dismiss the amended petition, which the trial court granted on June 25, 2012. The trial court reasoned that Jodi brought her petition pursuant to section 508(a)(1) and (3) of the Act but her complaint for specific performance, on which the fee petition is based, was not brought pursuant to the Act. The trial court granted Jodi leave to amend her petition.

Jodi filed a motion to vacate and reconsider the trial court's June 25, 2012, order, which the trial court denied on September 14, 2012. Jodi filed this timely appeal.

¶ 9

ANALYSIS

¶ 10 On appeal, Jodi contends that the trial court erred in granting Earl's motion to strike and dismiss her petition and finding that her amended petition for attorney fees did not fall under section 508(a) of the Act. This issue is one of statutory interpretation. The fundamental rule of statutory interpretation is to give effect to the intent of the legislature, and the best indicator of that intent is the statute's plain language. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135 (2004). When the statutory language is clear, courts must give it effect without aid from other sources. *Id.* We review the interpretation of a statute *de novo*. *Lee v. John Deere Insurance Co.*, 208 Ill. 2d 38, 43 (2003).

¶ 11 The trial court entered judgment for dissolution of Jodi and Earl's marriage, pursuant to the Act, on March 4, 2002. However, the parties remained married under Orthodox Jewish law because Earl refused to give Jodi the get. On March 28, 2006, Jodi filed a claim for specific performance alleging that Earl had a contractual obligation to give her the get. In her suit, Jodi acknowledged that "a Judgment for Dissolution of Marriage was entered dissolving the marriage." Instead, she based her claim on contract law: "the Defendant has a contractual obligation to give the Plaintiff a 'Get' " and she "seeks specific performance of the Defendant's obligation to provide her a 'get.' " She further alleged that "specific performance is the only relief available." Nowhere in her suit did she refer to any provisions of the Act. The trial court ruled in her favor and this court affirmed the trial court's determination in *Schneider v. Schneider*, 408 Ill. App. 3d 192, 203 (2011).

¶ 12 Jodi then filed her amended petition for attorney fees pursuant to sections 508(a)(1) and (3) of the Act. These statutory provisions provide that the court "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 statute states that the court may order such awards in connection with "[t]he maintenance or defense of any proceeding under this Act" and/or "[t]he defense of an appeal or any order or judgment under this Act, including the defense of appeals of post-judgment orders." 750 ILCS 5/508(a)(1); (a)(3) (West 2010).

¶ 13 It is clear by the plain language of these provisions that a petition for fees brought under section 508(a) must be in connection with a proceeding or judgment "under this Act." 750 ILCS 5/508(a)(1); (a)(3) (West 2010). The parties' marriage was dissolved pursuant to the Act in 2002, and Jodi filed her separate suit for specific performance of a contractual obligation four years later in 2006. That suit for specific performance did not involve a proceeding or judgment under the Act, as evidenced by the lack of any reference to the Act in the suit's allegations or requests for relief. Therefore, Jodi is not entitled to fees under section 508(a) and the trial court did not err in granting Earl's motion to strike and dismiss her amended fee petition.¹

¶ 14 Jodi, however, argues that the trial court's authority to enforce the terms of the ketubah, or Jewish marriage contract, stems from the Act. As support, she cites *In re Marriage of Goldman*, 196 Ill. App. 3d 785 (1990). *Goldman*, however, is distinguishable from the case at

¹ We note that section 508(a)(6) may have provided a means for the trial court to consider Jodi's amended fee petition under the Act. However, she did not file her petition pursuant to that subsection. Therefore, Earl had no opportunity below to respond to this argument and the trial court below never considered that subsection in making its determination. Since a party may not raise an issue for the first time on appeal, this argument is waived. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 306 (2000).

bar. In *Goldman*, Kenneth filed a petition for dissolution of marriage and Annette filed a counterpetition in which she included a count requesting specific performance of the ketubah. *Id.* at 788. After presentation of evidence, including testimony of expert witnesses, the trial court found that " 'the ketubah clearly and unequivocally obligates the husband to proceed with the get procedure.' " *Id.* at 791. It then entered an order to dissolve the marriage and also ordered Kenneth "to comply with his contractual obligation to give Annette an Orthodox get." *Id.*

¶ 15 Although the court in *Goldman* did order Kenneth to give Annette the get as part of the dissolution proceedings under the Act, Annette had included a count for such relief in her counterpetition for dissolution of marriage. Here, Jodi and Earl's marriage had been dissolved under the Act approximately four years before she brought a separate claim for specific performance of the terms of the ketubah. Furthermore, *Goldman* does not support Jodi's contention that the trial court's authority to enforce the ketubah stems from the Act. The *Goldman* court acknowledged testimony by the expert witness that the ketubah is a contract subject to general contract law. *Id.* at 792-93; 795 (in enforcing the ketubah, the trial court "merely applied well-established principles of contract law to enforce the agreement made by the parties"). Therefore, the trial court's enforcement of the ketubah does not rely on provisions of the Act. We are not persuaded that *Goldman* supports Jodi's argument.

¶ 16 Jodi also argues that prior court rulings have already determined that her amended fee petition falls under section 508(a) of the Act. Specifically, she points to the fact that "this Honorable Court, two Chief Presiding Judges and two Trial Judges, found that this cause belonged in the Domestic Relations Division under the" Act, and that two trial judges denied Earl's motions to strike and dismiss her fee petitions and awarded interim fees under section

501(c-1)(1) of the Act. 750 ILCS 501(c-1)(1) (West 2010). It is difficult to follow her argument fully on this issue, as it is not cohesive or developed, nor does her brief provide reference to the record for the orders used in the argument. Both parties filed many motions and responses below, and the trial court entered numerous orders. "This court is not a depository in which the burden of argument and research may be dumped." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80.

¶ 17 Furthermore, Jodi provides no authority to support her position that a prior award for interim fees under section 501(c)(1) automatically places her subsequently filed petition for attorney fees within sections 508(a)(1) and (a)(3) of the Act. No court below ever made that specific determination. In fact, section 501(c-1)(2) rejects that automatic assumption and provides that "[a]ny assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award." 750 ILCS 5/501(c-1)(2) (West 2010). Accordingly, Jodi has forfeited this issue on appeal. See *In re H.D.*, 343 Ill. App. 3d 483, 489 (2003).

¶ 18 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.