

No. 1-13-2490

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TIMOTHY J. DEAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 01 D6 79047
PRINCESS L. McCARTER,	)	
	)	
Defendant,	)	Honorable
	)	Sharon O. Johnson,
(Marta Bukata, Child Representative-Appellee).	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* In this *pro se* appeal, we affirm the circuit court order awarding attorney fees to Marta Bukata for services rendered during her appointment as the child representative for J.D.

¶ 2 Plaintiff Timothy Dean appeals *pro se* from an order of the circuit court awarding the court appointed child representative (CR) Marta Bukata \$1,601 in attorney fees for services rendered from May 4, 2012, through May 22, 2013, to be split equally between Dean and defendant Princess McCarter. On appeal, Dean contends Bukata was not entitled to any fees

where she failed to provide the parties with periodic, detailed billing statements as required by statute, and where she failed to file an appearance during the billed time period. He also maintained that Bukata improperly charged the parties for services she did not provide. We affirm.

¶ 3 Although no response brief has been filed, we can consider this appeal on Dean's brief alone. *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, 63 Ill. 2d 128, 133 (1976).

¶ 4 The record shows that McCarter gave birth to J.D. on February 9, 2000. DNA testing conclusively established that Dean was J.D.'s biological father. Extensive litigation followed regarding joint parenting, custody, and visitation of J.D.

¶ 5 On May 4, 2012, the trial court entered an order appointing Bukata as the CR in this case. The order established that Dean and McCarter were each responsible for 50% of Bukata's fees, which were based on a "sliding scale." Although absent from the record, the court apparently entered an order requiring that each party pay \$500 of Bukata's \$1,000 retainer.

¶ 6 On May 24, 2013, Bukata filed a petition for fees, contending that since her appointment on May 4, 2012, through May 22, 2013, she had personal interviews with the parties and J.D., attended hearings and court appearances, and regularly updated the parties and the court about any progress made. Bukata indicated in her petition that she expended 35.2 hours warranting fees totaling \$3,168 in services as a CR for J.D. Nevertheless, Bukata noted that she is only charging for 28.9 hours of work for a total of \$2,601. The \$1,000 retainer, purportedly allocated by the trial court on May 4, 2012, had been paid in full by Dean and McCarter by the time the petition had been filed, with each party paying \$500. As relief, Bukata requested that the trial court enter an order awarding her \$2,601 for services rendered on behalf of J.D. from May 4, 2012, through

May 22, 2013, but only requested that the parties be ordered to pay the remaining balance of \$1,601, as they already paid her retainer. Attached to the petition is a statement of the time expended by Bukata for legal services provided on behalf of J.D.

¶ 7 On June 20, 2013, Dean filed a *pro se* "Motion to Withdraw Child Representative" and "Answer to Child Representative's Petition for Fees." In the filings, Dean maintained that Bukata disregarded statutory law, which stated that itemized billing must be submitted to the court and the parties for review every 90 days. Instead, Bukata asked the parties to pay an additional \$1,601 in fees over 380 days following her appointment. Dean also pointed out that Bukata failed to fulfill her responsibilities as a CR by not sending him a questionnaire and court orders, and also withheld information from the court that a caseworker had investigated the wrong house. Dean also denied that Bukata regularly updated the parties and the court about the progress of the case, and denied the accuracy of Bukata's attached statement detailing her time expended for legal services. As relief, Dean requested that Bukata withdraw as the CR, and that the court deny her petition for fees.

¶ 8 On July 8, 2013, the court entered an order awarding Bukata \$1,601 in fees. The order stated in its entirety:

"This cause coming on to be heard for a hearing on the CR's petition for fees filed on 5-24-13. Father having filed an answer on June 20, 2013. Mother not having filed an answer and the court being fully advised in the premises,

*It is hereby ordered:*

1) The CR is awarded the \$1,601 owed on attorney's fees for services rendered from 5-4-12 through 5-22-13.

2) The \$1,601 is allocated 50/50 between the parties, that is each party is responsible for \$800 which should be paid directly to the order of the CR's employer the Chicago Legal Clinic.

3) The CR is hereby discharged."

¶ 9 On appeal from the July 8, 2013 order, Dean contends that the trial court abused its discretion in awarding fees to Bukata where she failed to provide detailed invoices, which should have included "itemized billing quarterly," the hourly rate, and the sliding scale, for over a year, and where Bukata failed to file an appearance during the time frame the fees were alleged to have incurred. Dean also disputed some of the fees included in the statement.

¶ 10 The trial court's decision regarding the allowance and amount of fees to be awarded a court appointed child representative is reviewed for an abuse of discretion. See *In re Marriage of Soraparu*, 147 Ill. App. 3d 857, 864 (1986) (citing *Gibson v. Barton*, 118 Ill. App. 3d 576, 582 (1983)) (stating that the decision regarding the allowance and amount of fees to be awarded a guardian *ad litem* rests within the sound discretion of the trial court, and will not be disrupted on review unless the discretion is clearly abused). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 11 Here, the record discloses that Bukata's total fee was \$2,601. Dean and McCarter each paid \$500, leaving an unpaid balance of \$1,601. Bukata requested the court to allocate the balance due between the parties. The record contains Dean's written responses to Bukata's petition, but we are nevertheless unable to determine whether the trial court abused its discretion in awarding Bukata the unpaid balance. Dean has provided this court an insufficient record to review his contentions because it does not contain an agreed statement of facts, a transcript from

the July 8 hearing, or an acceptable alternative from which we may ascertain the reasons for the court's rulings. See Ill. S.Ct. R. 323(c),(d) (eff. Dec. 13, 2005).

¶ 12 It is the appellant's burden to provide this court with a sufficiently complete record of the trial court proceedings to support his claim, and any doubts due to the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

We cannot ascertain from the record before us the court's reasons for ordering Dean and McCarter to pay the remainder of Bukata's fees. The trial court's decision to order Dean to pay half of the remaining balance of Bukata's fees does not, by itself, warrant a conclusion that the trial court abused its discretion.

¶ 13 In reaching this conclusion, we nevertheless note that Dean's argument on appeal that Bukata was not entitled to any fees because she failed to periodically submit detailed invoices is without merit. In support of his argument, Dean cited to two statutes that he claims demonstrate that such periodic, detailed statements are a requirement for a CR to recover fees.

¶ 14 Section 506(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) states, in pertinent part:

"The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian *ad litem*, or child's representative is appointed. Any person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party. The court shall review the invoice submitted and

approve the fees, if they are reasonable and necessary." 750 ILCS 5/506(b) (West 2012).

¶ 15 Section 508(f)(5) of the Act states, in pertinent part:

"The counsel will prepare and provide the client with an itemized billing statement detailing hourly rates (and/or other criteria), time spent, tasks performed, and costs incurred on a regular basis, at least quarterly. The client should review each billing statement promptly and address any objection or error in a timely manner." 750 ILCS 5/508(f)(5) (West 2012).

¶ 16 Dean maintains that these statutes instruct the CR to provide itemized and detailed billing statements. He points out that section 506(b) of the Act indicates that an invoice be provided every 90 days, and section 508(f)(5) of the Act requires such statements be provided at least quarterly. However, Bukata's alleged failure to strictly comply with these provisions does not result in her fees being waived. Although the word "shall," which is used here in section 506(b) of the Act, typically indicates a mandatory rather than a directory provision, where no penalty or consequence accompanies "shall," it will be deemed directory and require only substantial compliance. *Schultz v. Performance Lighting, Inc.*, 2013 IL App (2d) 120405, ¶¶ 13-14; See, e.g. *Sutton v. Cook County Officers Electoral Board*, 2012 IL App (1st) 122528, ¶ 16 (concluding that the statutory term "immediately" found in section 8-5 of the Election Code (10 ILCS 5/8-5 (West 2010) was not mandatory because the statute provided for no sanctions of any sort). Here, neither section cited to by Dean contains any consequence or punishment for failing to provide periodic billing statements. Therefore, only substantial compliance was required, and, without a transcript from the July 8 hearing, we must assume that the trial court found that the billing

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statement attached to the petition for fees fulfilled Bukata's statutory obligation. See *Foutch*, 99 Ill. 2d at 392 (stating that in the absence of a complete record, it is presumed that the trial court's finding had a sufficient basis in fact and law).

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.