2014 IL App (1st) 130404, 131676, 131721-U

SECOND DIVISION
September 16, 2014

Nos. 1-13-0404, 1-13-1676 & 1-13-1721 (Cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
STACY BAYGOOD STREUR,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant,	)	
	)	
and	)	No. 98 D 16610
	)	
JOHN HENRY STREUR, JR.,	)	Honorable
	)	LaQuietta J. Hardy,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *HELD*: The trial court's judgment awarding petitioner her appellate attorney fees and dismissing her declaratory relief motion is affirmed; the judgment dismissing her claim for fees related to respondent's modification petition is reversed and remanded, because voluntary dismissal of the modification petition did not divest the court of jurisdiction to award petitioner fees incurred in the modification proceeding.

¶ 2 The petitioner, Stacy Baygood Streur (Stacy), appeals from the trial court's judgment (1) awarding her attorney fees incurred in connection with a prior appeal in the case (appellate fees)

and fees resulting from prosecution of her appellate fees claims; (2) dismissing her request for attorney fees incurred in connection with a petition to modify brought by respondent, John Henry Streur's (John), for lack of jurisdiction; and (3) dismissing her motion for declaratory relief based on *res judicata*. For the following reasons, we affirm in part and reverse in part the judgment of the trial court pursuant to its January 4, 2013 and May 9, 2013 orders, and remand for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 The procedural history of this case is extensive and largely set forth in our previous opinion, *In re Marriage of Streur*, 2011 IL App (1st) 082326 (*Streur I*). Familiarity with that opinion is presumed. Accordingly, we focus our background discussion on those facts relevant to resolving the present appeal.

¶ 5 Stacy and John were married on October 24, 1987, and had three children, ages 22, 19, and 16 at the time of this appeal. Stacy initiated divorce proceedings in 1998, and on April 18, 2000, the trial court entered a judgment dissolving the parties' marriage (Dissolution Judgment). The Dissolution Judgment incorporated a marital settlement agreement (MSA) and a joint parenting agreement, which awarded the parties joint custody and made Stacy the primary residential parent. As in *Streur I*, paragraph 8 of the MSA is at issue here:

> 8. UNALLOCATED MAINTENANCE AND CHILD SUPPORT
>
> A. Commencing April 1, 2000 and continuing through March 1, 2005, JOHN shall pay STACY unallocated maintenance and child support based on his annual earned income. For purposes of calculating unallocated maintenance and child support, JOHN's

annual earned income shall be defined as all taxable income received from the Burridge Group, L.L.C. or any subsequent employer, or as a result of his ownership profit points in the L.L.C., including salary, bonuses, and net profit distributions from his Burridge Group L.L.C. profit points, but not including 'phantom income' attributable to JOHN for federal and state income tax purposes, but not actually received by him. By way of example, JOHN's annual earned income shall not include business travel and expenses and medical insurance premiums attributable to him as income. JOHN shall not do anything to diminish or defer his income so as to reduce support under this paragraph.

B. The unallocated maintenance and support shall be paid as follows:

i) JOHN shall pay STACY 100% of his first $100,000 of earned income;

ii) JOHN shall pay STACY 0% of his earned income between $100,000 and $200,000;

iii) JOHN shall pay STACY 30% of his earned income in excess of $200,000.

iv) The amount of family support in partial years covered by this Agreement (year 2000 and year 2005) shall be determined using a prorated percentage of JOHN's annual gross income. JOHN's annual gross income shall be prorated in partial years

> covered by the Agreement. Family support in the 9 months covered in the year 2000 shall be based on 75% of JOHN's annual gross income. Family support for the 3 months covered in 2005 shall be based on JOHN's annual gross income. JOHN has paid STACY the sum of $16,200 which shall constitute his unallocated maintenance and child support payments for the months of April and May, 2000. Commencing June 1, 2000, JOHN shall pay STACY the unallocated maintenance and child support on the 1st day of each month based upon his earned income in the prior month. During the period JOHN is obligated to pay STACY unallocated maintenance and child support pursuant to this paragraph, JOHN shall provide STACY, on a quarterly basis, his pay stubs, W-2 statements, and K-1 statements from Burridge Group, L.L.C., or any subsequent employer and his annual federal and state income tax returns showing his total income to verify his annual earned income as defined in paragraph 8, above. JOHN shall be permitted to redact those portions of his tax returns which do not relate to the Burridge Group, L.L.C. or any subsequent employer. JOHN shall pay the unallocated maintenance and child support directly to STACY and not through the Child Support Disbursement Unit.

¶ 6 On June 2, 2004, approximately four years after the entry of the Dissolution Judgment, Stacy initiated post-decree proceedings by filing a petition to modify and increase unallocated

child support and a petition for a rule to show cause based on John's alleged failure to disclose certain income statements required by the MSA. Stacy moved for a voluntary dismissal of the post-decree proceedings on June 14, 2006, which the trial court granted.

¶ 7 A. Section 2-1401 Petition (*Streur I*)

¶ 8 On November 9, 2006, Stacy filed a six-count "Petition to Vacate Judgment Under Section 2-1401 of the Code of Civil Procedure and Complaint at Equity" (Section 2-1401 Petition) in the chancery division. The Section 2-1401 Petition was at issue in *Streur I.*

¶ 9 Count I of the Section 2-1401 Petition sought to vacate the Dissolution Judgment. Stacy alleged that prior to and during the execution of the MSA, John falsely represented to Stacy that he was disclosing all of his income and assets and would continue to disclose that information in the future. Stacy alleged that despite his representation, John had no intention of honoring the MSA and had not disclosed the required financial information.

¶ 10 Counts II through VI, alternatively, acknowledged the validity of the Dissolution Judgment and sought relief based on its terms. Count II, a claim for breach of fiduciary duty, alleged that John failed to pay certain insurance premiums required under the MSA. Count III, a claim for conversion, alleged that Stacy had a "right in those sums of money due and owing to her for support under the Judgment." Count IV, a claim for unjust enrichment, alleged that John's "retention of funds due and owing to Stacy under the Judgment *** is an unjust enrichment of a benefit by John to the detriment of Stacy." Count V sought an accounting, based on Stacy's assertion that "[w]ithout full, complete and adequate financial records from John, Stacy cannot know the full extent of the money due to her under the Judgment[.]" Count IV sought a constructive trust, asking that the court "enter an order requiring John to pay to Stacy all moneys still due and owing to Stacy under the Judgment[.]"

¶ 11 John filed a motion to strike and dismiss the Section 2-1401 Petition, which the trial court granted, dismissing Count I on July 24, 2008 and the remaining counts on February 27, 2009.

¶ 12 Meanwhile, the parties were negotiating child support terms. Unable to reach an agreement, Stacy filed a petition to set child support. The trial court entered an agreed order on April 28, 2008, setting John's child support obligation at $17,000. Then, on February 27, 2009, the court entered an order making its April 28, 2008 award retroactive to May 1, 2007. The court also entered an order awarding Stacy the full amount of $127,000 in attorney fees that she had requested.

¶ 13 Subsequently, both parties appealed. Stacy appealed the dismissal of her Section 2-1401 Petition, as well as the court's determination of May 1, 2007 as the retroactive effective date for the child support award. John appealed the trial court's award of attorney fees to Stacy.

¶ 14 On appeal, this court affirmed the dismissal of the Section 2-1401 Petition, finding it was barred by the two-year statute of limitations set forth in section 2-1401 of the Code. *Streur I*, ¶ 34. We also rejected Stacy's argument—raised for the first time in her petition for rehearing—that Counts II through IV of the Section 2-1401 Petition were post-decree, equitable, and common law claims not subject to the two-year limitations period. *Id.* ¶ 41. Because Stacy failed to make this argument in her opening brief, we found that it was forfeited. *Id.* This court also affirmed the trial court's award of attorney fees to Stacy (*id.* ¶ 40) but modified the child support order, making it retroactive to April 1, 2005, when John's obligation to pay unallocated support under the MSA expired (*id.* ¶ 25).

¶ 15 B. Stacy's Petitions for Fees

¶ 16 While the appeal in *Streur I* was pending, on June 10, 2010, John filed a post-decree "Petition to Modify Child Support, Petition for Contribution of College Expenses and Other

Relief" (Petition to Modify). Two months later, Stacy filed a "Petition for Interim and Prospective Attorneys' Fees and Costs" (2010 Petition for Fees), seeking attorney fees incurred in connection with John's Petition to Modify.

¶ 17 On June 14, 2011, John filed a motion to voluntarily dismiss his Petition to Modify. Shortly thereafter, Stacy filed a three-count "Petition for Fees and Costs" (2011 Petition for Fees) under sections 501 and 508 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501, 508 (West 2010)) (Act), requesting the appellate fees related to prosecution of her claims (Count I), defense of John's claims (Count I), and fees related to the Petition to Modify (Count III).

¶ 18 In response, John filed a memorandum in support of his motion to dismiss, arguing that, upon dismissal of his Petition to Modify, the trial court "will lack jurisdiction to hear any other pending matter arising from the Petition to Modify, including STACY's fee petition."

¶ 19 John's motion for voluntary dismissal was granted on September 6, 2011. The trial court ordered that the hearing on Stacy's 2011 Petition for Fees "shall be limited to her request for fees associated with the issue upon which she substantially prevailed on appeal [in *Streur I*]." Stacy moved for clarification of this order and for a finding under Supreme Court Rule 304(a). The court subsequently issued its ruling on May 9, 2013, finding that Stacy's "previously filed motion for attorneys fees regarding the modification proceedings is also dismissed[,]" because the court had "no jurisdiction to hear the fee issue after the voluntary dismissal" of John's Petition to Modify. The court also entered a Rule 304(a) finding that there was "no just reason to delay the enforcement or appeal of this order."

¶ 20 On October 18, 2011, the trial court held a two-day evidentiary hearing on Stacy's petition for appellate fees. Stacy presented evidence to show that she had incurred a total of

$121,260.90 in *Streur I* appellate fees, based on $19,895 related to John's appeal and $101,365.90 related to her own appeal. Her claim for fees was subsequently reduced to $118,860.90, after her attorneys acknowledged a duplicate billing entry.

¶ 21 On October 19, 2011, and December 19, 2011, Stacy supplemented her appellate fee claims. She sought to add $69,778.42 for the attorney fees that she incurred in prosecuting her appellate fee claims.[1]

¶ 22 C. Trial Court's Fee Awards

¶ 23 The trial court initially entered an order on February 24, 2012, awarding Stacy $188,639.32 in appellate fees—representing the entire amount that she had requested. John filed a motion for reconsideration, arguing, *inter alia*, that a portion of the awarded fees were related to the Section 2-1401 Petition claim that Stacy lost on appeal or were not properly before the court during the evidentiary hearing.

¶ 24 On January 4, 2013, following reconsideration, the court reduced the appellate fees award (1) from $19,895 to $14,000, for fees related to John's appeal; and (2) from $101,365.90 to $57,030, for fees related to prosecution of her own appeal. The court also found that Stacy's request for the $69,778.42 in fees incurred in prosecuting her claims had not been properly presented at the hearing.

¶ 25 Stacy then requested a hearing on her request for the additional $69,778.42 in fees. She also sought to recover $29,327 in fees purportedly related to John's motion to reconsider the February 24, 2012 order. After hearing arguments from the parties' counsel, the court found it "reasonable" to award Stacy $26,900 for prosecution of her fee claims and $14,663.50 for fees related to the motion to reconsider.

¶ 26 In total, Stacy was awarded $112,593.50 in fees during the post-remand hearings.

[1] The additional fees totaling $69,778.42 were purportedly incurred from July 1, 2011 through December 15, 2011.

¶ 27 D. Stacy's Declaratory Relief Motion

¶ 28 During the pending fees litigation, on August 8, 2011, Stacy filed a declaratory relief motion challenging the provisions of the MSA. Counts I and II sought to declare portions of Paragraph 8 of the MSA "void as against public policy." Count I challenged language in Paragraph 8 "which limits the children's right to unallocated support to varying percentages of John's 'earned income.' " Count II alleged that John's promise to pay unallocated child support is illusory because "the language [in Paragraph 8] *** severely limits the documentary substantiation John is required to provide *** to verify his income" and Stacy is therefore unable to verify the amounts due each year for unallocated child support. Count III sought an order requiring John "to make full financial disclosure to Stacy *** and [to] provide complete documentary substantiation regarding his assets and income from all sources for each year in question between 2000 and 2005."

¶ 29 John moved to dismiss the declaratory relief motion pursuant to section 2-619, arguing, *inter alia*, that the requested relief was barred by the prior judgment in *Streur I.* The trial court granted John's motion on January 4, 2013.

¶ 30 Stacy now appeals from the trial court's (1) dismissal of her request for fees related to the Petition to Modify based on the court's finding that it lacked jurisdiction; (2) award of $112,593.50 in fees; and (3) dismissal of her declaratory relief motion based on *res judicata.* We address each issue in turn below.

¶ 31 ANALYSIS

¶ 32 A. Dismissal of Request for Fees Based on Lack of Jurisdiction

¶ 33 When the trial court granted John's motion to voluntarily dismiss his Petition to Modify, it also dismissed the claims that Stacy brought for attorney fees and costs related to the post-

decree modification proceedings.[2] The trial court's dismissal of the fee claims was based on its conclusion that it lacked jurisdiction to address the fee claims, following dismissal of the Petition to Modify. On appeal, Stacy argues that the trial court erred in finding that it lacked jurisdiction to adjudicate her request for fees related to the dismissed modification petition. We agree.

¶ 34 We review *de novo* the trial court's dismissal for lack of subject matter jurisdiction. Section 508 of the Act (750 ILCS 5/508 (West 2012)) applies to attorney fees in post-decree dissolution proceedings. *Blum v. Koster*, 235 Ill. 2d 21, 44 (2009). Section 508(a) provides, in relevant part:

> "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. *** Awards may be made in connection with the following:
>
> (1) The maintenance or *defense of any proceeding* under this Act.
>
> ***
>
> (3) The *defense of an appeal of any order or judgment* under this Act, including the *defense of appeals of post-judgment orders*.
>
> (3.1) The prosecution of any claim on appeal (if the prosecuting party has substantially prevailed)." (Emphasis added.) 750 ILCS 5/508(a) (West 2012).

¶ 35 Unfortunately, the parties' briefing both before this court and the trial court clouded the proper inquiry on this issue. While the parties suggest this may be an issue of first impression, when viewed through the proper lens, we conclude that the answer is well-resolved. Essentially,

[2] These fee requests were contained in Stacy's 2010 Petition for Fees and Count III of her 2011 Petition for Fees.

as we understand John's jurisdictional argument from his briefing in the trial court and on appeal, he contends that his Petition to Modify is a new proceeding, and section 2-1009 of the Code accordingly governs the conditions for a voluntary dismissal. Because he satisfied the requirements of section 2-1009, the trial court could not condition his voluntary dismissal on Stacy's then-pending fee petitions,[3] nor did the court have jurisdiction to address those fee petitions once the modification proceeding was voluntarily dismissed. John further maintains that this conclusion is consistent with the "general principle" in divorce actions that "an attorney may not file a fee petition against the opposing party following the voluntary dismissal of a petition for dissolution of marriage," a principle he contends was established in *Watson v. Watson*, 335 Ill. App. 637 (1st Dist. 1948), and reiterated in *In re Marriage of Lucht*, 299 Ill. App. 3d 541 (1st Dist. 1998).

¶ 36 The key issue, broadly framed, is whether a voluntary dismissal of a petition discharges the court of jurisdiction to adjudicate a respondent's request for fees incurred as a result of the proceeding initiated by the petitioner. It is well-established that it does not.

¶ 37 In the Supreme Court Rule 137 context, which, for purposes of our jurisdictional analysis, is analogous to a section 508 request for fees,[4] the court can award sanctions for frivolous pleadings despite a voluntary dismissal. *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 193 (1st Dist. 2003). Indeed, "the law is clear" that "[e]ven if a party withdraws the offensive pleading, he or she is still accountable for the damage done by violating Rule 137." *Id.* (quoting *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 571 (2d Dist. 1993)). "[A]

[4] Rule 137(a) provides: "Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

baseless complaint needlessly burdens both the court and individuals, even where the plaintiff soon dismisses the action." *Edward Yavitz,* 241 Ill. App. 3d at 572. The U.S. Supreme Court reached a similar conclusion in *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 398 (1990), holding that the district court retains jurisdiction to address a sanctions motion related to a plaintiff's complaint even after the voluntary dismissal of that complaint. As the Court explained in *Cooter*, "If a litigant could purge his violation of [Federal Rule of Civil Procedure] 11 merely by taking a dismissal, he would lose all incentive to 'stop, think and investigate more carefully before serving and filing papers.' [Citation.]" *Id.*

¶ 38 Although this case involves a request for fees under section 508 of the Act as opposed to Rule 137, it is a distinction without a difference. In divorce proceedings "[a]ll too frequently the 'economically advantaged spouse' would apply his or her greater access to income or assets as a tool, making it difficult for the disadvantaged spouse to retain counsel or otherwise participate in litigation." *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 26 (quoting *In re Minor Child Stella*, 353 Ill. App. 3d 415, 419 (2004)). Indeed, this is the very concern that the Act's "interim fee system was designed to ameliorate." *Id.* Thus, just as courts' ability to address Rule 137 motions creates an incentive against asserting baseless claims, their ability to award fees under section 508—despite a voluntary dismissal—dissuades the economically advantaged spouse from abusing the litigation process and unnecessarily increasing the other party's litigation costs.

¶ 39 *In re Marriage of Saleh*, 202 Ill. App. 3d 131 (1st Dist. 1990), and *In re Marriage of Manns*, 222 Ill. App. 3d 338 (5th Dist. 1991), cited by John, are inapposite and do not require the opposite result. Neither of those cases addressed whether the trial court retains jurisdiction to address a petition for fees incurred in connection with a voluntarily dismissed petition. In *Saleh*, the trial court concluded that public policy grounds warranted denying the petitioner's motion to

voluntarily dismiss his dissolution petition based on a pending petition for a rule to show cause which alleged that the petitioner had failed to comply with the trial court's order awarding the respondent temporary maintenance. The appellate court reversed, finding that the petitioner "had an absolute right to voluntarily dismiss pursuant to section 2-1009." 202 Ill. App. 3d at 136. None of the issues in *Saleh* involved a pending fee petition.

¶ 40 Similarly, in *Manns*, the court held that the petitioner had an "absolute right" to dismiss her petition for dissolution and that the trial court erred in conditioning that right on petitioner's compliance with a court order requiring her to reimburse the respondent for his income tax expenditures. 222 Ill. App. 3d at 344. Again, the trial court's jurisdiction over a pending fee petition was not before the court.

¶ 41 Nor are we persuaded by John's argument that the exercise of jurisdiction over the fee petition would be inconsistent with the "general principle" in divorce actions that "an attorney may not file a fee petition against the opposing party following the voluntary dismissal of a petition for dissolution of marriage." To support this position, John relies on *Watson v. Watson*, 335 Ill. App. 637 (1948), and *In re Marriage of Lucht*, 299 Ill. App. 3d 541 (1st Dist. 1998), but those cases, which involved the *pre-decree*, voluntary dismissal of a dissolution petition, were based on policy considerations not at issue here; namely, that " '[p]ublic policy forbids that parties to a divorce suit should be kept in a state of hostile litigation' after the divorce has been dismissed." *Lucht*, 299 Ill. App. 3d at 542 (quoting *Watson*, 335 Ill. App. at 641). Here, in contrast, the parties are now divorced, and the hostility continues despite the dismissal of Stacy's fee petitions.

¶ 42 Moreover, despite John's reliance on *Lucht*, even that opinion acknowledged that the trial court had the jurisdiction to award fees but, relying on *Watson*, it recognized that "sometimes

public policy requires that a trial court decline to exercise jurisdiction." *Id.* at 543; see also *id.* at 545 (Leavitt, J., dissenting) ("[W]ith the adoption of the Illinois Constitution of 1970 and the enactment of section 508 of [the Act] [citation] a jurisdictional bar to fee petitions in cases such as this is no longer an issue."). Again, that public policy concern does not apply here. Consequently, we conclude that the trial court had jurisdiction to resolve Stacy's 2010 Petition for Fees and Count III of the 2011 Petition for Fees on the merits.

¶ 43 B. Award of Appellate Fees

¶ 44 Stacy next argues that the trial court erred in its award of the appellate fees and the fees incurred in prosecuting her appellate fee petitions. We disagree.

¶ 45 Under section 508 of the Act, the court can award attorneys fees "where one party lacks the financial resources and the other party has the ability to pay." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). Contribution awards for attorney fees under the Act must be reasonable. See *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 657 (1st Dist. 2007). In assessing a fee award, the trial court considers several factors, "including the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation." *Harris Trust & Savings Bank v. American National Bank & Trust Co.*, 230 Ill. App. 3d 591, 595 (1st Dist. 1992). Moreover, the court also "may use its own experience to determine the reasonableness of the fee amounts requested." *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 110. We review the trial court's decision to award attorney fees for an abuse of discretion. *Nesbitt*, 377 Ill. App. 3d at 656.

¶ 46 First, with respect to the appellate fees incurred in connection with both her and John's appeals in *Streur I*, Stacy argues that the trial court erred in not awarding her "all or almost all" of her requested fees. We are not persuaded.

¶ 47 Under section 508(a)(3.1), the court may award fees related to "[t]he prosecution of any claim on appeal (if the prosecuting party has substantially prevailed)." In *In re Murphy*, 203 Ill. 2d 212 (2003), our supreme court interpreted this provision, holding that "the circuit court may only award fees incurred for *those individual claims* on which the appellant can be said to have 'substantially prevailed' on appeal." 203 Ill. 2d at 221.

¶ 48 Here, Stacy received (1) $14,000 of her requested $19,895 in fees and costs incurred in connection with John's appeal; and (2) $57,030 of the requested $101,365.90 in fees and costs incurred in prosecuting her appeal. The trial court explained that it was reducing the amount of fees requested because she only prevailed on one of her two claims on appeal (*i.e.*, the retroactive child support issue), and her counsel during the evidentiary hearing admitted that they "did not segregate the time attributable to claims Stacy won versus the claim [she] lost." The court also stated that the amount awarded for Stacy's defense of John's appeal included "an offset of $6,000 of the requested fees that the court [found] to be unreasonable and excessive."

¶ 49 According to Stacy, we should reverse the trial court's order because it acted inconsistently with *Murphy* by applying a "mechanistic, *pro rata* approach" to calculating fees and misapplied the "substantially prevailing" standard in section 508(a)(3.1). Having reviewed the record and the trial court's order, we find no abuse of discretion. The court correctly recognized that under *Murphy*, Stacy was not entitled to the fees incurred in connection with the Section 2-1401 Petition claim, which she lost on appeal. The court considered the relevant factors in awarding fees and ultimately awarded Stacy approximately 60% of the fees she

incurred in both defending John's appeal and prosecuting her own—an amount that the court concluded was reasonable under the circumstances. Given the deference we afford to the trial court's calculation of reasonable attorney fees, we see no reason to reverse that judgment.

¶ 50 Second, we reach a similar conclusion with respect to Stacy's challenge to the amount in fees that she was awarded in connection with the prosecution of her appellate fee petitions. Specifically, Stacy sought (1) $69,778.42 (later reduced to $65,209 during the hearing based on a miscalculation) for fees incurred to litigate her appellate fee petitions and (2) $29,327 in fees for unsuccessfully defending against John's motion for reconsideration.

¶ 51 According to Stacy, the trial court erred as a matter of law by implicitly assessing the awarded fees under the section 508(a)(3) "substantially prevailed" standard, which only applies to fees incurred in prosecuting an appeal. In the alternative, Stacy argues that even if the court applied the correct standard, it still abused its discretion because, in explaining its ruling, it noted that "I think this has just gone on and on and on," which Stacy contends demonstrates that the court's ruling was arbitrary and unreasonable. Again, we disagree that the court erred.

¶ 52 Based on our review of the record and the hearing transcript, we find no indication the court applied the incorrect legal standard for assessing fees or otherwise abused its discretion. Contrary to Stacy's contentions, the court never indicated that it was apportioning these fees according to the issues on which Stacy substantially prevailed. Rather, it rather expressly stated that its award of $26,900 for fees incurred in litigating the appellate fees petitions and $14,663.50 for fees incurred in the motion to reconsider were "reasonable." Moreover, we note that in explaining its ruling, the court also explicitly questioned whether briefing on the motion for reconsideration was even necessary and expressed its dissatisfaction that the parties had failed to "sit down and talk about it" before resorting to briefing. Given the trial court's extensive

knowledge of these proceedings, it was in the best position to assess what amount of fees was reasonable under the circumstances, and we see no reason to depart from that determination.

¶ 53 C. Dismissal of the Declaratory Relief Motion

¶ 54 Lastly, Stacy appeals the trial court's order dismissing her declaratory relief motion based on *res judicata*. As an initial matter, John contends that we lack jurisdiction over Stacy's appeal of this issue because Stacy did not timely file her notice of appeal. The trial court's order was entered on January 4, 2013. After the 30-day period for filing a notice of appeal had passed, on February 11, 2013, Stacy filed a motion for leave to file a late notice of appeal under Supreme Court Rule 303, which this court granted on February 20, 2013. Consistent with Rule 303(d), the appellate court clerk transmitted the notice of appeal to the clerk of the circuit court of Cook County on April 10, 2013.

¶ 55 John, however, contends that the notice of appeal was untimely because it was not filed in the circuit court within thirty days of this court's order granting Stacy's motion for leave. This argument is not well-taken. As prescribed by Rule 303(d) (and easily confirmed by contacting the clerk's office) the appellate court clerk—as opposed to Stacy—is responsible for transmitting the notice of appeal to the circuit court once this court grants the motion for leave to file a late notice of appeal. Stacy's notice of appeal accordingly complied with the requirements of Rule 303, and we have jurisdiction to resolve her appeal.

¶ 56 Turning to the merits, Stacy argues the trial court erred in granting John's section 2-619 motion to dismiss her declaratory relief motion on *res judicata* grounds based on the prior judgment in *Streur I*, which had affirmed the dismissal of her Section 2-1401 Petition. According to Stacy, *res judicata* does not apply because her declaratory relief motion presented "a fundamentally different claim" from those at issue in *Streur I*. We disagree.

¶ 57 "A motion to dismiss under section 2-619(a) admits the legal sufficiency of plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Relevant here, section 2-619(a)(4) provides for the dismissal of an action if it "is barred by a prior judgment." 735 ILCS 5/2-619(a)(4). Our review of the trial court's section 2-619 dismissal is *de novo*. *Sandholm*, 2012 IL 111443, ¶ 55.

¶ 58 Under the doctrine of *res judicata*, "a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). There are three requirements before the doctrine applies to bar a claim: (1) "a final judgment on the merits rendered by a court of competent jurisdiction"; (2) "an identity of [the] cause[s] of action"; and (3) "an identity of parties or their privies." *Id.* at 335. Here, only element two is in dispute.

¶ 59 In determining whether there is an identity between the causes of action, it is well established that " 'separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, *regardless of whether they assert different theories of relief*.' " (Emphasis added.) *Doe v. Gleicher*, 393 Ill. App. 3d 31, 37 (1st Dist. 2009) (quoting *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290 (1998)). Moreover, *res judicata* applies "not only to what was actually decided in the original action, but also to matters which could have been decided in that suit." *Rein*, 172 Ill. 2d at 334-35.

¶ 60 According to Stacy, the previously adjudicated claims are different from those at issue here because the Section 2-1401 Petition in *Streur I* addressed the factual question of John's alleged fraud and whether that fraud nullified the MSA. Her declaratory relief motion, in contrast, raised the legal issue of contract construction as to whether paragraph 8 of the MSA was void. She further maintains that *res judicata* does not apply because the relief requested in

the declaratory relief motion "is completely different from that sought in the 2-1401 petition." According to Stacy, the two actions contained "mutually exclusive forms of relief" which were "legally and logically inconsistent"; in other words, she could not have collaterally attacked the MSA while also attempting "to preserve the MSA via a construction of it that makes it comport with public policy." As explained below, we agree with the trial court that the claims stem from the same operative facts and are only reframed into different theories of relief. Consequently, they constitute the same claim for *res judicata* purposes.

¶ 61 In Stacy's Section 2-1401 Petition, which was dismissed in *Streur I*, she not only sought to vacate the judgment under section 2-1401, but also asserted claims for breach of fiduciary duty, conversion, unjust enrichment, an accounting, and the imposition of a constructive trust. These claims, like the claims in her declaratory relief motion, all involve the parties' rights and obligations under the MSA.

¶ 62 In the Section 2-1401 Petition, for example, Stacy alleged that paragraph 8 of the MSA required that John disclose certain financial information but that despite that obligation he repeatedly failed to do so. Because, according to Stacy, John fraudulently represented that he would comply with paragraph 8, Stacy requested that the court "declare the [MSA] void." In the breach of fiduciary duty claim, Stacy alleged that under paragraph 12 of the MSA, John had a duty to maintain a life insurance policy, which he breached. Similarly, both Stacy's conversion and unjust enrichment claims are based on sums "due and owing" to Stacy "under the [Dissolution] Judgment." And the accounting claim alleged that Stacy had "performed and did everything she was required to do under the terms of the [MSA]" and asked that the court "to order John to provide [Stacy] a full accounting of his income, assets and consequential sums due to her as and for unallocated maintenance and child support under the [MSA]."

¶ 63 In her declaratory relief motion, Stacy once again asked the court to determine the parties' rights and obligations under the MSA. In this action, however, she now asked the court to hold that paragraph 8 was void against public policy either because it provided less support for the children than the statutory guidelines or because it contained an illusory promise since it "severely limits the documentary substantiation John is required to provide to Stacy" such that Stacy cannot "verify how much unallocated support is owed," effectively rendering John's performance "optional." And once again, she asked the court to order John to provide a "full financial disclosure" for 2000 to 2005.

¶ 64 These claims do not involve new facts arising after the judgment in *Streur I* but rather assert Stacy's new theories concerning the parties' rights and obligations under the MSA—issues already raised and resolved in *Streur I*. Accordingly, we agree with the trial court that *res judicata* bars Stacy from pursuing these claims.

¶ 65 Stacy's remaining arguments that there is no identity of the causes of action because the claims seek different relief and advance inconsistent theories are not persuasive. Contrary to Stacy's contention, "separate claims will be considered the same cause of action for purposes of res judicata if they arise from a single group of operative facts, *regardless of whether they assert different theories of relief*." *Gleicher*, 393 Ill. App. 3d at 37. Moreover, "Illinois law unquestionably allows litigants to plead alternative grounds for recovery regardless of the consistency of the allegations[.]" *Heastie v. Roberts*, 226 Ill. 2d 515, 557 (2007). Parties can "argue in the alternative, even when such arguments are based on inconsistent facts." *Id.* at 558. Thus, that one theory in the Section 2-1401 Petition requested that the court nullify the entire agreement while the theories in her declaratory relief motion focused only on voiding specific provisions of the agreement did not prevent Stacy from asserting those claims in the Section 2-

1401 Petition. The trial court, therefore, correctly dismissed the declaratory relief motion based on *res judicata.*

¶ 66 For the above reasons, we affirm the trial court's judgment awarding Stacy attorney fees and dismissing her declaratory relief motion based on *res judicata*. We reverse the trial court's judgment dismissing Stacy's petitions for fees related to John's Petition to Modify and remand for further proceedings consistent with this order.

¶ 67 Affirmed in part and reversed in part.

¶ 68 Cause remanded.