2014 IL App (1st) 13-1347-U

FOURTH DIVISION
April 24, 2014

No. 13-1347

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re the Parentage of DEBORA PRICE,	)	Appeal from the Circuit Court
	)	of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 08 D 51210
	)	
RYAN DUNN,	)	The Honorable
	)	Sharon O. Johnson,
Respondent-Appellee,	)	Judge Presiding.
	)	
DENISE BREWER & ASSOCIATES,	)	
	)	
Appellant.	)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred when it granted the petitioner-appellee's motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)) on the basis of lack of subject matter jurisdiction. The court had jurisdiction to consider the attorney's petition for final fees as to her former client.

¶ 2 This appeal arises from a parentage action filed in the circuit court by the petitioner-

appellee, Debora Dunn (hereinafter Debora) as against the respondent Ryan Dunn (hereinafter Ryan), the biological father of their minor child. Attorney Denise Brewer (hereinafter Brewer) through her law firm, Denise Brewer and Associates (hereinafter the firm) represented Debora in some of the underlying parentage proceedings. After months of representation, the parties filed for voluntary dismissal of the action, and the court granted that dismissal. The firm then filed a petition for final attorney fees as against Debora and for contribution towards attorney fees as against Ryan, based upon an interim order of attorney fees entered against Ryan prior to the dismissal of the case. Both Debora and Ryan then filed motions to dismiss. Only Debora's motion is relevant to this appeal. The circuit court granted Debora's motion to dismiss the firm's petition for final attorney fees pursuant to section 2-619 of the Illinois Code of Civil Procedure (the Civil Code) (735 ILCS 5/2-619 (West 2012)) on the basis of lack of subject matter jurisdiction. The firm now appeals, contending that the circuit court erred: (1) when it granted Debora leave to file her section 2-619 motion (735 ILCS 5/2-619 (West 2012)) late; and (2) when it found that it was without jurisdiction to consider the firm's petition for final attorney fees. For the reasons that follow, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 The record reveals the following undisputed facts and procedural history. On April 17, 2008, Debora filed a complaint against Ryan to determine the parentage of their minor son, Ryan Dunn, Jr., (hereinafter the minor) born on January 22, 2007. On November 10, 2008, attorney Rochelle Grimbau (hereinafter Grimbau) filed an appearance on behalf of Ryan.[1] On Ryan's motion, on November 26, 2008, the circuit court ordered that both parents and the minor submit

[1] The firm did not represent Debora at this point. It appears from the record that Debora initially proceeded *pro se*, but that at some point, she obtained the services of attorney Jennifer C. Smetters, prior to retaining the firm.

to DNA testing to determine the minor's parentage. On February 5, 2009, the court entered a temporary order for child support in the amount of $120 per week. On July 13, 2009, the court entered an order of parentage finding that Ryan was the minor's biological father on the basis of the results of the genetic testing as well as Debora's testimony.

¶ 5 On September 15, 2010, attorney Jennifer C. Smetters (hereinafter Smetters), who had been representing Debora in the parentage proceedings up until that point, filed an emergency motion to withdraw as Debora's counsel. Soon thereafter, Debora retained the firm. On December 6, 2010, the firm filed a motion for substitution of attorneys, requesting that it replace Smetters as Debora's counsel of record. On that same date, the firm filed its first appearance on behalf of Debora. The firm also filed several discovery requests, as well as two substantive motions against Ryan, namely: (1) a motion for temporary and permanent increase in child support, contribution toward child care and health insurance and other relief (hereinafter the motion for increased child support); and (2) a motion for interim, temporary, permanent and contribution toward attorney fees and costs pursuant to sections 501 and 508(a) of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/501, 5/508(a)(1)-(3) (West 2012)) (hereinafter motion for attorney fees and costs).

¶ 6 In the motion for increased child support Debora, through the firm, alleged that she is 43 years old and unemployed, and that she receives less than $26,000 per year through unemployment benefits. Debora also alleged that since February 2009, she has received only $120 per week in child support from Ryan, pursuant to a temporary child support order entered at that time by the circuit court on the basis of Ryan's undetermined income. According to Debora, Ryan, is the president and sole shareholder of R&D Transportation, a closely held corporation wherein he "earns a substantial salary." In addition, Ryan owns several parcels of

real estate, as well as numerous luxury vehicles which he either failed to disclose on his mandatory 13.3 Disclosure Statement (including, a 2008 Porsche, a 2008 Maserati, a 2009 Maserati and a 2008 Bentley), or which he purchased after filing his disclosure statement (including, a 2010 Mercedes Benz and a 2010 Range Rover).

¶ 7 In her motion for attorney fees and costs, filed on the same date as her motion for increased child support, Debora argued that she was entitled to "an interim award" of "attorney fees and costs" from Ryan in the amount of $25,000 and "payable to [the firm]." She alleged that these costs and fees were necessary to enable her to participate adequately in the litigation without prejudicing her rights. In addition, she asserted that her "application for interim attorney fees and costs should be decided by the court on a non evidentiary, expeditious, summary basis" pursuant to sections 508 and 501(c-1)(1) of the Marriage Act (750 ILCS 5/508, 501(c-1)(1) (West 2012)). In her motion, Debora alleged that she retained the services of the firm on or about October 7, 2010, by paying them the amount of $2,500 from borrowed funds, which is a sum far smaller than their general retainer fee (between $7,500 and $25,000). She also asserted: (1) that the firm's hourly rate is $500; (2) that by October 14, 2010, she had already incurred the approximate sum of $2,500 in fees and costs by way of the firm's representation; and (3) that a conservative estimate of the investment of time that would be required to prepare her cause of action for trial or other disposition was 80-100 hours.

¶ 8 In support of both of her motions, Debora attached her own affidavit, swearing to the aforementioned facts. In addition, she attached an affidavit by attorney Brewer, attesting to her education, and the firm's hourly rate, as well as the firm's estimated $25,000 cost in pursuing Debora's case with respect to increasing Ryan's child support payment.

¶ 9 In February 2011, Ryan filed several motions and responses to Debora's pleadings and

discovery requests, including: (1) a response to Debora's motion for increased child support; (2) a motion to dismiss Debora's request that he pay her attorney fees and costs; and (3) objections to her discovery requests. On March 1, 2011, Debora filed a motion for sanctions against Ryan for failure to comply with discovery orders. On March 4, 2011, she filed a motion to compel discovery.

¶ 10 On April 20, 2011, Grimbau was granted leave to withdraw as Ryan's counsel and he was granted 21 days to file an additional appearance or to retain new counsel. Ryan failed to retain counsel or file an appearance within the 21 days.

¶ 11 On May 16, 2011, when Ryan failed to appear at the scheduled court hearing, the circuit court found in favor of Debora. The court first denied Ryan's objections to Debora's discovery requests as well as his motion for supervised discovery. Instead, the court granted Debora's motion to compel discovery and gave Ryan 30 days to file those discovery documents, noting that failure to answer would result in "the striking of his pleadings and the barring of any evidence on his behalf." The court then granted Debora's motion for "interim" attorney fees and costs, ordering Ryan to pay the firm $25,000 for "interim fees" on or before June 16, 2011. In doing so, the court explicitly found that the sum of $25,000 was reasonable and not unconscionable and that Ryan had sufficient assets to pay the lump sum. The court next granted Debora's motion for increased child support, ordering, *inter alia*, that Ryan pay Debora the sum of $5,000 per month for temporary child support. The court also ordered that within 30 days, Ryan provide medical, hospitalization, dental and optical insurance for the minor and that he tender proof of said insurance to Debora, as well as pay all medical expenses not covered by said insurance. The court next ordered that before June 16, 2011, Ryan secure a whole life insurance policy in the amount of no less than $1 million with the minor child as the irrevocable

beneficiary and Debora as trustee and that he tender proof of such insurance to the firm by the same date. The court stated that if Ryan failed to secure the life insurance policy a lien and/or claim against his estate for no less than $1 million would result. The court also ordered that Ryan contribute 100% towards Debora's child care expenses, as well as reimburse her for the expenses she already incurred for child care between April and December 2011.

¶ 12 On June 12, 2011, pursuant to sections 510, 511 and 7-701 of the Marriage Act (750 ILCS 5/510, 5/511, 5/7-701 (West 2012)) Debora filed a petition for rule to show cause against Ryan for his failure to comply with the May 16, 2011 order. On June 21, 2011, the law offices of Rosenfeld Hafron Shapiro & Farmer (hereinafter Farmer) filed a motion for leave to file an additional appearance on behalf of Ryan, and that motion was granted.

¶ 13 On June 28, 2011, the circuit court entered an order setting Debora's petition for rule to show cause for a hearing on August 16, 2011. In the June 28, 2011 order, the court, *inter alia*, also ordered that Ryan: (1) pay Debora $3,500 for child support for July, August and September 2011; (2) pay the minor's daycare provider $80 per week effective July 2011; (3) pay 100% of the minor's extracurricular activities; (4) within 30 days apply for the life insurance policy as explained in the May 16, 2011, order; (5) within 7 days add the minor to his Blue Cross/Blue Shield existing health insurance policy; and (6) on or before July 13, 2011, pay $7,500 to the firm for attorney fees.

¶ 14 On July 11, 2011, prior the scheduled hearing on the petition for rule to show cause, Debora filed an emergency *pro se* motion for voluntary dismissal of her action. In that motion, she explained that she and Ryan had come to an agreement which was in the best interests of their minor child. Debora asserted that she wanted to dismiss her cause of action because of "physical illness," and "extra financial costs" which had made it impossible for her to pay her

attorney, as well as "other legal issues in Mississippi with [Ryan's] father," which had burdened his estate. The court classified Debora's motion as a non-emergency joint motion asking the court to enter an agreed order to compel the withdrawal of both counsels. The court continued the case to July 18, 2011, to permit both counsels of record to appear.

¶ 15 On July 18, 2011, Debora and the attorneys of record appeared in court. The firm then filed a second petition for rule to show cause pursuant to sections 510, 511 and 7-701 of the Marriage Act (750 ILCS 5/510, 5/511, 5/7-701 (West 2012)) against Ryan for failure to pay the sum of $7,500 to the firm pursuant to the June 28, 2011 order. Over the firm's objection, the court granted the parties' voluntary dismissal, and the firm was given until September 14, 2011, to file a final fee petition. In a handwritten order, the circuit court judge explicitly stated: "Over the objection of [the firm], as to the petition for rule to show cause against Ryan *** for failing to pay $25,000 pursuant to the May 2011 order of this court, [the firm] is granted until September 14, 2011 to file [its] fee petition."

¶ 16 On September 13, 2011, the firm filed a two-count motion for final attorney fees and costs against Debora and contribution towards attorney fees and costs against Ryan (hereinafter final petition for fees) pursuant to Illinois Supreme Court Rules 201 and 137 (Ill. S. Ct. R. 201 (eff. July 1, 2002); Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)), section 508 of the Marriage Act (750 ILCS 5/508 (West 2012)) and section 17 of Illinois Parentage Act of 1984 (the Parentage Act) (750 ILCS 45/17 (West 2012)). The petition sought judgments against Ryan and Debora for attorney fees in the amount of $68,500 plus costs. On December 23, 2011, the firm sent Debora and Ryan an invoice itemizing the aforementioned costs.

¶ 17 On December 28, 2011, Ryan filed a motion to dismiss the firm's petition for final fees pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-619 (West 2012)). Ryan

contended that since Debora's parentage case had been voluntarily dismissed, all the orders entered by the circuit court as to his required contribution to Debora's attorney fees were void pursuant to section 501(d) of the Marriage Act (750 ILCS 5/501(d) (West 2012)), which specifically states that any temporary orders entered under that section, including "interim attorney fees and awards" "terminate[] when the final judgment is entered" or the cause of action "is dismissed."

¶ 18 On December 30, 2011, Debora filed an amended *pro se* response to the firm's petition for final fees and costs, arguing, *inter alia*, that she should not be required to pay the $68,500 in attorney fees because: (1) she had already paid a substantial amount of those fees to the firm through wages; and (2) the majority of the firm's fees were inflated. Debora specifically alleged that after retaining the firm on October 6, 2010, for a $2,500 retainer fee, she subsequently worked for the firm as a secretary in exchange for future anticipated legal fees and costs. Debora alleged that she worked for the firm in this capacity between December 6, 2010 and July 8, 2011, at which point both the employer/employee and attorney/client relationships were terminated. Debora alleged that she worked 868 hours at the firm in exchange for attorneys fees, and that her work should cover most, if not all, of her legal fees and expenses. Debora also contested the itemized bill provided by the firm, arguing that each itemized hour spent on her case was either exaggerated or made up.

¶ 19 On April 3, 2012, the firm filed a response to Ryan's motion to dismiss, and on July 24, 2012, Ryan responded with a reply. After several continuances, on September 5, 2012, attorney Marvin Marshall (hereinafter Marshall) filed an appearance on behalf of Debora. On that same date, the circuit court entered an order setting the matter for mediation and barring the issuance of any new discovery between the parties. Mediation was unsuccessful.

¶ 20 On December 5, 2012, the circuit court granted Debora 21 days to file a 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)) and set March 27, 2013, as the hearing date on the firm's petition for final fees and costs, Ryan's section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)), and Debora's anticipated section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)). Debora did not file her motion to dismiss within the requisite 21 days.

¶ 21 Rather, on March 27, 2013, the date scheduled for the hearing on the firm's petition for final fees, Debora's attorney, Marshall, appeared in court and sought leave to file Debora's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), arguing: (1) that the court lacked subject matter jurisdiction to hear the firm's petition for final fees because that petition was untimely filed, outside of the statutorily mandated 30 days post-final judgment period (in this case, the parties' voluntary dismissal of the action); and (2) in the alternative, that the fees requested by the firm were excessive and unreasonable. The firm objected to the late filing of Debora's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), arguing that the firm was not given proper notice of the motion. Debora's attorney, Marshall argued, and Ryan's attorney, Farmer, agreed, that Debora could raise the motion at any time as it challenged the court's subject matter jurisdiction. The court permitted Debora to file her motion but expressed its frustration with Debora's apparent "delay tactic." The court stated that it would have to give the firm an opportunity to respond to Debora's motion, and that this might move the hearing date another couple of months. The firm then volunteered to file a response to Debora's pleading on the next day, since the parties were already scheduled to appear on the firm's motion for final fees and costs for two days. Debora's attorney Marshall objected, arguing that he would not be able to file a reply to the firm's response in such a short amount of time. Over counsel Marshall's objection, the court set the matter for hearing on the following day, March 28, 2013.

¶ 22 On March 28, 2013, the firm filed its response to Debora's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), contending, *inter alia*, that the court had jurisdiction to consider its petition for final fees because the July 18, 2011, dismissal did not dispose of the case in its entirety and the court itself granted the firm leave to file its fee petition outside of the statutory 30 days. In addition, the firm argued that its fees were reasonable.

¶ 23 After hearing arguments by both parties, on March 28, 2013, the circuit court granted Debora's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), explaining that the fee's petition "terminated with the July 18, 2011, order dismissing all matters before the court on that date," and that "as a result, the court lacked jurisdiction" to consider the firm's fee's petition. The firm now appeals.

¶ 24 II. ANALYSIS

¶ 25 On appeal the firm makes two arguments. First, it contends that the trial court erred when it granted Debora leave to file her 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)) outside of the 21 days it had initially given her as the deadline. The firm asserts that the court should not have granted Debora leave to file her late motion because the attorneys of record were not given proper notice of that motion. The firm contends that it was severely prejudiced by the late filing of the motion, particularly since it had only one day to respond to the motion. For the reasons that follow, we disagree.

¶ 26 Pursuant to Illinois Supreme Court Rule 183, the trial court may "for good cause shown on motion," and "after notice to the opposite party" extend the "time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time." Ill. S. Ct. R. 183 (eff. Feb.16, 2012). "Good cause" is a prerequisite to relief, and the burden of establishing it rests on the party who is seeking the

extension. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007). In determining whether good cause exists, the trial court may consider all objective, relevant evidence as to why there is good cause for the failure to comply with the original deadline and why an extension of time should be granted. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353. The determination of what constitutes good cause is fact-dependent and rests within the sound discretion of the trial court, and we will not disturb that determination absent an abuse of discretion. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353.

¶ 27 In the present case, the record reveals that in permitting Debora to file her 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), the trial court considered arguments of both parties. Debora's attorney Marshall argued that he was permitted to raise the section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)) at any time because it questioned the court's subject matter jurisdiction. Ryan's attorney, Farmer, agreed that a section 2-619 motion (735 ILCS 5/2-619 (West 2012)) challenging the court's jurisdiction could be filed at any time. She further argued that it would be prudent for the court to hear that motion before making any substantive ruling on the firm's petition for final fees, because if the court lacked subject matter jurisdiction to rule on the petition for final fees, it would be a waste of resources to litigate the substance of the petition and then have that petition immediately vacated on the basis of lack of subject matter jurisdiction. The firm then itself agreed that if Debora was challenging the court's subject matter jurisdiction she "could file it at any time," but argued that it would be unfair to permit Debora to proceed with her motion without providing the firm with an opportunity to respond. After hearing the parties' arguments, the court expressed its frustration with Debora, calling her last-minute attempt at filing the section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)) a "delay tactic." The court nevertheless found that it needed to resolve the jurisdictional question

first before it could proceed with the merits of the disputed final fees and costs. Accordingly, it granted Debora leave to file her motion to dismiss. In doing so, it sought to provide the firm an adequate opportunity to respond, but the firm, itself volunteered to do so within a day. We find no abuse of discretion in this decision by the circuit court. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353. What is more, we do not see how at this stage the firm can persuasively argue that the court abused its discretion in granting Debora leave to file her motion to dismiss, when before that same trial court, the firm agreed with Debora that if her motion to dismiss challenged the court's jurisdiction, it could be raised at any time. We, therefore, proceed with the merits of Debora's section 2-619 motion to dismiss.

¶ 28 Section 2-619(a)(1) of the Civil Code permits the involuntary dismissal of a cause of action on the basis of lack of subject-matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2012); see also *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. "Subject matter jurisdiction concerns the authority of the court to hear and determine cases of the general class to which the proceeding in question belongs." (Internal quotation marks omitted.) *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, ¶ 11 (quoting *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27). In reviewing the grant of a section 2-619 motion to dismiss, we interpret the pleadings and supporting documents in the light most favorable to the nonmoving party. See *Snyder*, 2011 IL 111052, ¶ 8. Whether the trial court had subject matter jurisdiction is a question of law that we review *de novo*. *Crossroads Ford Truck Sales, Inc.*, 2011 IL 111611, ¶ 26 (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010); *Blount v. Stroud*, 232 Ill. 2d 302, 308 (2009)).

¶ 29 On appeal, the parties dispute whether pursuant to section 5/508(c) of the Marriage Act

(750 ILCS 5/508(c) (West 2012)) the circuit court had subject matter jurisdiction to consider the firm's petition for final fees against Debora.[2]

¶ 30 Section 508 of the Marriage Act provides circumstances under which the trial court may award necessary attorney fees to a party to a marital dissolution. *In re Marriage of Ahmad*, 198 Ill. App. 3d 15, 18 (1990). In pertinent part, section 508 states:

> "(a) 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 fees. Interim attorney fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501 and in any other proceeding under this subsection. At the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection. *Fees and costs may be awarded in any proceeding to counsel from a former client in accordance with subsection (c) of this Section.*" 750 ILCS 5/508(c) (West 2012).

Subsection (c), which is applicable here, and governs fee petitions against former clients, rather than opposing parties, further explicitly provides that "[a] [fee] petition *** shall be filed no later than the end of the period in which it is permissible to file a motion pursuant to Section 2-1203

[2] We note that the parties do not dispute that under the explicit direction of the Parentage Act (750 ILCS 45/1 *et seq*. (West 2012)), section 508 of the Marriage Act also determines attorney fees in all parentage actions. See 750 ILCS 45/17 (West 2012) ("Except as otherwise provided in this Act, the court may order reasonable fees of counsel *** and other costs of the action, pre-trial proceedings, post-judgment proceedings to enforce or modify the judgment, and the appeal and defense of an appeal of the judgment to be paid by the parties in accordance with *** Section 508 of the Illinois Marriage and Dissolution of Marriage Act, as amended.").

of the Code of Civil Procedure." 750 ILCS 5/508(c)(5) (West 2012).

¶ 31 Section 2-1203 of the Code of Civil Procedure, which governs postjudgment motions in non-jury cases, specifically provides: "In all cases tried without a jury, any party may, within 30 days after the entry of the judgment ***, file a motion *** for other relief." 735 ILCS 5/2-1203 (West 2012).

¶ 32 Debora argues on appeal that the trial court did not have subject matter jurisdiction under section 508(c)(5) of the Act to entertain the firm's request for attorney fees because the petition was filed more than 30 days after the dismissal of her action. We disagree.

¶ 33 In that respect, we note that a nearly identical argument was raised and rejected by this appellate court in *In re Marriage of Baniak*, 2011 IL App (1st) 092017. In that case, after months of litigation, the parties entered into a marriage settlement agreement, and the trial court entered a judgment for dissolution of marriage. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 3. Exactly 31 days later, the law firm representing the wife in the dissolution of marriage proceedings filed a petition for settling final attorney fees. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 4. The trial court awarded the law firm attorney fees in the amount of $71,347.50, and the wife appealed. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 6. Just as Debora here, the wife argued that the court was without jurisdiction to enter the fees because the law firm failed to file its fee petition within 30 days of the entry of the judgment for dissolution of marriage as required by section 508(c)(5) of the Marriage Act (750 ILCS 5/508(c)(5) (West 2012)) and section 2-1203(a) of the Civil Code (735 ILCS 5/2-1203(a) (West 2012)) referenced in that section of the Marriage Act. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 8.

¶ 34 The appellate court disagreed, holding that the trial court had subject matter jurisdiction

when it issued its order to award attorney fees to the firm. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 22. In coming to its decision, the appellate court relied on our supreme court's decision in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35, (2002), which held that "a court's power to act," (*i.e.*, its subject matter jurisdiction) "comes from Article VI of the state constitution, [and] not the legislature." *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 15 (citing *Belleville Toyota, Inc.*, 199 Ill. 2d at 335). According to *In re Marriage of Baniak*, in *Belleville Toyota, Inc.*, our supreme court made clear that:

> "[A] court is empowered by the constitution to hear all justiciable matters. [Citation.] The court's authority to exercise jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition. [Citation.] Generally, a 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 15 (citing *Belleville Toyota, Inc.*, 199 Ill. 2d at 335).

The appellate court held that section 508 of the Marriage Act (750 ILCS 5/508 (West 2012)) provides for the award of attorney fees, which is a justiciable matter. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 16 (citing *In re Marriage of Pagano*, 181 Ill. App. 3d 547, 554 (1989)). The court further held that the filing of a petition for final fees is a procedural, rather than jurisdictional requirement, so that the court had jurisdiction to entertain that petition even outside of the 30-day postjudgment period. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 16 (citing *In re Marriage of Pagano*, 181 Ill. App. 3d 547, 554 (1989)).

¶ 35 In coming to its conclusion, the appellate court explained:

¶ 36 "In *Belleville Toyota*, our supreme court offers an in-depth analysis of subject matter jurisdiction in Illinois. As the court stated in *Belleville Toyota*, the legislature may create new justiciable matters by enacting legislation that creates rights and duties that have no counterpart at common law or in equity. [Citation.] Divorce did not exist at common law. [Citation.] Through the legislature's adoption of the Illinois Marriage and Dissolution of Marriage Act in 1977 [citation] the legislature created a new justiciable matter. [Citation.] The legislature's creation of a new justiciable matter, however, does not mean that the legislature thereby confers jurisdiction on the circuit court. [Citation.] Article VI is clear that, except in the area of administrative review, the jurisdiction of the circuit court flows from the constitution. [Citation.] The General Assembly has no power to enact legislation that would contravene article VI. [Citation.]" *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 17.

¶ 37 The appellate court further noted that in *Belleville Toyota*, our supreme court rejected prior case law that had suggested that the legislature in defining a justiciable matter may impose "conditions precedent" to the court's exercise of jurisdiction that cannot be waived. See *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 17 ("Characterizing the requirements of a statutory cause of action as nonwaivable conditions precedent to a court's exercise of jurisdiction is merely another way of saying that the circuit court may only exercise that jurisdiction which the legislature allows. We reiterate, however, that the jurisdiction of the circuit court is conferred by the constitution, not the legislature." (quoting *Belleville Toyota Inc.*, 199 Ill.2d at 336)). As the court explained:

"Jurisdiction was a purely legislative concept in the 1818 state constitution. [Citation.] Under our former constitution, adopted in 1870, the circuit court enjoyed 'original jurisdiction of all

causes in law and equity.' (Internal quotation marks omitted.) [Citation.] The court's jurisdiction over special statutory proceedings, *i.e.*, matters which had no roots at common law or in equity, derived from the legislature. [Citation.] Thus, in cases involving purely statutory causes of action, unless the statutory requirements were satisfied, a court lacked jurisdiction to grant the relief requested. [Citation.]

However, 1964 amendments to the judicial article of the 1870 constitution radically changed the legislature's role in determining the jurisdiction of the circuit court. [Citation.] Under the new judicial article, the circuit court enjoyed ' "original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law." ' [Citation.] Thus, the legislature's power to define the circuit court's jurisdiction was expressly limited to the area of administrative review. [Citation.] The current constitution, adopted in 1970, retains this limitation. [Citation.]" *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶¶ 19-20.

¶ 38 Based on the aforementioned rationale, the appellate court concluded that since a dissolution of marriage proceeding did not involve administrative review, the trial court was not without subject matter jurisdiction to consider the fee petition, merely because the fee petition was filed one day after the 30-day time limit imposed by the statute. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶¶ 21-22.

¶ 39 We see no reason to deviate from the rationale of *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶¶ 21-22. Applying that rationale to the cause at bar, we are similarly compelled to conclude that the trial court was not without subject matter jurisdiction to consider the firm's petition for final fees against Debora. We find this conclusion even more apparent here, where

the firm filed its fee petition within the confines of the court's prior written order, explicitly permitting the firm to file its petition within 60, rather than 30 days of that final order.

¶ 40 III. CONCLUSION

¶ 41 For the aforementioned reasons we find that the circuit court erred in granting Debora's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)) on the basis of lack of subject matter jurisdiction. We therefore reverse and remand for further proceedings on the firm's petition for final fees.

¶ 42 Reversed and remanded for further proceedings.