FOURTH DIVISION
September 7, 2017

No. 1-15-3489

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 FORMER MARRIAGE OF LISA R. LOESSY,	)	Appeal from the
	)	Circuit Court of
Petitioner,	)	Cook County
	)	
and	)	
	)	
JOHN R. LOESSY,	)	
	)	
Respondent.	)	
______________________________	)	No. 08 D 9025
	)	
Randy Sly, Executor of the Estate of LISA R. LOESSY,	)	
	)	
Intervening Petitioner-Appellant,	)	
	)	
v.	)	
	)	
JOHN R. LOESSY,	)	Honorable
	)	Karen J. Bowes
Respondent-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's judgment affirmed. Trial court did not err in denying petition for attorney fees, as trial court had no basis under section 508(b) to grant petition. Although parties had filed petitions for rule to show cause for contempt and petitions were set for trial, no hearings were ever held on petitions, no findings under section 508(b) were made that any "failure to comply with the order or judgment was without compelling cause or justification," and, after mediation,

parties reached comprehensive agreement pursuant to which trial court had entered agreed order that petitions were withdrawn with prejudice.

¶ 2 This appeal arises out of a dissolution-of-marriage action and involves a petition for attorney fees filed by intervening petitioner, Randy Sly, Executor of the Estate of Lisa R. Loessy (the Executor). The petition was filed for fees incurred in seeking to enforce the judgment for dissolution of marriage pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) 750 ILCS 5/508(b) (West 2014). At issue is the trial court's decision denying the fee petition with prejudice. For reasons we discuss below, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On June 13, 2011, the trial court entered a judgment for dissolution of marriage involving Petitioner, Lisa R. Loessy (Lisa), who is now deceased, and Respondent, John R. Loessy (John). Postjudgment, numerous disputes arose. Both John and Lisa filed pleadings accusing the other of having failed to comply with the judgment for dissolution. John filed the following pleadings over the course of two years:

(1) Petition for issuance of rule to show cause;

(2) Supplemental petition for issuance of rule to show cause; and

(3) Amended petition for fraudulent transfers.

¶ 5 Lisa, later the Executor, filed the following pleadings around this same time interval:

(1) Petition for issuance of rule to show cause and finding of indirect civil contempt and other relief;

(2) Petition for the execution of documents by a judicial officer transferring certain assets pursuant to the marital settlement agreement;

(3) Motion to strike and dismiss John's amended petition for fraudulent transfers; and

(4) Petition for interim attorney fees and costs.

¶ 6 Before going to trial on these post-judgment claims, the parties were ordered to participate in mediation. Ultimately, the parties reached a comprehensive final agreement on all issues. No rules to show cause, or any other substantive orders, were issued on any of the motions or petitions listed in the preceding paragraphs. Nor was any hearing ever held or evidence presented.

¶ 7 On May 5, 2015, the trial court entered a five-page agreed order (Agreed Order), which resolved all of the petitions and motions we have listed above concerning John and Lisa's post-judgment compliance, or lack thereof, with the judgment order. The Agreed Order did, however, allow the parties to file fee petitions and stated, in relevant part, as follows:

> "14. That John and the Estate of LISA R. LOESSY are hereby granted twenty-one (21) days to file their respective fee petitions, *if any*. Each party is awarded twenty-one (21) days thereafter to respond or otherwise plead, and fourteen (14) days thereafter to reply. Said petitions for attorney fees are set for hearing on June 25, 2015, at 9:30 a.m.
>
> [Paragraph 15 involves an issue not relevant to this appeal.]
>
> 16. That except for the aforementioned fee disputes, *all pending pleadings are withdrawn with prejudice* and no remaining issues are pending regarding the division of the marital estate." (Emphases added.)

¶ 8 As contemplated in the Agreed order, each side timely filed a fee petition. The trial court denied both petitions with prejudice, ruling that the court had "no basis or jurisdiction" under section 508(b) of the Dissolution Act. The court denied the Executor's motion to reconsider. The Executor now appeals.

¶ 9 II. ANALYSIS

¶ 10 The dispute centers around Section 508 of the Dissolution Act, which governs "Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs," and provides, in pertinent part, as follows:

> "(b) In every proceeding for the enforcement of an order or judgment *when the court finds that the failure to comply with the order or judgment was without compelling cause or justification*, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. ***. " (Emphasis added.) 750 ILCS 5/508(b) (West 2014).

¶ 11 The trial court's ruling that it had "no basis *or* jurisdiction" (emphasis added) to grant relief under section 508(b) seems, quite obviously, to provide two separate grounds for its denial. We can think of no other reason why the court would have written the order in the disjunctive, and as we will discuss in more detail below, our review of the transcript of the hearing suggests that the words "basis" and "jurisdiction" were employed as different grounds by the trial court. We will consider them as such. The difference, we will see, is meaningful, as the standard of review is different. But we emphasize at the outset that we may affirm on any basis in the record, regardless of the standard of review, regardless of whether it was the trial court's reasoning, and regardless of whether the trial court's reasoning was correct. *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 357 (2006) (*de novo* review); *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 33 (abuse-of-discretion standard).

¶ 12 A. Jurisdiction

¶ 13 We will take up the court's ruling that it lacked "jurisdiction" first, because it is the almost singular focus of the Executor's briefs, and because if the circuit court lacked subject-

matter jurisdiction over this cause, any other reasoning the trial court employed would be moot; the trial court would have no further authority to rule in the matter, other than to dispose of it on jurisdictional grounds. *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994) (if court lacks subject-matter jurisdiction over cause, it lacks authority to enter any further order). A court's subject-matter jurisdiction presents a question of law, warranting *de novo* review. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18.

¶ 14 We agree with the Executor that the trial court had subject-matter jurisdiction to entertain the fee petitions. The Illinois Constitution provides that:

> "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law." Ill. Const. 1970, art. IV, §9.

¶ 15 That means that, beyond matters involving redistricting and the governor's fitness for office, which are reserved to the supreme court, the circuit courts have subject-matter jurisdiction over all justiciable matters; its jurisdiction cannot be curbed by statute, except in cases of administrative review. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). A "justiciable matter" is any controversy appropriate for review by a court, in that it is definite and concrete and will affect the legal relations between adverse parties. *Id.* at 335. To be sure, a justiciable matter may be *created* by statute; a statute may create a new legal right or obligation, a crime, or a new cause of action unknown to the common law. See *id.* (legislature created Motor Vehicle Franchise Act, which created justiciable matters between car dealerships

and car manufacturers and distributors). But that does not mean that the legislature confers jurisdiction on the court; "the jurisdiction of the circuit court flows from the constitution." *Id.*

¶ 16 So in *Belleville Toyota*, the limitations provision in the Motor Vehicle Franchise Act served as an affirmative defense to liability in a claim under that Act, but it was not, in any way, a *jurisdictional* limitation on the court's power to hear the case. *Id.* at 342, 344-45.

¶ 17 Other examples hit closer to home here. Under the old Illinois Marriage and Dissolution of Marriage Act, which required that a petition to modify custody be accompanied by an affidavit, the failure to file the mandatory affidavit required the denial of the petition—but it did *not* deprive the court of subject-matter jurisdiction to hear the case. *In re Custody of Sexton*, 84 Ill. 2d 312, 314, 319-321 (1981). Likewise, this court has held that a limitation provision for filing petitions for contribution of attorney fees under the Dissolution Act, though mandatory, did not deprive the court of jurisdiction to hear the matter. *In re Marriage of Cozzi-DiGiovanni & DiGiovanni*, 2014 IL App (1st) 130109, ¶ 44. And the failure to file a fee petition within thirty days of the judgment of dissolution, though mandated by the Dissolution Act, was not a jurisdictional impediment. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶¶ 14, 22.

¶ 18 So too, here, regardless of whether the trial court believed that section 508(b) provided a basis for relief to either side in the fee-petition battle, it was not correct to frame the issue as a "jurisdictional" one. "[I]t is evident that the awarding of attorney fees within a dissolution proceeding is a justiciable matter." *Marriage of Cozzi-DiGiovanni*, 2014 IL App (1st) 130109, ¶ 42 (quoting *Marriage of Baniak,* 2011 IL App (1st) 092017, ¶ 16). The court unquestionably had subject-matter jurisdiction to hear the fee petitions.

¶ 19 We have our doubts that the trial court really meant to indicate that it lacked subject-matter jurisdiction. We have often noted that both lawyers and judges sometimes misuse the term

"jurisdiction" to refer to a lack of authority under a statute. See, *e.g.*, *Belleville Toyota*, 199 Ill. 2d at 335-36 (collecting cases). In all likelihood, the trial court was probably trying to convey that it felt it had no authority to grant relief under the statute.

¶ 20 In any event, the written order said the court lacked "jurisdiction," and we agree with the Executor that the trial court had subject-matter jurisdiction over this fee petition.

¶ 21 B. Basis

¶ 22 We now take up the trial court's ruling that it had "no basis" under section 5-508(b) to grant these fee petitions.

¶ 23 Generally, a trial court's decision to award or deny fees will be reversed only if the trial court abused its discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005); *Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 9. This portion of the trial court's ruling, that it had no "basis" under section 508(b) to grant relief, suggests to us that the trial court was ruling that it had no evidence on which it could base an award of attorney fees. Our review of the transcript of proceedings, which we will discuss below, confirms that notion.

¶ 24 A court's determination that the parties have presented insufficient evidence or grounds for the awarding of attorney fees is not a legal determination, so the abuse-of-discretion standard would be applicable. *Marriage of Schneider*, 214 Ill. 2d at 174. When we review for an abuse of discretion, we will reverse only if the trial court "acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Haken*, 394 Ill. App. 3d 155, 160 (2009).

¶ 25 Recall first the operative language from section 508(b): the trial court shall award attorney fees against a party for failing to comply with a court order or judgment if "the court

finds that the failure to comply with the order or judgment was without compelling cause or justification." 750 ILCS 5/508(b) (West 2014).

¶ 26 It appears from the lengthy discussion at oral argument that the trial court's substantive ruling was grounded on the fact that it had no basis for finding that either side "fail[ed] to comply with the order or judgment *** without compelling cause or justification" (*id.*)—because both sides had *withdrawn with prejudice* their claims of failure to comply when they signed the Agreed Order, without an evidentiary hearing or anything other than those initial pleadings. We rely on the following from the hearing:

> "THE COURT: There never was a hearing. There's never been a finding that either [John] or [Lisa], before she died, failed to do something and that it was without cause of justification."
>
> ***
>
> "[Counsel for Executor]: Your Honor, you would be making the finding in the hearing on the petition for fees.
>
> THE COURT: That's not when you make the finding. The finding is made when the petition for rule is brought. Then the court finds that the party against whom it is brought failed to act without compelling cause or justification. Then the fee petition follows."
>
> ***
>
> "THE COURT: [S]ir, in order to get to the fee petition, the findings have to be made first. The fee petition does not kick in until there's a finding that someone acted without justification or without compelling cause. There's nothing for me to hear.

> I can't go back now and come in through the back door and say, because you filed a fee petition, [John] didn't do that or [Lisa] didn't do this. I mean it defeats the whole purpose of [the Agreed Order]. You settled the case. And under 508(b)—I find that 508(b) does not apply."

¶ 27 The trial court correctly ruled that the parties provided no "basis" for relief here. To be sure, the gravamen of all of the post-judgment motions and petitions here was that either John or Lisa had failed to comply with the judgment of dissolution. But they settled those claims. They dropped them by agreeing to terms on a settlement, manifested by the Agreed Order. No evidentiary hearing preceded this settlement. No admissions were made outside or within the Agreed Order. So when the fee petitions were filed, there was simply no basis for the trial court to determine whether either party failed to comply with the judgment order, much less whether they did so "without compelling cause or justification." *Id*. The only way that issue could be revived would be to vacate the Agreed Order and re-open the very case they just settled, something both sides emphatically assured the trial court they did not wish to do (and which neither party seeks in this court).

¶ 28 So while section 5-508(b) was by no means a jurisdictional impediment to relief, it contained a statutory precondition to the award of attorney fees—a failure to comply with a court order without compelling cause or justification—that the Executor did not satisfy, because the record was absolutely barren of any evidence that John failed to comply with that judgment, much less that he did so without compelling cause or justification. The court was provided no basis whatsoever to award fees to the Executor (or, for that matter, to John).

¶ 29 The Executor characterizes the trial court as having created some kind of rule that attorney fees cannot be awarded absent a contempt finding, and then cites *In re Marriage of*

Baggett, 281 Ill. App. 3d 34, 39-40 (1996), and *In re Marriage of Berto*, 344 Ill. App. 3d 705, 719 (2003), to demonstrate that this proposition is false. Again, the Executor is correct in stating the law. The plain language of section 5-508(b) says nothing about a contempt finding. If a party has not complied with an order, and has failed to do so without compelling cause or justification, the trial court may award fees under section 5-508(b) without first finding the party in contempt. *Baggett*, 281 Ill. App. 3d at 39; *Berto*, 344 Ill. App. 3d at 719.

¶ 30 But the Executor's premise is wrong. The trial court never ruled that a contempt finding was a prerequisite to relief under section 5-508(b), and neither do we so hold. The salient point is that the trial court needed some basis for determining whether John had failed to comply with the judgment of dissolution, and if so, whether he had justification for failing to do so. The Executor provided the court with absolutely no basis for making that finding—an evidentiary hearing, documentary proof, admissions in the Agreed Order—nothing.

¶ 31 The Executor also argues that the facts of *Berto*, 344 Ill. App. 3d 705, are "strikingly similar" with those here, but we agree with the trial court that this decision is distinguishable. There, the husband had agreed to pay over $23,000 a month in maintenance and support but then unilaterally reduced his payments by nearly half. *Id*. at 707. After a hearing, the court issued a rule to show cause. *Id*. at 708. The husband admitted he had failed to pay his wife the proper amount and paid his outstanding debt in full. When he did, the court discharged the rule and declined to hold him in indirect civil contempt. *Id*. at 709. The trial court invited a petition for fees, and the wife filed one, but then the trial court ruled that it "lack[ed] jurisdiction" over the fee petition because the rule to show cause had been discharged. *Id*. at 710.

¶ 32 We reversed, holding that the absence of a contempt finding was not an impediment to an award of attorney fees. *Id*. at 719.We further held that there was more than sufficient evidence in

the record—the evidentiary hearing, the husband's admission—to support the wife's position in the fee petition that the husband's failure to comply with the maintenance-and-support order was without compelling cause or justification. *Id*. at 713. Because there was ample, essentially undisputed evidence supporting the wife's claim, and section 5-508(b) mandated the award of fees to the wife in such an instance, we remanded the matter to the trial court to award attorney fees to the wife. *Id*. at 719.

¶ 33 But again, here, we have nothing from an evidentiary hearing, no admissions by the parties—nothing other than the pleadings from those post-judgment petitions and motions, all of which the parties withdrew with prejudice. This case is a far leap from *Berto*.

¶ 34 Because no hearing on the petition for rule to show cause was ever held, and because the Agreed Order resolved all matters, no finding was made—and there is no evidence in the record—that John's "failure to comply with the order or judgment was [or was not] without compelling cause or justification." The trial court correctly found that it had no basis for awarding attorney fees pursuant to section 508(b). At a minimum, we could not say that the trial court acted "arbitrarily" or "without conscientious judgment," or that its decision "exceed[ed] the bounds of reason, and thus we find no abuse of discretion. *Marriage of Haken*, 394 Ill. App. 3d at 160.

¶ 35 We affirm the trial court's judgment.

¶ 36 Affirmed.