2018 IL App (1st) 171168-U

SIXTH DIVISION
April 27, 2018

No. 1-17-1168

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF CINDY SUMMERFIELD, Petitioner-Appellee, and GEORGE SUMMERFIELD, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 12 D 03046 Honorable Debra B. Walker and John Thomas Carr, Judges Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** This case concerns the enforcement of a stipulated judgment of divorce between the parties. We affirm the judgments below because the record on appeal is insufficient to establish reversible error. In addition, the respondent husband's claim for a setoff against his support obligations is premature and not properly before this court.

¶ 2 Respondent, George Summerfield, appeals from various orders of the circuit court concerning the enforcement of a stipulated judgment of divorce between him and his ex-wife, petitioner Cindy Summerfield. He contends the circuit court improperly awarded Cindy a sum to

reimburse her for tuition and expenses she paid for their daughter's attendance at an out-of-state therapeutic boarding school. George also argues that he is entitled to an offset against that reimbursement for legal fees Cindy allegedly owes him for his representation of her in an out-of-state legal malpractice action. We find the record on appeal is insufficient for appellate review of the reimbursement and therefore affirm the circuit court's judgments. Further, we find that George's request for an offset is improperly before this court.

¶ 3 BACKGROUND

¶ 4 The parties, both of whom are attorneys, agreed to a judgment of divorce (JOD), which was entered on July 14, 1997, by a court in Oakland County, Michigan. The JOD awarded Cindy sole custody of the parties' two daughters, Brett, born May 26, 1992, and Paige, born April 3, 1993. The JOD required George to maintain health care insurance coverage for the benefit of the children and stated that "[t]he reasonable and necessary health care expenses of the children not covered by insurance shall be divided between the parties based on a ratio of their net weekly incomes while the order of support is in effect." The JOD also stated George "shall pay all necessary school and day care expenses for the minor children."

¶ 5 After the entry of the JOD, Cindy and George both relocated to Illinois. In May 2008, for legal and therapeutic reasons, the parties agreed to send Brett to a boarding school for treatment. An educational consultant recommended that Brett attend Greenbrier Academy in West Virginia. As a precondition to her attendance at Greenbrier, Brett was required to attend an intensive therapeutic wilderness program at Alldredge Wilderness Journey, also located in West Virginia. The cost for the treatment totaled $102,914.05, of which $32,716.15 was directly attributable to intensive psychotherapy and group therapy at Alldredge, while the remaining $70,197.70 constituted school related expenses including tuition, programs, room, board, food, and activities

at Greenbrier. During the time Brett attended Greenbrier and Alldredge in 2008 and 2009, Cindy earned no employment income. George earned approximately $290,000.00 in net income during each of those years. However, Cindy agreed to advance payment for Greenbrier and Alldredge in light of George's representations that he could not afford to pay at that time.

¶ 6 On March 28, 2012, Cindy filed a petition to register the Michigan JOD in the circuit court of Cook County. The court granted that petition. Separately, Cindy filed pleadings seeking postjudgment relief, alleging that George failed to fulfill his support obligations under the JOD, specifically regarding contribution of health and medical expenses for the children not covered by health insurance. She sought reimbursement from George for his share of those expenses, among other contribution requests.

¶ 7 After Cindy filed her initial petition for postjudgment relief, the parties filed numerous other pleadings concerning enforcement of the JOD. The circuit court conducted hearings on May 7, 8, and 20, 2013, which included the presentation of testimony and exhibits into evidence. The court considered Cindy's requests for monetary relief in a number of categories, including: (1) past college expenses for the parties' two children; (2) future college expenses for the children; (3) past medical expenses for the children; and (4) attorney fees incurred by Cindy. No report of proceedings from these hearings is included in the appellate record.

¶ 8 On July 8, 2013, the circuit court entered a detailed written order addressing each of the categories listed in Cindy's petition. As is pertinent here, the court ordered George to reimburse all associated costs for Brett's attendance at Greenbrier and Alldredge, finding "both parties agreed that it was necessary to send Brett to a therapeutic boarding school" and that Brett's therapist and educational consultant recommended she attend these programs. Based on the language of the JOD and the fact that Cindy was unemployed at the time Brett attended these

programs, the court ordered George to pay for the full costs of Greenbrier and Alldredge. The court deducted $22,500.00 from George's obligation to reflect the child support that George had overpaid to Cindy.

¶ 9 On July 18, 2013, George filed a postjudgment motion pursuant to Illinois Supreme Court Rule 274 (eff. Jan. 1, 2006), seeking an amendment of the circuit court's July 8, 2013 order regarding unpaid medical expenses and clarification of the court's finding as to attorney fees. George did not challenge the court's substantive finding that he was required to pay tuition and expenses for Greenbrier and Alldredge. Instead, he sought an additional offset of $65,000.00 for the total amount of weekly day care payments he made to Cindy since April 2006, when the children purportedly no longer needed day care. He argued that "from April 2006 until January 2012 (when child support ended), [he] paid [Cindy] more than $65,000.00 for day care services that the children simply did not receive." George contended Cindy "never sought to modify the [JOD's] child support obligation," although Illinois law provides that *George* was the one who was required to petition to modify *his* child support obligations "upon a showing of a substantial change in circumstances," *i.e.*, that the children no longer attended day care. See 750 ILCS 5/510(a) (West 2016); see also *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 862 (2000) ("no credit is given for voluntary overpayments of child support, even if they are made under the mistaken belief that they are legally required"). As to attorney fees, George only sought a clarification of the language in the order, but did not challenge the court's award of attorney fees in favor of Cindy.

¶ 10 Despite their ongoing disagreements regarding family support obligations, Cindy then hired George to represent her on a different matter. On August 20, 2013, Cindy entered into a contingency fee agreement with George, in which he agreed to undertake representation of her in

a legal malpractice lawsuit in New Jersey (*Summerfield v. Romanowski*, No. L-587-11 (N.J. Super. Ct. Law. Div.)). Cindy divorced her second husband on May 6, 2010. On October 12, 2010, she filed a malpractice complaint against her New Jersey divorce attorneys. The contingency fee agreement stated that George "will be entitled to a minimum payment of $80,000.00 in fees in the event that the Litigation has advanced through summary judgment, or $100,000.00 upon the commencement of an appeal in the Litigation." The malpractice litigation proceeded to an appeal before the Superior Court of New Jersey, which affirmed summary judgment in favor of the defendants on June 29, 2015. *Summerfield v. Romanowski*, No. A-1889-13T2 (N.J. Super. Ct. App. Div.) (Jun. 29, 2015) (unpublished order).

¶ 11 On August 28, 2013, the circuit court of Cook County then entered an order setting George's postjudgment motion for hearing on December 11, 2013. However, in an agreed order entered on October 30, 2013, the court struck the December 11, 2013 hearing date and "entered and continued generally" George's postjudgment motion. As we discuss below, George did not re-notice his postjudgment motion for hearing until three years later.

¶ 12 On March 17, 2016, Cindy filed a *pro se* emergency petition for temporary relief, seeking George's compliance with the July 8, 2013 court order. Specifically, Cindy sought college tuition and expenses from George for their younger daughter, Paige. In his responsive pleadings, George explained that the parties agreed to strike future court dates, including the hearing on George's postjudgment motion, due to his representation of Cindy in the New Jersey legal malpractice case. He sought an offset of the arrears he owed to Cindy from the legal fees Cindy allegedly owed him from the New Jersey case. On March 23, 2016, a different circuit court judge from the one that entered the July 8, 2013 order ruled on Cindy's emergency petition and

ordered George to pay for certain portions of Paige's college tuition and rent if Paige maintained a certain grade point average.

¶ 13 On April 11, 2016, the circuit court ordered Cindy to provide "receipts, invoices, and cancelled checks that evidence amounts to be reimbursed" under the July 8, 2013 order. The court conducted a hearing on May 11, 2016 regarding the amounts George owed Cindy. A transcript of this hearing is not included in the appellate record. George filed a "submission of supplemental authority on the right of setoff," in which he urged the court to offset the legal fees Cindy allegedly owed to George from the New Jersey case against any amounts he owed her towards tuition and expenses for the children. He alleged that during the May 11, 2016 hearing, the court declined to consider a setoff based upon "the lack of [a] judgment against the petitioner regarding the fee agreement, and the absence of an express provision in the fee agreement allowing for offset."

¶ 14 On May 12, 2016, George filed a *pro se* "motion for emergency relief" in the circuit court of DuPage County, Illinois, essentially arguing that Cindy breached the fee agreement from the New Jersey case. *Summerfield v. Summerfield*, No. 2016L000424 (Cir. Ct. DuPage Co.). George did not file a breach of contract complaint, nor any other complaint. Instead, he simply filed the motion for emergency relief. George explained that he filed the motion "as a result of [Cindy's] seeking payment for a purported arrearage in the co-pending *Summerfield v. Summerfield*, No. 12-D-03046 (Cir. Cook Co.)."

¶ 15 In a written June 17, 2016 order, the circuit court of Cook County set forth its calculations for the amounts George owed Cindy for the children's college tuition and expenses. The court ordered the matter to be transferred to the original judge for a determination of the offset amounts resulting from George's reimbursements to Cindy thus far, attorney fees owed to

Cindy under the July 8, 2013 order, and a payment schedule for any remaining reimbursement amounts.

¶ 16 On January 17, 2017, Cindy filed a petition for rule to show cause due to George's failure to comply with the portion of the July 8, 2013 order requiring him to pay all costs relating to Brett's attendance at Greenbrier and Alldredge. After George filed a responsive pleading, the circuit court ordered the parties to submit amounts owed for each of the categories set forth in the July 8, 2013 order. The court conducted evidentiary hearings on March 3, 2017 and April 12, 2017, the transcripts from which are not included in the appellate record.

¶ 17 On April 25, 2017, the circuit court entered an order finding that George's "failure to timely proceed on his Post-Judgment Motion relating to the Court's July 8, 2013 order as well as his participation in this litigation that resulted in this Court's March 16, 2016[1] and June 17, 2016 orders effectively waived his right to now proceed on this Post-Judgment Motion." The court stated that under the July 8, 2013 order, "George owes Cindy the sum of $103,628.25 for past medical expenses incurred between 2008 and January 2013. George shall pay Cindy the sum of $50,000 within 90 days of the entry of this order and the remaining $53,628.25 shall be paid within one year of the entry of this order." The court also calculated the total amount of attorney fees George owed Cindy based on the formula included in the July 8, 2013 order.

¶ 18 On May 5, 2017, George appealed from the circuit court orders dated July 8, 2013, June 17, 2016, and April 25, 2017, while Cindy moved for leave to file a petition for contribution to attorney fees to recover fees incurred since December 2016. The court entered an agreed order on May 12, 2017 allowing Cindy's motion for leave. On June 20, 2017, Cynthia filed a petition

[1] The record does not include an order dated March 16, 2016. It appears the circuit court entered the March 16, 2016 date as a typographical error and, based on the context of the court's statement, meant to refer to the order it entered on March 23, 2016.

for bankruptcy under Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §701 *et seq*. (2016)).

¶ 19 On June 29, 2017, the circuit court found that (1) Cindy had an inability to pay her attorney fees; (2) her attorney fees were reasonable; and (3) George was required to pay Cindy's attorneys a total of $14,552.45. The record before us shows the June 29, 2017 order was the last order entered in the circuit court case.

¶ 20 ANALYSIS

¶ 21 On appeal, George, for the first time since the July 8, 2013 order, challenges the circuit court's substantive ruling requiring him to pay the full costs for tuition and expenses incurred from Brett's attendance at Greenbrier and Alldredge. He argues that the costs relating to Greenbrier and Alldredge do not fall within the JOD's definition of "health care expenses" and, therefore, he should not have to pay those costs. George also argues the JOD did not contemplate the payment of "tuition" while his children were minors and only provided for reimbursement of college tuition and expenses. In addition, he contends that he was entitled to an offset for the amount of legal fees Cindy allegedly owes him under the August 20, 2013 contingency fee agreement in the New Jersey case.

¶ 22 Cindy contends that George's appeal is untimely and should be dismissed because his notice of appeal was filed more than three years after the July 8, 2013 order, which exceeds the 30-day period to appeal under Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015). She also argues George prematurely appealed the April 25, 2017 order and contends the June 29, 2017 order resolving her attorney fee petition constituted the final order in this case.

¶ 23 George responds that his appeal of the July 8, 2013 order is timely because it was not a final, appealable order in that the circuit court failed to specify the actual amount of attorney fees

owed and that the court "did not indicate that its July 8, 2013 Order included a judgment." According to George, the court only entered a final order on April 25, 2017 when it calculated and listed the amount of attorney fees owed. George contends in his brief, however, that this court has jurisdiction under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), even though none of the orders at issue contained a Rule 304(a) finding.

¶ 24 This court has a duty to determine whether jurisdiction exists and, therefore, we will consider the issue. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011). A challenge to our jurisdiction presents a question of law, which we review *de novo*. *In re Marriage of Gutman*, 232 Ill. 2d 145, 150 (2008).

¶ 25 "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001) (citing *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999)). Illinois Supreme Court Rule 301 provides that every final judgment of a circuit court in a civil case is appealable as of right. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Illinois Supreme Court Rule 303 governs the timing of an appeal from a final judgment of the circuit court. Ill. S. Ct. R. 303 (eff. July 1, 2017). Subsection (a)(1) of Rule 303 states that a notice of appeal must be filed within 30 days after the entry of a judgment appealed from or, if a timely postjudgment motion directed against the judgment is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion. *Id*. "A final judgment is a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 232-33 (2005). A judgment is final if it determines the

litigation on the merits so that, if affirmed, the only thing remaining is to proceed with execution of the judgment. *In re Marriage of Ehgartner-Shachter*, 366 Ill. App. 3d 278, 283 (2006).

¶ 26 Notably, neither party cited in their briefs Illinois authority addressing jurisdictional issues involving judgments in postdissolution matters related to the application of Rule 304(a) and the orders from which George appealed to this court. Rule 304(a) states that "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Conversely, "[i]n the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." *Id.*

¶ 27 Authority from this court is divided as to whether an order which disposes of a postdissolution matter is final and appealable without the requisite finding under Rule 304(a), when other postdissolution claims remain pending. See *In re Marriage of Teymour and Mostafa*, 2017 IL App (1st) 161091 (examining the split of authority). After a thoughtful and extensive discussion and review of the case law, the *Teymour* court determined that it would "join the Second and Fourth Districts and adhere to Rule 304(a)'s mandate that a final order disposing of one of several claims may not be appealed without an express finding that there is no just cause for delay." *Id.* ¶ 41. In so holding, the *Teymour* court declined to follow an earlier line of First District cases, which held that a Rule 304(a) finding is not required to appeal an order resolving "one of several postdissolution matters so long as the matters still pending below are unrelated to

the matter on appeal." *Id.* ¶ 35 (citing *In re Marriage of Knoll*, 2016 IL App (1st) 152494, ¶ 46, and *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶¶ 34–36).

¶ 28 We find the analysis of *Teymour* to be well-reasoned and convincing. Thus, prior to the resolution of all claims with respect to all parties in postdissolution proceedings, any order entered in a case, even if final as to one party or claim, is not appealable unless the order contains a finding that there is no just reason to delay enforcement or appeal, in compliance with Rule 304(a). See *In re Marriage of Teymour and Mostafa*, 2017 IL App (1st) 161091, ¶ 41. None of the orders that are the subject of this appeal include a Rule 304(a) finding.

¶ 29 Although the July 8, 2013 order substantively resolved all the issues raised in Cindy's amended petition to enforce judgment, it did not include specific calculations for amounts owed for past college expenses and attorney fees. See *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 505 (2009) (finding that, despite inclusion of Rule 304(a) language, order determining that the plaintiff was entitled to attorney fees, but failing to set the amount of such fees, was not a final order). Without a set amount of attorney fees, the July 8, 2013 order did not ascertain and fix absolutely and finally the rights of the parties. *Big Sky Excavating*, 217 Ill. 2d at 232-33. Furthermore, the July 8, 2013 order did not include Rule 304(a) language. Therefore, the July 8, 2013 order was neither final nor appealable upon its entry. *In re Marriage of Teymour and Mostafa*, 2017 IL App (1st) 161091, ¶ 41. We find the July 8, 2013 order became final *and* appealable only after the circuit court entered its final order on June 29, 2017, which awarded a specific amount of attorney fees to Cindy.

¶ 30 Cindy also argues that George prematurely appealed the April 25, 2017 order because the circuit court did not enter a final order resolving and calculating her remaining attorney fees until June 29, 2017. However, Illinois Supreme Court Rule 303(a)(2) states that "[w]hen a timely

postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). In this case, immediately after the circuit court entered its April 25, 2017 order, Cindy filed a petition for contribution for attorney fees to recover fees incurred since December 2016. The April 25, 2017 order, which also did not include a Rule 304(a) finding, resolved any pending matters remaining from the July 8, 2013 order, including the calculation of attorney fees George owed Cindy through July 2013. The June 29, 2017 order resolved Cindy's fee petition filed on April 25, 2017, and no unresolved postdissolution petitions or motions remained. Under Rule 303(a)(2), we have jurisdiction to consider George's May 5, 2017 notice of appeal, which became effective on June 29, 2017. Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

¶ 31 That resolves the jurisdictional questions. But before we can consider the merits of this appeal, we must address the state of the record before us, which does not contain a bound and certified copy of the report of proceedings. The burden of providing a sufficient record on appeal rests with the appellant (here, George). *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 32 Illinois Supreme Court Rules 321 and 324 require an appellant to provide a complete record on appeal, including a bound and certified copy of the report of proceedings. See Ill. S. Ct. R. 321 (eff. Feb. 1, 1994); Ill. S. Ct. R. 324 (eff. Jan. 1, 2016). If a verbatim transcript is unavailable, the appellant may file an acceptable substitute, such as bystander's report or an

agreed statement of facts, as provided for in Illinois Supreme Court Rule 323. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 33 George challenges the July 8, 2013 and April 25, 2017 circuit court rulings requiring him to pay tuition and expenses for Brett's attendance at Greenbrier and Alldredge. George's claims on appeal all depend upon the evidence adduced during hearings on May 7, 8, and 20, 2013, for the order entered on July 8, 2013, and March 3, 2017 and April 12, 2017, for the order entered on April 25, 2017. We have no transcript that would allow us to determine the propriety of the court's findings. In the absence of such a record or an acceptable substitute, we must presume the circuit court acted in conformity with the law and with a sufficient factual basis for its findings. *Foutch*, 99 Ill. 2d at 391-92. Furthermore, any doubts arising from an incomplete record must be resolved against the appellant. *Id.*

¶ 34 In sum, without a complete record of the proceedings below, George's claims of error are merely speculative. Where, as here, the record is incomplete, we may not speculate as to what errors may have occurred below. *Id.*; see also *People v. Edwards*, 74 Ill. 2d 1, 7 (1978) (holding that a reviewing court may not "guess" at the harm to an appellant where a record is incomplete; rather, it must "refrain from supposition and decide accordingly"). Therefore, we affirm the judgments of the circuit court.

¶ 35 One issue remains that were are able to resolve without the aid of a transcript. George also argues he was entitled to an offset for the amount of legal fees Cindy allegedly owes him under the August 20, 2013 contingency fee agreement in the New Jersey case.

¶ 36 "Setoff most commonly appears as a counter-demand interposed by a defendant against a plaintiff in a lawsuit, arising out of a transaction extrinsic to plaintiff's cause of action." *Bank of Chicago-Garfield Ridge v. Park National Bank*, 237 Ill. App. 3d 1085, 1091 (1992). "Deriving

sanction under statute, and in certain circumstances, at equity setoff normally must be pleaded, except in certain limited circumstances." (Citations omitted.) *Id.* "There is no inherent right in equity to set off one demand against another; rather, equitable setoff was conceived as a limited remedy, and is available only where the debts are mutual, mature, and of such a certain and ascertainable character as to be capable of being applied in compensation of each other without the intervention of the court to estimate them." (Internal citation and quotation omitted.) *Id.*

¶ 37 In this case, on January 24, 2017, George pleaded a counterclaim to offset the alleged legal fees Cindy owes him. At that time, George's *pro se* "motion for emergency relief," alleging Cindy's breach of the contingency fee agreement in the New Jersey case, remained pending in the circuit court of DuPage County. *Summerfield v. Summerfield*, No. 2016L000424 (Cir. Ct. DuPage Co.). We may take notice of the DuPage County court clerk's on-line docket entry, which showed the case was transferred to a different venue and closed in June 2016. See *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, n. 4 (taking judicial notice of court clerk's on-line docket entries). According to the Cook County court clerk's on-line docket, George filed a breach of contract complaint against Cindy on June 29, 2016. *Summerfield v. Summerfield*, No. 2016-L-006428 (Cir. Ct. Cook Co.). The on-line docket shows George's breach of contract case against Cindy remains pending in the Law Division of the circuit court of Cook County under a different case number. *Summerfield v. Summerfield*, No. 2018-L-002443 (Cir. Ct. Cook Co.).

¶ 38 On October 23, 2017, Cynthia received a discharge from the bankruptcy court. Her bankruptcy case was closed three days later. George then began pursuing his claim for legal fees in the Law Division case again. Cynthia opposed these efforts, contending that the debt for any legal fees she owed George has been discharged in her bankruptcy. Cynthia reopened her

bankruptcy case and filed a motion to enforce the discharge injunction so as to halt George's collection efforts. After briefing, on April 6, 2018, the bankruptcy court issued a detailed order resolving Cynthia's motion. *In re Summerfield*, No. 17-B-21556 (Bankr. N.D. Ill. April 6, 2018). In short, the bankruptcy court stated that there was no need for it to enter a new order enjoining George because the discharge injunction already enjoined him from pursuing the Law Division case. Relying on authorities holding that under 553(a) of the Bankruptcy Code (11 U.S.C. §553(a) (2016)), some "mutual" debts which were incurred before a debtor's bankruptcy petition could survive discharge, the court held: "The discharge injunction bars George from pursuing the Law Division case or seeking to collect on that alleged debt from Cynthia in any manner other than defensively as a setoff to Cynthia's action against George in the Domestic Relations Division. The Domestic Relations court and any courts reviewing its decisions are free to determine whether George has any setoff rights against Cynthia." *Id.*, slip op. at 10. The court further stated that George could "attempt[ ] to assert setoff rights as an affirmative defense (or counterclaim) to Cynthia's prepetition claim against him in the Domestic Relations Division." *Id.*, slip op. at 6. George has filed a motion requesting leave to submit the bankruptcy court's order as supplemental authority, which we have granted by separate order.

¶ 39 We are thus called upon to determine "whether George has any setoff rights against Cynthia." The setoff George claims would be available only when the debt is of such a certain and ascertainable character as to be capable of being applied in compensation of each other without the intervention of the court to estimate them. *Bank of Chicago-Garfield Ridge*, 237 Ill. App. 3d at 1091. Here, George's claim for attorney fees is only that—a claim. Despite being raised in four separate settings (DuPage County, Law Division, Domestic Relations Division, and bankruptcy courts) the amount of attorney fees Cindy allegedly owes George has not been

set and determined in "such a certain and ascertainable character as to be capable of being applied" as an offset to George's family obligations. In other words, even assuming that George's attorney fee claim survived the bankruptcy discharge, no court has ever determined if it is a valid claim, nor reduced it to a monetary judgment. Therefore, George's claim for a setoff was premature and not ripe for consideration. We thus find the circuit court did not err when it denied George's request to consider the issue.

¶ 40 To guide the circuit court, which may be called upon to revisit the setoff issue, we note that "it is the parent's basic responsibility to provide for the support of his or her children," and "public policy dictates that amounts payable as child support take precedence over and are not subject to any personal obligation between the parents." *Schmitt v. Woods,* 73 Ill. App. 3d 498, 500 (1979) (exempting setoff resulting from a personal debt of one of the parties to protect the rights of children upon the divorce of their parents).

¶ 41 CONCLUSION

¶ 42 We affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.