2011 IL App (2d) 100947-U
No. 2-10-0947
Order filed October 3, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MORTEN FISKER PETERSEN, Petitioner-Appellant, and METTE FISKER PETERSEN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County. No. 07-D-1164 Honorable Veronica M. O'Malley, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

ORDER

Held: The trial court properly dismissed petitioner's petition for legal separation because section 402 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/402 (West 2006)) mandates that a spouse must physically live apart from another spouse as a prerequisite for bringing a petition for legal separation. However, the trial court abused its discretion in imposing sanctions on petitioner's counsel pursuant to Illinois Supreme Court Rule 137.

¶ 1 In June 2007, petitioner, Morten Fisker Petersen, filed a petition for legal separation against respondent, Mette Fisker Petersen. On July 16, 2010, petitioner filed an emergency verified petition

for temporary maintenance claiming that the parties were legally separated, and sought temporary maintenance and health insurance. After a hearing on the petition and other pending motions, the trial court, *sua sponte*, dismissed the matter, concluding the petition for legal separation was legally insufficient because petitioner and respondent were still living together. The trial court subsequently denied petitioner's motion to reconsider and further imposed Rule 137 sanctions (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) on petitioner's attorney for failing to bring the motion to reconsider in good faith. Petitioner now appeals, contending the trial court erred when it (1) dismissed his petition for legal separation pursuant to section 402 of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/402 (West 2006)) because petitioner was still living with respondent, and (2) sanctioned his attorney pursuant to Rule 137. For the reasons set forth below, we affirm the trial court's dismissal of petitioner's petition for legal separation because the parties were living together when the petition was brought, but vacate the trial court's imposition of Rule 137 sanctions against petitioner's counsel.

¶ 2 I. Background

¶ 3 The relevant facts for the purposes of this appeal are not in dispute. On June 11, 2007, petitioner filed a petition for legal separation. On July 16, 2010, petitioner filed a verified petition for temporary maintenance pursuant to sections 501, 504, 505, and 508 of the Marriage Act (750 ILCS 5/501, 504, 505, 508 (West 2006)), arguing that he was unemployable due to a disability and had been supported by respondent since August 1992. Petitioner further argued that respondent controlled the marital assets and was not providing him with sufficient funds to care for himself.

¶ 4 On July 16, 2010, after entertaining arguments on petitioner's motions to bar testimony pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002), his second verified emergency

petition for rule to show cause, his emergency motion to compel discovery, his emergency motion for Rule 137 sanctions, his verified petition for rule to show cause, and his petition for temporary maintenance, the trial court, *sua sponte*, dismissed the matter on the basis that the petition for legal separation was "insufficient in law in that the parties are cohabitating." The trial court further ordered that all orders were "held for naught," and it vacated a previously entered qualified domestic relations order.

¶ 5 On August 11, 2010, petitioner filed a motion to reconsider asking the trial court to vacate its July 16, 2010, order dismissing the cause of action and to schedule a hearing for the motions that he had pending when the matter was dismissed. The basis of petitioner's motion to reconsider was that the trial court erred in dismissing the case because, although the parties still lived together, they had been living separate and apart for the purposes of section 402 of the Marriage Act. According to petitioner, that section did not require that the parties live in separate abodes to be considered living "separate and apart" to bring a petition for legal separation.

¶ 6 On September 16, 2010, after entertaining oral arguments, the trial court denied petitioner's motion to reconsider. The trial court further sanctioned petitioner's counsel pursuant to Supreme Court Rule 137, stating:

> "[T]he court finds that pursuant to Supreme Court Rule 137, that [the motion to reconsider] was not brought in good faith, the fact that your motion was inflammatory, most of it was irrelevant to the issue as the [trial court] ruled upon, that it was not signed in good faith, it was not warranted by existing law.
>
> [Petitioner's attorney keeps] referring back to the statute in the past. [Petitioner's attorney] did not make a good-faith argument for the extension, modification or reversal of

> existing law, and the [trial court] does find that it was interposed for an improper purpose, to harass the other side; that it needlessly increased the cost of litigation and required the other side to have to answer all these irrelevant points about how the parties interacted, which may be true or not true. That was to be heard at trial.
>
> That might have been, or was relevant if you were seeking additional funds to support your client, but the issue here was the interpretation of whether you could sustain your cause of action for the legal separation based on the parties residing in the same household for the last three years.
>
> Given that, the [trial court] is going to sanction you, not your client, you are the attorney of record, to pay reasonable attorney fees of the other side. The [trial court] is doing that on its own motion for bringing this improper motion for reconsideration, and the motion is hereby denied."

Petitioner timely appealed the trial court's order denying his motion to reconsider and imposing sanctions on his attorney.

¶ 7 II. Discussion

¶ 8 Before turning to the merits, we note that respondent did not file an appellee's brief. Nonetheless, because the issues are sufficiently clear, we can decide those issues without the aid of an appellee's brief. See *First Capital Mortgage Corp. v. Talandis*, 63 Ill. 2d 128, 133 (1976).

¶ 9 A. Trial Court's *Sua Sponte* Dismissal

¶ 10 Petitioner's first contention on appeal is that the trial court erred by *sua sponte* dismissing his petition for legal separation. Petitioner argues that the trial court erred because section 402 of the Marriage Act does not require that spouses physically live separate and apart. Specifically,

petitioner maintains that, because section 401(a)(2) of the Marriage Act governing no-fault divorce has been interpreted to provide that spouses do not need to physically live separate and apart to obtain a no-fault divorce, spouses should not have to physically live apart to satisfy section 402 because both statutory provisions use the statutory phrase "separate and apart."

¶ 11 Our resolution of this issue depends on the construction of a statute and is therefore subject to *de novo* review. See *In re Marriage of Best*, 228 Ill. 2d 107, 116 (2008) (citing *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006)). The primary objective of statutory interpretation is to give effect to the intent of the legislature, and the most reliable indicator of such intent is the language of the statute given its plain, ordinary, and popularly understood meaning. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004). When determining the meaning of a statute, it " 'should be read as a whole with all relevant parts considered.' " *Gardner v. Mullins*, 234 Ill. 2d 503, 511 (2009) (quoting *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)). If the statutory language is clear, a reviewing court does not need to resort to extrinsic aids of construction, such as legislative history (*Northern Kane Educational Corp. v. Cambridge Lakes Education Ass'n*, 394 Ill. App. 3d 755, 758 (2009)), and in such situations, a court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions which are inconsistent with the express legislative intent. *Landheer v. Landheer*, 383 Ill. App. 3d 317, 321 (2008).

¶ 12 Section 402 of the Marriage Act provides:

> "Legal Separation: (a) Any person living separate and apart from his or her spouse without fault may have a remedy for reasonable support and maintenance while they so live apart." 750 ILCS 5/402(a) (West 2006).

The historical purpose of legal separation, also referred to as separate maintenance, was to enable married women living apart from their husband without fault to bring an action in equity asking the court for money so she could support herself, and this right was later extended to husbands. *In re Marriage of Eltrevoog*, 92 Ill. 2d 66, 69 (1982). Although our research did not reveal any case law interpreting the most recent version of section 402, our supreme court has interpreted previous versions of that section. In *Eltrevoog*, the supreme court addressed the constitutionality of a previous version of the legal separation statute, which provided that, for a party to be entitled to a legal separation, the petitioner must reside "in a separate abode from the respondent *** and such separation has been without the petitioner's fault." *Id.* at 68. The supreme court concluded that, because the statute required the parties to live in separate abodes, a spouse "must have been living *apart* from the other spouse" as a prerequisite for bringing such an action. (Emphasis added.) *Id.* at 69.

¶ 13 Although *Eltrevoog* addressed a previous version of section 402, its sound reasoning is persuasive to the current matter. The clear holding of *Eltrevoog* is that, because the legislature used the phrase "separate abode," it was necessary for the parties to live *apart* as a prerequisite to a petition for legal separation. See *id.* Therefore, our supreme court clearly interpreted the phrase "separate abode" to be synonymous with "apart." Because the current version of section 402 of the Marriage Act provides that a spouse living "separate and apart" from her or his spouse without fault is entitled to maintenance while the parties "so live apart," there is no reason to deviate from our supreme court's interpretation of the word "apart." We conclude, therefore, that a spouse must physically live apart from the other spouse as a prerequisite for bringing a petition for legal separation.

¶ 14 We further recognize that previous courts have interpreted the phrase "living separate and apart" with respect to section 401(a)(2) of the Marriage Act, which governs no-fault divorce. Section 401(a)(2) provides that a court shall enter a judgment of dissolution of marriage if "the spouses have lived separate and apart for a continuous period in excess of 2 years and irreconcilable differences have caused the irretrievable breakdown of the marriage and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not in the best interest of the family." 750 ILCS 5/401(a)(2) (West 2010). Section 401(a)(2) further provides that the two-year period may be waived if the parties have lived separate and apart for a continuous period of six months next preceding the judgment of dissolution upon written stipulation of both parties. *Id.*

¶ 15 In *In re Marriage of Kenik*, 181 Ill. App. 3d 266 (1989), the Appellate Court, First District, held that spouses did not need to physically live "separate and apart" to satisfy the requirements of section 401(a)(2). *Id.* at 274. Citing the legislative history of section 401(a)(2), the reviewing court in *Kenik* concluded that the provision was intended to have an expansive reading. *Id.* at 273. According to the court in *Kenik*, because a no-fault dissolution is predicated upon a finding of an irretrievable breakdown of a marriage resulting in "irreconcilable differences," the state of "living separate and apart" for the purposes of that provision could be realized without physical distance between the parties. *Id.* at 274. Subsequently, in *In re Marriage of Dowd*, 214 Ill. App. 3d 156 (1991), this court agreed with the holding in *Kenik* and held that spouses were not required to physical live separate and apart to satisfy section 401(a)(2), stating that, "[a]lthough no physical separation of two years had occurred prior to dissolution, the parties had been 'living separate and apart' for more than two years." *Id.* at 159.

¶ 16 On our review, the previous interpretations of the phrase "separate and apart" with respect to section 401(a)(2) of the Marriage Act are irrelevant to our interpretation of section 402 of the Marriage Act. To conclude that the statutory language "separate and apart" in section 402 should be construed in the same manner as section 401(a)(2) requires us to read that phrase in isolation while ignoring the historical context, the current context, and the different purposes of sections 401(a)(2) and 402 of the Marriage Act. As discussed above, the historical purpose of legal separation was to provide a spouse who was living apart from the other spouse the right to seek money to provide him or her a means to survive. See *Eltrevoog*, 92 Ill. 2d at 69. Thus, pursuant to that limited purpose discussed in *Eltrevoog*, our supreme court noted that requiring a spouse to physically live apart as a prerequisite to bringing a petition for legal separation was "a logical and sound one." *Id.* Conversely, section 401(a)(2) is predicated on the irretrievable breakdown of a marriage resulting from irreconcilable differences, and therefore, the legislature intended for that provision to have an "expansive reading." *Kenik*, 181 Ill. App. 3d at 273. Therefore, because section 401(a)(2) has an expansive reach, it is unnecessary for spouses to physically live "separate and apart" before reaching the state where the marriage is irretrievably broken. *Id.* at 274. This interpretation of section 401(a)(2) is reinforced by the plain language of section 401(a)(2), which provides that the parties can waive the two-year "separate and apart" requirement after six months and the written consent of the parties. See 750 ILCS 5/401(a)(2) (West 2006). Noticeably, no such waiver provision was provided in section 402 (see 750 ILCS 5/402 (West 2006)), which indicates that the phrase "separate and apart" was not intended to have the same expansive reach as section 401(a)(2). In short, given the distinct purposes of sections 401(a)(2) and section 402 of the Marriage Act, we are not compelled to give the same interpretation to the phrase "separate and apart" with

respect to each provision. See *Lewis v. Giordano's Enterprises*, Inc., 397 Ill. App. 3d 581, 585 (2009) (noting that a court should consider the reason for the law and the purpose it obtains, in addition to the language chosen by the legislature).

¶ 17 Accordingly, because the plain language of section 402 requires that a spouse physically lives apart as a prerequisite to bringing a petition for legal separation, we conclude that the trial court did not err when it dismissed *sua sponte* petitioner's petition for legal separation.

¶ 18 B. Rule 137 Sanctions

¶ 19 Petitioner's second contention is that the trial court erred when it sanctioned his attorney pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Petitioner argues that the trial court erred when it concluded that his motion to reconsider was not brought in good faith; the motion was inflammatory; irrelevant to the court's ruling dismissing his petition for legal separation; and not warranted by existing law.

¶ 20 Rule 137 provides in relevant part that every pleading and motion shall be signed by the attorney of record, which constitutes a certificate by the attorney that he or she has read the pleading or motion and that, to the best of his or her knowledge, the pleading or motion is grounded in fact and warranted by existing law or a good-faith argument for the extension of existing law. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). Rule 137 further provides that, if a pleading, motion, or other court paper is signed in violation of the rule, a court may impose sanctions on the person who signed it, including an order to pay the other party's attorney fees. *Id.* Rule 137 is aimed to prevent parties from abusing the judicial process by imposing sanctions on attorneys who file vexatious and harassing actions based on unsupported allegations in fact or law. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999). However, we strictly construe Rule 137 because it is punitive in nature.

Sadler v. Ceekmur, 354 Ill. App. 3d 1029, 1045 (2004). In reviewing the imposition of Rule 137 sanctions, reviewing courts should consider whether the trial court's ruling was an informed one, whether the trial court's ruling was based on valid reasons which fit the case, and whether the ruling followed logically from the stated reasons to the particular circumstances of the case. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The decision to impose Rule 137 sanctions lies with the sound discretion of the trial court, and we cannot disturb its decision unless it was an abuse of discretion. *Mina v. The Board of Education for Homewood-Flossmoor*, 348 Ill. App. 3d 264, 279 (2004). Accordingly, we will afford "considerable deference" to the trial court's decision. *Id.*

¶ 21 Based on our review of the record, the trial court abused its discretion in imposing sanctions against petitioner's counsel for failing to bring the motion to reconsider in good faith. See *Sadler*, 354 Ill. App. 3d at 1047-49 (reversing a trial court's decision to impose Rule 137 sanctions because, although the plaintiff's claims were inartfully pleaded and she was ultimately unsuccessful, the claims were not frivolous). Here, as our discussion in the previous section indicates, the issue of whether petitioner could bring a petition for legal separation pursuant to section 402 of the Marriage Act involved a question of unsettled law. Although we rejected petitioner's argument that the statutory phrase "separate and apart" in section 402 should be construed in the same manner as that phrase is construed in section 401(a)(2) of the Marriage Act, petitioner's motion to reconsider requesting the trial court to reconsider its prior holding was not frivolous. Nonetheless, we share the trial court's concern that petitioner's motion to reconsider contained unnecessary and inflammatory language that was irrelevant to the specific legal issue the trial court was asked to reconsider. Unfortunately, petitioner's brief before this court again contained unnecessary and

inflammatory language regarding respondent's treatment of him. For example, petitioner accused respondent of treating him in a "terroristic fashion." Such language serves no purpose in helping us determine the statutory construction of section 402. Accordingly, although we vacate the trial court's decision to impose Rule 137 sanctions because the motion to reconsider was not frivolous, we take this opportunity to remind petitioner's counsel to use caution in the future and to include only the facts relevant to the issue presented on review.

¶ 22 III. Conclusion

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County with respect to dismissing the petition for legal separation, but vacate the trial court's decision to impose Rule 137 sanctions.

¶ 24 Affirmed in part, vacated in part.