2013 IL App (2d) 120287-U
Nos. 2-12-0287 & 2-12-0331 cons.
Order filed August 21, 2013
Modified upon denial of rehearing October 8, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re the Marriage of:	)	Appeal from the Circuit Court
	)	of Kane County.
JOANNE TUMMINARO, f/k/a Joanne Warlick,	)	
	)	
Petitioner and Respondent,	)	
	)	
and	)	No. 01-D-253
	)	
DOUGLAS B. WARLICK,	)	
	)	
Respondent and Respondent-Appellant	)	
	)	Honorable
(Susan M. Lonergan, Guardian *ad litem*, Petitioner-Appellee).	)	Linda S. Abrahamson,
	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.
Justice Schostok also specially concurred upon denial of rehearing.

ORDER

¶ 1 *Held*: The trial court had the discretion to consider and allocate fees incurred by the guardian *ad litem* even where the guardian was not strictly compliant with section 506(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506(b) (West 2008)); further, the local circuit court rule governing the same subject matter did not impermissibly conflict with section 506(b). The trial court did not abuse its

discretion in allowing the amount of guardian *ad litem* fees and in allocating them among the parties.

¶ 2 Respondent, Douglas B. Warlick (husband or Warlick), appeals the judgments of the circuit court of Kane County determining the reasonableness and the allocation of the fees incurred by the guardian *ad litem* (GAL) and petitioner, Susan M. Lonergan (GAL or Lonergan), in carrying out her duties in the postdecree custody proceedings initiated by respondent. Warlick contends that the GAL's fee petitions were untimely causing the court to lose its jurisdiction to hear the fee petitions, that the local curcuit court rules conflict with the pertinent State statutes, that the fees awarded to the GAL were neither reasonable nor necessary, that the fees incurred by the GAL in defending her petition for fees were improperly awarded as additional GAL fees, and that the allocation of the fees between the husband and the wife, Joanne Tumminaro, f/k/a Joanne Warlick (wife or Joanne), was inequitable and constituted an abuse of discretion. We reject Warlick's contentions and affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 18, 2001, Joanne and Warlick were divorced. They entered into a joint parenting agreement incorporated into the judgment of dissolution of marriage. The parenting agreement provided that Joanne was the residential parent for the parties' child. On January 30, 2009, Warlick filed a petition to modify the judgment of dissolution of marriage seeking to change the residential custody for the parties' child. In March 2009, Lonergan was appointed the GAL and charged with investigating and protecting the best interests of the parties' child. Eventually, after a lengthy hearing (comprising a small number of witnesses), Warlick's petition to change custody was granted, and the child's residential custody was changed to Warlick.

¶ 5 On March 10, 2009, Lonergan was appointed to serve as GAL in this case, and she was discharged on March 25, 2010, when the trial court rendered its judgment. However, following the

completion of her testimony on January 6, 2010, either at her own request or the request of the parties, she was excused from any further court appearances. The GAL submitted several fee statements to the parties, and, in March 2010, she submitted a fee petition which was amended several times. Evidence showed that Warlick paid $12,000 in GAL fees during the term of her service. Ultimately, in the final amended petition, the GAL sought a total fee award of $20,405 and the trial court granted a total award of $20,305 (disallowing a total of $100). After lengthy proceedings, the GAL fees were allocated $2,500 to Joanne and $17,805 to Warlick on the basis of ability to pay. Additionally, the GAL fee award was made joint and several over Warlick's objection.

¶ 6 The trial court also allowed the GAL to petition to recover her attorney fees incurred in the lengthy hearings in which she was defending her fee petition against Warlick's objections. The trial court held that the fees incurred in defending the petition were additional guardian *ad litem* fees under section 506 and not attorney fees under section 508. 750 ILCS 5/506, 508 (West 2008). The fee-petition-defense fees were allowed as reasonable and necessary in the amount of $6,900 and allocated $900 to Joanne and $6,000 to Warlick. Warlick timely appeals. Any further facts necessary to the understanding of the issues under review will be included in the analysis of each of the issues.

¶ 7 II. ANALYSIS

¶ 8 On appeal, Warlick raises issues that question the general validity of the GAL's fees by questioning the underpinnings of the fee hearings themselves. Specifically, Warlick contends that the trial court lost its jurisdiction over the fee issue because the GAL neither filed fee petitions every 90 days as required by section 506(b) of the Illinois Marriage and Dissolution of Marriage Act (Act)

(750 ILCS 5/506(b) (West 2008)) nor tendered billing statements every 90 days as required by the local rules of the circuit court. Additionally, Warlick argues that the local rule of the circuit court requiring that a judgment for fees due to a guardian *ad litem* be joint and several impermissibly conflict with the Act, rendering the local rule invalid. Warlick also challenges the results and necessity of the fee hearings. Warlick contends that the GAL failed to establish that her fees were reasonable and necessary. Warlick also argues that, due to the inadequacies identified in the fee petition, the GAL was not entitled to recoup the fees incurred while defending her fee petition. Last, Warlick objects to the allocation of responsibility for the GAL fees between the parties, himself and Joanne. We consider each issue in turn.

¶ 9 A. Motion to Dismiss Appeal

¶ 10 Before addressing Warlick's arguments on appeal, we first turn to the GAL's motion to dismiss for lack of jurisdiction. The GAL argues that Warlick's notice of appeal was untimely. On September 19, 2011, the trial court entered judgment on the reasonableness and necessity of the GAL's fees, reserving the issue of allocation between Warlick and Joanne. On January 6, 2012, the trial court entered an order allocating the responsibility for the fees between the parties. On January 26, 2012, Warlick filed a motion for clarification of the January 6, 2012, order, questioning whether that order was final and appealable, but not requesting either a modification or reconsideration of the judgment. On February 14, 2012, the trial court ruled on the motion for clarification, holding that the order of January 6 was final and appealable. On March 9, 2012, Warlick filed his notice of appeal.

¶ 11 The GAL argues that the notice of appeal, filed on March 9, 2012, was not filed within 30 days of the order appealed, namely the January 6 order. The GAL further argues that the motion for

clarification did not toll the time for filing the notice of appeal, because it was not a proper posttrial motion directed at the judgment. If these were all the facts, we might agree with the GAL. Unfortunately for the GAL, she overlooks that, even after the January 6, 2012, order, matters pended between the parties, preventing the January 6, 2012, order from being final.

¶ 12 Specifically, the GAL petitioned for fees related to the defense of her petition for fees. In the January 6 order, the trial court deemed the fees sought pursuant to the defense of the fee petition to be additional GAL fees and an addendum to the original fee petition. Because the fees for the defense of the original fee petition remained outstanding, the January 6 order was not final and appealable, and we reverse that part of the February 14 order finding that it was.

¶ 13 Rather, the motion for clarification, under the circumstances of this case, was more in the nature of a motion for a Rule 304(a) finding. The February 14, 2012, order effectively granted the motion, but was of improper form, and therefore, of no effect.

¶ 14 The matter continued with the hearing on the fees incurred in defense of the original fee petition. On March 13, 2012, the trial court entered an order disposing of this issue. On March 23, 2012, Warlick filed a notice of appeal from the March 13 judgment, and appealing all the orders leading up to that judgment. We hold that this notice of appeal was timely and effective to challenge the trial court's orders on the reasonableness and necessity of the fees, the allocation of the fees, and the fees incurred in defending the original fee petition. Accordingly, we deny the GAL's motion to dismiss.

¶ 15 Simultaneously with the motion to dismiss, the GAL filed a motion seeking an extension to filing her response brief on appeal should the motion to dismiss be denied. The GAL filed her

response brief, no objections based on timeliness were filed by the other parties, and this court accepted the filing as proper. Accordingly, we deny as moot the GAL's motion for an extension.

¶ 16 B. Fee Petition Filing Requirement Effect on Jurisdiction

¶ 17 In his initial issue on appeal, Warlick contends that the GAL failed to follow the requirements of both section 506(b) (750 ILCS 5/506(b) (West 2008)) and local rule 15.20(h) (16th Judicial Cir. Ct. R. 15.20(h) (Oct. 13, 2010)) when she did not file a fee petition with the trial court within 90 days of her appointment as guardian *ad litem* and within every 90-day period thereafter. Section 506(b) provides that "[a]ny person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90-day thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party." 750 ILCS 5/506(b) (West 2008). Similarly, local rule 15.20(h) requires the guardian to submit statements to the parties for services rendered within 90 days of appointment and within every 90-day period thereafter. Warlick argues that the GAL did not fulfill the requirements of the Act or the Local Rule because she did not comply with the requirement to submit invoices or statements of fees every 90 days beginning with her appointment.

¶ 18 Warlick notes that, on March 10, 2009, the GAL was appointed. He reasons that billing statements were required under the Act and the local rules on June 8, 2009, September 6, 2009, December 6, 2009, and March 7, 2010. Warlick observes that the GAL tendered statements on May 23, 2009, September 29, 2009, and February 15, 2010. He further notes that the GAL tendered a fee petition, not every 90 days as he asserts the Act requires, but that her first fee petition was filed on March 31, 2010, over a year after her appointment. According to Warlick, the use of "shall" in section 506(b) is mandatory. Warlick reasons that, as a result of the GAL's failure to follow the

statutory (and local) requirements, the trial court is divested of jurisdiction and the GAL should not be allowed to collect fees for services rendered but not properly billed.

¶ 19 There is no question that the GAL was not strictly compliant with the terms of section 506(b) and the local rules regarding the filing of fee statements. Warlick asks what should happen when this occurs, and suggests, effectively, that the nuclear option must obtain: the GAL loses the right to be recompensed for services rendered because the trial court loses its jurisdiction over the fees. The GAL seeks to avoid her nuclear winter by arguing that Warlick forfeited the issue because he did not raise it below. A review of the record, however, refutes the GAL's forfeiture argument. Therefore, we are squarely faced with the question of whether, in order to recover fees, a guardian *ad litem* must strictly comply with the requirements set forth in section 506(b) of the Act.

¶ 20 The first problem with Warlick's argument is its invocation of loss of jurisdiction. In *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002), our supreme court held that a circuit court's jurisdiction is conferred, not by statute, but by the Illinois Constitution. While the legislature may create a new justiciable matter, unknown in the common law, by enacting legislation, the statutory prerequisites do not touch on jurisdiction such that the failure to comply with the statute will divest the circuit court of its jurisdiction. *Id.* at 334-35. Here, the Act may be a statutory creation, but the circuit court's jurisdiction over it (and postdissolution matters) is not dependent upon fulfilling the terms of the Act, but on the Illinois Constitution. This means that the trial court has jurisdiction over any matters for up to 30 days after a final order has been entered. The trial court may have incorrectly considered the GAL's fee petition because the GAL did not follow the requirements of the Act in filing statements every 90 days, but the GAL's failure to timely file statements did not divest the court of its jurisdiction. See, *e.g.*, *People v. Davis*,

156 Ill. 2d 149, 156 (1993) (jurisdiction, or the power to render a particular judgment, does not mean that the judgment rendered must be the judgment that should have been rendered because the power to decide encompasses the power to make the wrong, as well as the right, decision). Thus, even if the trial court's decision to consider all of the GAL's claimed fees, extending from her appointment to the completion of her duties, was incorrect, the trial court had the jurisdiction to undertake that decision.

¶ 21 More fundamentally, however, Warlick's argument, that the word "shall" in section 506(b) is mandatory, fails, and this dooms his first issue on appeal. The word, "shall," used in a statute generally suggests a mandatory requirement, but not always. *Schultz v. Performance Lighting, Inc.*, 2013 IL App (2d) 120405, ¶ 13. Where the "shall" provision is accompanied by a penalty or consequence for noncompliance, it will be deemed a mandatory provision; where there is no penalty or consequence, it will be deemed a directory provision. *Id.* at ¶ 14. Here, section 506(b) of the Act does not indicate that there is any penalty or consequence associated with a guardian's failure to comply with the 90-day filing requirement. Accordingly, we agree with the trial court and hold that the filing requirement is directory and not mandatory. Because there is no penalty associated with the noncompliance with section 506(b), the trial court was free to decide whether to consider the GAL's untimely submissions. See, *e.g.*, *Filliung v. Adams*, 387 Ill. App. 3d 40, 50 (2008) (trial court's disposition of attorney fee petitions is typically reviewed for an abuse of discretion, unless the fee petition was submitted pursuant to a motion for summary judgment, judgment on the pleadings, motion to dismiss, or other dispositive motion normally subject to *de novo* review). The issue of timeliness was raised by Warlick, and the trial court considered and rejected Warlick's arguments. We have carefully reviewed the record and we cannot say that the trial court's decision

to consider the GAL's fee petition despite the untimely filing of it and the underlying statements constituted an abuse of discretion.

¶ 22 We turn to Warlick's specific contentions in support of his position that the GAL should be barred from receiving her fees incurred in this matter because of her noncompliance with the Act. As a general matter, we find that, while Warlick's arguments are substantial, they nevertheless fail to persuade as we explain below.

¶ 23 Warlick initially argues that *Kaufman, Litwin & Feinstein v. Edgar*, 301 Ill. App. 3d 826 (1998), supports his position requiring strict compliance with section 506(b). *Kaufman*, however, considered the constitutionality of various provisions of section 508, and did not at all directly touch upon section 506(b). Warlick attempts to maneuver around this difficulty by noting that section 506(b) states that it is governed by the provisions of section 508, and particularly, section 508(f), in which the attorney is required to inform his or her client that he or she must provide at least quarterly statements of fees incurred. 750 ILCS 5/506(b), 508(f) (West 2008). He then notes that *Kaufman* stated that, "An attorney must follow the requirements of section 508(f) if he wishes to seek fees from his client in the dissolution case pursuant to section 508." *Kaufman*, 301 Ill. App. 3d at 835.

¶ 24 *Kaufman*, however, is distinguishable. Not the least because it was considering the issue of the constitutionality of section 508, and not whether section 508 contained mandatory provisions requiring strict compliance or only substantial compliance. We can effectively say the same thing about section 506(b): a guardian *ad litem* must follow its requirements in order to recover the fees he or she expended in conducting her duties. This statement, however, offers no insight into whether section 506(b)'s statement, that "[a]ny person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90-day thereafter during the course

of his or her representation, a detailed invoice for services rendered with a copy being sent to each party," (750 ILCS 5/506(b) (West 2008)), is mandatory or directory, or whether strict or substantial compliance with the statement is required. We therefore view the particular quote from *Kaufman* as a generic hortatory expression, not an interpretation of section 508 commanding strict compliance. Further, the passage quoted in *Kaufman* was exploring whether a practitioner was unconstitutionally limited to following section 508. The court concluded that a practitioner could still bring an independent law suit to collect his or her fees, so the legislature's requirements in section 508 did not conflict with the common law remedies still available. *Kaufman*, 301 Ill. App. 3d at 835. Thus, while *Kaufman* includes excellent hortatory language urging the practitioner to follow the provisions of the statute, it does not command the result Warlick seeks to reach.

¶ 25 Moreover, looking at section 508, we note that subsection (b) has been held to contain mandatory language. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 38. Section 508(b) provides that "[i]n 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." 750 ILCS 5/508(b) (West 2008). In this subsection, the legislature included a mandatory provision as evidenced by the fact that a penalty is specified for failure to comply with an order. *Putzler*, 2013 IL App (2d) 120551 at ¶ 38 (section 508(b) is mandatory); *Schultz*, 2013 IL App (2d) 120405 at ¶ 13. In section 508(f), by contrast, there is no penalty or consequence included in case of noncompliance with its terms. Thus, section 508 itself debunks Warlick's primary argument.

¶ 26 Warlick's next tack is to attack the trial court judgment as erroneously interpreting the Act. Warlick contends that the trial court's (and our) rationale, that, because section 506(b) does not contain any penalty or consequences for noncompliance, it is not a mandatory requirement, fails because section 508 is similarly without a penalty or consequence, yet "it is clear that when attorneys do not comply with [s]ection 508, they lose the right to seek fees under [s]ection 508." In support of this point, Warlick actually provides no citation. We assume that Warlick means to rely on *Kaufman*, as he has already characterized that case as holding that strict compliance with section 508 is mandatory. However, we have already distinguished *Kaufman*, noting that the language to which Warlick particularly points is only hortatory, and cannot fairly be characterized as mandatory and requiring strict compliance. Moreover, the language to which Warlick points in *Kaufman* refers to section 508(f). As we have seen, section 508(f) simply does not contain a penalty provision, which is in contrast to section 508(b), which does, and which has been held to be a mandatory provision. In broad outline, then, Warlick's statutory interpretation argument also founders.

¶ 27 In support of the statutory-interpretation argument, Warlick cites to *In re Estate of Stoica*, 203 Ill. App. 3d 225, 229 (1990), and *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 343 (1999), both for their discussions regarding statutory interpretation and, particularly, both for the proposition that, where the statutory language is clear and unambiguous, the court cannot change or add to the intent expressed by the clear and unambiguous language. In particular, Warlick cites to *Stoica*, 203 Ill. App. 3d at 229, to support his contention that, when an attorney does not comply with the requirements of section 508, he or she loses the right to seek fees under section 508. A close reading of *Stoica*, both the entire case and the language quoted in support of the contention, reveals that it does not actually support the claim.

¶ 28 Warlick is arguing that the language in section 506(b) is mandatory. *Stoica* discusses statutory interpretation in light of the question of who should pay the guardian *ad litem*'s attorney fees, the State or the county. *Id.* at 228. Warlick quotes *Stoica*:

> "where the language of an act is obvious and unambiguous, the only legitimate function of the court is to enforce the law as enacted by the legislature. Such function does not include supplying omissions or remedying defects in the statute or adding to a statute conditions which depart from its plain meaning, or otherwise change the law under the guise of construction." *Id.* at 229.

The quoted language deals solely with the tenets of statutory construction and does not address the mandatory/directory issue that is the heart of Warlick's argument. Warlick is, in fact, arguing something of a tautology. His actual argument is concerned with requiring the trial court to read the statute as written, and he supports this argument with reference to the portion of *Stoica* which holds that a court must read clear and unambiguous statutory language just as the legislature wrote it. Further, Warlick makes use of this actual argument to bolster the argument he is attempting to raise. Warlick is trying to show that noncompliance with the provisions of section 506(b) results in the guardian's loss of the opportunity to collect fees pursuant to section 506(b). Warlick's interpretation argument, because it is correct, is hoped to inferentially bolster the main argument, sort of a guilt (or in this case, strength) by association. While we cannot gainsay the rectitude of Warlick's actual argument on its actual terms, it is nevertheless unrelated to the point he hopes to make, namely, that section 506(b) is mandatory.

¶ 29 This flaw in reasoning persists in Warlick's citation to *Brackett*. Warlick cited *Brackett* for the tenet of statutory interpretation that states that where the statutory language is clear and

unambiguous, there is no need to use the tools of statutory interpretation to divine the legislative intent. *Brackett*, 309 Ill. App. 3d at 343. The issue in *Brackett* was whether the trial court gave a fee petition the hearing required under the section 503(j) (750 ILCS 5/503(j) (West 2008)). *Id.* at 345-46. This topic is far afield from the issue addressed in this argument on appeal. Again, while we cannot gainsay the actual argument made about statutory interpretation, the argument still fails to engage with Warlick's primary argument regarding the mandatory nature of the provisions of section 506(b). Moreover, both *Stoica* and *Brackett* stand for the proposition that an unabmiguous statute must be interpreted as it reads. Warlick's argument here is actually asking us to read into section 506(b) a provision to make it "jurisdictional," and this actually violates the purposes for which Warlick cited *Stoica* and *Brackett*. Accordingly, while *Stoica* and *Brackett* are properly cited for the propositions actually stated in Warlick's argument, the cases, both the issues involved and the rationales of their decisions, are inapposite to the issue at hand in this case. We find little, if any, guidance from *Stoica* or *Brackett*.

¶ 30 Next, Warlick cites to *Cooney v. Bischoff*, 386 Ill. App. 3d 348, 351 (2008), ostensibly to support the proposition that this court has previously found section 506(b) to be mandatory. Specifically, Warlick quotes *Cooney*:

> "Second, because the child representative may obtain his or her fees only after 'fil[ing] with the court within 90 days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice' for the claimed fees [citation], we can infer that a trial court may award fees only for work done 'during the course of * * * representation' [citation]." *Id.* at 351.

Warlick's assertion that *Cooney* makes section 506(b) mandatory is not borne out by a reading of the portion of the case quoted by Warlick or, indeed, by a reading of the entire case. *Cooney* interpreted the phrase, "during the course of * * * representation" (750 ILCS 5/506(b) (West 2008)), and did not interpret whether "shall" in section 506(b) was mandatory or directory. Likewise, the passage quoted is directed at the propriety of the guardian collecting fees "during the course of * * * representation," even though the trial court had entered an order terminating the guardian's services. *Id.* at 351-52. This court held that it was within the trial court's discretion to decide whether services performed after termination were nevertheless within the course of representation. *Id.* This court made no comment regarding whether filing statements every 90 days was required for the guardian to recover fees and costs expended during the course of representation. Accordingly, we reject Warlick's argument on this point.

¶ 31 Warlick's remaining contentions on this point deal with errors in billing made by the GAL and what the GAL should have been doing, according to the statute (and local rule), rather than questioning whether the trial court's discretion to allow the GAL to recover all the fees petitioned for in spite of her noncompliance with the statement- or petition-filing requirements of section 506(b) (and the local rule) had been abused. In other words, while Warlick is making strong but irrelevant arguments that the GAL did not strictly comply with the statutory language, he misses the relevant argument directed at why this should have inhibited the trial court's discretion to allow the statements and fee petition to stand despite the GAL's lack of strict compliance. As the remaining contentions on this point are not relevant to the issue we have identified and analyzed, we will consider them no further.

¶ 32 Relatedly, Warlick raises a policy argument in support of why section 506(b) presents a 90-day fee-petition filing requirement, namely, to promptly resolve the parties' disputes about the reasonable and necessary fees being requested by the guardian. While Warlick's contention as to the statutory intent is reasonable and seems to suggest a factor for the court to use in exercising its discretion, Warlick does not turn his argument to the actual exercise of the court's discretion in this case in deciding to allow the GAL to stand on her late filings. The contention is, therefore, misplaced.

¶ 33 Further, the argument is couched in terms of what the GAL ought to have done to maximize efficiency as well as equitability. Warlick complains that the tardy statements and especially fee petition resulted in voluminous litigation at the end of the proceedings instead of (perhaps) prompt and minor hearings to resolve any issues with the fees the GAL was requesting during the course of her representation. This argument, while not without force, is also misplaced. Warlick does not relate it to the trial court's discretion in deciding to review the GAL's untimely fee petition. On the other hand, Warlick makes the not-unpersuasive claim that the fees incurred in litigating the GAL's fee petition resulted from the GAL's failure to abide by the terms of section 506(b) and the local rules. Warlick contends that it is inequitable that he must bear the burden arising from the GAL's dilatory actions in seeking to recoup her fees incurred during the course of the representation. Again, this contention, while not without force, is misplaced in the context of the issue under examination. Whether the GAL was dilatory sheds no light upon the issue whether section 506(b) and the local rules are mandatory or directory, as well as on the issue of the trial court's exercise of discretion in allowing the GAL's untimely fee petition to go forward without limitation. Conceivably, this could be a factor for the court to evaluate in determining whether it will allow and to what extent it will

allow an untimely filed fee petition or statement to be considered. Warlick, however, does not relate his contention to this point, and so we conclude that it is misplaced. Accordingly, we resolve the first issue against Warlick and conclude that section 506(b) is not mandatory and the trial court did not abuse its discretion in determining to allow the GAL's untimely fee petition to be considered in full.

¶ 34 C. Validity of the Local Rule

¶ 35 In his next argument on appeal, Warlick argues that the local rule conflicts with section 506(b). Local rule 15.20(h) provides, pertinently: "Unless otherwise determined by the Court upon good cause shown, both parties shall be jointly and severally liable for the fees and costs of the * * * Guardian *ad Litem* * * *." 16th Judicial Cir. Ct. R. 15.20(h) (Oct. 13, 2010). Section 506(b) provides, pertinently: "Any order approving the [guardian *ad litem*'s] fees shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate." 750 ILCS 5/506(b). According to Warlick, these two provisions conflict because section 506(b) permits but does not obligate a joint and several award, while the local rule requires a joint and several award and further shifts the burden from the guardian to request a joint and several award under section 506(b) to the parties to demonstrate good cause to avoid a joint and several award under the local rule. Warlick further contends that the local rule, "in practice, nullifies the allocation of a guardian's fee award [under section 506(b)] by making it joint and several." We disagree.

¶ 36 To resolve a claimed conflict between a statutory provision and a local rule we turn to statutory interpretation. *People v. Atou*, 372 Ill. App. 3d 78, 82 (2007). The creation of a local circuit court rule is allowed by statute and by rule. 735 ILCS 5/1-104(b) (West 2010); Ill. S. Ct. R. 21(a) (eff. Dec. 1, 2008). The local rule must be consistent with the statute and supreme court rules

and maintain, as far as practicable, uniformity throughout the state. *Phalen v. Groeteke*, 293 Ill. App. 3d 469, 470 (1997). In addition, the local rule must not place additional burdens on the litigants, compared with the requirements of the statute or supreme court rules. *Id.* at 471. The point of statutory interpretation is to ascertain the intent of the legislature or author of the rule. *Schultz*, 2013 IL App (2d) 120405, ¶ 9. The best indication of intent is the language used in the provision, given its plain and ordinary meaning. *Id.* Where the language is clear and unambiguous, we apply it as written without reading into it any exceptions, limitations, or conditions that are not actually included in the language itself. *Id.*

¶ 37 In order for Warlick's argument to succeed, then, the portion of section 506(b) and the portion of the local rule must deal with the same thing, and they must actually conflict. Section 506(b) commands the trial court to identify the source who will pay the fees. In other words, it provides for the trial court to make sure that the guardian will be paid. It does not specify that the fees be allocated between the parties or how any potential allocation may be divided. In contrast, Local Rule 15.20(h) specifies that the parties shall be jointly and severally liable for any fees awarded. This provision does not go to the source of the payment, but if the parents of the child are the source, then the provision ensures that the guardian will be paid the entirety of the fees by whichever parent has the ability to pay, leaving that parent to collect from the other parent any of the allocation he or she was unable to pay. We do not believe that the two provision concern precisely the same subject, therefore, they cannot conflict. Accordingly, we reject Warlick's argument.

¶ 38 Warlick argues that the local rule additionally burdens the parents by shifting the burden from the guardian to request an award against both parents to the parents to show why the fee award should not be joint and several. This view might work if both provisions dealt with the allocation

between the parents. However, section 506(b) is concerned with specifying a source for the payment; the local rule is concerned with the allocation between the parties. Because section 506(b) is not concerned with allocation, the fact that the local rule is does not mean that the local rule has added an impermissible burden due to the difference in the topics of each of the provisions. As a result, we reject Warlick's arguments on this point.

¶ 39 D. Reasonableness and Necessity of the GAL's Fees

¶ 40 Next, Warlick argues that the trial court erred in awarding substantially all of the fees requested by the GAL because the evidence presented was insufficient to support and establish that the claimed fees were reasonable and necessary. Whether to allow fees requested by a guardian *ad litem* and in what amount are matters within the discretion of the trial court. *In re Marriage of Soraparu*, 147 Ill. App. 3d 857, 864 (1986). The trial court's judgment regarding the guardian's fee issue will not be disturbed absent an abuse of discretion. *Id.*

¶ 41 Warlick acknowledges that the appropriate standard of review to apply to the award and allocation of attorney fees generally is abuse of discretion, citing *McClelland v. McClelland*, 231 Ill. App. 3d 214, 228 (1992). Warlick argues, however, that this case should be viewed under a manifest-weight-of-the-evidence standard because the award and allocation of attorney fees involve questions of fact. In support, Warlick cites *U.S. Steel Corp. v. Illinois Pollution Control Board*, 384 Ill. App. 3d 457, 461 (2008) (defining the manifest-weight-of-the-evidence standard), and *Cooney*, 386 Ill. App. 3d at 351 n.1 (2008) (explaining that the manifest-weight-of-the-evidence standard is applied to factual issues; issue decided in *Cooney* was legal issue reviewed *de novo* of whether a guardian *ad litem* could recover fees incurred after the termination of the representation). Neither *U.S. Steel* nor *Cooney* involved the issue of the reasonableness and necessity of attorney fees. By

contrast, *McClelland*, pertinently, squarely involved an issue regarding attorney fees, and it was decided under the abuse-of-discretion standard. *McClelland*, 231 Ill. App. 3d at 228. Warlick's suggestion that the attorney-fee award and allocation issue should be considered under the manifest weight of the evidence standard of review is contrary to well settled authority, and, perhaps, more problematic, no argument to change the standard of review is seriously advanced. We hold that the the standard of review to apply to the issue of the propriety of the award and allocation of the GAL's fees in this case is abuse of discretion. *Soraparu*, 147 Ill. App. 3d at 864. Warlick's un-argued and misplaced suggestion that the manifest-weight standard applies is rejected, and Warlick must abide by the consequences of his misidentification of the applicable law.

¶ 42 The standards considered by the trial court for the fee award to a guardian *ad litem* follow the standards of all fee awards. The fees must be reasonable and necessary. 750 ILCS 5/506(b) (West 2008); *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 983 (1987). The party seeking fees bears the burden of demonstrating their reasonableness, and the fee petition must have some amount of detail giving the court sufficient information to judge the reasonableness, minimally providing the type of service, who performed the service, the hourly rate, and the time expended on the service. *Id.* at 984. After the trial court has received these facts, it must consider additional factors in determining the award, such as the skill and standing of the attorneys, the nature of the case, the novelty or difficulty of the issues and work involved, the importance of the matter, the responsibility required, the benefit to the client, the usual and customary charges for comparable services, and the reasonableness of the connection between the fees and the amount involved in the litigation. *Id.* With these factors in mind, we turn to Warlick's specific arguments.

¶ 43 In attacking the sufficiency of the evidence supporting the GAL's claimed fees and the trial court's award, Warlick makes three broad claims. First, he contends that the billing records underpinning the fee petition were inadequate and unreliable. Second, he contends that the fees sought were excessive. And third, he contends that, overall, the GAL's overall billing was not fair and just. We consider each aspect of Warlick's claim in turn.

¶ 44 Preliminarily, we note that, as a consequence of Warlick's misidentification of the proper standard of review, his appellate argument focuses solely on his contentions regarding the GAL's billing statements and fee petitions. In other words, in his argument on appeal, Warlick focuses not on the trial court's judgment, which, properly argued, entailed an abuse of discretion, but on the purported factual determinations the trial court made in reaching its judgment. We, of course, agree that a trial court's factual determinations are reviewed under the manifest-weight-of-the-evidence standard. See, *e.g.*, *Cooney*, 386 Ill. App. 3d at 351 n.1 (explaining manifest-weight and abuse-of-discretion standards of review). What is overlooked, however, is that fee awards and allocations are within the trial court's discretion and must be reviewed for an abuse of that discretion (*Soraparu*, 147 Ill. App. 3d at 864), notwithstanding that any necessary precedent factual determinations may be reviewed under the manifest-weight standard.

¶ 45 Why do we harp on the standard of review as it relates to Warlick's appellate argument? Unfortunately, as a result of the mistaken standard of review, Warlick has entirely omitted the trial court's judgment from his discussion of the claimed errors. Even if we were to categorically agree with Warlick that every error he identified were true, he fails to take the final necessary step: explaining how the factual errors combined to cause the trial court to abuse its discretion regarding the allowance and allocation of the GAL's fee award. Warlick omits entirely from his argument any

and all discussion of the trial court's judgment. Yet, under an abuse-of-discretion standard, the trial court's exercise of discretion culminating in its judgment is precisely what we are considering. This situation is roughly analogous to that in *Mo v. Hergan*, 2012 IL App (1st) 113179, ¶ 42, in which that court held, "[w]ith no real record of the events that led to sanctions against the plaintiff, we have no meaningful way to evaluate whether the circuit court's imposition of sanctions constituted an abuse of discretion." Here, while the record is complete, the argument is wanting, and we cannot supply the missing argument for Warlick. *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 (the appellate court is not a repository in which to foist the burden of research and argument). Further, under Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), an appellant is required to sufficiently present his or her argument under pain of forfeiture if the argument is not sufficiently made. Here, Warlick has not completed his argument because he has omitted all mention of the trial court's judgment, the necessary object of his argument that the trial court abused its discretion in awarding fees to the GAL. See *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (the defendant forfeited his contention about plain error where his argument was concerned only with establishing the existence of error). Accordingly, we determine that Warlick has forfeited his contentions about the improprieties in the award of the GAL's fees.

¶ 46 Even had Warlick not forfeited this issue on appeal by failing to make the relevant argument, the arguments he made are not persuasive. We briefly review Warlick's actual arguments.

¶ 47 Turning first to the billing-records issue, Warlick argues that the billing statements submitted to the parties and the four versions of the GAL's fee petition submitted to the court were so fraught with inconsistency and were otherwise inadequate, that they cannot be trusted. Warlick points specifically to inconsistencies identified between the March 24, 2009, and May 23, 2009, billing

statements. He also contends that the underlying time sheets were not created and maintained to support the fee petitions, which should result in the denial of the fee petition.

¶ 48 During the hearing, Warlick engaged in nearly a line-by-line examination the fee petition, pointing out to the trial court the same issues he raises before us. However, here, as noted above, Warlick does not discuss the trial court's judgment. This is problematic to Warlick's contentions because he is ostensibly arguing that the trial court's factual determinations were against the manifest weight of the evidence. However, by not identifying any particular factual conclusion, we have nothing against which to measure the evidence in the record by the standard of review. Effectively, then, Warlick is implicitly forcing us to perform a *de novo* review. Warlick's argument is, effectively, this is wrong, this is wrong, and this is wrong. In order to agree with Warlick, we are required to consider each item and come to a decision based on our review of the record. In other words, we must perform *de novo* review, because we are not assessing the claimed error against any factual determination made by the trial court or against the trial court's exercise of its discretion. Once again, the misidentification of the standard of review and the holes and inadequacies of Warlick's argument prevent any proper and meaningful review of his contentions.

¶ 49 Regarding the issue of the inconsistency between the March 2009 and May 2009 billing statements, Warlick apparently suggests that only the entries that are identical between the two statements should be allowed. (We are forced to say "apparently" because Warlick does not make a recommendation as to the relief that should be granted regarding the two statements other than to disallow all of the GAL's fees.) The trial court was aware of the discrepancy, but errors in billing statements go to the weight accorded by the trial court, not to the admissibility of the statements. *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 115 (2000). Further, the GAL explained that some

of the non-identical charges between the two statements resulted because she was adding services that she performed that had not been captured in the initial statement. Given the extensive evidence presented at the hearing and the trial court's assessment of the witnesses as evidenced by its written order, we cannot conclude that it abused its discretion regarding the two billing statements at issue.

¶ 50 Next, Warlick challenges the fee petitions because they represent summaries of the time slip information used to generate the billing statements, but the individual time slips were not preserved and turned over to him during discovery. Warlick argues that the trial court erroneously accepted the fee petition summaries because there was not sufficient foundational evidence to demonstrate the accuracy of the information. Regarding the claim of inaccuracy, Warlick points to the March and May 2009 billing statements, as well as the changes from the initial fee petition through the interim amendments to the final amended fee petition upon which the trial court passed its judgment. He contends that the differences between the fee petitions underscores his claim of inaccuracy and, because the underlying billing information was not preserved, contends that the trial court erred in accepting the fees claimed by the GAL. We disagree.

¶ 51 Regarding the issues of accuracy and underlying time slips, we note particularly at least two instances in which Warlick vastly overstates his contention. First, Warlick argues that the information cannot be trusted because the GAL's "billing statements and fee petitions *all* indicate that she was in court and appointed on March 11, 2009." (Emphasis added.) In fact, the GAL's fee petitions all indicate , correctly, that, on March 10, 2009, she was appointed guardian *ad litem* in this case. Some of the billing statements do show the March 11, 2009, date for her appointment, but the trial court could reasonably conclude that this represented a scrivener's error. Significantly, Warlick does not identify any inconsistencies between the billing for the appointment as guardian on any of

the statements that show the erroneous March 11, 2009, date, meaning that the scrivener's error that was perpetuated probably showed the accurate time for the services provided upon the date of the appointment.

¶ 52 Warlick also argues that the GAL turned over no records whatsoever in response to his discovery request that all time records be produced. Again, this is an overstatement of the evidence. The GAL testified she did in fact, and Warlick appeared to acknowledge this during examination, produce all of the actual notes that still existed documenting how she recorded her time expended on service in this case. We note that the GAL testified that she would handwrite notes, text, email a note from her phone, or leave a voice mail to her staff containing the information about the time she expended on various services on the case contemporaneously with her activities. She testified that notes and emails were produced, but acknowledged that she did not preserve every such communication and that every minute billed could not be tied back to a communication to her staff. Thus, while not all the underlying time records were produced, some (controverting Warlick's categorical assertion) were produced, and the trial court was well aware of this fact. Ignoring Warlick's hyperbole, we conclude that this case presents a case similar to that in *DeLarco*. There, time slips were contemporaneously made, but the actual slips had been boxed and placed into long-term storage. The attorney was not able to provide all of the slips, but produced some of the time slips and explained his billing practices. This was held to be enough to satisfy the foundational requirements, and the court further held that any errors that were identified went to the weight and not the admissibility of the billing statements summaries. *Id.* at 115-16. Similarly here. The GAL produced some of the underlying time records and she explained how she recorded her time and prepared her bills. The court accepted the foundation. We have examined the record and conclude

that, insofar as this was a factual determination, it is not against the manifest weight of the evidence. Likewise, insofar as the record supports the factual basis underpinning the trial court's determination, we cannot conclude that the trial court abused its discretion in accepting the billing statements and fee petitions. The court was fully apprised of any insufficiencies, errors, and inadequacies that may have been present, observed the witnesses and assessed their credibility, and it rendered a thoughtful and thorough judgment. Accordingly, we reject Warlick's argument on this issue.

¶ 53 Next, Warlick argues that the GAL's fees were excessive. In support of this contention, Warlick challenges individual line-items of the fee petition. For example, Warlick attributes overbilling to the GAL's fee petition because she testified that it took her an hour to review pleadings even though Warlick believed it to be brief enough to warrant the expenditure of less time. Warlick gins up outrage over the GAL's apparent ploddingly thorough review of documents she received, often comparing them to earlier versions, reviewing statutory sections implicated in the pleading, and otherwise carefully considering the impact of the newly received material on the overal picture of the case. In pointing to the GAL's practices, Warlick is, impliedly, inviting us to substitute our judgment for that of the trial court. It is again notable that Warlick neither analyzes nor comments upon the trial court's written order and once again fails to point to any specific factual determinations that his highlighted line-items do not support. We emphasize that the trial court heard the evidence, including the evidence concerning the highlighted line-items, and generally commented that it was not concerned that the GAL did not perform her task in exactly the same manner that Warlick himself would have had he been the guardian *ad litem* for this case. In the end, Warlick's protestations, especially in the hearing below, amounted to the assertion that it would not

have taken him so long to review a pleading. While perhaps true, it does not particularly shed any light on whether it was reasonable or necessary for the actual guardian *ad litem* in this case to have performed the actions identified. The court concluded it was reasonable and necessary, and this conclusion is supported by the GAL's testimony and other evidence in the record, so we cannot conclude that it was against the manifest weight of the evidence. Similarly, considering the record, we cannot say that the trial court abused its discretion in allowing the fees associated with the challenged line items. We do not accept Warlick's contention on this point.

¶ 54 Next, Warlick challenges certain line-items as being padded because of the GAL's custom of billing for travel time. Warlick's argument is effectively that the GAL should not be recompensed for traveling, but he places it in the guise of a complaint that the GAL's travel policy was unstated, leading to too much time being taken with the particular items he identifies as a problem. This argument fares little better than his overbilling argument, especially because there is evidence showing that Warlick himself demanded that the GAL perform a home and school visit, both of which he challenges on appeal. Warlick ignores this contrary evidence in his argument and, as usual, also ignores the trial court's analysis in its written order. Once again, we cannot find that the trial court's allowance of these particular fees was against the manifest weight of the evidence; likewise, we cannot conclude that the trial court abused its discretion, especially since much of the fees objected to in this sub-argument were incurred at Warlick's specific behest.

¶ 55 Finally, Warlick identifies "unnecessary and unsubstantiated charges" contributing to the purported overbilling problem. According to Warlick, these charges were incurred after the termination of the GAL's services, or else are not sufficiently explained. However, Warlick acknowledges that the purported charges occurring after termination cannot really be characterized

as such, because the GAL in this case was not terminated until the trial court entered its final order. Warlick attempts to retrench from this concession, claiming that, because she testified, her services were effectively complete. As regards this sub-issue, the trial court was fully aware of the circumstances and evidence; it considered and rejected Warlick's claim, allowing the 0.7 hours billed after the GAL's testimony as reasonable and necessary. Our review of the record shows that this determination was neither against the manifest weight of the evidence nor an abuse of discretion.

¶ 56 Secondarily, Warlick complains that the entries were insufficiently detailed to allow the court to perform meaningful review. We reject this notion out of hand. The record clearly shows, and Warlick does not gainsay this point, that he specifically requested that the GAL's timesheet explanations provide limited detail so that Joanne would not be able to figure out the GAL's investigative strategy. In other words, Warlick invited the error of which he now complains. We cannot countenance such an assignment of error, where the party induced the action of which he now complains. *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 29.

¶ 57 Warlick made each of the specific points concerning the purportedly erroneous billing line-items to the trial court that he now raises before us on appeal. Again, he does not point to any factual findings or the trial court's analysis. While we have not exhaustively reported each line-item that Warlick challenges, we have carefully reviewed the record and cannot say that either that the allowance of the associated fees was against the manifest weight of the evidence or that the trial court abused its discretion in allowing the fees. Accordingly, we reject Warlick's contention on this point.

¶ 58 Warlick's final point regarding the challenged billing statements and fee petitions is that the trial court has an "obligation to the litigants to ensure that the overall billing is fundamentally fair

and just to the parties." Although Warlick indulges in three pages of supporting argument, this contention may be fairly summed up as the trial court has an obligation to determine that the fees awarded were reasonable and necessary. In fact, the trial court made this precise finding that the fees awarded were reasonable and necessary. Further, in light of our foregoing discussions on the other points raised, we cannot find that the trial court's findings of reasonableness and necessity were either against the manifest weight of the evidence (insofar as this involved factual findings) or an abuse of discretion (relative to the determination of the amount of the award).

¶ 59 In making his particular arguments under the "fundamentally fair" issue, Warlick specifically argues that the the GAL's rate was unreasonably high because she reads slower than normal and drives slower than normal. These issues were placed before the trial court, as well as the rates charged by the GAL for cases in which she is appointed as a guardian *ad litem* and cases in which her representation has been procured by a private party. The trial court analyzed the appropriate factors and concluded that the GAL's billing rates were reasonable, and we discern no abuse of discretion in that determination.

¶ 60 Warlick also challenges the tardy disclosure of fees based on fairness. Specifically, Warlick contends that the tardy filing of the fee petitions (and attached billing statements) precluded the timely challenge to the errors included on each petition and billing statement. Warlick further contends that the fee petition and billing statements should be subjected to a line-by-line analysis, pursuant to the requirements of the Act. While Warlick now contends that he was unable to timely challenge the purported errors appearing on the billing statements and fee petitions, we note that he testified that, in fact, he did communicate, either directly or through his attorney, his disagreement with certain entries on the billing statements as he received them. Further, Warlick was given full

opportunity to challenge any and all aspects of the fee petition during the hearing on the GAL's fee petition. Thus, he has not and cannot identify any prejudice arising from the procedure actually employed by the trial court here as he was allowed to do in the trial court all that which he claims he should have been allowed to do. Moreover, while it may well be more efficient to adjudicate fee petitions every three months, our consideration of the record reveals that Warlick was fully allowed to challenge what he wanted regarding the billing statements, fee petitions, and line-items in each, and he was allowed to choose the manner in which he approached his contentions below. We also note that Warlick does not point to any prejudice arising out of the procedure employed below, beyond his claim that certain fees were improperly awarded. Accordingly, we reject Warlick's final contention on the issue of the fee petitions and billing statements.

¶ 61 E. Propriety of Award of Attorney Fees Incurred Defending the Fee Petition

¶ 62 Next, Warlick challenges the trial court's decision to allow the GAL to recover the attorney fees she incurred defending her fee petition as additional fees attributable to her representation as guardian *ad litem*. Warlick argues that the trial court's decision to allow the GAL to recover her attorney fees incurred in defending her fee petition improperly shifted the burden from the professional to justify her fees as reasonable and necessary to the party to challenge the presumption that the fees are reasonable and necessary. Warlick argues that, "[p]ursuant to section 508 of the [Act], attorneys are not entitled to recover attorney's fees for collecting their attorney's fees because they are not deemed to be reasonable and necessary services for the client." However, neither in the statute itself, nor in any case interpreting the statute has such a proposition been expressed. Rather, the idea of benefit and service to the client is a component of the constellation of factors a court is to consider when considering an award of attorney fees. See *In re Marriage of Wardell*, 149 Ill. App.

3d 537, 542 (1986) (for a fee award, the trial court considers, among other things, "the importance, novelty and difficulty of the questions raised, the degree of responsibility of the attorney, the time and labor required, the benefits resulting to the client, the skill and standing of the attorneys employed, the usual and customary charge in the community and the financial position of the parties"). Thus, benefit to the client is a factor to consider and not the sole reason to allow or reject attorney fees, as Warlick appears to suggest.

¶ 63 Indeed, and contrary to Warlick's position, it has been held that a guardian, who was substituted for the original guardian and defended the guardian's fees on appeal was eligible to recover the fees incurred in the appeal, because he was defending the fees already earned. *Continental Illinois National Bank & Trust Co. of Chicago v. Spiegel*, 154 Ill. App. 3d 450, 454-55 (1987) (claim of providing no benefit to clients was rejected where guardian defended an appeal and the rulings previously given by the trial court, including where the guardian acted as an attorney to "protect the fees previously awarded by the court for his guardianship services"). *Spiegel* is not dissimilar to the circumstances here, where the GAL was forced to defend her services and fees incurred for providing the services from Warlick's objections. While not precisely procedurally aligned, *Spiegel* nevertheless provides guidance and suggests, at least, that the trial court's decision to allow the fees incurred in defending the fee petition as additional guardian-*ad-litem* fees was not beyond the pale so as to constitute an abuse of discretion.

¶ 64 The trial court's discretion to consider the fees incurred in defending the fee petition as additional guardian *ad litem* fees is further bolstered by *Cooney*, which held that the trial court had the inherent authority and discretion to award attorney fees even after the guardian's representation had ended or been terminated. *Cooney*, 386 Ill. App. 3d at 352. In other words, the trial court has

the authority to determine what is entailed by the guardian's course of representation, including post-termination fees being within the course of representation. *Id.* It is a short step from the allowance of post-termination fees to allowing the guardian to recover fees incurred in defending a fee petition, the objections to which include questioning the reasonableness and necessity of the services provided on the child's behalf. See *Spiegel*, 154 Ill. App. 3d at 454-55.

¶ 65 Finally, we have carefully reviewed the record and the arguments of the parties. We conclude that the trial court's judgment on this issue was neither arbitrary nor capricious, was not unfounded or unsupported in the evidence or in the law, and did not constitute an abuse of discretion.

¶ 66 In support of his contention that the GAL should not have been allowed the fees incurred as a result of defending her fee petition, Warlick cites to *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1164 (2007), for the proposition that an attorney should not be allowed to recover the fees incurred in collecting their attorney fees. We have resolved above this question, but we note that *Tantiwongse* stands for the much more limited proposition that an attorney who is representing himself in the attempt to collect attorney fees cannot recover the fees associated with that collection action. *Id.* As the court explained, "[l]awyers representing themselves simply do not incur legal fees." *Id.*; see also, *Rosenbaum v. Rosenbaum*, 38 Ill. App. 3d 1, 20 (1976) (an attorney is not entitled to fees incurred in the course of "*pro se*" or self-representation).

¶ 67 Warlick argues that *Cooney* actually supports his contention because the GAL did not fit into the three-prong test devised in *Cooney* as a method for judging whether fees could be awarded. *Cooney* held that there were at least three limitations on a trial court's ability to award fees under section 508(a) of the Act (750 ILS 5/508(a) (West 2008)): (1) the fees had to be related to a proceeding under the Act; (2) the fees had to be for work performed during the course of the

representation (which Warlick claims to be limited to fees requested in a quarterly fee petition); and (3) the fees must be reasonable and necessary. *Cooney*, 386 Ill. App. 3d at 350-51. Warlick contends that the GAL fails on the second and third prongs of the *Cooney* test. We disagree. The trial court expressly held both that the fees were reasonable and necessary and were incurred during the course of representation. Further, as noted above, *Cooney* defines, in part, the permissible contours of the exercise of the court's discretion. *Id.* at 352. Accordingly, we reject Warlick's interpretation of *Cooney.*

¶ 68 Warlick further contends that the GAL's own failings caused the protracted contest over her fees, raising the same arguments as those we have already passed on above. Because the arguments as to why it was the GAL's fault are neither new nor different from others we have dealt with above, we need not revisit them. Accordingly, we reject Warlick's contentions about the propriety of awarding the GAL the fees she incurred defending her fee petition as additional guardian-*ad-litem* fees.

¶ 69 F. Propriety of the Allocation of Fees between the Parties

¶ 70 Warlick next challenges the trial court's allocation of attorney fees between the parties. Warlick argues that it is unfair and improper that that he be required to pay nearly 90% of the GAL's fees especially where he paid most of the costs in the underlying custody litigation. The allocation of the guardian's fees between the parties lies within the trial court's discretion and will not be disturbed absent an abuse of that discretion. *Gibson v. Barton*, 118 Ill. App. 3d 576, 582-83 (1983). We consider Warlick's specific arguments keeping the proper standard of review in mind.

¶ 71 Warlick argues that the trial court abused its discretion by over-weighting the parties' relative abilities to pay the GAL's fees and under-weighting the consideration of litigiousness. The trial

court's written order on allocation first analyzed the parties' relative abilities to pay the fees. The trial court concluded, as a matter of fact, that Joanne's financial affidavit was complete and painted a clear picture of her financial position and ability to pay the fees. The trial court concluded, "[g]iven [Joanne's] modest income, the expenses she listed are found to be reasonable; she has very little discretionary income."

¶ 72 Turning to Warlick, the court noted, "[o]n the other hand, Mr. Warlick's affidavit is found to be particularly inadequate. To take it at face value, his household operates at a $5,000 monthly deficit." The court analyzed Warlick's expenses, noting that Warlick enjoyed a "very comfortable" standard of living, that he spent $10,000 per year on season tickets for the Chicago Bears, and, according to his affidavit, spent $1,550 to $1,750 per month on food and eating out, recreation and travel, the child's allowance, and a pet. The trial court concluded that, notwithstanding the less-than-candid picture of Warlick's finances, "[g]iven his income and lifestyle, his expenses are also reasonable. Notwithstanding that finding, the evidence also supports the fact that the parties' discretionary income is grossly disproportionate." Thus, the trial court determined that Warlick had by far the superior ability to pay the GAL's fees.

¶ 73 The trial court next discussed whether a party's litigiousness should be a significant factor in the allocation of the GAL's fees. The court held:

> "To shift fees to a litigious party who does not have the ability to pay them would defeat this court's primary objective of assuring that [the GAL] gets paid in full. Because I find litigiousness irrelevant to this analysis, there is no reason to comment further on either party's litigiousness, but do note that Mr. Warlick was ultimately successful on his Petition to Change Custody.

> I agree with Mr. Warlick that compared with [Joanne], the amount of fees paid by him has been 'lopsided.' However, Mr. Warlick paid fees because he *could* pay fees. [Joanne] could not." (Emphasis in original.)

¶ 74 Warlick argues that, by ignoring litigiousness and looking only to ability-to-pay, the trial court abused its discretion. He does not, however, offer any authority to support his contention that litigiousness must be the determinative factor in assessing the allocation of guardian's fees. Similarly, our research has uncovered no requirement that litigiousness must always result in the more litigious party being allocated a greater share of the fees than he or she might otherwise receive. We also note that, in this argument, we are assessing the trial court's exercise of its discretion. *Id.* The trial court referred to the appropriate factors (namely, those appearing in section 508 of the Act), and then singled out two of the more important factors to its analysis, ability-to-pay and litigiousness. The trial court presented a reasonable, evidence-based analysis (and our review of the record finds that the analysis ties into evidence of record), and rendered its judgment. Having carefully reviewed the record and the parties' arguments, we cannot conclude that the trial court abused its discretion in allocating most of the responsibility for paying the GAL's fees to Warlick, notwithstanding Joanne's apparent greater litigiousness.

¶ 75 Warlick contends that the trial court erred because it did not require Joanne to establish an inability to pay before it would allocate the guardian's fees disproportionately. He further contends that the trial court did not adequately explain and support its decision not to follow section 508 in all regards. We disagree. The trial court stated:

> "Although Section 508 [of the Act] applies in this case, its application is not completely straightforward. First, the maxim underlying Section 508 attorney fee petitions–that

> attorney's fees are first the responsibility of the contracting party, does not apply in a case where [guardian *ad litem*] fees are being allocated. Therefore, the rule that a party must show 'inability' before fees can be shifted does not strictly apply."

Warlick complains that the trial court's statement is not appropriately supported. We disagree.

¶ 76 Section 508 is a fee-shifting provision, and it makes it clear by reminding the reader that attorney fees are usually the contracting party's responsibility. 750 ILCS 5/508 (West 2008). However, neither Warlick nor Joanne contracted to retain Lonergan as the GAL in this matter. Thus, by its very terms, section 508 does not strictly apply. As there is no contracting party, there is no justification that must be met before the fees can be shifted. Rather, the obverse of the inability to pay, namely the ability to pay, may be reached without the need to first find that the party from whom fees would be shifted has an inability to pay the fees. We cannot say that the trial court's justification was arbitrary or capricious, and it is a proper reading of section 508. Accordingly, we reject Warlick's contention on this point.

¶ 77 Next, Warlick distinguishes the authority the GAL presented in argument below. Significantly, he does not really address the trial court's holding in particular detail. This is once again problematic, because we are addressing the trial court's exercise of discretion, so specific argument directed toward that exercise of discretion would be appropriate and helpful. In the absence of such, we can scarcely reasonably address Warlick's contentions. Effectively, distinguishing the GAL's argument and authority from the hearing before the trial court is irrelevant to our review here, and we need not further comment on that portion of Warlick's contentions.

¶ 78 Next, Warlick contends that Joanne should have some more significant allocation of the guardian's fees, because it might provide her an incentive to refrain from being unreasonably

litigious. Warlick does not, however cite any authority in support of this contention and we deem it forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 79 Warlick also notes that a case on which the trial court relied, *McClelland*, 231 Ill. App. 3d at 228, 229, requires the trial court to consider all the circumstances of the parties when allocating the guardian's fees, which includes both the ability to pay and litigiousness. As we have seen, however, the court carefully analyzed both the parties' relative abilities to pay and also determined that, here, litigiousness was effectively irrelevant to its decision in light of the gross disparity between the parties' ability to pay. Warlick does not argue that the trial court did not properly invoke or utilize the principles in *McClelland*; rather, he argues that it would have been appropriate for the court to weigh the factor of litigiousness more heaviliy. This is a reprise of his argument above, and we do not believe it merits a change in our response, namely, that we cannot find an abuse of discretion in the trial court's judgment here. Accordingly we reject Warlick's arguments on this point.

¶ 80 III. CONCLUSION

¶ 81 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 82 Affirmed.

SEPARATE ORDER UPON DENIAL OF REHEARING

¶ 83 JUSTICE SCHOSTOK, specially concurring.

¶ 84 I write separately to emphasize that my dissent in *Cooney* is not inconsistent with the instant case. At issue in *Cooney* was whether a GAL could receive fees pursuant to section 506(b) of the Act for work that she had done on the child's behalf after she had been discharged as the child's representative. Based on section 506(b)'s language that a child representative could receive her fees

only for work done during the course of her representation, I found that the GAL could not recover the fees for the services she rendered after her discharge. *Cooney*, 386 Ill. App. 3d at 352 (Schostok, J., dissenting).

¶ 85 In the instant case, the husband argues that under section 506(b), the GAL should not have been allowed the attorney fees she incurred as a result of defending her fee petition because those attorney fees were not incurred during the course of her representation. I disagree. The GAL's fee petition was directly related to the services she rendered during the course of her representation. The trial court found that underlying fees were reasonable and necessary. It would be manifestly unjust for a GAL to provide necessary and reasonable services in her capacity of representing a child but then have to incur thousands of dollars in attorney fees so that she receives her statutory-authorized compensation. Neither anything in my dissent in *Cooney* nor the plain language of section 506(b) would allow for such an injustice.

¶ 86 For this reason, I specially concur.