2015 IL App (2d) 140657-U
No. 2-14-0657
Order filed December 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
MICHELLE CICINELLI,	)	of Kane County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 12-D-811
	)	
THOMAS CICINELLI,	)	Honorable
	)	Kevin T. Busch,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Respondent's motion to dismiss the appeal in No. 2-14-0791 was granted; (2) the trial court's comments and rulings did not deprive respondent of a fair trial; and (3) the court erred in ordering respondent to contribute 100 % to petitioner's attorney fees without a hearing.

¶ 2 Respondent, Thomas Cicinelli, appeals from a judgment for dissolution of marriage entered by the circuit court of Kane County on May 19, 2014, which this court docketed as No. 2-14-0657. Respondent also appeals an order of July 25, 2014, which was docketed as No. 2-14-0791. On September 26, 2014, this court granted respondent's motion to consolidate the appeals.

In his opening brief, respondent moves to dismiss the appeal in No. 2-14-0791. As petitioner makes no objection, we grant the motion. In No. 2-14-0657, we affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 Petitioner, Michelle Cicinelli, filed a petition for dissolution of marriage on June 6, 2012. Two minor children were born to the parties: Brittany, born August 29, 2000, and Vito, born August 24, 2002. On January 16, 2014, the parties entered into a final custody judgment and parenting order that was incorporated into the judgment for dissolution of marriage and which is not at issue in this appeal. Property issues were tried. Respondent does not contest the court's property division as such, but he contends that the court's impatience and hostility toward him affected its evidentiary rulings, denying him a fair trial. According to respondent, the court's hostility initially was directed toward a chancery suit that he filed arising out of the operation of the family business, Best Firewood and Mulch, Inc. (the business), and continued through trial. Respondent cites the following as examples. We will supplement the facts in the analysis section as necessary.

¶ 5 A. Proceedings In the Chancery Suit

¶ 6 Petitioner inherited a firewood business from her father, and she gave respondent a 49% interest. They added mulch sales and, briefly, a tree trimming operation. The court's finding that the business was marital property is uncontroverted.

¶ 7 Throughout the proceedings, respondent contended that petitioner dissipated the business's assets by charging personal items on business credit cards and withdrawing large amounts of cash. Conversely, petitioner accused respondent of attempting to destroy the business.

¶ 8 On June 6, 2012, petitioner obtained an order of protection granting her exclusive control of the business. On June 15, 2012, petitioner filed an *ex parte* emergency petition to modify the order of protection, in which she alleged that respondent had entered onto the business's property, removed the doors to a trailer, and destroyed a surveillance system therein. Petitioner also alleged that respondent stole a welding machine belonging to the business. It appears from the common law record that the court granted an extension of the June 6, 2012, order of protection.

¶ 9 Thereafter, petitioner alleged that respondent sabotaged the business by withdrawing money from joint accounts and cancelling petitioner's name on a business credit card. Respondent countered that petitioner subverted the business by not reporting income and by allowing an unlicensed driver to operate the business's vehicles. On July 17, 2012, the court entered an order requiring respondent to reinstate petitioner on the credit card and to replace the money he had withdrawn. The order further required petitioner to deposit cash receipts into a business account and to disallow the unlicensed employee from operating company vehicles.

¶ 10 On August 16, 2012, respondent filed a "Complaint for Shareholder Remedies" in the chancery division of the circuit court. Respondent sued the business and petitioner, both individually and in her capacity as an officer of the business. He alleged that petitioner failed to make distributions of profits, failed to maintain and make available to respondent corporate records, excluded respondent from shareholders' and directors' meetings, illegally removed respondent from the board of directors, committed waste, and misapplied corporate assets for her personal expenses. The shareholder suit was consolidated with the dissolution action.

¶ 11 On March 7, 2014, the court addressed the shareholder suit with the parties. Attorney Stuart Petersen represented respondent, and attorney Michael Navigato represented the business.

The judge asked Petersen to explain "what the difference is between the [shareholder] claim and a claim for dissipation." Seeing none, the judge said: "[q]uite frankly, *** I think you and [respondent] are *** spinning windmills *** because this claim is, in my opinion, frivolous and a waste of the court's time." The judge further said: "I'm just trying to understand why the shareholder's action is even pending." Respondent then voluntarily dismissed the shareholder suit.

¶ 12 B. Further Proceedings Before Trial

¶ 13 1. Meade's Fees

¶ 14 Immediately after respondent dismissed the shareholder suit, the court and the parties addressed Gary Meade's invoice for services as the court's business valuation expert. The court ordered the parties each to pay $7,500 toward Meade's total invoice within 7 days. Respondent said that he could not afford it. The judge then stated that respondent had taken "unreasonable" positions that had prolonged the litigation and "unnecessarily" inflated Meade's fees. The judge added that the payment of Meade's fees was in support of the marital estate and noted that the parties had agreed to Meade's appointment. The judge further commented: "As the saying goes, if you want to *** play, you got to pay."

¶ 15 2. The Stogsdill Firm's Withdrawal

¶ 16 On March 25, 2014, respondent was represented by John Georgievski of the Stogsdill firm. Petitioner's counsel mentioned that he was served with Stogsdill's motion to withdraw. Georgievski acknowledged that he had served the motion but had not formally filed it with the court. Georgievski stated that he also had noticed a petition for interim attorney fees. The judge instructed Georgievski to pick one or the other. Georgievski replied that he would pursue the motion to withdraw.

¶ 17 The judge inquired of respondent whether he knew about the motion. Respondent objected to Stogsdill's withdrawal, because the firm knew that he could not pay legal fees until the case was over. Respondent told the court: "I am completely and utterly out of money. I wouldn't be able to retain another attorney." Nevertheless, the court allowed Stogsdill to withdraw. The court remarked that the litigation had "veered off track" because of respondent's actions. The court gave respondent 21 days to obtain new counsel but urged him to agree with petitioner's counsel on a valuation of the business. The court advised respondent: "[T]his case really shouldn't be as complicated as you want to make it."

¶ 18 3. The Court Discharged Meade as its Valuation Expert

¶ 19 On April 3, 2014, the court allotted five days for trial of the property issues. At that time, respondent was again represented by Petersen. The court stated that it was "not going to put [Meade] back on the clock" but told respondent that he was free to call Meade as a witness. On April 17, 2014, respondent objected to terminating Meade's appointment only one week before trial. The court stated that respondent was not prejudiced, because he could call Meade as a witness at his sole expense. Petersen remarked that the expense would include paying Meade's outstanding bill "without allocation" plus his fees for appearing at trial.

¶ 20 4. The Order of Protection and the Issuance of the Rule to Show Cause

¶ 21 Also on April 17, 2014, petitioner's counsel represented to the court that respondent had physically abused Vito after the parenting order was entered. Petersen rejoined that petitioner was encouraging the children to defy respondent's authority. After much back and forth, the judge rejected respondent's offer to speak on his own behalf. The court stated: "You have a lawyer here representing you, and I'm not truthfully interested in spending a lot of time going

over this issue, because I agree wholeheartedly with everything [petitioner's counsel] has just said. So let's move on."

¶ 22 5. The Court Denied Respondent's Request for Customer Invoices

¶ 23 At the April 17, 2014, status hearing, Petersen objected to being given only two and a half days to present his case at trial. He noted that he was not stipulating to a valuation of the business and wanted to argue "dissipation and other things." The judge commented that the major issue, custody, had already been resolved and that the remaining issues were relatively "simplistic." Then the court stated: "I warn you *** that the court is not going to allow for wild allegations and speculations of hearsay, and I am not going to entertain *** wild speculations and accusations that aren't substantiated with substantive evidence."

¶ 24 On the same day, Petersen noted that four months of financial records that he had requested from petitioner had not been produced. Upon petitioner's representation that she was not in possession of those records, the judge commented that respondent could have subpoenaed them.

¶ 25 Next, Petersen complained that petitioner had not produced receipts showing the names and addresses of the business's customers. Petitioner's counsel explained that she did not produce those due to a protective order that prevented respondent from contacting the customers. The judge admonished Petersen: "You're not going to get anything more than what has been represented, because [respondent] will go on a fact-finding mission and blow the company up, in my opinion, and I'm not going to allow him to do so."

¶ 26 C. Trial on Property Issues

¶ 27 Trial commenced on April 21, 2014. The parties stipulated to grounds for dissolution. Then petitioner testified that she owned and was employed by the business. Her salary was

$88,000 per year. Respondent "coerced" her into giving him a 49% interest in the business by threatening to cease working for it. Petitioner testified that she was in compliance with the June 2012 court order that required her to deposit all cash receipts. She also testified that she had filed amended state and federal tax returns to reflect the parties' and the business's true income. She believed that the parties would face a serious tax liability after the completion of an ongoing IRS audit.

¶ 28 Petitioner denied that she paid personal expenses through the business. She ran out of credit on the business card and began using her personal credit card for business expenses. Therefore, she explained, personal expenses also were included on the credit card statements. Petitioner testified that revenues were down due to having to stockpile less mulch to comply with fire regulations. Also, she discontinued the tree trimming business due to not having a certified arborist. Because sales were down, she was not able to meet payroll at times. She used personal funds from the sale of a vacation home to loan the business $25,000, and she had since repaid herself. There were times when she did not issue herself a paycheck.

¶ 29 Petitioner testified that she paid the taxes and insurance on the marital home. She also paid the insurance premiums on the parties' automobiles, ATVs, jet skis, snowmobiles, trailers, and her jewelry. She paid for the children's private schools, extracurricular activities, as well as their out-of-pocket medical and dental expenses. Petitioner testified that respondent had missed the last two child-support payments.

¶ 30 Petitioner further testified that the parties owned four timeshares encumbered with mortgages, to which respondent had not contributed. She also described real estate transactions that netted the parties approximately $1.2 million. She described respondent's gun collection that he acquired at a cost of $75,000 to $100,000.

¶ 31 On cross-examination, the court sustained an objection to Petersen's question about the real estate taxes, ruling that the taxes were listed on petitioner's financial statement and that the "document speaks for itself." The court instructed Petersen to "move onto [*sic*] new information."

¶ 32 On the second day of trial, petitioner objected to subpoenas that respondent served on employees of the business on the ground that their appearance in court would shut down the business for the day that they were scheduled. That prompted the court to ask Petersen what the relevance of each potential witness was. Petersen's answers were vague. Petersen stated that respondent believed that he derived no benefit from the business. The judge said: "[Y]es, [respondent] has received a benefit[,] because the business is still operating. Truthfully, it would not be if I left [respondent] in charge." The judge continued: "There's a long history of this case *** including when [respondent] sabotaged the construction trailer with all the electronics inside. So, let's stick to the point and relevant testimony."

¶ 33 Petitioner next called James Godbout as a witness. Godbout's assignment was to determine the fair market value of a 100% ownership interest in the business. He opined that a 100% ownership interest was worth $620,000. Godbout contrasted his valuation with Meade's valuation of $1,290,000. According to Godbout, Meade added more unreported cash back to the business's bottom line. On cross-examination, the court sustained an objection when Petersen asked Godbout whether petitioner's salary could sustain her lifestyle. Petitioner rested following Godbout's testimony.

¶ 34 John Annoreno, the parties' family friend, was respondent's first witness. In February 2012, he saw nine money bags labeled $50,000 each in the parties' home safe. Anthony Sciacotta, respondent's nephew, testified that he saw approximately five "bundles" labeled

"50K" each in the safe in approximately January 2012. Mark Anthony Cicinelli, respondent's nephew, testified that he observed four bags in the safe that were "filled to the gill with cash" in early June 2012. Mark also saw a manila envelope with black lettering that said "30K for Jim K." Angela Sciacotta, respondent's sister, testified that she and her husband picked up some of respondent's belongings from the marital residence following entry of the order of protection against respondent, including an envelope containing $2,000 in cash. Jeffry DeCore, another family friend, testified that he had seen stacks of cash in the family safe.

¶ 35 Respondent testified. He described his former job duties with the business. Respondent testified that he collected cash receipts from an employee every morning. Respondent estimated, conservatively, that he collected $300,000 in cash during the 2011 mulch season. Respondent learned after the dissolution action was filed that the cash was then deposited into the parties' personal bank account. Respondent testified to the various homes that the parties purchased, one with a substantial amount of cash taken from the business. Respondent testified that the parties bought another lot using cash from the business. Bundles of cash were also kept in the family safe. Respondent testified that the parties purchased ATVs and other "toys" with cash taken from the business.

¶ 36 Respondent valued his firearms collection at between $8,000 and $10,000. He testified that mulch sales were not dwindling when he was involved with the business, nor was the mulch a fire hazard. Respondent further testified that he refused to sign the amended personal income tax returns, because the income was underreported.

¶ 37 Respondent testified that his income was down, because he was no longer a construction foreman, while his liabilities had increased. He testified to a list of personal and other items that he wished to be awarded.

¶ 38 Meade testified as respondent's business valuation expert. Meade testified that he assumed that there was $250,000 a year of unreported cash income. Using that assumption, Meade opined that the value of the business was $1,290,000. When asked to assume that the unreported cash income was $300,000 per year, Meade opined that the value would be $1, 624,000.

¶ 39 Respondent called petitioner as an adverse witness. Petitioner testified that she never recorded cash that came into the business until the court so ordered. Petitioner denied that she discontinued tree trimming to devalue the business during the divorce proceedings. She testified that her corporate attorney advised her to discontinue tree trimming for liability reasons. She further testified that, although she had rented additional space to store logs, the business's mulch inventory was reduced due to fire regulations.

¶ 40 During closing argument, petitioner's counsel requested 60% of the marital estate as an offset for the attorney fees she expended. Alternatively, counsel requested that respondent contribute to petitioner's attorney fees, which were $163,858.50. Petersen objected to an award of attorney fees without a hearing as to their reasonableness. The court interrupted Petersen's closing argument to remind him that he had one minute left, and then 30 seconds.

¶ 41 The court ruled immediately following closing arguments. The court awarded 100% of the business to petitioner, but awarded respondent other property to offset that amount. Then, the court ordered respondent to contribute 100% toward petitioner's attorney fees, "because this case unfortunately went south very early on, as [respondent] insisted on a scorched-earth type approach to addressing the case."

¶ 42 On May 19, 2014, the court entered a written judgment that incorporated its oral findings and rulings and the child custody and parenting agreement. This timely appeal followed.

¶ 43 II. ANALYSIS

¶ 44 Respondent first contends that the trial judge's remarks and evidentiary rulings, detailed above, singly and cumulatively deprived him of a fair trial.[1] We disagree. For a judge's comments to constitute reversible error, the aggrieved party must show that the remarks were prejudicial and that he was harmed by the comments. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 323 (2009). Moreover, in a bench trial, the judge's comments are given more latitude than in a jury trial. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 29. Here, respondent does not identify how the outcome should or would have been different in the absence of the remarks. Respondent complains that his cross-examinations of petitioner and Godbout were unfairly restricted, but he does not demonstrate how that perceived restriction harmed him. Respondent argues that the court prevented him from developing his theory that the valuation of the business should have been higher than Godbout's figure, but he does not say what valuation he would have proved. Nor does he argue that Meade's figure was correct and the court's valuation of $689,951 was against the manifest weight of the evidence.

¶ 45 Respondent argues that he need not demonstrate prejudice, because the totality of the court's remarks showed the court's "animosity, hostility, ill-will, and distrust" to such a degree that the fair-trial violation is manifest. We disagree. Respondent misconstrues the court's remarks. Regarding the chancery suit, it is clear that the court commented that its *pendency* was redundant, and therefore frivolous, because the same issues were to be decided in the dissolution action. When the court asked Petersen, multiple times, how the relief sought in the chancery

[1] Petitioner asserts that respondent cannot argue matters that occurred prior to the orders referenced in the notice of appeal. The remarks respondent complains about were not orders that needed to be included in the notice of appeal.

case differed from the relief available in the dissolution action, Petersen could not explain. Given the orders in the dissolution case that restricted respondent's access to the business, it is not a stretch to believe that respondent filed the chancery action to circumvent those orders. Nothing in the judge's comments prejudged the substantive issues.

¶ 46 The court denied respondent access to invoices that identified customers of the business because of respondent's history of attempting to disrupt and even destroy the business. Respondent argues that the orders of protection were entered *ex parte*, and therefore without evidence. However, the court was obviously satisfied that the incidents had occurred or it would not have entered the orders. Moreover, the trial court has broad discretion in ruling on discovery matters. *Shapo v. Tires N Tracks*, 336 Ill. App. 3d 387, 394 (2002).

¶ 47 Further, the court did not, as respondent claims, induce the Stogsdill firm to withdraw. Georgievski had already served respondent and other counsel with the notice of withdrawal but had neglected to file the motion with the court. In proceeding with the motion, Georgievski stated that he had been instructed, presumably by his firm, to withdraw. Again, respondent can show no prejudice, because he hired Petersen, who was already familiar with the issues surrounding the business.

¶ 48 The court's admonition that it would not allow respondent to indulge in "wild allegations" and speculation most likely referred to respondent's allegation that petitioner laundered money taken from the business through her mother. Respondent insisted that petitioner was funneling cash from the business to her mother, who then paid certain bills on petitioner's behalf. However, the mother's attorney proved to the court's satisfaction that the source of the funds at issue was the mother, not the business.

¶ 49 With regard to the court's alleged impatience, the record shows that respondent provoked it. He went through numerous attorneys. He filed the chancery suit to circumvent the court's orders. He disobeyed other orders. He listed over 80 witnesses, when the only real contested issue was the valuation of the business, which was subject to expert testimony. He scheduled numerous employees of the business on the same day, which would have shut down the business. When the court inquired as to the relevance of those witnesses, Petersen failed to give a coherent answer. Petersen attempted to lay foundations for documents despite the parties' stipulations and questioned petitioner as though it were an open-ended deposition instead of cross-examination.

¶ 50 The court noted that respondent disrupted the proceedings with facial gestures and comments and directed Petersen to go on fruitless fishing expeditions. The court also described an incident in which respondent shouted at his attorney and slammed his chair into another chair. When respondent denied it, saying "[a]llegations, allegations," the court stated: "I just watched what you did, sir. *** It was a very violent and unnecessary action on your part."

¶ 51 While the court's verbal time-count during Petersen's closing argument might seem harsh, it was an effort to control respondent's erratic behavior. Accordingly, we reject respondent's argument that the court's remarks, singly or cumulatively, denied him a fair trial.

¶ 52 Respondent next argues that the court erred in awarding petitioner 100% of her attorney fees without a hearing. Petitioner presented no evidence at trial concerning the amount or reasonableness of the fees or respondent's ability to pay. Petitioner contends that no hearing was necessary, because the $163,858.50 was not a fee award but compensation in the form of assets for respondent's litigiousness.

¶ 53 In the written judgment, the court specifically ordered that "[respondent] shall pay and be responsible for [petitioner's] attorney's fees in the amount of $163,858.50." The court's oral

ruling also awarded that amount as respondent's contribution to petitioner's attorney fees. The issue is whether the court improperly avoided the mechanism that the legislature prescribed in section 508 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508 (West 2014)).

¶ 54 The allowance of attorney fees and the amount awarded are within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. *In re Marriage of Suriano and LaFeber*, 324 Ill. App. 3d 839, 846 (2001). The reviewing court must analyze whether the trial court acted arbitrarily, that is, without conscientious judgment, or whether it exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted. *Suriano*, 324 Ill. App. 3d at 846.

¶ 55 The legislature has the authority to devise procedures to be followed in causes of action it creates, such as dissolution of marriage. *Kaufman, Litwin, & Feinstein v. Edgar*, 301 Ill. App. 3d 826, 832 (1998). The legislature is free to define the parameters and application of its purely statutory creation. *Kaufman*, 301 Ill. App. 3d at 831. Attorney fees can be awarded only when they are expressly authorized by statute or by agreement of the parties, and, when the basis of the award is statutory, a trial court is bound by the statutory grant of authority. *In re Marriage of Waltrip*, 216 Ill. App. 3d 776, 781 (1991). Courts cannot rewrite a statute to make it consistent with the court's idea of orderliness and public policy. *In re Estate of Schlenker*, 209 Ill. 2d 456, 466 (2004).

¶ 56 Section 508(a) of the Act provides in pertinent part that "at the conclusion of the case, contribution to attorney's fees and costs may be awarded from the opposing party, in accordance with subsection (j) of Section 503." 750 ILCS 5/508(a) (West 2014). Section 503(j) provides in relevant part that "after proofs have closed in the final hearing on all other issues between the

parties (or in conjunction with the final hearing, if all parties so stipulate) and before judgment is entered, a party's petition for contribution to fees and costs *** shall be heard and decided." 750 ILCS 5/503(j) (West 2014). Section 503(j) thus establishes the method for formally petitioning the court for contribution of attorney fees. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 622 (2004). A contribution award is based on the criteria for division of marital property under section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under section 504. 750 ILCS 5/503(j)(2) (West 2014). A party seeking an award of attorney fees must show that he or she is unable to pay the fees and the other party is able to do so. *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 479 (1999). Further, in making a contribution award, the trial court must also consider whether the attorney fees charged by the petitioning party's attorney are reasonable. *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 114 (2000).

¶ 57 Respondent cites this court's decisions in *In re Marriage of Feldman*, 199 Ill. App. 3d 1002, 1007-08 (1990), and *Sahs v. Sahs*, 48 Ill. App. 3d 610, 613 (1977), for the proposition that where attorney fees are contested, the court must conduct a hearing on the question. Petitioner argues that those cases are not applicable, because they were decided prior to the 1997 amendments to section 508 of the Act. We agree that those cases are inapplicable, because the amendments altered the procedures by which issues concerning attorney fees are presented and heard in dissolution cases. *DeLarco*, 313 Ill. App. 3d at 113. As we pointed out, contribution to attorney fees is now governed by sections 508(a) and 503(j). Nevertheless, respondent is correct to the extent that he asserts that the trial court must hear evidence relating to fees.

¶ 58 Petitioner offers no legal justification for eliminating or shortcutting the procedures required by sections 508(a) and 503(j). This court held in *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 345 (1999), that the plain and ordinary meaning of section 503(j) requires the court

to hear and decide a party's petition for contribution to attorney fees and costs after the close of proofs on all other issues. However, we interpreted section 503(j) as not requiring an additional hearing but, rather, as requiring the court to hear, *through testimony or otherwise, additional proofs* when a petition for contribution is filed. It is not unusual for the attorney seeking contribution to provide the court with detailed billing statements itemizing the outstanding fees and costs owed and to present testimony as to the work performed. See *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 27. Thus, petitioner's argument that no evidence with respect to these details was required is rejected.

¶ 59 As an alternative, petitioner asserts that the court conducted a hearing pursuant to section 503(j). Petitioner alludes to evidence in the record supporting the court's determination that respondent unnecessarily increased the cost of litigation by employing "scorched-earth" tactics. However, it is undisputed that petitioner presented no evidence relating to the amount or reasonableness of the fees. Indeed, the first mention of contribution to attorney fees was made in petitioner's closing argument, in the context of seeking a disproportionate property distribution. Petitioner's counsel represented to the court that petitioner had incurred "more than $160,000" in attorney fees as a result of "actions taken by [respondent]." Because the subject of contribution to fees never arose until after all of the proofs were closed, and because there was no evidence whatsoever introduced as to the specifics relating to fees, we reject the argument that the court held a section 503(j) hearing. In *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 597 (2001), the court considered the minimum requirements of a contribution hearing. "[T]he trial court heard evidence of computation of fees, the total fees owed [by both parties], who performed the services for which fees were sought, the time spent representing [the parties] and the hourly rate charged." The appellate court concluded: "By any definition, that was a hearing." *Hasabnis*,

322 Ill. App. 3d at 597. In contrast, the court in the present case heard no additional proofs on the subject of attorney fees.

¶ 60 Petitioner relies on language in *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 660 (2007), in arguing that the trial court is not required to conduct a "critical examination" of the requesting party's billing records or make an express finding as to reasonableness of fees. However, in *Nesbitt*, the court recognized that this court in *DeLarco* set a more stringent standard than that observed in the First District when we said that the court "must" determine the reasonableness of fees. *Nesbitt*, 377 Ill. App. 3d at 658. Moreover, *Nesbitt* hardly supports petitioner's theory that the court in the instant case held a hearing on contribution. In *Nesbitt*, the petitioner's attorney testified to the bills he invoiced his client, his firm's billing practices and record keeping, the work his firm performed on specific days, and the benefit his client derived from his representation. *Nesbitt*, 377 Ill. App. 3d at 652-53. Additionally, counsel testified that, in his opinion, all of the work billed by his firm was fair and reasonable. *Nesbitt*, 377 Ill. App. 3d at 653. An associate who worked on the petitioner's behalf also testified to the amount of her billing and her time sheets and explained the work she performed. *Nesbitt*, 377 Ill. App. 3d at 653. A third attorney who worked on behalf of the petitioner similarly testified to her billing and the services she rendered. *Nesbitt*, 377 Ill. App. 3d at 653.

¶ 61 Accordingly, we vacate that part of the judgment that held respondent responsible for 100% of petitioner's attorney fees and remand to the trial court at this point for an evidentiary hearing pursuant to section 503(j). Respondent requests that the hearing be conducted before a different judge. We do not so order. However, we direct the court specifically to require proof of and to consider and make findings on petitioner's inability to pay fees and respondent's ability to pay as well as the amount and reasonableness of the fees.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed in part, vacated in part, and remanded with directions.

¶ 64 Appeal No. 2-14- 0657 is affirmed in part, vacated in part, and remanded with directions; appeal No. 2-14-0791is dismissed.