2017 IL App (2d) 160309-U
No. 2-16-0309
Order filed May 3, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF SHARAREH SARIRI, Petitioner-Appellee, and GHASEM SARIRI, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Lake County. No. 00-D-651 Honorable Elizabeth M. Rochford, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent failed to show prima facie error in the trial court's award of attorney fees: the evidence established that, despite some uncertainty about petitioner's finances, she lacked the financial ability to pay her fees and that, given the extensive litigation between the parties, her fees were reasonable and necessary, while the evidence did not establish that petitioner acted in bad faith or that respondent was without fault in prolonging the case.

¶ 2 Although the marriage of petitioner, Sharareh Sariri, and respondent, Ghasem Sariri, was dissolved over 16 years ago, litigation between the parties ended only recently. More specifically, on April 20, 2016, the court granted petitioner's petition for attorney fees, finding that petitioner was unable to pay the entire amount of the fees incurred, that fees of $8733.70

were reasonable and necessary, and that respondent must pay $6986.96 of that amount. Respondent appeals that order, arguing that the trial court erred in making him pay any amount of the fees. We affirm.

¶ 3 The marriage between the parties was dissolved in May 2000. Incorporated into the judgment was the parties' marital settlement agreement. That agreement provided for the care of the parties' three children, who were all under 10 at that time. More specifically, the agreement provided that respondent would pay petitioner $9000 per month in child support. Further, while the agreement did not award petitioner any maintenance, it did provide her with, among other things, well over $2 million, the parties' home in Lake Forest, the home's furnishings, and three relatively new cars.

¶ 4 After the marriage was dissolved, numerous pleadings were filed, including petitions to modify the marital settlement agreement and petitions for rules to show cause.[1] During these proceedings, the court noted that petitioner had filed some pleadings that bordered on frivolous, and the court questioned petitioner's credibility.

¶ 5 On February 5, 2016, after petitioner had proceeded *pro se* for awhile, she retained the services of Sam F. Cannizzaro. Cannizzaro filed two pleadings concerning medical insurance

[1] Some of these pleadings resulted in an agreed order entered in February 2010. That agreed order modified the marital settlement agreement by, among other things, increasing child support to $10,000 per month and awarding the children $2000 or $1000 per month for personal expenses they incurred. In modifying child support, the court noted that the amount reflected a downward deviation from the statutory guidelines, as awarding child support based on respondent's income at that time would have exceeded the needs of the children and the amount necessary for them to live the type of lifestyle they enjoyed during the parties' marriage.

coverage for the parties' two youngest children and the payment of medical expenses for the parties' youngest child. Those pleadings were subsequently resolved pursuant to an agreed order.

¶ 6 Cannizzaro also filed a petition for attorney fees (see 750 ILCS 5/508(a) (West 2014)). According to this petition, Cannizzaro had over 31 years of experience in family law in Illinois. He charged $375 per hour for noncourt time and $400 for in-court time. Petitioner's financial affidavit, which was attached to the petition for fees and dated February 18, 2016, revealed that her net monthly income was $360, which included $194 in food stamps, and her total monthly living expenses were $1509. This left petitioner with a total monthly income of -$1148. Two bills Cannizzaro submitted indicated that a balance of $8069.86 was owed for his services from February 5 to April 14, 2016.

¶ 7 Evidence presented at the hearing on the fee petition, which was held on April 20, 2016, revealed that petitioner worked for friends in 2015. That work involved working at booths at home shows. Petitioner's income in 2015 was $5000. In addition to this income, her friends would compensate petitioner by giving her a place to live rent free. Moreover, petitioner indicated that she bartered and traded for things that she needed.

¶ 8 Petitioner was shown the financial affidavit she prepared. She indicated that it was not accurate, as a bank had a judgment against her totaling $300,000. No evidence indicated when that judgment was entered. Moreover, although petitioner listed on her financial affidavit a $1500 loan from a friend, she indicated that she actually owed more than that, and she stated that she did not execute a promissory note for the $2000 loan she received to retain Cannizzaro. Petitioner claimed that there was another financial affidavit that listed these things.

¶ 9 Petitioner also testified that from March 17, 2015, to July 30, 2015, she incurred $19,055 in charges from a doctor who treated the couple's youngest child. She claimed that she did not submit the bills for these doctor visits to the insurance company, because she was told to access the company's website, and petitioner did not always have access to a computer. Petitioner assured the court that she was going to submit these charges, and the record revealed that she should receive reimbursement for half of the outstanding amount.

¶ 10 The parties stipulated that respondent had the ability to pay Cannizzaro's fees.

¶ 11 Cannizzaro went through the bills he submitted, noting that he charged petitioner in three-minute increments. The bills showed that, during the 43 days Cannizzaro represented petitioner, petitioner sent Cannizzaro 39 e-mails and contacted Cannizzaro by phone at least 12 times. The record also reflected that Cannizzaro appeared in court on the case three times.

¶ 12 The court found that the fees were reasonable and necessary. In doing so, the court noted, as respondent's attorney indicated, that "this case has been in court on a great number of occasions" and that "there has been a great number [*sic*] of post-decree litigation." Despite that, the court was "pleased that in this particular case it has been brought rather promptly to its conclusion," a result with which the court credited Cannizzaro. The court then determined that respondent should be responsible for 80% of petitioner's attorney fees. In coming to that conclusion, the court observed that "[q]uite frankly, there is some mystery surrounding [petitioner's] financial circumstances." The court clarified that it "[did not] know exactly what [petitioner's] financial circumstances are." Nevertheless, the court found that "there is evidence that there is very little regular income and that [petitioner] apparently live[s] and survive[s] as the result of generosity of friends." Accordingly, the court found that "[petitioner] ha[d] a

limited ability to pay attorneys' [*sic*] fees" while respondent had the ability to do so. This timely appeal followed.

¶ 13 At issue in this appeal is whether the trial court erred in ordering respondent to pay a portion of petitioner's attorney fees. In resolving the issue raised, we first note that petitioner has not filed a brief in this court. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), our supreme court explained the options a reviewing court may exercise when an appellee fails to file a brief. Specifically, we may (1) serve as an advocate for the appellee and decide the case when justice so requires; (2) decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief; or (3) reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Id.*

¶ 14 We cannot conclude that this case falls within either of the first two categories. Thus, we are left to decide whether respondent demonstrates *prima facie* reversible error. " '*Prima facie* ' means, '[a]t first sight; on first appearance but subject to further evidence or information' and '[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.' " *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009) (quoting Black's Law Dictionary 1228 (8th ed. 2004)). As discussed below, we determine that respondent has not met that standard.

¶ 15 Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(a) (West 2014)) authorizes the award of attorney fees incurred in connection with post-dissolution proceedings. See *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 28. "The allowance of attorney fees depends upon the unique characteristics of each case." *Kuhns v. Kuhns*, 7 Ill. App. 3d 884, 886 (1972). An award of attorney fees in post-dissolution proceedings will not be reversed on appeal absent a clear abuse of discretion. *In re Marriage of O'Malley*,

2016 IL App (1st) 151118, ¶ 60; *Bolte*, 2012 IL App (3d) 110791, ¶ 28. A trial court abuses its discretion when its ruling is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 16 Generally, the party who incurred the attorney fees bears the responsibility of paying them. *Bolte*, 2012 IL App (3d) 110791, ¶ 28. However, in certain circumstances, one spouse may be ordered to pay the attorney fees of the other spouse. See 750 ILCS 5/508(a) (West 2014); see *Bolte*, 2012 IL App (3d) 110791, ¶ 28. For example, one spouse may be ordered to pay the attorney fees of the other spouse for (1) "[t]he maintenance or defense of any proceeding under [the] Act"; (2) "[t]he enforcement or modification of any order or judgment under [the] Act"; or (3) "[a]ncillary litigation incident to, or reasonably connected with, a proceeding under [the] Act." 750 ILCS 5/508(a)(1), (a)(2), (a)(6) (West 2014); see *Bolte*, 2012 IL App (3d) 110791, ¶ 28. Regardless, "[t]he party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *Id.*

¶ 17 Respondent argues that the trial court should not have awarded petitioner any attorney fees, because (1) petitioner failed to prove (a) her inability to pay the fees or (b) that the fees were reasonable and necessary and (2) petitioner acted in bad faith in bringing various post-dissolution proceedings. We consider each issue in turn.

¶ 18 The first issue we consider is whether respondent makes a *prima facie* case that petitioner failed to prove an inability to pay her attorney fees. The evidence revealed that, although petitioner was awarded a great deal of property when the marriage was dissolved, she now earns

an amount insufficient to meet her needs. In contrast, respondent has the financial means to pay petitioner's attorney fees. Although the trial court noted the "mystery" surrounding petitioner's financial circumstances, we do not find, as respondent urges, that this mandates a conclusion that petitioner failed to meet her burden. Despite making that statement, the trial court found that petitioner had "very little regular income" and "a limited ability to pay." We cannot say that that finding is against the manifest weight of the evidence. See *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 110 (2000) (court of review should not second-guess trial court's factual findings unless trial court's findings are against the manifest weight of the evidence).

¶ 19 Respondent argues that the evidence established that petitioner had the ability to pay all of her attorney fees, noting that her friends gave her money and free housing. Respondent also notes that petitioner will receive reimbursements for the medical expenses the parties' youngest child incurred between March 17, 2015, and July 30, 2015.

¶ 20 Although we do not deny the relevance of these facts, they fall well short of establishing that petitioner has the financial wherewithal to pay more than $8000 in attorney fees. See *Bolte*, 2012 IL App (3d) 110791, ¶ 33 (party not required to show destitution before court may award attorney fees); see also *In re Marriage of Yakin*, 107 Ill. App. 3d 1103, 1117-18 (1982) (the fact that spouse asking for fees had savings account, regular income, stock, or other assets did not mandate that award of attorney fees should be reversed). The cases on which respondent relies are clearly distinguishable. See, *e.g.*, *In re Marriage of Roth*, 99 Ill. App. 3d 679, 686 (1981) (trial court's order requiring husband to pay a portion of wife's attorney fees was reversed where evidence established that wife had a net worth of $500,000 and substantial annual income). Given the great disparity in the parties' earning capacities and actual earnings, we cannot conclude that respondent has established *prima facie* error. See *Bolte*, 2012 IL App (3d) 110791,

¶ 33 ("A trial court abuses its discretion in not awarding attorney fees under section 508(a) of the Act when the evidence reveals a great disparity in the parties' actual earnings and earning capacity.").

¶ 21 Respondent also claims that attorney fees should not have been awarded, because they were neither reasonable nor necessary. Factors to consider in assessing the reasonableness of fees include (1) the attorney's skill and standing; (2) the nature of the controversy; (3) the novelty and difficulty of the issues raised; (4) the degree of responsibility involved as it relates to the management of the case; (5) the time and labor required; (6) the usual and customary charge in the community; and (7) the benefit to the client. *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 502 (1992). Moreover, the time charged must be necessary for the proper handling of the issues raised. *Yakin*, 107 Ill. App. 3d at 1119. In weighing these factors, a trial court may rely on its own knowledge and experience in deciding the value of the legal services rendered. *Siddens*, 225 Ill. App. 3d at 503.

¶ 22 Here, the evidence revealed that Cannizzaro had 31 years of experience in family law. The itemized bills Cannizzaro submitted reflected, among other things, that Cannizzaro had almost daily contact with petitioner about matters related to the dissolution action. Although the issues raised were neither novel nor difficult, the case had been ongoing for 16 years. During those 16 years, numerous petitions to modify the marital settlement agreement and for rules to show cause were filed, making the court file quite extensive. Gleaned from the court file was evidence that the parties harbored a great deal of animosity toward each other. Yet, within 43 days of being hired, Cannizzaro, via an agreed order, was able to put an end to the litigation between them, a result with which the trial court credited Cannizzaro and that clearly benefitted both parties. Given all of the facts, the trial court found that Cannizzaro's fees were reasonable

and necessary, and it ordered respondent to pay a portion of those fees. Based on the evidence, we cannot conclude that respondent has established that this was *prima facie* error.

¶ 23 In arguing that the fees were not necessary, respondent takes issue with a motion petitioner filed seeking to have respondent submit to his insurance company invoices for medical services for the parties' youngest child. Respondent claims that fees associated with this motion were unnecessary, because petitioner could have submitted the invoices to the insurance company herself, as petitioner vowed to do in the most recent agreed order. However, nothing in the marital settlement agreement or the agreed order modifying the marital settlement agreement specifically indicated who should submit medical bills to the insurance company. Given the absence of specific language and the contentious nature of the parties' relationship, it is not surprising that the issue could not, as respondent suggested, be resolved without involving the parties' lawyers.

¶ 24 Respondent also argues that the fees were unreasonable, because Cannizzaro and petitioner did not need to be in "near-constant communication." However, given the extensive litigation between the parties, we cannot say that a daily exchange of e-mails was so clearly unreasonable as to warrant reversal.

¶ 25 The last issue we address is whether petitioner acted in bad faith. Respondent claims that, because the record is rife with examples of petitioner being a "serial instigator of frivolous, meritless and harassing post-judgment litigation," he should not have to pay any of the attorney fees petitioner incurred most recently.

¶ 26 "There is no prohibition against awarding attorney fees to an unsuccessful litigant, although good faith of litigants is to be considered." *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. Courts should examine the circumstances that led to the action being brought to

court in determining who should pay the attorney fees incurred, and "where the party upon whom the fees are sought to be imposed has done *nothing* which necessitated or required judicial action, the allowance of fees is error." (Emphasis added.) *Kuhns*, 7 Ill. App. 3d at 886.

¶ 27 Here, even if we can consider prior acts of possible bad faith, we cannot conclude that respondent has established *prima facie* error. Although the court had questioned during earlier proceedings the merit of petitioner's pleadings and her credibility, the court did not find that petitioner acted in bad faith. Without such an indication, we cannot conclude that petitioner brought her claims now for an improper purpose. See *Streur*, 2011 IL App (1st) 082326, ¶ 39. That said, and more importantly, the record reflects that respondent was not without blame in the protracted litigation of this case. For example, when it was brought to respondent's attention, by way of a motion or otherwise, that the medical bills the youngest child incurred needed to be submitted to the insurance provider, respondent easily could have taken care of the matter expeditiously by, for example, submitting the invoices to the insurance company himself. He did not take this course of action, opting instead to file a reply to petitioner's motion. Thus, to argue that petitioner should be accountable for all of the fees she incurred is disingenuous, as respondent's resistance contributed to the need to bring the matter to the attorneys and the court. Thus, the cases on which respondent relies are clearly distinguishable. See *In re Marriage of Cotton*, 103 Ill. 2d 346, 362 (1984) (requiring husband to pay wife's attorney fees in post-dissolution child-custody case was an abuse of discretion where wife's neglect of the parties' child, who was abused by the wife's boyfriend, led father to seek custody of the child and rescue child from dangerous environment); *In re Marriage of Simmons*, 77 Ill. App. 3d 740, 744 (1979) (wife could not seek contribution from husband for attorney fees incurred in seeking to modify maintenance where clear terms of marital settlement agreement, which was not unconscionable,

provided that wife could not seek modification of maintenance); *Kuhns*, 7 Ill. App. 3d at 885-86 (trial court abused its discretion in awarding wife attorney fees in defending change-of-custody proceeding initiated by husband where wife's violence toward parties' children, in addition to her contact with fugitive, alcohol intoxication, and drug addiction, forced husband to initiate those proceedings to obtain custody of the children).

¶ 28 For these reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 29 Affirmed.