2017 IL App (2d) 160700-U
No. 2-16-0700
Order filed September 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE OF O.J.D. and V.J.D., Minors,	)	Appeal from the Circuit Court of Lake County.
	)	No. 12-F-694
(Violetta J., Petitioner-Appellee and Cross-Appellant v. Dariusz D., Respondent-Appellant and Cross-Appellee).	)	Honorable Elizabeth M. Rochford, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: We find the manifest weight of the evidence does not support the trial court's determination that there was a substantial change in circumstances to warrant an increase in child support and that the trial court's decision was an abuse of discretion. However, the trial court did not abuse its discretion when it ordered respondent to contribute to petitioner's attorney fees and costs in the amount of $40,500. Affirm in part and reverse in part.

¶ 2 This appeal concerns a post-decree parentage case, in which petitioner, Violetta J., filed for an increase in child support and an interim petition for contribution to attorney fees and costs from respondent, Dariusz D. Following separate hearings, the trial court awarded petitioner a $500 a month increase in child support to a total of $5,500 per month and awarded petitioner $40,500 attorney fees and costs. Respondent appeals the trial court's increase in child support.

Both parties appeal the trial court's allocation of attorney fees and costs. We affirm the judgment awarding attorney fees and costs to petitioner and reverse the judgment modifying and increasing the award of child support to petitioner.

¶ 3 I. BACKGROUND

¶ 4 The parties in this case were never married but had four children together, two of whom remain minors. They also had a business relationship. On May 12, 2014, the parties entered into two agreed orders. The first order concerned custody and visitation issues and the second order concerned financial matters. The agreed order regarding financial matters set respondent's child support obligation at $5,000 per month based upon the needs of the minors.

¶ 5 The parties subsequently engaged in post-judgment litigation. As stated, petitioner filed two petitions: (1) one to modify and increase child support and (2) the other for interim attorney fees.

¶ 6 A. Petition to Modify and Increase Child Support

¶ 7 Petitioner filed the petition to modify and increase child support on January 21, 2015. In the petition, she alleged that on May 12, 2014, the parties came to an agreement on financial matters, in which respondent acknowledged his obligation to pay 28% of his net income per year for child support in the sum of $5,000 per month, based on the current needs of the children and the difficulty in ascertaining the net income of respondent, "especially considering the ongoing litigation between the parties in Cook County, Illinois." (The ongoing litigation in Cook County concerned the business dealings between the parties.) Petitioner alleged that there was a substantial change in circumstances in that the expenses related to the children had increased. Petitioner alleged that on her "11.02 Financial Disclosure Statement, dated May 9, 2014, regarding 'Transportation' for 'Payments/Replacement' the amount of $725 is listed for the

replacement or payment cost of her vehicle, a 2010 Porsche Cayenne SUV." The motion further stated that "this vehicle was the subject of a Replevin Action." Petitioner attached this financial disclosure statement to the petition to modify and increase child support. Petitioner also alleged that an order was made in the replevin case (in Cook County) granting an order of replevin to respondent and ordering petitioner to return the vehicle to him and that this was her sole means of transportation for the parties' minor children. Petitioner alleged that she had little access to funds with the ongoing litigation in Cook County regarding a shareholder dispute and that her ability to obtain credit or financing for a vehicle is limited; that without a vehicle, she will not be able to transport the parties' minor children to and from school or their activities, as they reside in Lake Forest, Illinois, and attend classes in Des Plaines, Illinois. She further alleged that respondent had ample access to funds from which to pay an increased amount for a suitable replacement vehicle cost for petitioner as he enjoyed the entire income generated by the parties' shared business.

¶ 8 The petition came before the trial court for hearing on July 25, 2016. Prior to the hearing, respondent filed and presented a motion *in limine*, seeking to limit petitioner's testimony and the evidence presented at the hearing to the four corners of her petition. The trial court entered an order granting respondent's motion *in limine* and ordering that petitioner's evidence and testimony at the hearing on her petition would be limited to "the specific allegations in her Petition to Increase Child Support related to the vehicle only." Following the hearing, the trial court increased respondent's child support obligation $500 per month to the total sum of $5,500 per month.

¶ 9 B. Petition for Interim Attorney Fees

¶ 10 On December 9, 2015, petitioner filed an amended petition for interim attorney fees pursuant to section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1) (West 2014)) and section 508(a) of the Act (750 ILCS 5/508(a) (West 2014)). Petitioner alleged that, although respondent contributed $12,500 to her balance of $25,000 of attorney fees, she had a current balance exceeding $80,000, which did not include amounts for work performed on the ongoing litigation in Cook County. Petitioner alleged that respondent had unlimited resources from which to pay for "equal representation" of petitioner in the present litigation, "as he has usurped her interest in their shared enterprise, dissolved the entity, and has taken all of the income from their previous joint venture for himself," and "has placed *lis pendens*" on all of her assets "leaving her unable to access those assets from which to pay reasonable fees." Petitioner further alleged that she recently began employment as a real estate broker but only closed one deal in 2015 for less than $20,000. She requested that her application for attorney fees and costs be decided on a summary basis pursuant to sections 501(c-1)(1) and 508 of the Act and that respondent be required to reimburse her for her attorney fees and costs.

¶ 11 Petitioner's petition was heard by the court on July 25, 2016, and August 19, 2016, immediately following the hearing on the petition to modify and increase child support. Following the close of the evidence, the trial court found that petitioner had a limited ability to pay and contribute to her fees and that respondent had a superior ability to pay and contribute to respondent's fees and ordered respondent to contribute to petitioner's fees in the amount of $40,500. This amount was based on the court's determination that the total fees and costs of $90,000 were reasonable and necessary.

¶ 12 Respondent timely appeals, raising two issues relating to child support and attorney fees. Petitioner timely cross-appeals, raising two issues related to the child support hearing and two issues related to attorney fees.

¶ 13 II. ANALYSIS

¶ 14 We must first mention that petitioner's briefs are in violation of Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016). Her nature of the case is not an introductory paragraph but instead goes on for more than 6 pages in violation of Rule 341(h)(2). Additionally, in violation of Rule 341, petitioner uses this section to argue the appeal and includes numerous allegations regarding the litigation in Cook County, which is not relevant to this appeal or part of the record. Accordingly, we strike petitioner's nature of the case. Petitioner's brief also contains an improper statement of the issues presented for review, as required by Rules 341(h)(3). Moreover, many of the facts set forth in the statement of facts also contravene Rule 341(h)(6) in that they are argumentative. We will disregard any argumentative assertions in petitioner's statement of facts.

¶ 15 A. Child Support

¶ 16 We next note petitioner does not respond in her response brief to respondent's first contention that the trial court erred in finding petitioner proved a substantial change in circumstances to warrant an increase in child support. Rather, she responds to this argument in her sur-reply brief, which does not afford respondent the opportunity to address her arguments in his reply brief. The requirements of supreme court rules apply to appellees and cross-appellees with equal strength. *Plooy v Paryani*, 275 Ill. App. 3d 1074, 1088 (1995). When an appellee does not address arguments in her brief, her position should be equivalent to that as if she had not filed a brief at all. *Id*.

¶ 17 **Where appellee does not file a brief and** "the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp*. 63 Ill. 2d 128, 133 (1976). In this case, respondent's argument presents a *prima facie* case for error.

¶ 18 Motions to modify judgments awarding child support are governed by section 510(a) of the Act (750 ILCS 5/510(a) (West 2014)). Section 510(a) provides, among other things, that an order for child support may be modified only "upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2014). To satisfy this burden, the party seeking a child support modification bears the burden of demonstrating that a substantial change in circumstances has occurred since the entry of the judgment. *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 818 (2001); *In re Marriage of Fazioli*, 202 Ill. App. 3d 245, 251 (1990). Once the court has determined that there has been a substantial change in circumstances, it may proceed to consider a modification of child support pursuant to the factors listed in section 505(a)(2) of the Act (750 ILCS 5/505(a)(2) (West 2014)). *In re Marriage of Rash & King*, 406 Ill. App. 3d 381, 388 (2010).

¶ 19 A trial court is given wide latitude in determining whether a substantial change in circumstances has occurred. *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 13. A trial court's factual findings will not be disturbed unless they are against the manifest weight of the evidence. *Id*. ¶ 16. The court's judgment regarding substantial change and whether to allow a modification is reviewed for an abuse of discretion, meaning that its judgment will not be disturbed unless no reasonable person would agree with the decision. *Id*.

¶ 20 Petitioner filed the petition to modify and increase child support on January 21, 2015, roughly eight months after the entry of the May 12, 2014, agreed child support order was

entered, and the hearing on the petition did not begin until July 25, 2016. Petitioner's position to increase child support only relied on her loss of the use of the Porsche and her expense in buying a new car in order to transport the two minors. The petition to modify made no other allegations of changes in circumstances. Petitioner did not amend her petition to add additional allegations of any substantial change in circumstances at any time after she filed the petition.

¶ 21 Prior to the commencement of the hearing, respondent filed a motion *in limine* seeking to limit the petition to the four corners of the pleading regarding the allegation that the change in vehicle was a substantial change in circumstances warranting an increase in child support. The trial court granted the motion after hearing argument. In ruling in respondent's favor, the court reasoned that to allow petitioner to allege facts not in her petition would prejudice respondent.

¶ 22 Following the hearing and argument on the petition for modification and increase in child support, the trial court ruled there was a substantial change in circumstances that justified modifying petitioner's child support obligation. The court expressed three grounds for justifying a modification: (1) the increase in petitioner's vehicle and expenses from "zero to $350 per month" and that transportation is necessary for the children for school and their other activities; (2) given their respective and current ages, the needs of the children for food and clothing and social activities (which) have naturally increased in the two-year period"; and (3) respondent's stipulation that he has the ability to pay for an increase in support. The court awarded an increase of $550 per month, "reflecting $350 towards the necessary car expense for the needs of the children and $100 per month per child for their increased needs and expenses associated with their advancing ages and respective social obligations."

¶ 23 Respondent argues there was no substantial change in circumstances as the car expense was factored into the original May 2014 support order and the evidence at the hearing showed that the children's expenses actually had decreased.

¶ 24 At the hearing on the petition to modify, petitioner testified that, at the time the child support order was entered on May 12, 2014, she had possession of the 2010 Porsche, which was entirely paid for. In February 2015, the Porsche was surrendered to respondent, and petitioner purchased a 2015 Hyundai.

¶ 25 Petitioner further testified to financial affidavits that had been prepared by her both before and after the May 12, 2014, child support order had been entered. As set forth in her petition and as she testified, petitioner was required to surrender the Porsche and she anticipated that in her financial affidavit, which was prepared on May 9, 2014, that the "automobile payments/replacement" would be $725 per month.

¶ 26 Petitioner also testified to a financial affidavit prepared on October 1, 2015, in which she set forth the actual expense for her Hyundai car payment at $370 per month. Petitioner testified that she omitted other expenses, including approximately $200 per month for car insurance from her current financial affidavit. Respondent points out that the monthly car payment of $370 per month plus $200 per month insurance is actually less than the anticipated cost of $725 per month for a replacement vehicle, which petitioner and her counsel had **included** in petitioner's May 9, 2014, financial affidavit and the initial calculation for the May 12, 2014, child support.

¶ 27 Respondent cites to *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 819 (2001), for the proposition that, where the possibility of a particular event is contemplated and provided for in a marital settlement agreement, the occurrence of the event will not constitute a substantial change in circumstances. In *Hughes*, the events that were argued to constitute an increase in income

sufficient to constitute a substantial change in circumstances were the termination of maintenance and the termination of the husband's car payments on behalf of the wife, both of which were scheduled in the parties' marital settlement agreement. *Id*.

¶ 28 Here, the only evidence that was argued to constitute a substantial change in circumstances was a vehicle replacement expense of $725 for the Porsche. This amount was clearly contemplated by petitioner, as evidenced by her affidavit of the minors' expenses, prior to entering into the initial order of child support. Thus, we **determine that** the evidence regarding a change in vehicle did not constitute a substantial change in circumstances. See *Id*. (stating "[t]he change in circumstances must occur after the date of the decree").

¶ 29 We note that an increase in the obligor's ability to pay support may on its own justify an increase in child support. *In re Marriage of Heil*, 233 Ill. App. 3d 888, 891 (1992). Secondly, the court may also consider the fact that the children are older and their expenses are presumed to have increased as well. *Id*. at 894-95. See also *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343 (2004). Respondent acknowledges this and that the court may consider this in a motion to modify and increase child support, even if there are no allegations set forth in the petition for modification. However, respondent points out that not much time had passed from the time the original child support award had been entered before petitioner filed the petition to increase child support. Moreover, the evidence shows that the minors' expenses actually had decreased. Accordingly, we find the manifest weight of the evidence does not support the trial court's determination that there was a substantial change in circumstances to warrant an increase in child support and that the trial court's decision was an abuse of discretion.

¶ 30 Petitioner argues that the trial court erred in granting respondent's motion *in limine* because it was untimely. Specifically, petitioner argues respondent acted improperly by

presenting his motion *in limine* prior to the opening statements at the hearing on the petition to modify and increase child support rather than at the final trial conference.

¶ 31 Lake County's local rules (19th Judicial Cir. Ct. R. 5.02 (eff. Jan. 6, 2014)), regarding motions *in limine*, provide:

> "Motions *in limine* shall be in writing and shall be presented to the Court not later than immediately prior to *voir dire* examination in jury cases and opening statements in bench cases, unless the Court orders that they be presented at an earlier date. The Court, in its discretion, may consider motions *in limine* presented thereafter if it determines that the grounds therefore became known subsequent to the deadline or for other good cause. All orders on motions *in limine* shall be reduced to writing by movant's counsel and presented to the Court for signature prior to *voir dire* examination in jury cases and opening statements in bench cases." 19th Judicial Cir. Ct. R. 5.02 (eff. Jan. 6, 2014).

¶ 32 There was no order in the record requiring motions *in limine* be presented prior to the trial and thus, the trial court had the authority by rule to hear the written motion at any time and did so prior to the parties' opening arguments on the petition to modify and increase child support. Respondent did not need to prove good cause ~~shown~~ for presenting the motion, as petitioner asserts, because respondent presented the motion prior to trial. The good cause shown analysis is triggered only if the trial court hears the motion after a court ordered deadline or after opening statements in a bench trial, which was not the case here.

¶ 33 Petitioner further claims that she was not allowed to amend her pleadings to conform to the proofs. Pursuant to section 2-616(c) of the Code of Civil Procedure (735 ILCS 5/2-616(c) (West 2014)), petitioner could have amended her pleading at any time, before or after judgment to conform the pleadings to the proofs. However, she did not seek to amend her pleadings at any

time either prior to, during the trial, or after the trial. Additionally in her brief, petitioner does not state what her amendments would be. In any event, respondent notes the record reveals that petitioner was able to enter evidence during the hearing outside the four corners of her petition.

¶ 34 B. Attorney Fees

¶ 35 1. Evidentiary Hearing for Good Cause

¶ 36 Petitioner first argues in her cross-appeal that the trial court abused its discretion by granting respondent's motion for an evidentiary hearing on her petition for interim attorney fees. Respondent argued in his motion for a hearing that the credibility of the parties was at issue, and therefore good cause existed for an evidentiary hearing. Petitioner asserts that the trial court's finding that good cause existed was contrary to the plain meaning of the statute to hold non-evidentiary hearings on interim fees. She maintains that sanctions were available to address falsehoods and to hold the parties accountable, "and such a request by [respondent] was intended, and caused a substantial delay in the proceedings."

¶ 37 Except for good cause shown, proceedings regarding interim fee awards shall be nonevidentiary, summary, and expeditious. 750 ILCS 5/501(c-1)(1) (West 2016). A nonevidentiary proceeding is proper as long as the decision maker can determine, from the evidence presented in the petition and answer, what amount would be a reasonable award and the opposing party had an opportunity to be heard. *Raintree Health Care Center v. Illinois Human Rights Commision*, 173 Ill. 2d 469, 495-96 (1996). The determination of what constitutes good cause is fact-dependent and rests within the sound discretion of the trial court, and we will not disturb that determination absent an abuse of discretion. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007).

¶ 38 We find the trial court did not abuse its discretion in finding good cause existed to hold an evidentiary hearing. In his petition for an evidentiary hearing, respondent alleged, *inter alia*, possible duplicative time entries from the Cook County litigation, which may have inflated petitioner's attorney fees. Respondent also noted during argument on his petition that petitioner listed several people who had loaned her money under the creditor section of her 11.02 financial affidavit, and one of the persons respondent deposed stated, in contravention to the sworn affidavit, that petitioner did not give her any money. Accordingly, respondent argued that the credibility of the parties and their financial affidavits were at issue. At the hearing, the trial court found that there was an issue of credibility raised by both parties and therefore there was good cause to have an evidentiary hearing on attorney fees. Under these circumstances, we cannot say that the trial court abused its discretion.

¶ 39 Petitioner argues that respondent caused the hearing on her interim petition for attorney fees to be delayed, which prejudiced her because the standard for granting interim fees would have created a presumption that fees should have been equalized between the parties. See 750 ILCS 5/501(c-1) (3) (West 2016). Based on our review of the record, it appears that a delay was caused by the trial court's schedule, both attorneys' schedules, and case priority. Accordingly, her argument is not supported by the record.

¶ 40 2. Section 501(c-1) or 508(a)

¶ 41 We next address whether the trial court erred in determining that section 501(c-1) did not apply to the amended petition for interim attorney fees. We note that the amended petition for interim attorney fees was brought pursuant to sections 508 and 501(c-1) of the Act.

¶ 42 The primary rule of statutory construction is to give effect to the intent of the legislature. *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16.

The most reliable indicator of legislative intent is the statutory language itself, which must be given its plan and ordinary meaning. *Id*. We review *de novo* issues of statutory construction. *Id*.

¶ 43 Under section 809(a) of the Parentage Act of 2015 (750 ILCS 46/809(a)) (West Supp. 2015)), the court may order reasonable fees of counsel and costs to be paid by the parties "in accordance with the relevant factors specified in Section 508 of the Illinois Marriage and Dissolution of Marriage Act." Section 809(a) of the Parentage Act of 2015 does not use the word "interim fees," but it refers to payment of "reasonable fees of counsel" for every stage of the proceedings, and then directs the court to the "relevant factors specified in Section 508" of the Marriage Act.

¶ 44 Section 508 of the Act provides:

> "(a) The court, from time to time, after due notice and hearing, and after considering the financial resources of the parties may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *Interim attorney's fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501* [(750 ILCS 5/501)] *** . (Emphasis added.) 750 ILCS 5/508(a) (West 2014).

Thus, the Parentage Act confers the application of the provisions of sections 508(a) and 501(c-1) on litigants seeking attorney fees.

¶ 45 The trial court found that section 501(c-1) did not apply to this case because the litigation had concluded. As stated above, section 508 provides that interim attorney fees and costs may be awarded from the opposing party in a pre-judgment dissolution proceeding in accordance with section 501(c-1). Under section 501(c-1), " 'interim attorney's fees and costs' means attorney's fees and costs assessed from time to time while a case is pending." 750 ILCS 5/501(c-1) (West

2016). The language is clear and unambiguous. Because of the continuances and the fact that petitioner did not tender her counsel's billing statements to the trial court until the matter came before the court for the final hearing on the petition for modification of increase in child support, the petition for attorney fees could no longer be considered interim as the case would no longer be pending. Accordingly, the trial court correctly determined that section 508 applied rather than section 501(c-1) to petitioner's petition for interim attorney fees.

¶ 46 3. The Trial Court's Allocation of Attorney Fees

¶ 47 We next address whether the trial court applied the correct standard in allocating the fees. Respondent argues that the trial court erred in finding that petitioner did not have the ability to pay. Petitioner responds that she was not required to demonstrate an inability to pay attorney fees. As such, both are appealing whether the trial court applied the correct standard in allocating the award of attorney fees and costs.

¶ 48 In *In re Marriage of Heroy*, 2017 IL 120205, the Illinois Supreme Court recently addressed the standard the court should apply when awarding attorney fees and costs under section 508 of the Act. The court first noted the "inability to pay" standard that had previously been applied in supreme court decisions (see, *e.g.*, *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005); *In re Marriage of Cotton*, 103 Ill. 2d 346, 361 ((1984)) and by several panels of appellate courts (see, *e.g.*, *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 49; *In re Marriage of Keip*, 332 Ill. App. 3d 876, 884 (2002)). *Id*. ¶ 15. The *Heroy* court cited other appellate court panels that have reached different conclusions when considering whether the inability to pay standard contradicted the statutory language of section 508. *Id*. ¶ 17. For example, in *In re Marriage of Haken*, 394 Ill. App. 3d 155 (2009), the court relied on

amendments added to section 508 as evidence that the legislature intended to do away with the inability to pay standard. *Haken*, 394 Ill. App. 3d at 162.

¶ 49 Determining whether the trial court applied the correct standard when it awarded the fees in *Heroy* required the supreme court to interpret section 508 of the Act, which the court found was clear and unambiguous. *Heroy*, 2017 IL 120205, ¶ 19. The *Heroy* court concluded that "[t]he trial court must (1) " 'consider [ ]the financial resources of the parties' and (2) make its decision on a petition for contribution 'in accordance with subsection (j) of Section 503' ". *Id.* (quoting 750 ILCS 5/508(a) (West 2014)). However, the court was not convinced that those courts using the inability to pay standard must be overturned. The court surmised that it was "clear that the inability to pay standard was never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance." *Id.* "Rather, a party is unable to pay if, after consideration of all the relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability. This conclusion is consistent with the statutory language of section 508 and with this court's precedent." *Id.*

¶ 50 We find the trial court's ruling in the present case fits within the broad language set forth in *Heroy* when it found that petitioner has "a limited ability to pay fees and that [respondent] has a superior ability to pay and contribute to her fees."

¶ 51 Petitioner requested attorney fees and costs in the amount of $90,000. The trial court ordered respondent to contribute 45% of that amount, totaling $40,500. Both parties appeal the allocation. Neither party appeals the trial court's finding that the total fee amount was reasonable.

¶ 52 Petitioner asserts that the evidence at trial demonstrated that she was almost completely reliant upon loans in order to survive and continue in the litigation. She claims that her assets were depleted by respondent delaying the litigation in an attempt to undermine her financial ability to participate. Petitioner also maintains that her assets were depleted by the Cook County litigation between the parties. She argues that the trial court failed to adequately consider and weigh these facts.

¶ 53 Respondent contends that petitioner did not demonstrate that paying her own attorney fees would undermine her economic stability and points to her ability to procure money whenever she needed it and choosing to rent the Harlan Lane property (one of two properties petitioner owns) instead of selling it to pay her attorney fees.

¶ 54 The trial court found that neither parties' testimony was credible. The court found petitioner's testimony lacking memory and that she made choices in regard to finances that did not benefit her position. As to respondent, the court found a significant inability to determine with any precision what his finances were and that his testimony in regard to his finances was not credible, evasive, self-serving, and incomplete. The court further noted that it was clear that both parties would go to "great lengths to disadvantage each other financially," which had been devastating for everybody involved. But in the final analysis when the court weighed all of the testimony and the evidence that was presented, the court found that petitioner had a limited ability to pay fees and that respondent had a superior ability to pay and contribute to her fees in regard to these proceedings since the entry of the judgment.

¶ 55 The trial court's decision to award attorney fees will not be disturbed absent an abuse of its discretion. *Heroy*, 2017 IL 120205, ¶ 13. It is well established that determinations by the

trier of fact as to the credibility of parties are given great deference. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997).

¶ 56 The evidence supports the trial court's findings. Petitioner's source of income is her child support allowance and monthly rental income from the Harlan Lane property. She also testified that she is a realtor and earned one commission in 2015 for $15,000. Respondent paid petitioner $12,500 in interim attorney fees in October 2015. And she received substantial sums of money from friends and family in what she described as "loans" to pay off debts, but petitioner failed to provide evidence regarding her obligation to repay these loans. Petitioner also potentially could sell the Harlan Lane property, worth about $900,000, to repay her debts and her attorney, although we note it is not necessary for the spouse seeking fees to divest her capital assets, deplete her means of support, or undermine her economic stability in order to pay all of her fees. See *In re Marriage of Weinberg*, 125 Ill. App. 3d 904, 919 (1984).

¶ 57 On the other hand, although it is unclear exactly what respondent's finances are, it is clear that he has sufficient sums to pay $5,000 a month for child support, $4,800 a year for extracurricular activities, $12,000 a year for half of private school tuition, and pays for health insurance for the minors. Additionally, respondent paid his attorney from his personal account from money borrowed from his corporation. He also testified that he owns three or four cars, all of which are paid for.

¶ 58 Accordingly, we cannot say that the trial court abused its discretion when it ordered respondent to contribute to petitioner's attorney fees and costs in the amount of $40,500.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the judgment of the trial court ordering respondent to contribute $40,500 toward petitioner's attorney fees and costs and reverse the judgment of the trial court modifying and increasing the award of child support to petitioner.

¶ 61 Affirmed in part and reversed in part.