

2024 IL App (1st) 231384-U
No. 1-23-1384
Order filed September 30, 2024

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF HOLLY L. SCHROEDER,)	Appeal from the
)	Circuit Court of
Petitioner,)	Cook County.
)	
v.)	No. 2020 D 330236
)	
CHRISTOPHER C. SCHROEDER,)	
)	
Respondent-Appellee)	Honorable
)	Lori Rosen,
(James Goldberg, Appellant).)	Judge, presiding.

JUSTICE D.B. WALKER delivered the judgment of the court.
Presiding Justice Lampkin and Justice Martin concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the circuit court’s award of attorney fees under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2022)).
- ¶ 2 Appellant James Goldberg, former counsel for petitioner Holly L. Schroeder, appeals the circuit court’s orders directing him to pay respondent Christopher C. Schroeder \$6304 in attorney fees under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS

5/508(b) (West 2022)).¹ On appeal, Goldberg argues that the circuit court erred in awarding attorney fees because it did not find that he violated a court order or judgment. He also contends that attorney fees could not be awarded where the court did not find him in contempt of court. We affirm.

¶ 3 Christopher and Holly were married in August 2003. On March 3, 2020, Holly filed a petition for dissolution of marriage. On August 23, 2022, Goldberg entered an appearance on behalf of Holly in the dissolution of marriage proceedings.²

¶ 4 On March 31, 2022, Christopher filed a petition for interim and prospective attorney fees. On September 16, 2022, Christopher's attorney, Erin Wilson of The Law Office of Erin M. Wilson LLC, issued a subpoena for records only to Goldberg.³ The subpoena requested documentation of attorney fees that Holly incurred pertaining to Christopher's pending petition for interim and prospective attorney fees.

¶ 5 On October 14, 2022, after Goldberg failed to respond by the required date of October 7, 2022, Christopher filed a petition for rule to show cause for failure to comply with the subpoena (first petition) pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002) and Rule 754 (eff. Feb. 1, 2018). Christopher argued that Goldberg did not cooperate and failed to provide information about Holly's attorney fees. He requested the court to order Goldberg to pay the attorney fees and costs incurred to prepare, present, and litigate the petition.

¹ Because Holly and Christopher share the same last name, we refer to them by their first names.

² On June 21, 2023, Goldberg withdrew as attorney of record for Holly.

³ The subpoena is not in the record. However, Goldberg acknowledges that he received the subpoena, which requested a list of all attorney fee payments made by or on behalf of Holly. The record also includes the notice of subpoena, attesting service of the notice and subpoena on Goldberg via email on September 16, 2022.

¶ 6 On December 19, 2022, the court held a hearing on the petition. At the hearing, Goldberg stated that the subpoenaed documents contained confidential information, as the billing statements detailed information discussed with Holly. Upon questioning by the court, Goldberg confirmed that he neither filed a motion to quash the subpoena nor put in writing what Holly had incurred in attorney fees. The court explained to Goldberg that the amount of attorney fees that Holly incurred relating to a pending petition for interim and prospective fees was not confidential. The court stated that the subpoena, which was extremely routine when there was a petition for interim and prospective attorney fees, had been issued months ago.

¶ 7 The court explained that if Goldberg did not think the subpoena was appropriate “because it asked for way too much information,” he could have either filed a motion to quash the subpoena or complied by submitting redacted invoices. The court elaborated that there was “nothing private, secret, or confidential about that information when there is a petition for attorney fees for interim or prospective fees pending, nothing.” The court found Goldberg in contempt of court, explaining that he “chose to completely, willfully, and repeatedly not comply, and [he] had months to comply.”

¶ 8 On the same day as the hearing, the court entered a written order, holding Goldberg in indirect civil contempt and finding Goldberg’s failure to respond to the subpoena was willful, contumacious, and without cause or justification. As a purge, Goldberg was to provide by December 21, 2022 “all billing statements attributable to this action” showing the attorney fees that Holly incurred and paid, and who paid them. The court also granted Christopher leave to file a petition for section 508(b) attorney fees and costs relating to Goldberg’s failure to comply with the issued subpoena.

¶ 9 On January 4, 2023, Christopher filed a second petition for rule to show cause against Goldberg (second petition). He raised Goldberg's failure to comply with the court's December 19, 2022 order, despite the clearly articulated purge, and sought attorney fees and costs pursuant to section 508(b) of the Act. Christopher acknowledged receipt of a redacted engagement agreement and heavily redacted billing statements. However, he had not received copies of payments detailing how much Holly, or someone on her behalf, had paid in attorney fees, as required under the December 19, 2022 order. Christopher asserted that Goldberg's refusal to comply with the December 19, 2022 order further prolonged the matter and was consistent with his refusal to move the matter forward towards a resolution since he was retained as Holly's counsel. Christopher asserted that, due to Goldberg's failure to comply with court orders, he incurred \$6399.50 in attorney fees, including preparing for the December 19, 2022 hearing on the first petition.

¶ 10 On April 18, 2023, the circuit court declined to find Goldberg in contempt on the second petition, but granted Christopher leave to submit a petition for attorney fees under section 508(b). The court stated that the fee affidavit would be ruled on at the next court date scheduled for May 22, 2023. Christopher's attorney filed the fee affidavit on April 25, 2023, averring that the attorney fees and costs incurred in attempting to obtain responses to the September 2022 subpoena and filing and litigating the two petitions for rule to show cause totaled \$6872.

¶ 11 In its May 23, 2023 written order, the circuit court ordered Goldberg to pay \$6872 in connection with Christopher's fee affidavit "regarding [Christopher's] Second Petition for Rule to Show Cause *** for failure to comply with December 19, 2022 Order and for Attorney's Fees and Costs." The court noted that Goldberg was present on the previous court date when the issue was set for hearing and was given courtesy copies and an opportunity to respond.

¶ 12 On May 26, 2023, Goldberg filed a “petition” to reconsider or vacate the court’s order directing him to pay Christopher and requested sanctions on Christopher’s counsel based on her filing of the fee affidavit. Goldberg recounted that he timely sent his redacted retainer agreements on December 20, 2023 and informed counsel of his difficulty in accessing the actual checks paid by Holly. Goldberg acknowledged that counsel granted a three-day extension to permit him to gather the checks. He asserted that, on December 23, 2023, he informed counsel that he did not have “current or immediate access to any check images” and would “swear under oath” to the amount he had been paid. Goldberg alleged that Christopher’s counsel agreed to send him an affidavit to sign, but did not do so, filing instead the second petition. Goldberg also asserted that Holly’s mother’s attorney provided the checks in question on February 17, 2023.

¶ 13 Christopher filed a response and statement in opposition, asserting that Goldberg caused him to incur attorney fees and costs through his failure to comply with the court’s orders and rules of discovery.

¶ 14 On July 17, 2023, the circuit court entered an order *nunc pro tunc* to July 6, 2023, denying Goldberg’s petition to reconsider, explaining that Goldberg was given the opportunity to argue and respond to the fee affidavit. After reviewing billing statements, Christopher’s counsel agreed to reduce the attorney fees from \$6872 to \$6304. The court ordered Goldberg to tender payment of \$6304 by September 5, 2023 to Christopher’s counsel to be applied to his outstanding balance.

¶ 15 Goldberg timely appealed. This court entered an order on its own motion, taking the appeal on the record and Goldberg’s brief only where Christopher failed to file a brief on appeal within the time-period prescribed by Illinois Supreme Court Rule 343(a) (eff. July 1, 2008). See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (case may be

taken on appellant's brief only where the issues are simple and can be decided without additional briefing).

¶ 16 On appeal, Goldberg contends that the circuit court erred in awarding attorney fees and costs to Christopher under section 508(b), because at no time did the court find that he violated any "order" or "judgment." Specifically, Goldberg argues that his only alleged violation was of a discovery subpoena and not of a court "order" or "judgment" as provided by the language and legislative history of section 508(b) of the Act.

¶ 17 When construing a statute, courts must ascertain and give effect to legislative intent as expressed by the plain language of the statute. *In re Marriage of King*, 208 Ill. 2d 332, 340 (2003). We will enforce clear and unambiguous statutory language as written, and will not read into it exceptions, conditions, or limitations not expressed by the legislature. *In re N.C.*, 2014 IL 116532, ¶ 50. The interpretation of a statute is a question of law that we review *de novo*. *King*, 208 Ill. 2d at 340.

¶ 18 Section 508(b) provides:

"In 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. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs

of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.” 750 ILCS 5/508(b) (West 2022).

¶ 19 Pursuant to Christopher’s first petition for rule to show cause, the circuit court found Goldberg in contempt and as a purge, ordered him to “provide all billing statements attributable to this action.” When Goldberg failed to comply with this order, entered on December 19, 2022, Christopher filed a second petition for rule to show cause alleging that he had not received copies of payments detailing how much Holly, or someone on her behalf, had paid in attorney fees, as required under the order.

¶ 20 Although the circuit court did not find Goldberg in contempt a second time, it granted Christopher leave to file a petition for attorney fees under section 508(b) in connection with the proceedings. In his affidavit, Christopher’s attorney averred that the fees and costs incurred in attempting to obtain responses to the September 2022 subpoena and filing and litigating the two petitions for rule to show cause totaled \$6872. On May 23, 2023, the circuit court ordered Goldberg to pay \$6872 in connection with the fee affidavit “for failure to comply with December 19, 2022 Order.” This amount was later reduced to \$6304.

¶ 21 Contrary to Goldberg’s assertions, the circuit court did find that he failed to comply with a court order when it awarded Christopher attorney fees under section 508(b).

¶ 22 Goldberg, however, argues that the fee award under section 508(b) was improper to the extent that it included fees related to Christopher’s first petition for rule to show cause. He contends that the circuit court did not find that he violated an order in those proceedings. Rather, it only found him in contempt and ordered a purge.

¶ 23 Pursuant to the plain language of section 508(b), the party who fails to comply with an order in an enforcement action must “pay promptly the costs and reasonable attorney’s fees of the prevailing party.” *Id.* Nothing in the provision limits the fee award to only those fees directly related to the enforcement of the violated order. Instead, section 508(b) provides for “reasonable attorney’s fees.” Generally, in a dissolution proceeding, reasonable attorney fees are allowed for “those services which were reasonable and necessary to the action.” *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 111 (1990).

¶ 24 The circuit court’s December 19, 2022 purge order was entered on Christopher’s first petition and expressly found Goldberg in contempt regarding the subpoena. As a purge for the contempt, Goldberg was ordered to provide documents showing the attorney fees that Holly incurred and paid, and who paid them. When he failed to comply with that order, Christopher filed his second petition for rule to show cause. After a hearing on that petition, the circuit court granted Christopher leave to file a petition for attorney fees under section 508(b) against Goldberg “for failure to comply with the December 19, 2022 Order.” The fees and costs related to the filing of the first petition were clearly connected to the court’s enforcement of the December 19, 2022 order. We find that the circuit court did not err in awarding attorney fees related to the first petition under section 508(b).

¶ 25 Goldberg argues that even if the circuit court correctly ordered attorney fees for the first petition for rule to show cause, the court abused its discretion in awarding fees incurred in bringing the second petition where the court did not find him in contempt as to the second petition. We review an award of attorney fees for an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13. The court abuses its discretion where its decision “is arbitrary, unreasonable, or

fanciful or where no reasonable person” would take the view adopted by the court. *People v. Heineman*, 2023 IL 127854, ¶ 59.

¶ 26 Although the circuit court did not find Goldberg in contempt pursuant to the second petition, that did not preclude the court from awarding attorney fees under section 508(b). Under section 508(b), a finding of contempt is not required for the court to award attorney fees. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 397 (2002). Furthermore, section 508(b) allows an award of attorney fees where a “hearing under this Act was precipitated or conducted for any improper purpose.” 750 ILCS 5/508(b) (West 2022). An improper purpose includes “harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.” *Id.*

¶ 27 Christopher incurred additional attorney fees for the preparation, presentation, and litigation of the second petition, which were precipitated by Goldberg’s persistent failure to comply with the court’s orders and underlying discovery subpoena. The court expressly permitted Christopher to add attorney fees incurred to prepare and litigate the second petition. The court did not abuse its discretion in allocating fees and costs associated with the hearing on the second petition where Goldberg’s conduct forced Christopher to file the second petition, thus needlessly increasing the cost of litigation. See 750 ILCS 5/508(b) (West 2022).

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 29 Affirmed.