

Nos. 1-12-3754 and 1-13-1410
(CONSOLIDATED)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF ANITA LENGERICH,)	Appeal from the
n/k/a ANITA WILDMAN,)	Circuit Court of
)	Cook County.
Petitioner-Appellant,)	
)	
and)	No. 00 D 9626
)	
VINCENT C. LENGERICH,)	Honorable
)	Mark Joseph Lopez,
Respondent-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not abuse its discretion in awarding attorney fees to petitioner pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act.

¶ 2 This is an appeal from a postjudgment proceeding in a dissolution action in which the circuit court of Cook County assessed attorney fees and costs against respondent, Vincent C.

Lengerich, and in favor of petitioner, Anita Lengerich (n/k/a Anita Wildman), pursuant to section

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508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (705 ILCS 5/508(b) (West 2010)). The record shows that the parties were married on September 1, 1979, and that six children were born to the marriage. A judgment for dissolution of marriage was entered on June 18, 2003, and petitioner was awarded sole custody of the minor children. Respondent was ordered to pay \$937 per month to petitioner as child support.

¶ 3 On April 7, 2005, respondent filed a petition to modify child support, citing the upcoming emancipation of one of the parties' children, and claiming that he had "suffered a significant reduction in income[.]" He attached a Cook County Circuit Court Rule 13.3.1 affidavit (Cook Co. Cir. R. 13.3.1 (eff. Jan.1, 2003)) (affidavit) dated March 31, 2005, in support. In that affidavit, respondent disclosed \$2,745 in monthly income, \$2,700 of which was from "self employment." Respondent listed no interest in real property, savings or interest-bearing accounts, certificates of deposit, money market accounts or cash.

¶ 4 On September 13, 2005, the trial court held a hearing on respondent's motion to modify support. The court concluded that respondent was underemployed, and imputed income of \$19 per hour for 40 hours per week to him for purposes of setting a new monthly child support obligation of \$562 per month. Respondent was also ordered to contribute \$325 per month for the children's medical insurance coverage.

¶ 5 On January 20, 2009, petitioner filed a motion to vacate the order entered on September 13, 2005, alleging that respondent fraudulently misrepresented his income and concealed his interest in real property and financial accounts. Petitioner had recently become aware that respondent's new home at 2431 North Artesian in Chicago was titled in his name. After subpoenaing the mortgage company, she learned that respondent filed his mortgage application

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on March 15, 2005, approximately two weeks before he executed his affidavit. In that application, respondent listed his gross monthly income as \$7,560, significantly more than the \$2,745 which he had previously claimed. Respondent also listed a number of brokerage and other financial accounts on the application, which he did not disclose in his affidavit.

¶ 6 On April 30, 2009, the court entered an order finding that respondent made material misrepresentations of his income, and that these representations were relied upon by the court in entering the September 13, 2005, order modifying his support obligations. The court also found that respondent failed to disclose relevant documents responsive to discovery requests, including documents related to the purchase of the Artesian property. The court concluded that the September 13, 2005, order should be vacated in part, and recalculated respondent's child support arrearage as \$70,701.44 for his obligations from September 13, 2005, through the date of the order. The court also determined that respondent committed fraud on the court, found him in direct civil contempt, and remanded him to the Cook County jail for five nights. Petitioner was then granted leave to file a fee petition.

¶ 7 On May 4, 2009, petitioner filed a fee petition under section 508(b) (750 ILCS 5/508 (West 2010)), contending that, as a result of respondent's fraudulent misrepresentations, she incurred substantial attorney fees and costs to investigate and litigate this matter. The fee petition was thereafter amended and updated, along with itemized billing statements of counsel showing a total of \$107,799.36 in expenses for legal services provided from December 22, 2008, through January 18, 2013.

¶ 8 Respondent filed a motion to reconsider the April 30, 2009, order, which the court granted "as to the issue of the proper calculation of child support" from September 13, 2005

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through April 30, 2009. On April 12, 2013, the court entered an amended order regarding the calculation of respondent's child support obligation. Although a transcript is not included in the record on appeal, the court extensively described a hearing in which the testimonies of petitioner, respondent, and respondent's accountant and friend were presented. The court described, *inter alia*, that respondent admitted that he purchased the Artesian property, a three-flat, on April 30, 2005, and that he had a tenant who paid rent of \$850 per month in cash from April through December 2005. Although respondent's tax returns for 2005 through 2009 showed adjusted gross incomes of negative \$5,510.38 to negative \$81,451.55, respondent submitted a mortgage application on which he claimed \$7,560 per month in income. Respondent's accountant testified that he reviewed, but did not prepare respondent's tax returns. He acknowledged receiving no documents to support numerous income and expense items, and admitted that he did not ask respondent about his methodology in arriving at each annual loss.

¶ 9 The court concluded that respondent failed to meet his burden, and that no modification of the April 30, 2009, order was warranted. The court observed that it "had the ability to observe [respondent's] demeanor and assess his credibility." It found respondent's attitude towards the proceedings "quite cavalier," and that respondent was hiding his true income from petitioner and perpetuating litigation with her "simply to amuse himself[.]" The court also observed that respondent admitted receiving cash payments, and believed that he "does not declare all of his income."

¶ 10 That same day, the court entered an order on petitioner's fee petition. In it, the court determined that some of the fees were incurred by petitioner "as a result of this pending post-decree litigation precipitated by [respondent], [and] that he conducted a hearing for an improper

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purpose, which resulted in harassment, unnecessary delay and other acts needlessly increasing the cost of litigation." The court observed that it had granted respondent a rehearing for purposes of recalculating his income, but that, after "much delay" respondent failed to present credible evidence of his true income for the relevant time period. Respondent further failed to disclose that he had purchased a rental property, or his rental income from that property, at a hearing or in his affidavit. The court specifically noted that respondent "deliberately obfuscated the record to make it as difficult as possible for [petitioner] or this [c]ourt to ascertain his true income[.]" Although the matter was a "simple" petition to set child support and determine the arrearage, respondent's conduct was the "cause of all of the litigation subsequent to the 2005 support order that both [petitioner] and [the court] have suffered through." The court thus found that a monetary sanction of \$42,000 was appropriate under section 508(b) (750 ILCS 5/508 (West 2010)), and entered judgment in favor of petitioner and against respondent.

¶ 11 In this appeal, respondent contends that the court abused its discretion in ordering section 508(b) attorney fees. In doing so, respondent does not contest the amount or reasonableness of fees awarded, but claims that the court erred by "[m]erely comment[ing] on the testimony and evidence adduced at trial, [without making] specific findings of fact" to support its "conclusions[.]" He maintains that this failure serves "as a reason to reverse and remand." Although petitioner has not filed a brief in response, we may consider the merits of this appeal under the principles set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

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¶ 12 We initially note that, although respondent's notice of appeal and brief purport to challenge four of the trial court's orders,¹ his argument focuses solely on its ruling regarding petitioner's motion for attorney fees. By doing so, respondent has abandoned his challenges to the remaining orders, forfeiting them for review. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 13 As respondent acknowledges, a trial court's decision to award or deny attorney fees under the Act will not be disturbed absent an abuse of discretion. *In re Marriage of Harrison*, 388 Ill. App. 3d 115, 120 (2009). A trial court abuses its discretion when it "acts arbitrarily, acts without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Pond and Pomrenke*, 379 Ill. App. 3d 982, 987-88 (2008).

¶ 14 Ordinarily, attorney fees are the responsibility of the person for whom legal services were rendered. *In re Marriage of Ziemer*, 189 Ill. App. 3d 966, 969 (1989). However, under section 508(b) of the Act, the court is *required* to order one party to pay the other party's reasonable attorney fees when it finds "that a hearing under this Act was precipitated or conducted for any improper purpose *** includ[ing], but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2010).

¶ 15 In the entirety of his argument, respondent cites four cases as authority for his position that the award was improper because the court failed to set forth findings of fact to support its conclusions: *In re Estate of Smith*, 201 Ill. App. 3d 1005 (1990); *McGrath v. Botsworth*, 405 Ill. App. 3d 781 (2010); *Turner Investors v. Pirkl*, 338 Ill. App. 3d 676 (2003); and *Yowell v.*

¹ In his notice of appeal, respondent refers to three orders entered on April 12, 2013, and one order entered on April 5, 2013. In his brief, however, he claims that all four of the orders that he is appealing were entered on April 12, 2013.

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Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., 360 Ill. 272 (1935). We note, however, that none of these cases concern proceedings under the Act or section 508(b) sanctions. 750 ILCS 5/508(b) (West 2010). Instead, *Smith, McGrath*, and *Turner Investors* relate to claims for attorney fees for discovery sanctions under Supreme Court Rule 219(b) (Ill. S. Ct. R. 219(b) (eff. July 1, 2002)), and *Yowell* concerns the required factual findings at hearings under the Public Utilities Act (220 ILCS 5/1-101 *et seq.* (West 2010)). Respondent provides no argument as to why or how these cases apply to the review of attorney fee awards under section 508(b).

¶ 16 Although respondent takes issue with the factual findings made by the court, it does not make them, as he claims, mere "conclusions" unsupported by facts. To the contrary, the record below provides a litany of support for the court's award of section 508(b) attorney fees. The record shows that, in his attempt to modify his child support obligations, respondent executed a fraudulent financial statement and concealed, *inter alia*, his interest in the Artesian property, the rental income he received from that property, and a number of financial accounts. Respondent's fraudulent concealment led to more than eight years of litigation as the court attempted to properly determine respondent's child support obligations. The court found that respondent intentionally obfuscated the record in an attempt to conceal his true income from petitioner and the court, that he engaged in the proceedings with a "cavalier" attitude, and that he did so merely "to amuse himself[.]" The court thus concluded that respondent precipitated the litigation for an improper purpose pursuant to section 508(b) of the Act. 750 ILCS 5/508(b) (West 2010). Given these circumstances, we find no abuse of discretion by the court in awarding attorney fees to petitioner.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

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¶ 18 Affirmed.