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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF MICHAEL BRANDES,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellant,)	
)	
and)	No. 12-D-885
)	
MARY E. BRANDES,)	
)	
Defendant,)	
)	Honorable
(Dreyer, Foote, Streit, Furgason & Slocum, P.A., Appellee.))	Kathryn D. Karayannis Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in denying the client's motion to dismiss as untimely the attorney's section 508(c) fee petition. Reversed and vacated.
- ¶ 2 Thirty-seven days after the entry of the final judgment of dissolution, appellee, Dreyer, Foote, Streit, Furgason & Slocum, P.A., petitioned under section 508(c) of the Illinois Marriage and Dissolution of Marriage Act for \$17,207.52 in remaining fees against its former client. 750 ILCS 5/508(c) (West 2014). By the nature of a 508(c) fee petition, the attorney requested that

his fee petition be heard as part of the dissolution proceedings. See *Id.* Appellant, Michael Brandes (client), moved to dismiss, because the petition was not filed within 30 days of the final judgment, as required by section 508(c)(5). 750 ILCS 5/508(c)(5) (West 2014). The trial court denied the motion to dismiss, explaining that the attorney could not have filed his fee petition within 30 days, because he had not yet moved to withdraw as counsel, as required by section 508(c)(1). 750 ILCS 5/508(c)(1) (West 2014). The trial court proceeded to grant the section 508(c) fee petition in full. We disagree with the trial court that there is any tension between the 30-day requirement of section 508(c)(5) and the withdrawal requirement of section 508(c)(1) that would prevent the attorney from timely filing his fee petition. As we may consider any basis in the record to affirm, we also consider other issues raised by the parties concerning the merits of the motion to dismiss the section 508(c) fee petition. However, we hold that the trial court erred in denying the client's motion to dismiss. We reverse the judgment on the motion to dismiss, and we vacate the section 508(c) attorney fee award. Pursuant to section 508(e), the attorney may pursue his fees in an independent proceeding. 750 ILCS 5/508(e) (West 2014).

¶ 3

I. BACKGROUND

¶ 4 On November 24, 2014, the trial court entered the final judgment of dissolution. On December 8, 2014, the guardian *ad litem* (GAL) petitioned for fees. Then, on December 31, 2014, 37 days after the judgment, the attorney petitioned for fees against his client. 750 ILCS 5/508(c) (West 2014). In conjunction with his fee petition, he moved to withdraw. On February 6, 2015, the trial court granted the motion to withdraw.

¶ 5 On February 9, 2015, through new counsel, the client moved to dismiss the attorney's fee petition, arguing, *inter alia*, that the attorney did not meet 508(c)(5)'s 30-day deadline. 750 ILCS 5/508(c)(5) (West 2014).

¶ 6 On February 26, 2015, the attorney responded. He essentially raised an efficiency and fairness argument. He stated that ongoing matters, including the GAL fee petition, warranted his retention as counsel and, having no indication that his client was not going to pay, he was not alerted to withdraw and pursue fees. He also argued that the pending GAL fee petition, which was filed less than 30 days after the final judgment, gave the trial court continuing jurisdiction over the cause.¹

¶ 7 On March 3, 2015, the trial court denied the client's motion to dismiss. The court explained that, under the particular circumstances of the case, the attorney could not have filed his fee petition within 30 days, as required by section 508(c)(5), because he had not yet moved to withdraw as counsel, as required by section 508(c)(1). In the court's view, section 508(c)(1) controlled over section 508(c)(5). It noted that, up until the motion to withdraw and the petition for fees, the attorney was still representing the client on matters such as the GAL fee petition. In the court's view, to allow the attorney to petition for fees under those circumstances would put the attorney in a position adverse to his client: "You don't want to *force* an attorney into an

¹ Below, the attorney's theory of the case was not consistent. At points, he seemed to accept that that judgment of dissolution was a final judgment, and he seemed to accept the section 508(c) post-judgment procedural framework. At other points, however, he seemed to suggest that the judgment of dissolution was *not* a final judgment, and, thus, the 30-day count never began. For example, he repeatedly noted that the parties still needed to perform the personal-property division. He also noted that there had never been a section 503(j) hearing, which concerns petitions for fee contributions *prior* to the final judgment. 750 ILCS 5/503(j) (West 2014). In any event, the attorney now implicitly admits, as a logical underpinning to each of his arguments on appeal, that the judgment of dissolution was a final judgment.

adverse position with his client when he's still counsel of record." (Emphasis added.) That same day, the court granted the GAL's fee petition.

¶ 8 On December 17, 2015, the trial court granted the attorney's fee petition in full. The client had already paid the attorney \$30,000, and the court ordered him to pay the remaining balance of \$17,000. The client had argued for, at a minimum, a reduction in fees owed. The attorney fee agreement had listed a rate of \$275 per hour, but the fee reflected a rate of \$300 per hour. Additionally, a small portion of the work was performed by lower-level associates whose rate should have been \$225 per hour. The court rejected the client's motion to reconsider. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 The client contends that the trial court erred when it determined that there was no section 508(c)(5) violation, and, consequently, denied his motion to dismiss the fee petition. He contests the attorney's position that section 508(c)(5)'s 30-day deadline: (1) conflicts with section 508(c)(1) such that it need not be followed; (2)(a) is merely directory; (2)(b) requires only substantial compliance; and, alternatively, (3) was tolled by the filing of the GAL fee petition. The trial court found the first of these sub-issues dispositive, and did not consider the others. We consider each of the sub-issues to ensure that there is not another basis in the record to affirm. See, e.g., *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 357 (2006).

¶ 11 Each of the sub-issues invoke questions of statutory interpretation and/or questions of law, which we review *de novo*. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004). The fundamental rule of statutory interpretation is to give effect to the legislature's intent. *Id.* The best indicator of intent is the plain language of the statute. *Id.* When the language is clear and unambiguous, we must give it effect without resort to other tools of interpretation; we will not

read into it exceptions, limitations, or conditions that are absent from the statutory language. *Id.*; *Schultz v. Performance Lighting, Inc.*, 2013 IL App (2d) 120405, ¶ 9.

¶ 12 Here, section 508(c) provides:

“(c) Final hearings for attorney’s fees and costs against an attorney’s own client, pursuant to a Petition for Setting Final Fees and Costs of either a counsel or a client, shall be governed by the following:

(1) No petition of a counsel of record may be filed against a client unless the filing counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel. ***.

* * *

(5) A petition (or a praecipe for fee hearing without the petition) shall be filed no later than the end of the period in which it is permissible to file a motion pursuant to Section 2-1203 of the Code of Civil Procedure. A praecipe for fee hearing shall be dismissed if a Petition for Setting Final Fees and Costs is not filed within 60 days after the filing of the praecipe. *** Each of the foregoing deadlines for the filing of a praecipe or a petition shall be:

(A) tolled if a motion is filed under Section 2-1203 of the Code of Civil Procedure, in which instance a petition (or a praecipe) shall be filed no later than 30 days following disposition of all Section 2-1203 motions;
or

(B) tolled if a notice of appeal is filed, in which instance a petition (or praecipe) shall be filed no later than 30 days following the date jurisdiction on the issue appealed is returned to the trial court.

If a praecipe has been timely filed, then by timely filed written stipulation between counsel and client (or former client), the deadline for the filing of a petition may be extended for a period of up to one year.” 750 ILCS 5/508(c) (West 2014).

¶ 13 Thus, section 508(c), through its reference to section 2-1203 of the Illinois Code of Civil Procedure, requires that petitions for fees against one’s client, or an initial praecipe from which the attorney may obtain extensions, be filed within 30 days of the final judgment. 750 ILCS 5/508(c)(5) (West 2014); 735 ILCS 5/2-1203 (West 2014) (“In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief”).

¶ 14 “After the close of the period during which a petition (or praecipe) may be filed under subdivision [508](c)(5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue such an award and judgment in an independent proceeding.” 750 ILCS 5/508(e)(2) (West 2014). In that circumstance, the limitations period for breach of contract shall apply. 750 ILCS 5/508(e) (West 2014). The limitations period for breach of a written contract is 10 years. 735 ILCS 5/13-206 (West 2014).

¶ 15 A. No Conflict Between Sections 508(c)(5) and (c)(1)

¶ 16 We first address the basis upon which the trial court denied the client’s motion to dismiss. That is, the court determined that it is possible for section 508(c)(1), which requires an attorney to withdraw before petitioning for fees against his client, to control over section 508(c)(5), such that section 508(c)(5) need not be followed.

¶ 17 We disagree with the trial court that there exists a tension between sections 508(c)(5) and (c)(1). With a little planning, the attorney can avoid putting himself in a position adverse to his

client. For example, section 508(c)(5) allows for the attorney to obtain extensions, so long as he timely requests the extensions. For example, Section 508(c)(5) indicates that an attorney may file a praecipe against a current client, stating: “If a praecipe has been timely filed, then by timely filed written stipulation between counsel and client (or former client), the deadline for the filing of a petition may be extended for a period of up to one year.” 750 ILCS 5/508(c)(5) (West 2014). Section 508(c)(1) supports that a praecipe may be filed against a current client, because it prohibits only the filing of a *petition* against a current client: “No *petition* of a counsel of record may be filed against a client unless counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel.” (Emphasis added.) 750 ILCS 5/508(c)(1) (West 2014). Additionally, by simply filing a praecipe, the attorney automatically receives a 60-day extension to file his petition. 750 ILCS 5/508(c)(5). Thus, so long as the attorney files the initial praecipe within 30 days, he may take steps to obtain up to a one-year extension to file the petition for fees and the motion to withdraw.

¶ 18 Here, the attorney faced no unique circumstances that would have “forced” him into a position adverse to his client. The case had no status changes between 30 and 37 days after the final judgment; nothing was filed or ruled on in that time. There was no reason that the attorney could not have filed his motion to withdraw within 30 days after the final judgment just as he moved to withdraw 37 days after the final judgment. Alternatively, there was no reason that the attorney could not have filed a praecipe on day 30, and, on day 37 or even later, file the petition and the motion to withdraw. Filing the motion to withdraw was entirely within the attorney’s control.

¶ 19 B. The 30-Day Provision is Mandatory and, Separately, it Requires Strict Compliance

¶ 20 We next consider whether the 30-day provision is mandatory and, separately, whether it requires strict compliance. In the some of the cases cited by the parties, the courts conflated the questions of whether the provision: (1) is mandatory or directory; and (2) requires strict or substantial compliance. See, e.g., *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 31. These are actually two different questions; a provision may be mandatory but not require strict compliance. See, e.g., *Fehrenbacher v. Mercer County*, 2012 IL App (3d) 110479, ¶ 15. Here, we determine that the 30-day provision is mandatory and, separately, it requires strict compliance.

¶ 21 1. The 30-Day Provision is Mandatory

¶ 22 Generally, when the legislature uses the word “shall,” it intended a mandatory obligation. *Schultz*, 2013 IL App (2d) 120405, ¶ 13. Here, the legislature twice used the word “shall” with respect to the deadline. Section 508(c) states that the fee petition “shall” be governed by a list of five requirements. 750 ILCS 5/508(c) (West 2014). Also, section 508(c)(5) states that a petition “shall” be filed not later than the end of the period in which it is permissible to file a motion under section 2-1203 of the Civil Code. 750 ILCS 5/508(c)(5) (West 2014); 735 ILCS 5/2-1203 (West 2014). Thus, according to the general rule, the 30-day deadline is mandatory.

¶ 23 The attorney urges that this case should not be governed by the general rule, because the statute does not specify a penalty for non-compliance with the 30-day deadline. Indeed, when the statute does not specify a penalty *or consequence*, it may not be mandatory. See, e.g., *Schultz*, 2013 IL App (2d) 120405 ¶ 14 (citing *Sutton v. Cook County Officers Electoral Board*, 2012 IL App (1st) 122528). The attorney also invokes the principle of *expressio unius est exclusio alterius*, noting that the legislature could have specified a consequence for non-compliance, because it did so later in the same provision when it called for the automatic

dismissal of an initial praecipe if the subsequent petition is not filed within 60 days (and an extension is not timely sought). 735 ILCS 5/508(c)(5).

¶ 24 These points do not persuade us to deviate from the general rule. In our view, the language of the statute *does* evince an intent that a petition be subject to dismissal for failure to meet the initial filing deadline. The legislature specified that the 508(c) initial filing deadline mirror the section 2-1203 deadline: “A petition *** shall be filed no later than the end of the period in which it is permissible to file a motion pursuant to Section 2-1203 of the Code.” 750 ILCS 5/508(c)(5) (West 2014). The legislature need not specify the consequence of dismissal where it is already well-known that section 2-1203 motions are subject to dismissal if filed outside the 30 days. See, *e.g.*, *Wilk v. Wilmorite, Inc.*, 349 Ill. App. 3d 880, 883-84 (2004). In contrast, it is not well-known or intuitive that a timely filed praecipe will be automatically dismissed if the subsequent petition is not filed within 60 days, hence, the statute’s mandate.

¶ 25 2. The 30-Day Provision Requires Strict Compliance

¶ 26 A mandatory provision does not always require strict compliance. *Fehrenbacher*, 2012 IL App (3d) 110479, ¶ 15. Substantial compliance can, under certain circumstances, satisfy a mandatory provision if: (1) the purpose of the statute was satisfied; and (2) the opposing party was not prejudiced. *Id.*

¶ 27 In *Fehrenbacher*, upon which the attorney relies, the statute at issue mandated that, to terminate employment, the county must serve the employee with a “petition for removal.” *Fehrenbacher*, 2012 IL App (3d) 110479, ¶ 14. The petition must set forth the hearing date, the charges, and request removal from office based on the charges. *Id.* The county’s petition did not strictly comply, because it was not titled “petition for removal,” and it did not state that the

county exclusively sought discharge. *Id.* ¶ 18. Instead, the petition stated that the county sought “disciplinary action, up to and including discharge.” *Id.* ¶ 4.

¶ 28 The *Fehrenbacher* court determined that the notice provision at issue was amenable to substantial compliance. *Id.* ¶¶ 17-19. The purpose of the statute was satisfied because the engineer received notice of the hearing date, the charges against him, and the possible outcome of removal. *Id.* ¶ 18. The engineer was not prejudiced, because he attended the hearing with his attorney, and he presented evidence to refute the charges against him. *Id.* ¶ 19.

¶ 29 Here, in contrast, a provision setting forth a 30-day deadline is not amenable to the concept of substantial compliance. It is not possible for non-compliance with a 30-day deadline to be minor, such that the statutory element is still satisfied. *Cf.*, *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 37 (the candidate substantially complied where 426 out of 427 signature pages met the requirements). The attorney does not explain why filing 37 days after the final judgment shows substantial compliance with a requirement to file within 30 days of the final judgment. He does not cite any deadline cases involving substantial compliance. Either the attorney met the deadline, or he did not. The 30-day provision requires strict compliance.

¶ 30 C. The GAL Fee Petition did not Toll the 30-day Period

¶ 31 The attorney argues that the GAL Fee Petition, filed two weeks after the final judgment, tolled the 30-day period. He points to section 508(c)(5)(A), which states that the 30-day deadline will be tolled “if a motion is filed *under Section 2-1203* of the Code of Civil Procedure, in which instance a petition (or a praecipe) shall be filed no later than 30 days following disposition of all Section 2-1203 motions.” (Emphasis added.) 750 ILCS 5/508(c)(5)(A) (West 2014).

¶ 32 The GAL fee petition did not toll the 30 days, because the GAL fee petition was not a section 2-1203 motion. Not every motion filed after a final judgment can be characterized as a section 2-1203 motion. For example, in *Naperville South Commons v. Nguyen*, 2013 IL App (3d) 120382, ¶ 11, which involved a forcible entry and detainer action, the trial court entered a final judgment in favor of the tenant. Within 30 days, the tenant petitioned for attorney fees. *Id.* After 30 days, the landlord filed a notice of appeal. *Id.* The landlord argued that his notice of appeal was timely, because the tenant's petition for attorney fees was a section 2-1203 motion directed against the judgment that tolled the 30-day period. *Id.*

¶ 33 The court rejected the landlord's argument, and it determined that the tenant's petition for attorney fees was *not* a section 2-1203 motion. *Id.* ¶ 14. The motion was related to the underlying judgment, in that the underlying judgment gave the tenant a basis to seek attorney fees. *Id.* However, it did not challenge any findings in the judgment. *Id.* Instead, the claim for fees was collateral to the underlying action. *Id.*

¶ 34 Similarly, in the instant case, the post-judgment GAL fee petition was collateral to the underlying judgment of dissolution. The pending GAL fee petition did not challenge the judgment of dissolution. It was not a section 2-1203 motion.

¶ 35 We note that the attorney did not argue below that the GAL fee petition tolled the 30 days; we considered the argument because we may search the record for a basis to affirm. *Rodriguez*, 218 Ill. 2d at 357. Below, with respect to the pending GAL fee petition, the attorney essentially raised an efficiency argument. He stated that ongoing matters, including the GAL fee petition, warranted his retention as counsel and, having no indication that his client was not going to pay, he was not alerted to withdraw and pursue fees. We sympathize with the attorney's position. And, by the trial court's account, the attorney did a fine job representing the client in

the divorce proceedings. However, we fail to see how the complained-of circumstances are different than those in many divorce cases. Section 508(c)(5) does not prescribe exceptions for such circumstances. It is not our place to do so. While we see that it may have been convenient for the fee petition to have been decided as an ancillary part of the divorce proceeding, the attorney will have to pursue his fees in an independent proceeding as described in section 508(e). 735 ILCS 508(e) (West 2014). The limitations period for breach of contract shall apply. *Id.* We will not address the merits of that action, and we do not intend for our order to reflect any opinion on the merits of that action.

¶ 36

III. CONCLUSION

¶ 37 For the aforementioned reasons, we reverse the trial court's judgment on the motion to dismiss, and we vacate the attorney fee award.

¶ 38 Reversed and vacated.