2017 IL App (2d) 151175-U
No. 2-15-1175
Order filed February 16, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF WILLIAM L. HOTOPP, Petitioner-Appellant,	)	Appeal from the Circuit Court of De Kalb County.
and	)	No. 14-D-307
KATHLEEN J. McGUIGAN, Respondent-Appellee.	)	Honorable Marcy L. Buick, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly awarded attorney fees to respondent: the court had not shown a bias in denying petitioner's petition for a rule to show cause (which was part of the grounds for the fee award), and respondent's fee petition was sufficiently specific to support the award.

¶ 2 Petitioner, William L. Hotopp, appeals, seeking review of an award of attorney fees in favor of respondent, Kathleen J. McGuigan. He argues (1) that the award was premised on an absurd interpretation of the marital settlement agreement (MSA), and (2) that the billing statement filed by respondent's counsel was insufficiently specific to support the award. We hold that the court did not interpret the MSA in the manner that petitioner states. We further

hold that it was within the court's discretion to award fees based on the billing statement. We therefore affirm the award.

¶ 3 I. BACKGROUND

¶ 4 On December 22, 2014, petitioner filed his petition for the dissolution of his marriage to respondent. According to the petition, respondent was 32 years old and was not employed. The parties had been married for just months; the wedding was on July 22, 2014. The couple had no children, although other documents show that respondent had a minor child who lived with her. Petitioner, an attorney, prepared the petition, but later had another attorney appear on his behalf; respondent was also represented.

¶ 5 The parties filed an MSA on January 14, 2015. Respondent would have two weeks from the MSA's signing to leave their shared residence. The parties would each retain their nonmarital property. The terms relating to the property that are relevant to this appeal are as follows:

> "Wife shall have as her sole and separate property all the items currently in her possession, including:
>
> (1) All personal property currently in her possession.
>
> * * *
>
> (4) Wife shall have use of the 2013 Chevrolet Camaro for a period of ninety (90) days after the entry of this Judgment. ***
>
> (5) Exhibit 'A,' attached hereto and made a part hereof[.]"

Exhibit A, a handwritten document, stated in full:

> "• All clothes belonging to Kathleen and Keenan[.]
>
> • All toys belonging to Keenan including bikes, balls and scooters in garage.

• All belongings in storage space that belongs to Kathleen and Keenan.

• Elliptical.

• Black shelf by front door including all Vases and china[.]

• TV in master bedroom PS3 from downstairs TV, computer downstairs[.]

• Bird, Mirka, Fiona (1 bird 2 dogs)[.]

• Pictures, posters.

• Fridge in basement, toy box, some mugs from Kitchen[.]

• All premarital property.

• Laptop.

All the above property shall be removed by Kathleen[.]"

Several items, such as "Childs [*sic*] twin bed and frame," were stricken.

¶ 6 The hearing to prove up the judgment took place on January 14, 2015. The parties agreed that, for the two weeks she would remain in the residence, respondent was to remove her personal property from the (first floor) master bedroom to a bedroom on the second floor near her son's bedroom and she would have the use of a second-floor bathroom. The parties agreed that they had irreconcilable differences. Counsel for respondent asked respondent about her understanding of the MSA's property agreement:

"[The MSA is] also identifying as far as personal property is concerned all the personal property pursuant to the exhibit that we have here which is Exhibit 1 [*sic*], which is basically your personal property that you brought into the marriage, correct?"

Respondent said that she agreed and further stated that she understood that she was expected to remove all listed property from the house when she left. The parties also told the court that petitioner was giving respondent $2,500 to use as a security deposit and to pay a first month's

rent. The parties addressed disputes about some specific items. For instance, when respondent made the list that became exhibit A, she included what she described as the "[t]win bed that [Keenan had] been using for the past year." That was crossed off the list because, as respondent put it, petitioner "want[ed] to keep [it]."

¶ 7 On February 9, 2015, petitioner, *pro se*, filed a petition for a rule to show cause. He asserted that the MSA had permitted respondent to remove the items listed in exhibit A, but that respondent had "attempted to remove *all* the kitchen ware from the house," so that petitioner "was forced to place the kitchen ware in his vehicle" while respondent was moving out. (Emphasis in original.) Further, she had in fact removed the following items of his premarital property:

"A. Dyson vacuum cleaner valued at approximately $323.67;

B. Single file cabinet in the dining room valued at $50.00;

C. The salt and pepper shakers valued at $6.00;

D. Assorted kitchen utensils valued at $50.00."

Petitioner sought compensation for the items removed. He did not allege any request for return of the items.

¶ 8 On February 27, 2015, the court found "probable cause that Respondent removed the items stated in the petition."

¶ 9 Respondent filed a response. She asserted that the vacuum cleaner was her personal property because it "was a gift from Petitioner that he gave her while they were living together while he was representing her in her prior divorce." She denied removing the other items.

¶ 10 On April 3, 2015, with the petition for a rule to show cause still pending, petitioner filed a "Motion for Specific Relief." The motivation for this filing was a collision between petitioner's

Camaro (still driven by respondent) and a parked car. Petitioner alleged that respondent was (1) under investigation for driving under the influence (DUI), (2) that the damage to the Camaro would cost more than $7,000 to repair, and (3) that respondent used her improperly retained military spouse identification to back up a false claim to "health care treaters" that she was covered under petitioner's health insurance. Petitioner sought an order that respondent: (1) return the military dependent ID card; (2) disclose whether she had health insurance or whether she had told any provider that she had health insurance; (3) pay the $2,500 auto insurance deductible; (4) compensate respondent for his increased auto insurance premiums; (5) pay the increased monthly car payment resulting from the accident; and (6) compensate respondent for the decreased value of the car.

¶ 11 On April 10, 2015, the court held a hearing on the contempt petition. (Petitioner sought a hearing on the "Motion for Specific Relief," on that day, but the court concluded that respondent should have a week to respond.) At the hearing, petitioner testified that respondent had removed the items at issue, that he had already bought replacements, and that he had receipts for the replacement costs. Most of the argument related to the interpretation of the MSA. That discussion was not entirely easy to follow, but petitioner's position seems to have been that, with the inclusion of exhibit A, the parties had intended to specify all of respondent's personal property. Respondent contended that the MSA described her as getting certain categories of property, including "all personal property *** in her possession" and "all premarital property." (We note that, despite what might be inferred from petitioner's argument on appeal, nothing in this colloquy suggested that respondent was then claiming the right to *petitioner's* premarital property.) Petitioner countered that the category of all personal property in respondent's

possession, the broadest category in the text of the MSA proper, had been intended to exclude anything remaining on the ground floor of the residence.

¶ 12 The court ruled that the MSA had not explicitly detailed the distribution of all property in the residence and that the items listed in the petition for a rule to show cause were among those that lacked an explicit disposition:

> "These parties don't have that precise language [that is needed to avoid disputes]. They don't have precise language regarding the vacuum cleaner, they don't have precise language regarding the wooden file cabinet, and because of that, I can't find that she's in contempt of court for taking those two items[.]"

It entered an order discharging the rule to show cause with no finding of contempt.

¶ 13 The next filing was respondent's motion to strike or dismiss petitioner's "Motion for Specific Relief" for failing to state a legal basis for relief. In particular, respondent argued that none of the relief sought was grounded in the MSA or dissolution judgment. She further asserted that she was not asleep when the crash occurred, she was not intoxicated, and no investigation into a DUI incident was ongoing as a result of the crash.

¶ 14 At a May 1, 2015, hearing, petitioner voluntarily withdrew the "Motion for Specific Relief." Counsel for respondent expressed frustration that petitioner had given no warning of the withdrawal, which had caused counsel to prepare for a hearing that did not happen and to make an unnecessary trip. He particularly asserted that the "Motion for Specific Relief" raised issues inappropriate for the divorce case:

> "[Counsel for respondent]: *** I think what counsel [for petitioner] should be doing is if [petitioner] really wants some relief, this may be in a different court, in maybe

a civil court, rather than this, and so I believe that this is just causing my client nothing but financial distress, because in the divorce she got nothing.

THE COURT: Okay. Well, you can file something if you want.

[Counsel for respondent]: Thank you, your Honor.

THE COURT: I'll give you relief."

¶ 15 Respondent filed her fee petition on May 27, 2015. It stated that respondent had incurred fees of $4,571.32. She noted the resolution of the petition for a rule to show cause. Concerning the "Motion for Specific Relief," respondent argued that the filing had requested relief not founded in the dissolution judgment or MSA and that it had further contained false allegations of criminal behavior. Further, petitioner had not withdrawn the "Motion for Specific Relief" until the day it was set for hearing, causing respondent's counsel to unnecessarily subpoena a witness, prepare for a hearing, and travel to court. She asserted that both filings were frivolous and filed for an improper purpose. However, she also asserted that she lacked funds to pay counsel. Included with the motion was a page of itemized charges relating to the two filings, with fees totaling $4,497.50.

¶ 16 Petitioner responded, asserting, among other things, that counsel's fees were above what was customary for De Kalb, that it was respondent's wrong in removing petitioner's property that prompted the petition for a rule to show cause, and that nothing had been filed for any improper purpose. In the course of litigating the petition for fees, petitioner served respondent with an Illinois Supreme Court Rule 216 (eff. July 1, 2014) request to admit facts. This asked respondent to admit, among other things, that she removed the items at issue and that they were not hers, that she had sought to use her improperly retained military dependent ID to claim that she had health insurance, and that she had been negligent in the crash of the car. Respondent

filed an objection to this, asserting that most of the requested admissions were improper or irrelevant.

¶ 17 At the hearing on the fee petition, petitioner challenged the sufficiency of the fee statement:

> "[R]ather than properly itemizing [the statement], counsel has clumped a number of things together. *** [H]e clumps things together like drafting pleadings and having a phone conversation and writing a letter in the same item, and then attaching a number of hours such as 1.30 or 1.70. *** [T]his is excessive because we don't know what pleading, what letter, what phone conversation, or how much it took to do any of those single things."

¶ 18 The court ruled for respondent on her objections to the request to admit. On October 29, 2015, the court entered a written decision on attorney fees:

> "First, the court finds that the only possible reason for the filing of the Petition for Rule to Show Cause was to harass Kathleen. *** Kathleen incurred attorney's fees in defending against the petition and rule.
>
> Second, the court finds that William's Motion for Specific Relief was also filed primarily to harass Kathleen. The only allegation that may have had merit was the allegation that Kathleen was responsible to pay for the damage to the vehicle. *** All of the other allegations in the motion were irrelevant to the issue of enforcement of the judgment; and, the court simply could not have granted any of the relief that William requested.
>
> [Finally, a]t the time William issued his [request to admit facts] to Kathleen, the only matter that was pending before the court was her petition for contribution to fees.

> William's requests were irrelevant to that petition and needlessly increased the costs of litigation.
>
> The court has examined the fee petition's attached billing statement. First, the court finds that the hourly rate(s) charged by Kathleen's counsel is reasonable and customary for the 23rd judicial circuit. Second the court finds that the billing statements are in line with the postjudgment litigation in this case."

On November 20, 2015, the court entered an order stating, "Judgment order of October 29, 2015, is a final and appealable order and dispositive of all pending issues." Petitioner filed a notice of appeal on Monday, November 30, 2015.

¶ 19 II. ANALYSIS

¶ 20 On appeal, petitioner challenges only the fee order:

> "In the instant case, the trial court *** found there was no contempt. Discretion of the court. William accepts this, even though it doesn't settle well. However, going farther, the trial court clearly adopts a hostile attitude toward William. The evidence from William's testimony was completely ignored, and the trial court advocated for twisting the record against William. William takes the position that no one [way of] thinking of the prove up transcript is reasonable. However, regardless, the interpretation of the trial court that Kathleen had the legal ability to take all ore [*sic*] marital property, both William's and Kathleen's, is ridiculous."

He asserts that the court "ignor[ed] the uncontroverted testimony, [and went] on to interpret the marital settlement agreement and exhibit A as though Kathleen had the right to take all premarital property of both parties." He further argues that the billing statement that respondent's counsel filed lacked sufficient detail.

¶ 21 Respondent has not filed an appellate brief. We nevertheless consider the appeal on its merits. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal"). We conclude first that the court did not interpret the MSA in the biased way that petitioner claims, and, second, that the fee petition contained adequate detail. We therefore affirm the award of fees.

¶ 22 Petitioner argues that the court showed bias against him by interpreting the MSA to allow respondent to take whatever items of *his* premarital property that she chose, an interpretation that was "ridiculous." We find no trace of that interpretation in the record. To be sure, the court did effectively rule that respondent could not show contempt on the part of respondent simply by pointing to the *absence* of an item in the specification of those explicitly noted as respondent's:

> "They don't have precise language regarding the vacuum cleaner, they don't have precise language regarding the wooden file cabinet, and because of that, I can't find that she's in contempt of court for taking those two items[.]"

But that kind of interpretation became inevitable with the inclusion of the catchall phrase "all premarital property" in exhibit A. If petitioner wanted the mere fact of respondent's taking an item to be contemptuous on its face, he would have needed to include a *comprehensive* list, either of his property or of respondent's, in the MSA. If anything suggested that respondent was entitled to the premarital property of both parties, it was the MSA itself: exhibit A, read in a completely literal fashion, gave *all* premarital property, without qualification, to respondent. Despite that wording, the court never read the MSA in such a way. The bias that petitioner suggests is simply not apparent in the record.

¶ 23 Petitioner's second claim is that the entries in the billing statement were not specific enough to support the fee award. We do not agree. A trial court has great discretion in its granting of attorney fees in divorce proceedings, and a reviewing court should not interfere with its choices unless the trial court clearly abused its discretion. *E.g.*, *In re Marriage of Agers*, 2013 IL App (5th) 120375, ¶ 29. A trial court may rely on its own knowledge and experience in determining the value of an attorney's services. *E.g.*, *In re Marriage of Salata*, 221 Ill. App. 3d 336, 339 (1991). Itemizations of fees must provide the trial court with sufficient information to judge the reasonableness of the fees sought. Cf. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987) (listings that are not sufficient to allow the court to judge reasonableness are not sufficient to support an award of fees). Without such information, an award is necessarily arbitrary. Although precedent thus supports the proposition that itemization can be so poor as to make fees unsupportable, petitioner has failed to cite any authority to suggest that "clump[ing] things together like drafting pleadings and having a phone conversation and writing a letter in the same item" fall to such a level. For instance, in *In re Marriage of Jacobson*, 89 Ill. App. 3d 273, 276-77 (1980), the case cited by petitioner that best supports his position, the reviewing court held that mere testimony about the hours expended and the number of court appearances was insufficient to support a fee award. The billing here, by contrast, listed specific times for specific projects. In fairness to petitioner, we acknowledge that typical billing practice breaks down hours more finely than did respondent's counsel's "clumps." On the other hand, actual work does not naturally occur in 6- or 12-minute increments. We deem that the court had the discretion to rule that the level of granularity in the billing statement allowed it to decide that the fees were reasonable.

¶ 24 Petitioner asserts that much of the fee award derived from the court's finding that he acted with improper purpose, with that finding grounded in its "absurd" reading of the MSA. We have explained why we disagree about the MSA's interpretation. We also point out that much of the fee award related to his "Motion for Specific Relief" and the request to admit facts. Petitioner does not challenge the court's findings on those matters.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the award of fees in favor of respondent.

¶ 27 Affirmed.