

2017 IL App (2d) 160387-U
No. 2-16-0387
Order filed February 6, 2017

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
SECOND DISTRICT

MORGAN GIBSON,)	Appeal from the Circuit Court
)	of Kendall County.
Petitioner-Appellee,)	
)	
v.)	No. 15-F-18
)	
EDWARD OHLIGSCHLAGER,)	Honorable
)	Stephen L. Krentz,
Respondent-Appellant.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in awarding respondent attorney fees for drafting and communication time, but it did abuse its discretion in failing to state why it limited the time spent in court to 3 hours rather than the unrebutted 6.75 hours, and in disregarding the time spent on document review and trial preparation. Affirmed in part and reversed in part; cause remanded.

¶ 2 Respondent, Edward Ohligschlager, filed a petition for rule to show cause alleging that petitioner, Morgan Gibson, denied his visitation. Following a hearing, the trial court determined that petitioner's denial of visitation was without cause or justification. Respondent, by and through his counsel, Lisa M. Giese, filed a petition for attorney fees for the amount of \$6,752 pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750

ILCS 5/508(b) (West 2014)). The trial court awarded \$1,375 in fees and \$275 in costs. Respondent appeals, contending the trial court abused its discretion by failing to consider the specific itemized time spent on the case and failed to determine that any portion of the itemized time was unreasonable. We affirm in part and reverse in part.

¶ 3

I. BACKGROUND

¶ 4 On December 16, 2015, respondent filed a verified petition for rule to show cause in which he sought an adjudication of indirect civil contempt against respondent for violating a custody judgment. In the petition, respondent alleged that petitioner denied his parenting time with their child. Respondent's counsel, Giese, and her staff spent approximately 1.3 hours drafting and revising the rule to show cause and preparing it for filing.

¶ 5 On December 23, 2015, respondent and Giese appeared in court to present the petition. Neither petitioner nor her counsel appeared. Giese advised the court that petitioner was completely denying respondent his parenting time and contact with the child. The court ordered the parties to attend mediation. Giese spent one hour in court that morning.

¶ 6 The parties subsequently attended mediation. However, they were unable to reach an agreement.

¶ 7 On December 31, 2015, the court issued a rule to show cause against petitioner and set a hearing on respondent's petition. Petitioner's counsel could not be there that morning. Giese spent one hour in court and her law clerk spent a total of 2.95 hours preparing and serving five witness subpoenas for the scheduled hearing.

¶ 8 Giese and petitioner's counsel's associate appeared in court on January 14, 2016, for the hearing on respondent's petition. Petitioner's counsel associate advised the court that petitioner's regular counsel was unavailable for the hearing. The court then continued the

hearing for February 1, and issued an alias rule to show cause. Giese spent a total of one hour in court that morning.

¶ 9 Respondent filed an amended petition for rule to show cause due to petitioner's denial of his additional parenting time after he had filed the original petition. Giese spent 1.3 hours preparing the amended petition, which included correspondence with respondent, drafting the amended petition, preparing exhibits, filing the amended petition, and sending the documents to petitioner's counsel.

¶ 10 The parties, their counsel, and several witnesses appeared in court on February 1, 2016, for the hearing on the amended petition. Petitioner's counsel asserted that he did not have enough time to prepare for the hearing and requested another continuance. Giese argued that the amended petition only added a few additional dates and she advised the court that her four witnesses, a DCFS investigator and three police officers, had appeared that morning ready to proceed. The court continued the hearing. Giese spent 1.25 hours in court that morning and 30 minutes preparing for the hearing.

¶ 11 Finally, on March 16, 2016, the hearing on the petition commenced. Following testimony by the witnesses and argument by counsel, the court found that petitioner did not have a compelling cause or justification to deny respondent's parenting time, and it granted respondent leave to file a petition for fees pursuant to section 508(b). Giese spent a total time of 2.5 hours in court for the hearing.

¶ 12 Respondent filed his petition for counsel's fees, and attached Giese's affidavit, the client activity report, and an itemization of all billable activity due to the filing and adjudication of the petition for rule to show cause, all of which amounted to \$6,753. At the hearing, Giese stated that she only included those items related solely to the adjudication of respondent's petition for

rule to show cause and she did not include additional time spent simultaneously on other pending matters, such as the modification of child support or transportation arrangements for the child. Giese stated that all of the actions taken while representing respondent were necessary and reasonable and that her fees and hourly rate of \$300 was reasonable, given her skill and extensive experience in family law.

¶ 13 Petitioner’s counsel stated that, as far as the fees are concerned, “obviously [Giese] is honest and ethical.” Petitioner’s counsel stated to the court that he had no issue with Giese’s billing statement or for the items billed.

¶ 14 After reviewing the fee petition, the court found that an hourly rate of \$275 was more reasonable based on prevailing norms in Kendall County. Further, based on the court’s experience and what the court believed “is reasonable to pursue a matter such as this, and I am going to conclude that three hours of court time is reasonable, and one hour of drafting time, and one hour of communication time is reasonable for a total of five hours times [\$]275 results in a judgment for attorney fees of \$1,375.” The court added costs of \$275 to the judgment. Respondent timely appeals.

¶ 15

II. ANALYSIS

¶ 16 As a preliminary matter we point out that petitioner has not submitted a brief on appeal. This, however, does not prevent us from deciding this appeal without the appellee’s brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). This appeal raises only the question of whether the trial court abused its discretion in awarding only \$1,375 in attorney fees to his counsel, when the attorney fee petition contained charges and costs totaling \$6,753.

¶ 17 An appellate court reviews the amount a trial court awards in attorney fees under an abuse-of-discretion standard. *In re Marriage of Powers*, 252 Ill. App. 3d 506, 508-09 (1993). A trial court abuses its discretion when it acts arbitrarily, 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 Marsh*, 343 Ill. App. 3d 1235, 1240 (2003).

¶ 18 Attorney fees relating to the enforcement of a judgment are mandatory under section 508(b). The trial court is required to review the reasonableness of the attorney fees and has discretion to award the specific amount of fees that it deems reasonable. *In re Parentage of M.C.B.*, 324 Ill. App. 3d 1, 4 (2001). When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged. *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314-15 (2007). A court also should use its own knowledge and experience when making the reasonableness determination. *Id.* at 315. When a trial court reduces the amount requested in a fee petition, the court's ruling should include the reasons justifying a particular reduction. *Id.*

¶ 19 Respondent's fee petition can be separated into the following categories of time: (1) time spent in court; (2) document drafting; (3) communication with the client and opposing counsel; and (4) review and preparation. The trial court found that, based on its experience, the reasonable time to prosecute the petition was three hours of court time and one hour each for drafting and communication. The court also reduced the hourly rate to \$275 based on prevailing norms in Kendall County. Respondent does not appear to contest the hourly rate reduction.

¶ 20 The trial court is permitted to use its own knowledge and experience in assessing the time required to complete particular activities. *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 24 (2009). In that light, we cannot say that the trial court abused its discretion in determining that the drafting and communication time with the client and opposing counsel reasonably would be completed in one hour each, as the issues presented in the visitation petition were not complicated.

¶ 21 Respondent cites *Richardson* for the proposition that the trial court abused its discretion by failing to scrutinize the specific entries in the fee petition. By allowing one hour for drafting time and one hour for communication time with respondent and opposing counsel, the trial court necessarily rejected any entries on the fee petition over and above that hour for those specific purposes.

¶ 22 Nevertheless, we find two areas the trial court failed to address. First, the fee petition lists several entries for reviewing various reports and exhibits and preparing for the hearing. The trial court failed to address these entries in any way. Second, the trial court allowed for three hours of court time, but the fee petition documented 6.75 hours of court time. The record shows that Giese attended court on five separate dates. While petitioner's counsel was notified of the first three court dates, he failed to appear. On the fourth court date, petitioner's counsel requested a continuance of the hearing on the rule, while Giese was ready for hearing and had several witnesses present in court. Finally, on the fifth court date, the court held a full evidentiary hearing on the petition.

¶ 23 The fee petition sets forth the time Giese spent in court. Those entries were un rebutted. In fact, petitioner's counsel indicated that he had no issue with the items billed. Since the trial court did not state why Giese's time actually spent in court should not be fully compensated, it

abused its discretion in limiting the award in this regard to three hours. See *Richardson*, 375 Ill. App. 3d at 316.

¶ 24 In sum, the trial court did not abuse its discretion in assessing one hour each for drafting time and communication time. However, we find the trial court did abuse its discretion in failing to state why it limited the time spent in court to 3 hours rather than 6.75, and in disregarding the amount of time spent on document review and trial preparation. As such, because respondent's brief "demonstrates *prima facie* reversible error and the contentions of the brief find support in the record," the judgment of the trial court in this regard may be reversed without the aid of petitioner's brief. See *Talandis*, 63 Ill. 2d at 132.

¶ 25

III. CONCLUSION

¶ 26 For the reasons stated, the judgment of the circuit court of Kendall County is affirmed in part and reversed in part, and the cause is remanded for further proceedings consistent with the views expressed in this disposition.

¶ 27 Affirmed in part and reversed in part; cause remanded.