2017 IL App (2d) 160531-U
No. 2-16-0531
Order filed March 28, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ANN MARIE ANDEXLER, Petitioner, and CHRISTOPHER A. ANDEXLER, Respondent-Appellant. (Lynn Mirabella, guardian *ad litem*, Appellee.)	))))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-MR-70 Honorable John W. Demling, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in allowing the guardian *ad litem*'s application for fees or in allocating those fees to the parties. We affirm.

¶ 2 This is the fourth appeal in this case. Each appeal has been brought by respondent, Christopher A. Andexler, acting *pro se*. The first and third appeals involved respondent's visitation rights with his minor children. In the second appeal, respondent challenged the trial court's order allowing and allocating guardian *ad litem* fees. We held that the trial court had

abused its discretion, and we therefore vacated the order and remanded the cause with instructions for further proceedings. *In re Marriage of Andexler*, 2015 IL App (2d) 141151-U. On remand, the trial court conducted a hearing and entered a new order allowing and allocating the guardian *ad litem* fees. Respondent appealed, and we now affirm the trial court's order.

¶ 3 I. BACKGROUND

¶ 4 We begin with a brief recitation of the procedural history in this case. Respondent's former wife is petitioner Ann Marie Andexler. Respondent and petitioner were married in Florida, where they lived with their four children. In April 2011, the circuit court of Volusia County, Florida, entered a "Final Judgment of Dissolution of Marriage with Minor Children." The Florida court ordered that: (1) petitioner (Ann Marie) would be solely responsible for day-to-day decisions regarding the children's welfare; (2) respondent (Christopher) was entitled to contact with the children three days per month; and (3) respondent (Christopher) would pay $924.76 per month for child support.

¶ 5 In January 2012, petitioner filed a petition to enroll the Florida judgment in the Du Page County Circuit Court (the trial court). The trial court granted the petition and entered an order stating that the State of Illinois had asserted jurisdiction over the matter. Petitioner next filed a petition to modify respondent's visitation rights, requesting that they be either terminated or supervised. In turn, the trial court appointed a guardian *ad litem* (GAL) to address whether there should be any restrictions on respondent's visitation rights. After conducting a hearing in March 2014, the trial court concluded that continued visitation with respondent would seriously endanger the mental and emotional health of the children. Accordingly, the trial court ordered that respondent have no visitation of any kind with the children until further court order.

Respondent challenged the suspension of his visitation rights in *Andexler I*, and we affirmed the trial court's ruling. (*Andexler I*) *In re Marriage of Andexler*, 2015 IL App (2d) 140476-U.

¶ 6 On October 20, 2014, while *Andexler I* was pending, the trial court conducted a hearing on the GAL's application for fees. Respondent was not present. The trial court entered an order allowing the GAL's petition for nearly $20,000 in fees and allocating half of those fees to respondent. The trial court also ordered that respondent's child support obligation be increased by $200 per month, with the extra money being forwarded to the GAL as a means of satisfying her fees. Respondent appealed, and in *Andexler II*, we held that the trial court had abused its discretion. We first concluded that the GAL had failed to account for more than $3,000 in fees. We next concluded that the trial court had allocated the GAL's fees without a proper consideration of respondent's ability to pay. Finally, we noted our concern with the manner in which the trial court had sought to have the GAL compensated. Accordingly, we vacated the trial court's order and remanded the cause with instructions for further proceedings. (*Andexler II*) *In re Marriage of Andexler*, 2015 IL App (2d) 141151-U.

¶ 7 Relevant to this appeal, the GAL filed an updated fee petition on October 29, 2015. However, not relevant to this appeal, respondent filed a petition for modification of visitation on November 9, 2015, in which he sought the reinstatement of his visitation rights. He then filed a petition for modification of child support on February 23, 2016. The trial court conducted a hearing on February 29, 2016, during which it heard testimony and considered evidence pertaining to the GAL's updated fee petition and respondent's petition for modification of visitation. At the conclusion of the hearing, the trial court entered an order that: (1) denied respondent's petition for modification of visitation; (2) scheduled a hearing for respondent's petition to modify child support; (3) suspended the GAL's investigation until further court order;

and (4) stated the matter of GAL fees would be taken under advisement. Respondent then attempted to appeal the portion of the order that denied his petition for modification of visitation. However, in *Andexler III*, we granted petitioner's motion to dismiss the appeal for lack of jurisdiction, as other post-dissolution matters remained pending when the trial court issued its order. (*Andexler III*) *In re Marriage of Andexler*, 2016 IL App (2d) 160247-U.

¶ 8 On June 6, 2016, the trial court conducted a hearing for the purpose of resolving all outstanding matters. This included the GAL's fee petition and respondent's petition for modification of child support, as well as petitioner's newly filed petition for modification of child support. Additionally, respondent had filed a motion to quash a subpoena related to his bank records, and petitioner had filed a petition for rule to show cause, alleging that respondent had failed to comply with a court order that he provide his tax returns. At the conclusion of the hearing, the trial court entered two separate orders, both dated June 6, 2016. In the first order, the trial court allowed the GAL's fee petition in the amount of $25,900. The fees were split with 60% allocated to respondent and 40% allocated to petitioner. After accounting for payments already received by the GAL, this left $14,700 due and owing from respondent and $2,900 due and owing from petitioner. In the second order, the trial court denied respondent's motion to quash the subpoena, ordered that respondent produce his tax returns, and reserved ruling on the cross-motions to modify child support.

¶ 9 On June 30, 2016, the trial court entered an order that increased respondent's child support obligation from $924.76 per month to $1,452.96 per month. The order noted that one of the minor children would soon become emancipated, and that the support obligation would therefore decrease to $1,162.37 per month after August 14, 2016.

¶ 10 On July 7, 2016, respondent filed a notice of appeal. He identified the trial court's June 6, 2016, order relative to the GAL's fee petition. The notice of appeal contained a signature line that was left unsigned.

¶ 11 II. ANALYSIS

¶ 12 Before addressing the merits of this appeal, we must first address the issue of our jurisdiction. Respondent filed his notice of appeal on July 7, 2016, identifying the trial court's June 6, 2016, order relative to GAL fees. Although 31 days elapsed between these dates, we nonetheless hold that respondent's notice of appeal was timely filed. This is because an order that disposes of fewer than all of the parties' claims is not appealable absent a finding that there is no just reason to delay the appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1094 (2011). We have held that a post-dissolution petition is a claim within the original dissolution proceeding, and therefore, in the absence of a Rule 304(a) finding, it is appealable only when all pending post-judgment motions or separate claims are resolved. *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 744 (2007). Here, the trial court issued no Rule 304(a) finding on June 6, 2016, when it entered the order relative to the GAL fees. All other pending matters were resolved on June 30, 2016, when the trial court entered the order modifying respondent's child support obligation. Thus, respondent properly filed his notice of appeal within 30 days of June 30, 2016, when the final and appealable order in this case was entered. See Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015).

¶ 13 We next observe that respondent failed to sign his notice of appeal, in violation of Supreme Court Rule 303(b)(4) (eff. Jan. 1, 2015). However, "Illinois courts have repeatedly refused to dismiss an appeal because of a technical deficiency in the notice of appeal so long as

the notice fulfills its basic purpose of informing the victorious party that the loser desires a review of the matter by a higher court." *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1108-09 (2011) (quoting *In re Estate of Weber*, 59 Ill. App. 3d 274, 276 (1978)). Therefore, because respondent's notice of appeal adequately informed the GAL and petitioner of his intent to appeal the June 6, 2016, order relative to GAL fees, we will not dismiss the appeal.

¶ 14 We also observe that the arguments raised in respondent's brief pertain solely to the issue of GAL fees. To the best of our knowledge, after conducting a thorough review of the record and the filings related to this case, it appears that respondent has not filed any notice of appeal since our resolution of *Andexler III* relating to the modification of his visitation. There is also no record of any notice of appeal relating to the modification of his child support obligation, including the trial court's June 30, 2016, order. Thus, the only issues in this case that have not been fully resolved are the trial court's allowance and allocation of the GAL fees.

¶ 15 Before addressing the merits, the GAL has moved within her appellate brief to strike several portions of respondent's brief. We agree with the GAL that respondent's brief violates Supreme Court Rule 341(h) in several respects. See Ill. S. Ct. R. 341(h) (eff. Jan 1, 2016). Accordingly, we will disregard the following portions of respondent's brief: (1) his improper standard of review; (2) his improper statement of jurisdiction; and (3) the improper arguments and conclusory statements within his statement of facts. See Rules 341(h)(3), (4), and (6).

¶ 16 Turning now to the merits, the guiding principles here are similar to those that controlled in *Andexler II*. Section 506 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) provides that the court may appoint an attorney to serve as a GAL for the child in a child custody proceeding. 750 ILCS 5/506(a)(2) (West 2012). The GAL shall file a detailed invoice for every 90-day period following the appointment, and the court shall review these invoices and

approve the fees if they are reasonable and necessary. 750 ILCS 5/506(b) (West 2012). In determining the amount of GAL fees to be awarded, the court must consider the total circumstances involved, including the difficulty of the questions raised, the degree of responsibility involved from a management perspective, the time and labor required, and the usual and customary charge in the community. *In re Marriage of Soraparu*, 147 Ill. App. 3d 857, 864 (1986). The court should also consider the total circumstances of the parties when determining the proper allocation of GAL fees, including the parties' financial resources and their relative ability to pay. *McClelland v. McClelland*, 231 Ill. App. 3d 214, 228 (1992). Additionally, a court may consider which party necessitated the guardian's appointment and make that party bear the greater part, if not all, of the GAL's expenses. *Gibson v. Barton*, 118 Ill. App. 3d 576, 583 (1983).

¶ 17 The decision regarding the allowance and allocation of GAL fees rests within the sound discretion of the trial court, and will not be disrupted on review unless that discretion is clearly abused. *Soraparu*, 147 Ill. App. 3d at 864; *In re Estate of K.E.S.*, 347 Ill. App. 3d 452, 468 (2004). A trial court abuses its discretion where its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court. *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306.

¶ 18 Here, respondent's first contention is that the trial court did not follow the "directives" of this court in *Andexler II*. As discussed, in *Andexler II*, we held that the trial court had abused its discretion by: (1) allowing the GAL's fee petition even though the record was devoid of any invoices to account for more than $3,000 in fees; and (2) allocating the GAL's fees without a proper consideration of respondent's ability to pay. *In re Marriage of Andexler*, 2015 IL App (2d) 141151-U, ¶¶ 25-26. We also questioned the propriety of the trial court's decision to

increase respondent's child support obligation as a means of compensating the GAL, specifically noting our concern as to whether this practice was consistent with protecting the best interests of the children. *Id.* ¶ 32.

¶ 19 Regarding respondent's ability to pay the GAL fees, we noted that respondent had been unemployed for a significant period of time during the proceedings, and that he was behind in his child support obligations. *Id.* ¶ 26. Although respondent did not appear at the hearing in question, the record contained no indication that the trial court had considered these factors in allocating the GAL fees. *Id.* We also noted that respondent had been granted leave to sue or defend as an indigent person under section 5-105 of the Code of Civil Procedure (Code) (735 ILCS 5/5–105 (West 2012)), which provides that an applicant may be permitted to sue or defend in a civil action without payment of GAL fees upon a finding that he is indigent. *Id.* ¶ 27. We observed, however, that respondent's section 5-105 application had been granted by a different judge in an order-of-protection case. Although the order-of-protection case was subsequently consolidated with the post-dissolution proceedings, we noted that the judge who granted respondent's section 5-105 application may not have been aware that a GAL had been appointed in the post-dissolution proceedings. Thus, we concluded that "a reevaluation of respondent's financial circumstances may be justified," and we declined to provide an advisory opinion regarding the applicability of respondent's section 5-105 application toward the GAL fees in this case. *Id.* ¶ 30.

¶ 20 The record reflects that the trial court properly addressed these issues on remand. Regarding the reasonableness of the GAL's fees, the trial court noted that it had considered the evidence and arguments presented by the parties during the hearing on February 29, 2016. This included a consideration of the GAL's updated invoice that accounted for her hourly billing and

fees. The trial court commented that the GAL's hourly rate of $250 was below the market rate for attorneys in Du Page County with similar backgrounds, which ranged from $300 to $500 per hour. It also noted that the litigation had been complicated and contentious, and that the GAL had been required to spend a considerable amount of hours working on the case. For these reasons, unlike in *Andexler II*, the trial court did not abuse its discretion by allowing the GAL's fee petition.

¶ 21 The record also reflects that the trial court conducted a proper inquiry into respondent's ability to pay the GAL fees. As per our instructions in *Andexler II*, it considered respondent's financial circumstances and determined the effect of the order granting respondent's application to sue or defend as an indigent person in the order-of-protection case. The trial court found that respondent did not qualify as an "indigent person" under section 5-105, as his 2015 income tax return reflected wages and salaries in the amount of $55,517, and an adjusted gross income of $42,500.

¶ 22 Section 5-105(a)(2) of the Code provides that an "indigent person" is one who meets one or more of the following criteria:

> "(i) He or she is receiving assistance under one or more of the following public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary Assistance for Needy Families (TANF), Food Stamps, General Assistance, Transitional Assistance, or State Children and Family Assistance.
>
> (ii) His or her available income is 125% or less of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of

a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5-105.5 of this Code." 735 ILCS 5/5-105(a)(2) (West 2012).

In turn, section 5-105.5 of the Code provides than an "indigent person" means "a person whose income is 125% or less of the current official federal poverty income guidelines or who is otherwise eligible to receive civil legal services under the eligibility guidelines of the civil legal services provider or court-sponsored pro bono program." 735 ILCS 5/5-105.5 (West 2012).

¶ 23 Here, respondent's 2015 tax return reflects that his filing status was single. He did not claim any dependants and he did not claim to qualify as a head of household. According to the Office of the Assistant Secretary for Planning and Evaluation, the United States Department of Health and Human Services established that the poverty threshold for a single-person family or household in 2015 was $11,770. In 2016, that same poverty threshold was $11,880. https://aspe.hhs.gov/computations-2016-poverty-guidelines (last visited March 15, 2017). Respondent did not provide the trial court with evidence that he received assistance under one of the named public benefit programs in section 5-105, and he did not establish that he was eligible to receive civil legal services under section 5-105.5. Hence, we agree with the trial court that respondent did not qualify as an "indigent person" under the relevant statutes, and we cannot say that the trial court abused the discretion otherwise afforded to it under the Code. For these

reasons, we affirm the trial court's determination that respondent did not qualify to sue or defend without payment of the GAL fees.

¶ 24 Respondent argues that the trial court erred by failing to factor "who necessitated the appointment of the GAL" when it allocated the GAL fees. However, the trial court had discretion in deciding whether to weigh this factor in the first instance. See *Gibson*, 118 Ill. App. 3d at 583. While there may be some truth to the notion that petitioner necessitated the appointment of the GAL by petitioning for the termination of respondent's visitation rights, it cannot be overlooked that the GAL's considerable fees are largely attributable to the myriad of *pro se* motions and petitions that were filed by respondent. See *Andexler I*, 2015 IL App (2d) 140476-U, ¶ 15 ("We begin by noting that respondent inundated the docket below with countless *pro se* filings."). Furthermore, as we have discussed, respondent's financial circumstances have improved significantly since our ruling in *Andexler II*—the trial court did not abuse its discretion by choosing to weigh this factor more heavily in allocating the GAL fees. We therefore affirm the trial court's order allocating 60% of the GAL fees to respondent.

¶ 25 Respondent's final contention is that the GAL's fee application should not have been granted because she failed to file an updated invoice with the trial court for every 90-day period her following appointment. Section 506(b) of the Marriage Act provides, "[a]ny person appointed under this Section *shall* file with the court within 90 days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party." (Emphasis added.) 750 ILCS 5/506(b) (West 2012). The GAL rather flippantly argues that the statute's use of the word "shall" does not provide a penalty for her lack of strict adherence to the 90-day filing requirement. *Schultz v. Performance Lighting, Inc.*, 2013 IL App (2d) 120405, ¶ 14 (noting that

the word "shall" is generally directory, requiring only substantial statutory compliance, unless it is accompanied by a penalty or consequence). We agree with the GAL that her failure to strictly comply with the 90-day rule in section 506(b) is not fatal to her fee petition, and her point is well-taken that respondent never objected to her sporadic filing of invoices. The record reflects that respondent was adequately informed of the GAL's mounting billable hours throughout the course of the underlying litigation, and the trial court was within its discretion to allow her fee petition. However, we caution that a better practice in the future would be to strictly comply with the 90-day filing rule in section 506(b).

III. CONCLUSION

¶ 26 For the reasons stated herein, we affirm the trial court's allowance and allocation of the GAL fees, as stated in its June 6, 2016, order.

¶ 27 Affirmed.