

NOTICE  
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2017 IL App (5th) 150483-U

NO. 5-15-0483

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
EDGAR LLOYD MYERS IV,	)	Madison County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 09-D-908
	)	
CRYSTAL D. MYERS,	)	Honorable
	)	Janet Heflin,
Respondent-Appellee.	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Cates concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court did not abuse its discretion in ordering the former husband to pay \$20,000 of the wife's attorney fees where the evidence showed that his income was nearly twice her income.
- ¶ 2 The husband in this dissolution case appeals an order of the trial court ordering him to pay a portion of his former wife's attorney fees. The fees were incurred litigating petitions filed by both parties seeking to modify child support, custody, and visitation. The court indicated that it ordered the husband to pay the fees after considering both the financial circumstances of the parties and the fact that "numerous [unnecessary]

pleadings were filed." The husband argues that the court abused its discretion in ordering the fees because (1) the wife did not demonstrate either that she was unable to pay all of her fees or that he was able to pay them; and (2) the court's finding concerning the filing of unnecessary pleadings was not specific enough to support an award of attorney fees. We affirm.

¶ 3 The parties, Edgar Lloyd Myers IV (Ed) and Crystal D. Myers, were married in October 1997. Their two children were born in October 2000 and March 2006. In September 2009, Ed filed a petition for dissolution of marriage, along with a joint parenting agreement and marital settlement agreement. The following day, the court entered an order dissolving the parties' marriage and incorporating both agreements. Pursuant to their agreements, the parties were awarded joint legal custody of the children with Crystal serving as their primary residential custodian. Ed was ordered to pay \$667 biweekly as child support.

¶ 4 In 2011, Ed remarried. Prior to that time, the parties managed to work together to co-parent their children. After Ed remarried, however, their relationship deteriorated. In June 2011, Crystal filed a petition to modify child support. Soon thereafter, Ed filed a petition to modify visitation, and both parties filed petitions to modify custody asking to be awarded sole legal custody of the two children.

¶ 5 These matters came for a hearing in December 2013. At the end of the four-day hearing, the court took the matter under advisement and directed both parties to prepare proposed written orders.

¶ 6 On April 14, 2014, Crystal filed a motion for attorney fees. She alleged that she had incurred \$35,033.85 in attorney fees and that she expected to incur an additional \$1,000 in fees for the preparation of the proposed order. She alleged that a balance of \$1,957.55 remained on the fees she had already incurred. Crystal further alleged that she had limited means. She requested that Ed be ordered to pay all of her attorney fees.

¶ 7 On May 15, 2014, the court entered a written judgment. The court found that due to the deterioration in the parties' relationship, joint custody was no longer a viable option. The court found that Ed's income was \$94,416 in 2011, \$96,267 in 2012, and \$89,074 in 2013. The court found that the child support he was paying—\$667 every two weeks, or approximately \$1,445 per month—was less than the statutory guideline amount for this income. See 750 ILCS 5/505(a)(1) (West 2012) (providing that 28% of the noncustodial parent's income is the guideline amount for two children). The court noted that Ed's wife, Cassie, also worked. The court found that Crystal's income was \$43,319 in 2011, \$48,978 in 2012, and \$51,201 in 2013. The court awarded sole legal custody of both children to Crystal, set out a visitation schedule, and ordered Ed to pay \$1,838 per month in child support along with half the cost of the children's extracurricular activities.

¶ 8 In addressing Crystal's request for attorney fees, the court stated as follows:

"The court has reviewed \*\*\* the parties' respective incomes and ability to pay. The court finds that numerous pleadings were filed and court appearances required that were not necessary. Considering this and the ability of the parties to pay fees, the court orders [Ed] to pay [Crystal's] attorney fee in the amount of \$20,000."

The court also ordered Ed to pay 60% of the remaining fees to a guardian *ad litem* appointed for the children, while Crystal was ordered to pay 40% of the guardian *ad litem*'s remaining fees.

¶ 9 Ed filed a motion to reconsider. In October 2015, the court modified the visitation schedule, but denied the motion to reconsider in all other respects. This appeal followed.

¶ 10 Ed first argues that the court abused its discretion in ordering him to pay a portion of Crystal's attorney fees because Crystal did not show either that she was unable to pay her own fees or that Ed was able to pay the fees. He contends that the financial circumstances of the parties are substantially similar. We disagree.

¶ 11 In proceedings under the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/101 *et seq.* (West 2012)), a trial court may order one party to pay all or part of the other party's attorney fees "after considering the financial resources of the parties." 750 ILCS 5/508(a) (West 2012). The party requesting fees must show both a financial inability to pay her own fees and "a corresponding ability of the ex-spouse to do so." *In re Marriage of Vest*, 208 Ill. App. 3d 325, 331 (1991). As Ed correctly notes, attorney fees are generally the responsibility of the party who incurs them, and there is no presumption "that the wife is financially unable to pay her retained attorney." *In re Marriage of Meyer*, 140 Ill. App. 3d 1031, 1036 (1986). However, the party requesting fees is not required to show that she is destitute or that she must "liquidate [her] assets to pay [her] own fees before there can be a finding of inability" to pay. *In re Marriage of Vest*, 208 Ill. App. 3d at 331-32.

¶ 12 Courts have found awards of attorney fees to be warranted in cases where there is a significant disparity in the incomes of the parties. See, e.g., *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 976 (1997); *In re Marriage of Radae*, 208 Ill. App. 3d 1027, 1023 (1991); *In re Marriage of Vest*, 208 Ill. App. 3d at 332. Whether to award attorney fees and the amount of the fees to award are decisions entrusted to the discretion of the trial court. On appeal, we will not reverse these decisions absent an abuse of the trial court's discretion. *In re Marriage of Vest*, 208 Ill. App. 3d at 332.

¶ 13 We find no abuse of discretion in this case. The court found that Ed's income was nearly twice Crystal's income for each of the three years at issue, and Ed had the benefit of his wife's income in meeting his household expenses. Ed argues, however, that their financial circumstances were similar taking into account the child support that Ed paid to Crystal. We are not persuaded.

¶ 14 Ed cites no authority to support the proposition that income is to be adjusted in the manner he suggests. Moreover, his argument overlooks the basic purpose of child support. Child support is awarded because both parents have an obligation to support their children and provide for their needs. 750 ILCS 5/505(a) (West 2012); *In re Marriage of Edwards*, 369 Ill. App. 3d 1035, 1039 (2006). Child support payments represent the noncustodial parent's contribution to providing this support; they do not represent additional income for the custodial parent. Thus, we reject Ed's contention that the parties' financial circumstances were similar because he paid child support. The disparity in their incomes ordinarily justifies an award of attorney fees, and in some cases, a court's refusal to award attorney fees in the face of a substantial difference in

income may even constitute an abuse of discretion. See *In re Marriage of Carpenter*, 286 Ill. App. 3d at 976.

¶ 15 Ed also points to the fact that Crystal paid most of her attorney fees before filing her motion requesting the award of fees. He contends that this fact demonstrates that she was able to pay the fees. See *In re Marriage of Vest*, 208 Ill. App. 3d at 332 (noting that while the husband's attorney fees had been paid in full, the wife had an outstanding bill for over \$5,000 among other factors supporting the court's finding that the wife was unable to pay her fees and the husband was able to pay them). Again, we are not persuaded. The evidence showed that Crystal had \$10,743 in a checking account and \$275 in savings accounts. The evidence also showed that she had outstanding credit card debts of \$11,288, an amount that could only be paid by depleting nearly all of her funds. In addition, Crystal was ordered to pay a portion of the guardian *ad litem* fees. As discussed previously, a party need not exhaust or liquidate her assets before a court may find an inability to pay the party's attorney fees. See *In re Marriage of Vest*, 208 Ill. App. 3d at 331-32. The fact that Crystal exhausted a significant portion of the funds available to her in order to pay her attorney does not negate a finding that she was financially unable to pay the fees without undermining her financial security. It is also worth noting that the court ordered Ed to pay only approximately 55% of Crystal's attorney fees. We find that this award was a proper exercise of the court's discretion.

¶ 16 Ed next argues that the court abused its discretion in awarding fees based on its finding that numerous unnecessary pleadings were filed. The Dissolution Act authorizes courts to award attorney fees in cases where they find that a party or attorney improperly

acted to harass the other party, cause "unnecessary delay, or [engage in] other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2012). Ed argues, however, that the court's "non-specific commentary" concerning the filing of unnecessary pleadings in this case is too vague to support an award of attorney fees. In response, Crystal argues that the court's statement referring to the filing of numerous unnecessary pleadings should be read as a "side comment, possibly directed against both parties," rather than as a basis for the court's ruling. She points out that the court stated that "numerous pleadings were filed and court appearances required that were not necessary" without explicitly stating which pleadings were unnecessary or which party filed them. We need not resolve these arguments. We have already found that the award of attorney fees was justified on the basis of the financial circumstances of the parties, and we believe this conclusion is sufficient to support the trial court's decision.

¶ 17 In *In re Marriage of Theeke*, 105 Ill. App. 3d 119 (1981), a division of the First District considered a similar question. There, as here, the husband earned substantially more income than the wife. *Id.* at 122. As in this case, the trial court ordered the husband to pay a portion of the wife's attorney fees. *Id.* at 123. A "substantial amount" of the time the wife's attorney worked on the case was attributable to the husband's "failure to comply with court orders." *Id.* In ordering the husband to pay a portion of the wife's fees, the trial court "alluded to the fact that it did not overlook the unnecessarily drawn-out procedure which took place." *Id.* at 127. However, the court did not explicitly "assign[ ] any responsibility for [the delays] to either party." *Id.*

¶ 18 On appeal, the husband challenged the award of attorney fees, arguing that under the law in effect at the time, the " 'sole criterion for assessing [attorney] fees [was] the relative financial resources of the parties,' " and that, as such, "vexation and harassment [were] not relevant considerations." *Id.* (quoting *In re Marriage of Miller*, 84 Ill. App. 3d 931, 938 (1980)). In rejecting this argument, the appeals court first disagreed with the notion that the trial court considered any of the husband's improper actions in awarding the fees. The court emphasized that although the trial court referred to delays at trial, it did not "assign[ ] any responsibility" for these delays "to either party." *Id.* The appeals court then went on to explain that the trial court properly "considered evidence relative to the financial circumstances of the parties," including their salaries, debts, and household expenses. *Id.* The appeals court further explained that based on this evidence, the trial court found that the burden of paying her attorney fees and costs in full would "exhaust [the wife's] resources." *Id.* The court concluded that, in light of the evidence presented, this finding was not an abuse of the trial court's discretion. *Id.*

¶ 19 Here, as in *In re Marriage of Theeke*, the trial court did not explicitly assign blame for the unnecessary pleadings and hearings to either party, nor did it identify which pleadings or hearings it found to be unnecessary. Moreover, as we have already concluded, the award of fees was justified by the court's consideration of the parties' economic circumstances. We find no abuse of discretion.

¶ 20 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 21 Affirmed.