2018 IL App (1st) 172873-U

FOURTH DIVISION
September 20, 2018

No. 1-17-2873

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	
	)	Appeal from
FERMIN L.,	)	the Circuit Court
	)	of Cook County
Petitioner-Appellant,	)	
	)	
v.	)	14 D 394
	)	
MEGAN S.,	)	
	)	Honorable
Respondent-Appellee.	)	Nancy Katz and
	)	Karen Bowes,
	)	Judges Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in granting respondent's petition for attorney fees and costs pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2016)) where petitioner engaged in conduct for an improper purpose throughout the proceedings on respondent's motion to restrict parenting time.

¶ 2 Following the trial court's granting of respondent Megan S.'s motion to restrict petitioner Fermin L.'s parenting time based on allegations that petitioner struck the parties' younger son in the presence of their older son, respondent filed a petition for attorney fees pursuant to sections

508(b) and 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(b), 610.5 (West 2016)). After a trial, the trial court granted respondent's petition in a written order, awarding $124,430.76 in attorney fees and $10,225.25 in costs under section 508(b) of the Marriage Act and $4,475 in attorney fees and costs under section 610.5(f) of the Marriage Act.

¶ 3 Petitioner appeals *pro se*, arguing that (1) the trial court erred in granting respondent's petition because petitioner's conduct did not fall within the definition of "improper purposes" as provided in section 508(b) of the Marriage Act; and (2) if petitioner's conduct fell within the statute, the trial court erred in allocating the attorney fees and costs against petitioner.

¶ 4 Petitioner and respondent were married in Maryland in 2003. During their marriage, the parties had two sons: S.L., born December 2007, and N.L., born October 2009. In 2009, respondent became a foreign service officer with the United States Department of Commerce. From 2009 to 2012, the family resided in the Dominican Republic.

¶ 5 While in the Dominican Republic, the parties experienced marital issues which resulted in respondent leaving the family home with the children. Later, respondent filed for divorce in Wisconsin, where her family lived, while petitioner filed for divorce in Maryland. Ultimately, the divorce was finalized in Maryland in December 2012. The divorce was subsequently registered in the Cook County, Illinois, where the parties later resided.

¶ 6 In 2014, respondent received notice of her assignment to Santiago, Chile for a period of four to five years. She filed a motion for leave to remove the children to Chile during the pendency of her assignment. In September 2014, after several months of litigation, an agreed order was entered by the trial court granting respondent's request to remove the children to Chile

and awarded petitioner parenting time. Petitioner exercised his parenting time in both Chile and the United States as well as Skype and telephone calls. Also in 2014, respondent remarried.

¶ 7 In 2015, N.L. was assessed before enrolling at his school in Chile and eventually diagnosed with auditory and sensory issues. During the fall semester of school, N.L. had poor impulse control, issues interacting with friends, and lacked respect for others' personal space. He was referred to a psychologist for therapy as well as occupational therapy. After four to five sessions with the therapists, N.L. improved both academically and behaviorally at school and no further incidents occurred. S.L. had no behavior or academic problems at school.

¶ 8 On March 2, 2016, respondent filed her amended emergency petition to restrict the parenting time of petitioner. She subsequently amended her petition an additional two times, but the substance of the petition remained consistent. Her petition alleged that after the children's visit with petitioner in Chicago from December 19, 2015 to January 23, 2016, the children's behavior changed. N.L. was more aggressive and emotional than before his visitation with petitioner. S.L. was less talkative and withdrawn. N.L. would frequently hit S.L., which made S.L. afraid of his younger brother. S.L. would hide in the bathroom or behind an adult and often cried.

¶ 9 According to respondent's petition, on or about February 8, 2016, S.L. told respondent and his stepfather that petitioner had hit N.L. in the face several times for being a bad boy, not following the rules, or not doing his homework. S.L. was crying as he shared this information and curled into the fetal position. N.L. pointed to his face and occasionally his buttocks while S.L. described petitioner's actions.

¶ 10 In March 2016, the trial court reappointed Kathryn Ciesla as Guardian Ad-Litem (GAL) for the children. Ciesla had previously represented the children during the removal proceedings.

Ciesla traveled to Chile to interview the children, their teachers, and treatment providers. The court also appointed Dr. Kerry Smith to conduct an evaluation pursuant to section 604.10(b) of the Marriage Act (750 ILCS 5/604.10(b) (West 2014)).

¶ 11 On March 31, 2016, petitioner filed a petition to modify parenting time, seeking to reallocate parenting time where the children spend the school year and a reasonable amount of holiday and vacation time with petitioner. Petitioner based his petition on N.L.'s special needs and issues that occurred prior to the agreed order for removal. In May 2016, respondent filed a motion to strike and dismiss the petition to modify parenting time pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)).

¶ 12 In May 2016, the trial court conducted a settlement conference and the parties engaged in settlement discussions. Both Ciesla and Dr. Smith presented recommendations, which included a recommendation that petitioner travel to Chile and attend reunification therapy with the children before regular visitation would resume. The court was advised that the parties were close or had reached a settlement. Petitioner declined to agree with the recommendations and refused to travel to Chile for reunification therapy. The trial court subsequently struck the scheduled trial dates for June 2016 as the parties needed additional time for trial preparations since a settlement had not been reached. The trial was rescheduled for August 2016. In June 2016, petitioner voluntarily withdrew his motion to modify parenting time.

¶ 13 In August 2016, Judge Ellen Flannigan conducted a trial on respondent's third amended petition to restrict parenting time. The trial lasted four and a half days, consisting of live testimony from the parties, petitioner's sister, Ciesla, Dr. Smith, and petitioner's former attorney, as well as eight evidence depositions from the children's teachers, treatment providers, and respondent's husband in Chile. A transcript of the trial on the petition has not been included with

the record on appeal. Petitioner, as the appellant, bears the burden of providing a sufficiently complete record to support his claims of error. In the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellant. *Id*. at 392. Here, without a transcript or bystander's report, we are limited in our review to the extent that petitioner's actions in that trial precipitated respondent's motion for attorney fees and costs at issue on appeal.

¶ 14 On September 23, 2016, Judge Flannigan issued her 19-page written order granting respondent's petition to restrict parenting time. Her order contains detailed findings of fact, which we summarize as necessary. After the February 2016 outcry, respondent contacted N.L.'s psychologist and she met with the children. She testified that both boys told her that petitioner hit N.L. on his cheeks. S.L. was distressed and had difficulty sleeping. N.L. told her that he had an escape plan if petitioner was going to slap him again, he would escape to the bedroom. The psychologist found the children credible.

¶ 15 Testimony was presented that S.L. was grouchy, not talkative, and did not want people around his desk. He became angry easily and overreacted to events by crying. He no longer wanted to go to lunch or recess. The school counselor saw S.L. twice as a result of uncontrollable crying and testified that S.L. seemed sad and worried about something. She referred S.L. to a clinical psychologist. The psychologist testified that S.L. told her that petitioner hit N.L. and S.L. felt bad that he did not defend N.L. The psychologist found S.L. credible and diagnosed him with an emotional reaction disorder towards a traumatic event.

¶ 16 N.L.'s teacher testified that when he returned from break, he had reverted to the behavior from the beginning of the previous semester, but was not hitting and punching his peers. The school's early childhood counselor made similar observations, noting that N.L. had difficulty controlling himself and that hitting friends was a new behavior.

¶ 17 Dr. Smith, the section 604.10(b) expert, interviewed the children. They told her that petitioner hit N.L. because N.L. was not listening. N.L. also told her of his plan to avoid future attempts by petitioner to hit him. Dr. Smith found the children credible. She also interviewed the school personnel, counselors, and witnesses.

¶ 18 Ciesla, the GAL, traveled to Chile and interviewed respondent, respondent's husband, the children, their teachers, and counselors. S.L. told her that the hitting occurred on different days when N.L. was not listening. N.L. told her that petitioner also pinched him, and N.L. demonstrated being pinched in his inner thighs. Ciesla found the children credible.

¶ 19 The children's therapists and counselors recommend reunification therapy in Chile. According to the trial court, "[t]he purpose of the therapy is for the children and [petitioner] to address the situation, to heal, and to move forward with their relationship." Petitioner opposes attending therapy and Chile and was "adamant" that he never hit N.L. Ciesla interviewed petitioner and his witnesses and did not find petitioner credible when he denied hitting N.L.

¶ 20 Petitioner testified that N.L.'s behavior was a pre-existing condition and was not caused or exacerbated by the alleged physical contact. The trial court observed that it was undisputed that N.L. had been previously diagnosed with behavioral issues, but according to multiple witnesses, N.L. had shown great improvement before his visitation with petitioner. As the trial court found,

> "These individuals credibly testified as to [N.L.'s] pre and post visitation behaviors, and related them to event(s) that occurred during winter break. As such, this court does not find this argument persuasive. Assuming, *in arguendo*, that [petitioner's] 'pre-existing condition' argument had merit, it does not explain [S.L.'s] drastic behavior change following his return from his Winter break visitation with his father."

¶ 21 The trial court next considered and rejected petitioner's argument that no physical evidence supported the children's statements. The court noted the testimony regarding both children's emotional abuse and the witnesses' testimony about the children's behavioral changes was "very thorough, detailed and credible." The court further rejected petitioner's argument that there was no evidence to corroborate the children's statements, including no witnesses. Petitioner contended that because there were no witnesses, the children may have been coached or were lying. The court found that "there was no credible evidence or testimony to establish that the children were coached or were lying." The court pointed out that Dr. Smith, Ciesla, the school personnel, and therapists all found the children to be credible and not coached. In addressing petitioner's testimony on this argument, the court recounted:

> "When asked if he had any facts or evidence to establish the children were coached or lying, [petitioner] testified, 'I don't know,' In fact, when asked if he had any facts or evidence to establish that [respondent, respondent's husband], the school personnel and mental healthcare treaters were coached or lying, he testified, 'I don't know.' "

The court found petitioner not credible and his argument lacked merit.

¶ 22 The trial court considered several factors in considering the allocation of parental responsibilities and parental time under the Marriage Act. In considering the distance between the parents, costs and scheduling, the court noted that despite the agreed order from 2014, petitioner complains that he cannot afford to travel to Chile, his schedule does not allow for multiple or prolonged visits to Chile for reunification therapy, and he cannot obtain secure internet to work while in Chile. The court observed that petitioner's financial disclosures showed he earns over $123,000, and he testified that he has six weeks paid vacation and usually works from home.

¶ 23 Regarding petitioner's refusal to travel to Chile because he feared criminal or civil charges being imposed on him, the court observed that petitioner's initial refusal "may have been justified" based on testimony of his former attorney. But the court found that several months had passed, petitioner had new counsel, but has not made "any inquiry to substantiate his fear." Specifically, the court believed that petitioner's "fear of travelling to Chile is based on ignorance, intransigence, third party hearsay, unfounded assertions, and his unrelated past experience in the Dominican Republic. His continued failure to conduct any investigation or due diligence regarding travel to Chile may indeed reflect as an impaired mental state and his ability to problem-solve."

¶ 24 When considering petitioner's willingness and ability of petitioner to place the needs of the children ahead of his own needs, the court found:

> "[Petitioner] testified that he cannot go to Chile to attend reunification therapy to help his children. His fear of being detained, arrested or charged, is unsupported by fact, and is merely

> conjecture. His reliance upon his past experience in the Dominican Republic is unjustified because he has not set forth any credible evidence that connects the two countries with the allegations at bar. [Petitioner's] failure to investigate and perform due diligence to verify whether or not his fear is substantiated is inexcusable. His continued reliance upon his former counsel's advice without further inquiry is troubling. [Petitioner] testified he has not retained legal advice in Chile and there was no testimony elicited that he has contacted any authority in Illinois, Washington, D.C., Maryland, or Chile. *In arguendo* what would [petitioner] do if an emergency situation arose in Chile and the children needed him to come to Chile? This court believes that [petitioner] does not want to travel to Chile and face his children and their therapists, to defend his position that he did not hit [N.L.]
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> Likewise, [petitioner] cites lack of time, inability to work and the excessive travel expenses as his reasons why he does not travel to Chile. This court finds [petitioner's] rationale unjustified. Simply put, [petitioner] is protecting his own best interest and not his children's."

¶ 25 In reaching her conclusion that a restriction on parenting time was appropriate, the trial judge noted the opinions of Dr. Smith and Ciesla. "Dr. Smith opined that because [petitioner] does not follow the recommendations of the children's mental healthcare providers, his conduct constitutes a serious endangerment to the children's mental health and emotional development

and function. GAL Ciesla testified that [petitioner's] failure to acknowledge the physical discipline coupled with his refusal to participate in reunification therapy significantly impairs the children's emotional development on a continuing basis." The court then held that based on the witness testimony, including the credible testimony of respondent and her husband and petitioner's "incredible" testimony, respondent had met her burden that petitioner's "conduct of hitting and slapping [N.L.] in front of [S.L.], coupled with [petitioner's] refusal to attend reunification therapy, has seriously endangered the children's mental health and significantly impaired their emotional development." The court granted respondent sole decision making authority in regard to the children's mental health and that petitioner may not exercise in-person parenting until he attends reunification therapy in Chile. Petitioner was also required to attend and complete a parenting class.

¶ 26 In October 2016, petitioner filed a motion to reconsider the trial court's findings, asserting that there was no evidence to support the children's statements and the children may have lied or have been coached, and that portions of the judgment requiring him to comply with the mental health provider's recommendations should be vacated. In February 2017, the trial judge denied petitioner's motion to consider, but struck the language requiring him to comply with the mental health provider's recommendations. The court explicitly found there was evidence to support the children's statements.

¶ 27 In October 2016, respondent filed her petition for attorney fees and costs pursuant to sections 508(b) and 610.5 of the Marriage Act (750 ILCS 5/508(b), 610.5 (West 2016)). Petitioner filed a motion to dismiss the petition under section 2-615 and 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-615, 619(a)(9) (West 2016)), contending that section 508(b) only provided for the recovery of attorney fees and costs in enforcement proceedings. Judge

Nancy Katz subsequently denied petitioner's motion to dismiss. In his response to the petition, petitioner denied the allegations, including that he ever struck N.L., and denied that there was an adequate legal basis for the award of attorney fees, maintaining that the statute only applied in enforcement proceedings.

¶ 28 Judge Katz presided over a trial on respondent's petition in March 2017. Four witnesses testified during the two-day trial: respondent's attorney Kathryn Homberger Mickelson, petitioner's former attorney Marilyn Longwell, petitioner, and Ciesla in rebuttal.

¶ 29 Mickelson is a family law attorney and partner at Beermann Pritikin Mirabelli Swerdlove LLP, and was retained by respondent in February 2016. The trial was initially set for the first week in June 2016. Two pretrial conferences were conducted in May 2016 before Judge Katz. Ciesla, as the GAL, made recommendations regarding reunification therapy as well as protocol for further communication with the children. Ciesla recommended that petitioner go to Chile and participate in therapy with the children's treatment providers. Mickelson testified that there were discussions based on the recommendations to settle the case without a trial, but a settlement was not reached. According to Mickelson, petitioner wanted an apology from respondent. At that time, the case was reset for trial in August 2016.

¶ 30 Mickelson, another attorney, a paralegal, and law clerks were involved in the preparations for trial. They took ten depositions in total, two were the parties and the remaining eight were the evidence depositions for trial of the witnesses in Chile. She estimated that 15 witnesses testified at the trial. The billing statements were submitted into evidence. Attorney fees totaled approximately $148,000 at trial. Mickelson testified that her hourly rate was $425 and the second attorney's hourly rate was $350. She believed the time spent on the case was reasonable and appropriate. Respondent rested after her attorney's testimony and exhibits were admitted.

¶ 31 Marilyn Longwell represented petitioner initially regarding respondent's motion to restrict parenting time, but withdrew her representation in early June 2016 when petitioner obtained new counsel. Longwell testified about the pretrial settlement discussions based on Ciesla's recommendations. According to Longwell, petitioner's position was that he had "done nothing" to either of the boys, he had not abused them or hit them. He did not want to go to Chile as recommended. "he was fearful of [respondent's] power to get him arrested, so he did not want to go to Chile."

¶ 32 Longwell testified regarding an email sent by Ciesla in which Ciesla reported that someone at the children's school had made an official report about the abuse allegations. At the time, Longwell discussed the logistics of petitioner not going to Chile with petitioner and Ciesla in light of the report. Ciesla went to Chile in May 2016 without petitioner. Longwell denied filing the petition to modify parenting time in retaliation, maintaining that the petition was filed because of N.L.'s special needs which petitioner believed would be better addressed in the United States.

¶ 33 In his testimony, petitioner denied that he hit, slapped, pinched or otherwise physically abused either of his children during the December 2015 to January 2016 visitation. Petitioner testified that he had three "preconditions" for settlement in the case. First, he wanted to know what was filed regarding the abuse allegations and with which authority, whether in the United States or Chile. Second, he wanted "a clear statement that there was no finding of abuse" because he did not hit his children. Third, he wanted to have therapy with access to Skype.

¶ 34 Petitioner testified that he was concerned about traveling to Chile because it could affect his personal safety and he could "get stuck in jail or some other trial in a foreign country" before he could complete the therapy requirement. He maintained that he never received a response

from anyone whether anything had been filed and with which authorities. He also wanted the statement to "basically protect" himself from any possible complaint in a foreign country. He also stated that the statement was relevant to his career because "statement of abuse is – has a negative effect on any person in any job ***." He wanted a trial to have a proper process in the United States. Petitioner also provided testimony about his financial status.

¶ 35 On cross-examination, petitioner denied being aware of an email from Ciesla to his attorney informing that the State Department declined to investigate the case. Petitioner maintained that he received no answer about filing of a complaint in Chile. When asked if Ciesla would be lying if she were to testify that she looked him in the eye and told him that she determined it was safe for him to travel to Chile, petitioner responded that he "didn't have the answer to the question to be able to find out if it was safe or not to travel to Chile." He testified that he "never got an answer." He admitted that he did not hire an attorney in Chile.

¶ 36 Petitioner admitted that he requested an apology. He wanted "a clear statement that nothing had happened. That was in the best benefit of the children." Petitioner maintained that N.L. had behavioral issues before the visitation.

¶ 37 In rebuttal, Ciesla testified that as the GAL she had a meeting immediately preceding a May 2016 settlement conference with petitioner and Longwell. She discussed her recommendations and "specifically addressed" petitioner's concern about going to Chile. While in Chile, Ciesla spoke with respondent about what her department, the commerce department, would be doing and spoke with respondent's supervisor. Ciesla also spoke with school personnel to find out where a report occurred and how it was pursued, and she discussed with Longwell about Longwell's investigation with Illinois Department of Children and Family Services (DCFS). Based on her investigation, Ciesla's conclusion was that "there was absolutely no

problem with [petitioner] traveling to Chile." She testified that she looked him in the eye and told him directly "many times" that there was no problem. Ciesla stated she told petitioner she would not tell him she felt it was safe to go if she did not feel it was safe to go.

¶ 38 On cross-examination, Ciesla explained that a teacher heard from the children about the abuse allegation and told a school official. The school official reported it to the United States embassy security officer, who then reported to the security office in Washington, D.C. Ultimately, Ciesla determined the claim was reported to DCFS and they waited to see if any action would be taken. She noted that no investigation was conducted by DCFS. She did not intend for her email to Longwell to suggest the possibility of authorities in Chile pursuing the matter.

¶ 39 In June 2017, Judge Katz issued a detailed memorandum opinion and order granting respondent's petition for attorney fees and costs. The judge found petitioner's closing argument that section 508(b) fees are only available in enforcement proceedings to be "meritless." The judge concluded that respondent was entitled to an award of attorney fees and costs under section 508(b). The court observed that the recommendations from Ciesla and Dr. Smith in May 2016 were "clear and unambiguous" that petitioner "needed to attend reunification therapy with the children to repair their relationship, in order for the children to heal, and so that the children could recommence regular visitation with [petitioner]. The treating sources and educators in Chile were in agreement and on board with the plan."

¶ 40 In considering petitioner's testimony at the trial on fees, the judge found that petitioner "proceeded to trial because he wanted to be vindicated against the accusations of abuse before he would see his children again. Of course, that did not happen, because he did, in fact, hit and slap his child." The court held petitioner "not to be a credible witness during the hearing on attorneys'

fees." Specifically, the court found petitioner "lied about his conversations with Ms. Ciesla, the GAL, wherein she reassured him that it was safe for him to travel to Chile, and he reiterated positions that Judge Flannigan also found not credible."

¶ 41 The court concluded:

> "[Petitioner's] wrongful conduct with the children precipitated the need for this litigation. The litigation was prolonged by [petitioner's] failure to take responsibility for his actions. His failure to investigate his fears of travel to Chile to see his children was 'inexcusable,' as Judge Flannigan aptly put it. His desire for vindication despite his conduct caused him to impose unjustifiable conditions on any settlement. As a result he unreasonably refused to resolve this matter on the terms that were proposed to him by the Court, the GAL, and the Court appointed evaluator, and that were ultimately mandated by Judge Flannigan. His conduct cost [respondent] thousands of dollars in legal fees.
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> [Petitioner] certainly was within his rights to seek a trial on [respondent's] Motion, However, because his wrongful conduct precipitated this litigation, and because his unreasonable stances in litigation prolonged it, [respondent] is entitled to an award of attorneys' fees from [petitioner] pursuant to Section 508(b) of the [Marriage Act]."

¶ 42 The trial judge also found that respondent was entitled to attorney fees and costs for defending against petitioner's motion to modify parenting time pursuant to section 610.5(f) of

the Marriage Act. The court found the hourly rates charged by respondent's attorneys to be commensurate with their experience. While respondent requested to pay all of her fees and costs associated with this litigation, the judge declined to award all fees and costs. "while [petitioner's] inappropriate conduct precipitated this litigation, [petitioner's] improper conduct with the children was compounded by his unreasonableness in resolving this matter in the best interest of his children." The judge then awarded attorney fees and costs from mid-May 2016 through March 3, 2017, for a total of $124,430.76 in attorney fees plus $10,225.25 in costs under section 508(b) of the Marriage Act. The court awarded $4,475 in fees and costs under section 610.5(f) of the Marriage Act. No challenge has been raised on appeal related to the fees and costs awarded under section 610.5(f) of the Marriage Act.

¶ 43 In June 2017, petitioner filed his *pro se* motion to reconsider the trial court's order, arguing that his actions in the proceedings did not warrant the award of attorney fees and costs under section 508(b) because he did not initiate a proceeding for an improper purpose and his conduct does not fall within the characterization of improper purpose as defined in the statute. The motion to reconsider was heard by Judge Karen Bowes and following a hearing in October 2017, the judge denied petitioner's motion.

¶ 44 This appeal followed in compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015) with a timely notice of appeal filed on November 8, 2017. Accordingly, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 45 On appeal, petitioner argues *pro se* that the trial court erred in granting respondent's petition for attorney fees and costs pursuant to section 508(b) of Marriage Act (750 ILCS 5/508(b) (West 2016)) and denying his motion to reconsider the award. Specifically, petitioner contends that the trial court erred in interpreting his conduct during the proceedings on

respondent's motion to restrict parenting time fell within the definition of "improper purpose" under section 508(b) and, assuming the trial court properly interpreted section 508(b), whether the trial court correctly allocated attorney fees and costs against petitioner. Respondent maintains the evidence presented demonstrates that the trial court was within its discretion in granting her petition for attorney fees and costs under section 508(b).

¶ 46 Petitioner asserts that his first argument involves a question of law, and thus, we review the award of attorney fees under section 508(b) *de novo*. Petitioner contends that he is not challenging the trial court's factual findings, but "the legal conclusion that the Court derives from them." However, respondent disagrees, arguing that the issue does not involve the interpretation of a statutory term, but whether petitioner's conduct fell within the statute, and as such, we give deference to the trial court's decision. We agree with respondent. "[A] trial court's decision to award or deny fees will be reversed only if the trial court abused its discretion." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.* at 173.

¶ 47 "Attorney fees are generally the obligation of the party that incurred them." *In re Marriage of Pond*, 379 Ill. App. 3d 982, 987 (2008). However, under section 508(b) of the Marriage Act, a trial court is required to award attorney fees and costs "[i]f at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose" to the party found to have acted improperly. 750 ILCS 5/508(b) (West 2016). "Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." *Id.* According to petitioner, his conduct preceding the motion to restrict parenting time and during the proceedings does not fall within the statutory definition of "improper purposes."

¶ 48 Petitioner devotes a significant portion of his argument to his contention that the trial court based its conclusion to award attorney fees on his refusal to settle the case prior to trial. We find such contention without merit. While the court did observe petitioner declined to settle, the court also recognized in its ruling that petitioner "certainly was within his rights to seek a trial" on respondent's motion to restrict parenting time. Rather, Judge Katz in ruling on the petition for attorney fees considered the findings of Judge Flannigan on the merits of the motion to restrict parenting time. Judge Flannigan found petitioner's petitions to be based on "ignorance, intransigence, third party hearsay, unfounded assertions, and unrelated past experiences" as well as finding petitioner's failure to investigate his ability to travel to Chile "inexcusable." Judge Flannigan concluded that petitioner was "protecting his own best interest and not his children's." We note that both Judge Flannigan and Judge Katz did not find petitioner credible. As respondent states, the award was "about a litigant who precipitated a costly week-long hearing without bothering to advance a colorable defense." Thus, the trial judge's basis for the award was not petitioner's decision not to settle, but his actions, or lack thereof, that increased the time and costs of litigation.

¶ 49 Petitioner next asserts that his "inexcusable" conduct does not fall within the statutory definition of "improper purposes" under section 508(b). 750 ILCS 5/508(b) (West 2016). According to petitioner, "[m]eritless arguments, ignorance, lack of due diligence, failure to investigate, intransigence, third party hearsay, unfounded assertions and unrelated past experiences, as defined in Petitioner case [*sic*] well may be 'inexcusable' and self-serving, but they are not grounds to recover fees and cost[s] ***." We disagree with petitioner.

¶ 50 "Improper purposes *include, but are not limited to,* harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." (Emphasis added.) *Id.* The cardinal rule in

construing a statute, to which all others are subordinate, is to ascertain and give effect to the intent of the legislature. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). To determine legislative intent, we turn to the language of the statute, which is the best indicator of its intent. *Id*. We must give the statutory language its "plain, ordinary, and popularly understood meaning," and "[w]here the language is clear and unambiguous, the statute must be given effect as written without resort to further aids of statutory construction." *Id*. "[A]ll words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation." *Brucker v. Mercola*, 227 Ill. 2d 502, 514 (2007). "Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *Id*.

¶ 51 Contrary to petitioner's assertion, the trial court was not restricted to find petitioner's conduct fit within the list of examples of "improper purposes" under section 508(b). The plain language of the statute set forth a list of examples, but explicitly provides that the list was not limited to those examples. "The doctrine of *ejusdem generis* provides that when a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *City of East St. Louis v. East St. Louis Financial Advisory Authority*, 188 Ill. 2d 474, 484 (1999). Thus, even if petitioner's conduct did not constitute harassment or needlessly increase the costs of litigation, his admitted inexcusable and self-serving conduct fits within the spirit of the statute and the trial court was within its authority to conclude that petitioner acted with an improper purpose during the course of the proceedings. Petitioner's conduct of advancing meritless arguments, failure to investigate, intransigence, unfounded assertions, a lack of due diligence, as well as providing testimony that lacked credibility while placing his own best interest over the best interest of his children falls within the same class of terms as

"harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." Accordingly, the trial court did not abuse its discretion in finding petitioner acted with an improper purpose as provided under section 508(b) of the Marriage Act (750 ILCS 5/508(b) (West 2016)).

¶ 52 Petitioner next contends that the trial court improperly considered his conduct with the children, specifically the striking of N.L. in front of S.L., prior to the filing of respondent's motion to restrict parenting time. According to petitioner, section 508(b) "is not intended to be a sanction for events preceding the proceedings where the costs and fees are incurred, nor they are [*sic*] a mandatory sanction for the wrongfulness of those events."

¶ 53 Petitioner attempts to distinguish several cases cited by the trial court, but such cases were cited generally and petitioner misunderstood their application by the trial court. See *In re Marriage of Parker*, 216 Ill. App. 3d 672 (1991), *In re Marriage of Kramer*, 211 Ill. App. 3d 401 (1991), *In re Marriage of Irvine*, 215 Ill. App. 3d 629 (1991), and *In re Marriage of Patel*, 2013 IL App (1st) 112571. None of these cases reached the question of conduct precipitating a hearing under the Marriage Act and we note that three of the cases were decided before section 508(b) included the second basis to award attorney fees under the section. *Patel* was the only case decided after the 1997 amendment that added this language. There, the reviewing court affirmed the trial court's award of attorney fees and costs against a wife based on her improper conduct, which included "failing to comply with discovery; making false physical and sexual abuse allegations; publishing mental health information, attending a children's event unsupervised in violation of the court's orders; and filing pro se motions without leave of court in violation of the court's order." *Patel*, 2013 IL App (1st) 112571, ¶ 122.

¶ 54 We find petitioner's contention lacks merit. As respondent observes, while the trial court

found petitioner's wrongful conduct with the children "precipitated" the hearing, the court did not base its award under section 508(b) on that conduct. As discussed above, the trial court found that petitioner engaged in conduct for an improper purpose during the proceedings and the award was premised on such conduct. Additionally, respondent also points out that the court limited the award of fees from mid-May 2016 forward, not from the inception of the proceedings. Since the trial court based its award of attorney fees and costs on petitioner's conduct during the proceedings, petitioner's argument is not persuasive.

¶ 55 For his second issue, petitioner argues whether the trial court "appropriately allocated" attorney fees and costs against petitioner. Petitioner appears to claim that the trial court should have only awarded attorney fees to respondent for events in which the trial court found petitioner acted for an improper purpose. Specifically, petitioner claims that the trial court should not have awarded attorney fees or costs related to his failure to settle or for his motion to reconsider because the motion was granted in part.

¶ 56 According to petitioner, since he had the right to refuse to settle the case, any attorney fees or costs incurred after his refusal should not have been allocated against him because "it would be a sanction for exercising his right." As we have already found, petitioner was not sanctioned for his refusal to settle, but rather for his "inexcusable" conduct in the proceedings. Therefore, petitioner's claim is not persuasive.

¶ 57 Next, while petitioner is correct that the trial court granted part of his motion to reconsider, the court denied all of his claims of error as to the merits of the ruling on respondent's motion to restrict parenting time. In his motion to reconsider, petitioner argued in his first claim of error that the there was no evidence supporting the children's statements, the children may have lied or been coached, and there was insufficient evidence of abuse and

neglect. In his second claim of error, petitioner asked the trial court to modify its order to remove language that appeared to grant judicial power to the children's mental health providers. The trial court rejected petitioner's first claim of error in totality. As for the second claim, the court granted petitioner's request and removed language in its initial order requiring petitioner to cooperate and adhere to the recommendations of the children's mental health providers and added language that petitioner, respondent, Ciesla, and Dr. Smith may report to the court their positions concerning therapy progress, parenting time, and other relevant matters that arise. The court included this language to "alleviate" petitioner's concern that "the therapists and not the Court will have the final determination of his parenting rights ***."

¶ 58 Petitioner contends that because the court found some of his conduct to be appropriate in the motion to reconsider, he could not be liable for fees and costs for the entire proceeding. Petitioner has not cited any authority to support his position that the proceeding should be essentially pro-rated based on the portion of his conduct that was not improper. Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Moreover, it is well-settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990).

¶ 59 Even if petitioner's claim was not forfeited, he fails to address the meritless claims regarding the fundamental issue, his striking of N.L. in front of S.L. These same claims of insufficient evidence and that the children had lied or been coached were previously raised and rejected at trial. As the trial court observed, petitioner "presented no evidence or testimony,

expert or otherwise, that refuted the reports and opinions contained therein or the testimony of the individuals in court." The court also found that petitioner's "own testimony belies his defense that the children were lying" and when asked if he had any facts or evidence, petitioner responded, "I don't know." The court reaffirmed its findings that petitioner's defenses were "meritless." Thus, while the court granted a narrow claim in petitioner's motion to reconsider, the main contention raised by petitioner was a repeat of his unsupported and rejected claims from trial. Accordingly, the trial court did not abuse its discretion in considering his conduct regarding the motion to reconsider in granting respondent's petition for attorney fees and costs.

¶ 60 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 61 Affirmed.