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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
MICHAEL BRANDES,	)	of Kane County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 12-D-885
	)	
MARY E. BRANDES,	)	Honorable
	)	Joseph M. Grady,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices McLaren and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the trial court’s contempt determination and underlying order to grant interim, post-decree attorney fees.

¶ 2 Appellant, Michael Brandes, appeals the trial court’s decision to hold him in contempt based on his failure to pay appellee’s, Mary Brandes’s, interim attorney fees pursuant to sections 501(c-1) and 508 of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/501(c-1), 508 (West 2016). He also challenges the underlying orders denying his motion to dismiss the interim fee petition and granting \$5000 in interim attorney fees. For the reasons that follow, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 On November 24, 2014, the trial court entered a final judgment of dissolution of the parties' marriage. It granted Michael custody of the party's three children, who had been born between 2000 and 2005. Michael, who earned approximately \$186,000 as an air traffic controller, was to pay Mary \$4300 per month in maintenance. Later, in 2016, the trial court ordered Mary, who earned approximately \$32,000 per year excluding maintenance, to pay Michael \$325 per month in child support.

¶ 5 Between November 2014 and April 2016, the parties engaged in extensive post-decree litigation. In an earlier appeal, Michael's former attorney sought to collect \$17,000 in unpaid fees. *In re Marriage of Brandes (Brandes I)*, 2016 IL App (2d) 160052-U, ¶ 2. The trial court granted the fee petition, but we reversed, holding that the petition was untimely and directing the attorney to pursue his fees in a separate proceeding. *Id.*

¶ 6 On April 14, 2016, the trial court held that each party would be responsible for his or her own attorney fees. After that ruling, Michael filed numerous motions. Most significantly, in November 2016, he petitioned to terminate maintenance due to his retirement. He also filed a motion to modify parenting time and to appoint a guardian *ad litem* (GAL). He alleged that Mary failed to help their daughter comply with dietary restrictions and failed to provide adequate sleeping arrangements. Finally, he petitioned for rule to show cause based on Mary's alleged failure to transfer title to personal property, contribute to medical expenses, and pay child support (beginning one month after he unilaterally ceased paying maintenance, according to Mary). The court later characterized several of Michael's motions, without specifying which ones, as being based on "unfortunately, *insignificant* failures by [Mary]." (Emphasis added.)

¶ 7 Mary, for her part, moved for rule to show cause based on Michael's alleged complete nonpayment of maintenance for the prior four months. She also moved for various continuances and to modify or clarify parenting time, alleging, among other issues, that Michael "insisted" that she could not attend school parties or functions for the children if the events fell outside of her specific visitation time. And, the events often did, as her visitation time began after school hours.

¶ 8 On May 31, 2017, Mary petitioned for interim attorney fees pursuant to sections 501(c-1) and 508 of the Act. In her verified petition, signed by her and her attorney, she alleged that, to date, she had paid her attorney \$21,541, but she had an outstanding balance of \$6500. She believed that Michael paid his counsel far greater sums over the course of the litigation. (The last appeal suggested that he had incurred \$47,000 in fees as of December 2014. *Brandes I*, 2016 IL App (2d) 160052-U, ¶¶ 4, 8.) She also believed that Michael's family funded his litigation. Although she was employed, she did not have the resources to pay the outstanding fees or defend against the pending petitions to terminate maintenance and modify parenting time. She represented that, without an award of attorney fees, she would be at a significant disadvantage in the litigation and her attorney would be unable to proceed in his representation. She reminded the court that it could grant an interim fee award on a summary, non-evidentiary basis, and she requested an award of not less than \$10,000. Mary attached her attorney's affidavit to the petition. In the affidavit, her attorney averred that Mary's outstanding balance was \$6500. One week later, on June 6, 2017, Mary filed a financial affidavit to support the allegations made in her petition.

¶ 9 On June 13, 2017, Michael moved to dismiss Mary’s petition as legally insufficient pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2016). He pleaded:

“[Mary’s] petition for interim attorney fees is substantially insufficient at law in that said petition is not accompanied by an affidavit \*\*\* that delineates the factual basis for the relief [Mary] is requesting. In addition, [Mary’s] petition for interim attorney fees fails to specify the services performed, by whom they were performed, time expended on services rendered, and the hourly rate charged, so that this court is unable to determine the reasonableness of the fees charged. Accordingly, neither the petition for interim attorney fees nor the supporting affidavit provides this court with sufficient information on which to base the interim attorney fee award.”

¶ 10 On June 21, 2013, the trial court conducted a hearing on the motion to dismiss. Michael argued that Mary did not provide sufficient information, nor did she attach an affidavit delineating relevant factors. Mary responded that she had provided sufficient detail and that the June 6 financial affidavit was meant to supplement the petition. The court denied the motion to dismiss.

¶ 11 After denying the motion to dismiss, the court proceeded to a hearing on the merits. Michael filed his response. In it, he reminded the court that, in April 2016, the court had ordered each party to pay his or her own attorney fees. As of April 2016, Michael had incurred \$24,000 in legal fees, of which \$5600 remained outstanding.

¶ 12 Michael also submitted his own financial affidavit as well as his retainer agreement showing his attorney’s hourly rates. In his financial affidavit, Michael represented that, in 2016, he earned \$186,000 gross while working. In 2017, he expected to earn \$90,000 gross, or \$7495

per month, while retired. He listed his total monthly living expenses at \$6400. (Michael later testified that his father helped with expenses, particularly legal expenses, through informal loans.) Michael left blank the portion of his affidavit concerning retirement accounts. However, he stated that he held \$188,000 in a brokerage account and that the funds were not liquid. Michael also held a \$25,000 ownership interest in a business. Michael owned three parcels of real estate, with a total value of approximately \$500,000 and with a total outstanding loan amount of \$372,500. He owned four vehicles, only one of which had an outstanding balance. He owned a pontoon boat, valued at \$6000, with no outstanding balance.

¶ 13 Mary's financial affidavit averred that her gross income in 2016 had been \$82,760. She received \$4300 in monthly maintenance that year. In 2017, while the parties disputed Michael's alleged non-payment of maintenance, Mary expected her gross income to be \$31,596, or \$2633 per month, which was based on her employment income. Mary estimated her monthly living expenses to be \$3630. This included \$1425 for rent, \$400 for groceries, \$550 for various utilities, \$250 for transportation, \$600 for personal expenses, including medical, and \$400 for the children. Mary did not own any real estate. She owned one car, a 2011 Toyota Corolla, valued at \$6200 with no remaining balance. She had nearly \$37,000 in debt, including taxes, child support, legal fees, and credit card payments. Accounting for her debt payments, her monthly living expenses were actually \$5855. Mary held \$5000 in non-retirement bank accounts and CDs. She held \$126,000 in retirement accounts.

¶ 14 At the hearing, Mary did not dispute that she could begin accessing her share of Michael's pension. This would provide her with an additional \$2300 per month. Five months of income were available for her to collect. Her attorney explained, however, that Mary still needed

to complete various application steps in order to receive the funds, and, as of this snapshot in time, she did not have access to the funds.

¶ 15 The court granted Mary's petition:

“I have considered your arguments. \*\*\* I've considered the history of the case, the various filings, the pleadings, who did what. And certainly, each party has contributed to the litigation in this case. But some of the pleadings have been based on rather, unfortunately, insignificant failures by—well, by [Mary] anyway. Never mind what its cost them to employ each of you [attorneys]. But, however, the door was opened and the pleadings were properly filed. And most of it is they don't communicate and they both seem to contribute to that. I'm ordering [Michael] to pay \$5000 within three months to [Mary's attorney directly] with respect to the attorney fees.”

¶ 16 Three months later, on September 27, 2017, Mary petitioned for rule to show cause based on Michael's failure to pay the \$5000 in interim attorney fees. The court entered an order to show cause.

¶ 17 On October 20, 2017, the court held contempt proceedings. There, Michael admitted that he had made no attempts to pay any portion of the fees. He did not attempt to sell his motorcycle. Michael also testified to his financial assets, this time stating that his retirement account held \$250,000. The court held Michael in contempt for his non-payment:

“The fact that he hasn't paid the entire \$5000, I don't even have a problem with that. The fact that he has paid nothing out of all this time, I have a huge problem with that. So, I find that he is in indirect civil contempt of court. I'm going to sentence him to the Kane County Jail until he pays it.

I'm considering suspending that provided he pays at least \$2500 by November 9, to which date we are going to continue this case. If that hasn't been paid, I will [effectuate] the sentence, and his purge amount will be \$5000."

¶ 18 Michael's attorney asked to stay enforcement of the judgment pending appeal, and the court answered: "No. He is going in right now. \$5000. He is gone." Michael's attorney objected, stating that the court had punitively changed its purge order based on a stay request, "which was within [his] advocacy" duties. The court disagreed: "I'm trying to solve this problem. I gave him time. He has the keys. All he has to do is come up with the money." Michael then paid the \$5000 with his credit card, purging the order of contempt. This appeal followed.

¶ 19 **II. ANALYSIS**

¶ 20 Michael appeals the trial court's award of interim attorney fees pursuant to sections 501(c-1) and 508 of the Act. Mary has filed a *pro se* response statement.

¶ 21 Section 508 states:

"The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501 and in any other proceeding under this subsection." 750 ILCS 5/508 (West 2016).

¶ 22 Section 501(c-1) states:

"As used in this subsection (c-1), 'interim attorney's fees and costs' means attorney's fees and costs assessed from time to time while a case is pending, in favor of

the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and 'interim award' means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(1) Except for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature. All hearings for or relating to interim attorney's fees and costs under this subsection shall be scheduled expeditiously by the court. When a party files a petition for interim attorney's fees and costs supported by one or more affidavits that delineate relevant factors, the court (or a hearing officer) shall assess an interim award after affording the opposing party a reasonable opportunity to file a responsive pleading. A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. A responsive pleading shall include costs incurred, and shall indicate whether the costs are paid or unpaid. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary, including to the extent applicable:

(A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party;

(B) the needs of each party;

(C) the realistic earning capacity of each party;

(D) any impairment to present earning capacity of either party, including age and physical and emotional health;

(E) the standard of living established during the marriage;

(F) the degree of complexity of the issues, including allocation of parental responsibility, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both;

(G) each party's access to relevant information;

(H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and

(I) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/501(c-1) (West 2016).

¶ 23 An award of interim attorney fees is not an appealable interlocutory order. *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45. However, a finding of contempt based on violation of an interim fee order is final and appealable and allows the court to review the underlying fee order. *Id.* Interim attorney fees are reviewed for an abuse of discretion. *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 320 (2001).

¶ 24 Section 501(c-1) of the Act authorizes the trial court to award interim attorney fees while the case remains pending. 750 ILCS 5/501(c-1) (West 2016). Section 501(c-1) applies to post-decree and pre-dissolution proceedings. *Beyer*, 324 Ill. App. 3d at 314. The goal of section 501(c-1) is “to equalize the relative positions of the parties before the court by shifting liability for attorney fees, thereby diminishing the advantage one party may have over the other in the presentation of the case due to a disparity in their respective financial resources.” *Beyer*, 324 Ill.

App. 3d at 315. The moving party must support his or her petition with at least one affidavit that delineates the relevant factors. *Radzik*, 2011 IL App (2d) 100374, ¶ 40. However, except for good cause shown, the proceedings are to be non-evidentiary, summary, and expeditious. *Id.* Holding an evidentiary hearing absent good cause would undermine the goal of fair and efficient presentation by stringing out litigation at the outset. *Beyer*, 324 Ill. App. 3d at 316. But, on balance, the parties should recognize that interim fees constitute temporary relief and that, as circumstances change over the course of litigation, the award may be modified or revoked. *Id.*

¶ 25 We first address whether the trial court properly denied Michael’s section 2-615 motion to dismiss the petition. 735 ILCS 5/2-615 (West 2016). A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. *In re J.W.*, 2017 IL App (2d) 160554, ¶ 35. “The critical inquiry is whether the allegations of the complaint, when considered in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. All well-pled facts in the complaint must be taken as true, but conclusions of law will not be taken as true unless supported by specific factual allegations.” *Id.* A trial court’s section 2-615 decision is reviewed *de novo*. *Id.*

¶ 26 Michael argues that the trial court erred in denying his section 2-615 motion, because Mary’s petition: (1) was not supported by the required affidavit; and (2) did not provide enough information to determine whether Mary’s request for fees was reasonable. We disagree.

¶ 27 A fee petition is to be supported by at least one affidavit. *Radzik*, 2011 IL App (2d) 100374, ¶ 48. Here, the petition *was* supported by an affidavit. Mary’s attorney attached an affidavit, recounting Mary’s outstanding fees. Michael contends that the affidavit did not sufficiently inform the court of the section 501(c-1) factors. We need not address that argument, because Mary also submitted a supplemental financial affidavit. Mary’s attorney reminded the

court that the supplemental filing was in accordance with local rules and was the general practice in Kane County. We defer to the trial court's decision to accept Mary's supplemental financial affidavit. Michael does not develop any argument as to why the court should not have accepted it. (And, it appears that Michael suffered no prejudice, as he did not ask for a continuance following the denial of his motion to dismiss and before proceeding to the merits of Mary's petition.)

¶ 28 The court may consider the allegations in the verified petition together with the affidavits to determine whether there is sufficient information from which to determine that the request for fees was reasonable. *Radzik*, 2011 IL App (2d) 100374, ¶ 46 (discussing *Beyer*, 324 Ill. App. 3d at 320). Here, Mary's petition alleged that, although she was employed, she did not have the funds to pay the outstanding fees or defend against the pending petitions to terminate maintenance and modify parenting time. The court was aware that these petitions were pending, and Mary attached her financial affidavit detailing her financial resources. The petition and supporting documentation was sufficient to survive a motion to dismiss.

¶ 29 We next address whether the trial court abused its discretion in awarding \$5000 in interim fees. We hold that it did not. The court was aware that Mary was defending against several pending motions, including motions to terminate maintenance and to modify parenting time. The court recognized that some of the motions were brought due to Mary's failure to comply with court orders, but it deemed these failures "insignificant." Still, Mary's \$4300 maintenance payment was at issue. And, as Mary alleged and as Michael appears to concede on appeal, Michael has not paid any maintenance in months. The court also reviewed each party's respective financial affidavit. Mary's income through employment was \$2633 per month, and, though she became eligible to receive \$2300 per month from Michael's pension just a few

months prior, she had not yet completed the paperwork. Mary had \$5000 in non-retirement accounts. She had \$126,000 in retirement accounts. Mary had significant legal and credit-card debt. She did not own any real estate.

¶ 30 In contrast, even in retirement, Michael's income, comprised largely of his pension, was \$7495 per month. Although Michael alleged a monthly deficiency, he had no debt. Rather, his father provided him with informal loans. Michael owned three real estate properties. Also, Michael owned a vacation residence, a motorcycle, and a boat, none of which he was willing to sell. Michael referred to these assets as illiquid. However, a motorcycle is not illiquid in the same way Mary's retirement account is illiquid. Also, Michael's financial affidavit set forth that he had \$188,000 in a brokerage account. Michael's financial affidavit left blank the section concerning retirement accounts. Michael later represented during contempt proceedings that he held \$250,000 in retirement accounts. Another omission in Michael's financial affidavit was his failure to list the \$4300 maintenance payment as an expense. This omission, in combination with his assertion on appeal that Mary's income includes employment and pension income only, not maintenance, creates a strong inference that Michael was not satisfying his maintenance obligation to Mary. The trial court may reasonably have had Michael's lack of payment in mind when it ordered interim fees.

¶ 31 Under these facts and circumstances, Mary requested \$10,000 in interim fees. The court granted her \$5000 in interim fees. The court did not abuse its discretion in so doing.

¶ 32 We reject Michael's various arguments. Michael complains that Mary's financial affidavit shows that she has sufficient funds from which to pay her attorney fees. We reject this argument as explained in the above paragraph. Mary is clearly in the weaker financial position *vis-a-vis* Michael.

¶ 33 Michael also complains that the court did not have enough information to assess the reasonableness of the fees, because Mary did not specify the genesis of the \$6500 in outstanding fees, and she did not submit billing records of services performed or hourly rates charged. However, while potentially helpful, a petitioner is not required to submit itemized billing statements or a copy of the retainer agreement to establish the reasonableness of the interim fees. *Beyer*, 324 Ill. App. 3d at 321. Instead, the judge who has been presiding over the case is in a position to assess the reasonableness of the fees, based on his or her own experience and his or her knowledge of the procedural history of the case. *Id.* (where the judge had been presiding over the case for one year, his knowledge was sufficient to assess the reasonableness of the fee amount). This is true so long as the minimum, requisite documentary evidence has been submitted. *Radzik*, 2011 IL App (2d) 100374, ¶ 53 (the judge's knowledge of the case can only go so far and, absent *any* current affidavit or documentary evidence, there was no basis for the amount of the award). Again, interim fees are temporary and subject to later modification. Proceedings are meant to be summary and non-evidentiary. For the purposes of a summary ruling, the court had sufficient information here.

¶ 34 Further, Michael complains that portions of Mary's June 6, 2017, financial affidavit list category totals without itemization amounts for the sub-categories. We disagree that the trial court was required to find Mary's financial affidavit was insufficient for the purposes of an interim fee petition. In any case, under the category for household expenses, Mary *did* itemize 12 separate sub-categories. For monthly deductions, she itemized 8 separate sub-categories. She did not itemize separate sub-categories for personal expenses or transportation. These shortcomings are not significant, especially compared to Michael's failure to clearly set forth his retirement assets.

¶ 35 Lastly, Michael challenges the rationality of the court's award where Mary's affidavit shows that she currently pays \$1000 per month to her attorneys. He argues that the \$1000 payment proves that she can continue to pay her own attorney fees. However, the \$1000 payment reflects payment on a debt, which is different than the prospective fees sought here.

¶ 36 As a final note, we address Michael's argument that the trial court acted improperly when it changed the timing requirements of the purge order following Michael's motion for stay. We agree that the better practice would have been to simply deny the motion for stay. However, there is no remedy here, and Michael does not suggest one. Michael has paid the \$5000 interim fee, and he did not have to go to jail. Even if the stay had been granted, we have now held on appeal that the \$5000 fee order was proper. By this point in time, Michael would have had to pay the \$5000 under any course of action taken by the trial court.

¶ 37

### III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's contempt determination and underlying interim fee order.

¶ 39 Affirmed.