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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF LESTER TRILLA,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
and)	No. 88 D 005624
)	
JEAN TRILLA,)	Honorable
)	Regina A. Scannicchio and
Respondent-Appellee,)	Timothy P. Murphy,
)	Judges, presiding.
AUDREY L. GAYNOR & ASSOCIATES,)	
P.C.)	
)	
Appellee,)	
)	
LAW OFFICE OF JOEL OSTROW,)	
)	
Appellee.)	

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion when it awarded the respondent \$140,498.24 in attorneys' fees and \$45,000 to defend against petitioner's appeal.

The circuit court did not violate petitioner's due process rights by its *in camera inspection* of the records.

¶ 2 This appeal arises from the final orders in post-judgment dissolution of marriage proceedings between petitioner, Lester Trilla, and respondent, Jean Trilla. On June 28, 2017, the circuit court entered an order granting Jean's Petition for Contribution to Fees and Judgment in the amount of \$60,498.24 to Audrey L. Gaynor & Associates, P.C. Lester then appealed from that order as well as previous orders entered on November 5, 2013, May 17, 2016, and June 30, 2016. While the first appeal was pending before this court, Jean filed two separate petitions for attorney fees to defend against the appeal in the circuit court, one seeking prospective attorney fees to pay her appellate counsel and the other to pay her trial counsel for post-judgment services. On October 30, 2017, the court granted Jean's petitions for attorney fees to defend appeal. In light of the circuit court's ruling, Lester filed a motion to reconsider. On January 17, 2018, the court denied his motion. Lester appealed, and the appeals were consolidated.

¶ 3 On appeal, Lester contends that the circuit court: (1) erred in awarding Jean a total of \$140,498.24 in attorney fees; (2) erred in awarding Jean an additional \$45,000 to defend an appeal; and (3) violated his due process rights. For the reasons discussed below, we affirm the circuit court's judgment.

¶ 4 I. BACKGROUND

¶ 5 Jean and Lester were married in 1965. A Judgment of Dissolution of Marriage was entered on June 21, 1991, ending their twenty-six year marriage. Pursuant to the dissolution decree, Jean was awarded permanent maintenance in the amount of \$5,000 per month, with neither party having the right to modify the obligation in the first three years absent a showing of any substantial change in the parties' circumstances. In 1995, Lester petitioned

for a modification of maintenance, seeking a reduction in the amount of his obligation. On February 11, 1998, an agreed order reducing Lester's maintenance obligation was entered. The agreed order provided reductions in maintenance from the years 1998 through 2006. The agreed order further provided that maintenance was permanent at \$41,000 per year or \$3,416.67 per month beginning January 1, 2006.

¶ 6 A. Petitions to Terminate/Increase Maintenance

¶ 7 On March 27, 2012, Lester filed a petition to terminate maintenance, or in the alternative, to modify the amount of maintenance. Lester contended that he could no longer afford maintenance payments to Jean. Conversely, Jean filed a petition to increase maintenance on June 11, 2013. Both parties subsequently filed amended petitions.

¶ 8 In her amended petition, Jean argued that a substantial change in circumstances warranted an increase in the amount of maintenance awarded to her.¹ The alleged change in circumstances included Lester's increase in assets and income, an increase in the cost of living, and Jean's inability to find work and loss of income.

¶ 9 In his amended petition to terminate, Lester argued that Jean's failure to seek employment pursuant to the Dissolution Judgment should serve as basis for the court to terminate his maintenance obligation. Moreover, Lester argued that over the last twenty-four years, Jean had reasonable time to seek gainful employment and rehabilitate herself.

¶ 10 B. Contribution Petitions

¶ 11 In its November 5, 2013 ruling, the circuit court granted Jean's petition for contribution and ordered Lester to pay \$50,000 to Audrey L. Gaynor & Associates, P.C. for Jean's incurred and prospective interim attorney fees and costs. The court reasoned that an award of

¹ Jean also requested the court to award her maintenance in gross or secure maintenance by life insurance or trust. The court denied Jean's request for security of the maintenance award.

interim attorney's fee was appropriate as these fees were generated in the maintenance or defense of a proceeding and enforcement and modification of an order under section 508(a) of the Illinois Marriage and Dissolution of Marriage Act. The court further noted that Lester caused delay and additional attorney fees in the proceeding by (1) unilaterally terminating maintenance payments; (2) pursuing a Petition to Terminate Maintenance; and (3) failing to comply with local court rules and produce his completed Disclosure statement.

¶ 12 On May 17, 2016, the court entered an order requiring that Lester pay contribution in the amount of \$30,000 for interim attorney fees and costs. Thus, pursuant to the 2013 and 2016 court orders, Lester was to pay a total of \$80,000 in attorney fees and costs.

¶ 13 In her subsequent Petition for Contribution, Jean argued that she had incurred \$68,787.20 initially from the 2016 award. This was allegedly due to Lester's litigation tactics and trial preparation. Jean further argued that she anticipated incurring an additional \$30,000 in fees to conduct a scheduled three-day trial. Jean maintained that she had scant resources and that her total monthly expenses were approximately \$4,629.12. On December 2, 2016, Lester filed a petition for contribution to attorney fees and costs. According to the petition, he incurred attorney fees and costs due to Jean's actions, including but not limited to, her failure to timely comply with discovery which made him file multiple motions. Further, he had an outstanding balance of \$15,188.86 for the time his attorney had spent on the matter through November 30, 2016.

¶ 14 C. June 28, 2017 Ruling

¶ 15 In its June 28, 2017 order, the circuit court addressed both parties' petitions to modify maintenance and claims for contribution. The court found that the maintenance award at the time of dissolution was appropriate and that the factors that supported an award for

permanent maintenance still existed. The court, however, denied both Jean's petition to increase maintenance and Lester's motion to terminate maintenance. In doing so, the court noted that Jean did not meet the burden of showing a substantial change in circumstances since the February 11, 1998 court order warranting an increase in maintenance. Likewise, Lester also failed to meet his burden in showing a substantial change in circumstances to support his argument that he could not afford to pay maintenance. Accordingly, the circuit court's order provided that Lester's maintenance obligation would remain at \$41,000 per year or \$3,416.67 per month.

¶ 16 With respect to contribution, the circuit court granted Jean's petition but denied Lester's. After its *in camera* inspection of the billing records submitted in support of Jean's petition for contribution, the court found that the \$181,122.80 in legal fees was "fair, reasonable and necessarily incurred for Jean's representation." The court further found that attorneys' fees and cost incurred on behalf of Lester were also fair, reasonable and necessarily incurred. However, the court noted that Jean lacked the financial resources to provide any contribution. Ultimately, the circuit court ordered Lester to pay Audrey L. Gaynor & Associates, P.C. \$60,498.24 toward the balance of attorney fees and costs incurred by Jean. Accordingly, Lester's contribution or amount ordered to be paid to Jean in attorney fees totaled \$140,498.24.² On July 27, 2017, Lester appealed the circuit court's June 28, 2017 ruling which ordered him to pay the additional contribution in the amount of \$60,498.24 to Audrey L. Gaynor & Associates, P.C.³

² Lester had been ordered to pay a total of \$80,000 pursuant to the November 5, 2013 and the May 17, 2016 court orders.

³ Lester also requested the court to rule on his pending motion for sanctions pursuant to Illinois Supreme Court Rule 219(c) contemporaneously with his petition for contribution. Ill. Sup. Ct. R. 219(c) (eff. July 1, 2002). At the June 28, 2017 hearing, the court denied Lester's request for

¶ 17

B. October 30, 2017 Ruling

¶ 18

In response to Lester's appeal, Jean filed with the circuit court: (1) a petition for fees and costs to defend appeal-related motions before the trial court pursuant to 750 ILCS 5/508(a) and (a)(3) of the Act; and (2) a petition for attorney fees to defend against appeal pursuant to 750 ILCS 5/508(a)(3) of the Act. On October 30, 2017, the circuit court granted Jean's petition for fees and costs to defend appeal in the trial court in the amount of \$15,000. The court noted that while each party has a primary obligation to pay his or her own attorney fees, section 508 of the Act instructs the court to apply a list of factors in determining whether a party should be required to contribute to the other party's attorney fees. The court found that after consideration of all of the relevant factors in section 503 and 504 of the Act, it was reasonable for Lester to pay \$15,000 as contribution to the \$18,787.15 Jean incurred in attorney fees and costs in defending against Lester's appeal-related motions.

¶ 19

The court also granted Jean's petition for appellate attorney's fees to defend appeal in the amount of \$30,000. The court found that Jean presented evidence in support of her need and the propriety of the \$30,000 amount in fees. Therefore, it was appropriate to order Lester to pay \$30,000 in attorney fees to Jean to defend the appeal.

¶ 20

C. January 17, 2018 Order

¶ 21

Lester requested the circuit court to reconsider its October 30, 2017 ruling. In his motion to reconsider, Lester argued that the circuit court erred in its application of the law by: (1) granting Jean \$7,500 more than what had been the estimated need; and (2) not reviewing Lester's responses and affirmative defenses when it entered its judgment earlier than the set

sanctions pursuant to Illinois Supreme Court Rule 219(c). The court's denial of sanctions was not challenged on appeal.

hearing date of November 8, 2017. The court heard arguments on the motion on December 5, 2017. On January 17, 2018, the circuit court denied Lester's motion to reconsider.

¶ 22 In its written order, the court found that "there is no precedent which requires this Court to grant precisely the amount that is asked for when a party requests prospective attorney's fees to defend an appeal." Furthermore, the court pointed out that Lester misquoted the affidavit of Jean's appellate attorney. Specifically, the affidavit did not state that the appellate attorney would expend 50 hours but rather an estimate of "at least 50 hours will be expended" in the case. The court further noted that it can use its own experience and knowledge in determining the time required to complete a particular service. Thus, the court ruled that its grant of prospective attorney fees in excess of the estimated hours, by approximately 16 hours, was proper. The court reasoned that it had statutory authority to grant these fees under section 508(a)(3) of Act and Lester did not present any evidence to the contrary. Therefore, Lester failed to show that the court erred in its application of the law. Accordingly, the court denied Lester's motion to reconsider and ruled that the \$30,000 previously ordered by the court as contribution to Jean's attorney fees to defend appeal would stand.

¶ 23 Next, the court addressed Lester's argument regarding the court's ruling on the petition prior to the set hearing date. Lester argued that the court did not review his response and affirmative defenses because judgment was entered on October 30, 2017 prior to the pre-set November 8, 2017 hearing. The court noted that it "made its fee determination based not only on the pleadings, response and affirmative defenses included, and billing statements, but its familiarity with this matter." The court further acknowledged that "even though a trial court may have general knowledge about the parties' respective financial situations, due

process requires that a party be given the opportunity (by way of cross-examination and oral arguments to persuade the judge on the righteousness of his or her position.”)

¶ 24 The circuit court noted that at the end of the hearing on Lester’s motion to reconsider on December 5, 2017, the counsels for the parties agreed that Jean’s counsel, Gaynor, would provide supplemental invoices for fees incurred. On December 12, 2017, Gaynor hand-delivered to the court an un-redacted set of invoices for the time period of August 2, 2017 through December 11, 2017. Lester’s counsel, Feiwell, was also sent copies of the same via email and did not object or file a response. Having reviewed the un-redacted invoices provided by Gaynor, the court found that Jean’s attorney fees and costs incurred from July 26, 2017 to November 29, 2017 in the trial court to defend against the appeal totaled \$25,598.35. The court further found \$6,415.50 of the fees and costs to be “excessive, internally duplicative or duplicative with appellate counsel.” Accordingly, the court determined that Jean incurred \$19,182.85 in attorney fees and costs in the trial court to defend appeal. Thus, the court denied Lester’s motion to reconsider and held that the \$15,000 previously ordered by the court as contribution to Jean’s trial attorney’s fees and cost to defend the appeal would stand.

¶ 25 Lester now appeals the rulings, order and judgments that have led to the final award of attorney fees to Jean.⁴

¶ 26 II. ANALYSIS

¶ 27 On appeal, Lester argues that the circuit court’s decision to award attorney fees to Jean should be reversed or vacated because the circuit court (1) erred in ordering Lester to pay

⁴ In his brief, Lester requests this court to reverse or vacate six circuit court rulings. These include the order of June 28, 2017, November 5, 2013, May 17, 2016, June 30, 2016, October 30, 2017, and January 17, 2018.

\$140,498.24 towards Jean’s attorney fees; (2) erred in requiring Lester to pay an additional \$45,000 towards Jean’s attorney fees to defend this appeal; and (3) violated Lester’s due process rights by reviewing time records *in camera*.

¶ 28

A. Standard of Review

¶ 29

A trial court’s decision to award attorney fees in a dissolution case is a matter of discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Schneider*, 214 Ill. 2d 152, 174 (2005). An abuse of discretion occurs when the “the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)). In determining whether the circuit court abused its discretion the question is not whether this court might have decided the issue differently, but whether any reasonable person could have taken the position of the trial court. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 95. Due process claims, on the other hand, are questions of law which are reviewed *de novo*. *Girov v. Keith*, 212 Ill. 2d 372, 379 (2004).

¶ 30

B. Contribution Toward Jean’s Attorney Fees

¶ 31

Lester contends that the circuit court abused its discretion in awarding Jean \$140,498.24 in attorney fees. This award is the sum of awards from three separate circuit court orders entered on November 5, 2013 (\$50,000 for interim fees), May 17, 2016 (\$30,000 for additional interim fees), and June 28, 2017 (\$60,498.24 for incurred trial attorney fees). Additionally, Lester challenges the circuit court’s award of an additional \$45,000 in attorney fees for defending against the present appeal.

¶ 32

1. Trial Attorney Fees

¶ 33 In support of his argument that the circuit court erred in awarding Jean attorney fees of \$140,498.24, Lester contends that in “determining fees an evidentiary hearing is generally required,” the issues in this case were not complex enough to warrant an excessive award of attorney fees, Gaynor’s billing statements were deficient because they failed to meet the specificity requirements as set forth in *Kaiser v. MEPC American Properties Inc*, 164 Ill. App. 3d 978 (1987), and the timesheets were admitted into evidence without establishing a foundation. Lastly, Lester requests this court take judicial notice that Patrick Riley, an associate at Gaynor firm, was not authorized to practice law as of the date the brief was filed as evidenced by the Illinois Attorney Registration and Disciplinary Commission’s records.

¶ 34 Prior to addressing the merits of this appeal, we note that Lester’s brief does not present coherent legal arguments. Illinois Supreme Court Rule 341(h)(7) requires that an appellant’s brief “contain the contentions of the appellant and reasons therefor, with citation to the authorities and the pages of the record relied on.” Ill. S. Ct. R. 341(h)(7)(eff. May 25, 2018). The “rules of procedure for appellate briefs are rules, not mere suggestions.” *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 18. We are entitled to the benefit of clearly defined issues with pertinent authority cited and cohesive legal arguments. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 457 (2009) (quoting *Obert v. Saville*, 25 Ill. App. 3d 677, 882 (1993)). As such, we are not obligated to entertain an appeal in which the appellant has dumped the burden of argument and research on this court. *Id.* When a violation of the rules interferes with our review of the issues, we have the discretion to strike a brief for its failure to comply. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10.

¶ 35 Here, Lester not only fails to clearly define what his arguments are but he also fails to adequately provide analysis and context for why the cited authorities support his argument.

Despite Lester's lack of cohesive arguments, with the benefit of respondent's brief and our reading of the cited authorities, we are able to understand the issues Lester intends to raise. Therefore, we will not strike his brief for failure to comply and address the merits of Lester's appeal. See *Twardowski v. Holiday Hospital Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001) (providing that our jurisdiction to entertain an appeal is unaffected by the insufficiency of plaintiff's brief "so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party").

¶ 36 In his brief, Lester cites to *In re Marriage of Thompson*, 384 Ill. App. 3d 1 (2008), *S.C. Vaughan Oil Company v. Caldwell, Troutt & Alexander*, 299 Ill. App. 3d 892 (1998), *In re Marriage of Lorenzi*, 84 Ill. App. 3d 427 (1980), and *Dendrinos v. Dendrinos*, 58 Ill. App. 3d 639 (1978) for the proposition that an evidentiary hearing is required. Generally, an award of attorney fees is justified upon a showing that a party seeking this relief is financially unable to pay whereas the other party is able to do so. *In re Marriage of Cierny*, 187 Ill. App. 3d 334, 134 (1989). However, "when a party does not request a hearing on his ability to pay or his opponent's inability to pay, the right to such a hearing is waived and the court may base its decision on the financial conditions of the parties as shown by the record." *Id*; See also *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641 (2009) (holding that the husband waived the opportunity to demonstrate error because he failed to request a hearing).

¶ 37 Our examination of the record shows that Lester did not request an evidentiary hearing on Jean's petition for contribution nor does he argue that he did so. Accordingly, Lester's evidentiary hearing claim is waived. We further note that the circuit court's final award of attorney fees, as reflected in the June 28, 2017 order, was based on the financial conditions of the parties as shown in the record. Specifically, the circuit court considered, *inter alia*, the

relative financial standing of both parties by looking at the parties' income, present and future earning capacity, and their ability to be supported through appropriate employment. The court then noted that unlike Lester, Jean is financially unable to pay her fees. Thus, we find that the circuit court did not abuse its discretion by ordering Lester to pay attorney fees without an evidentiary hearing.

¶ 38 Next, citing *In re the Marriage of Yakin*, 107 Ill. App. 3d 1103 (1982), Lester contends that the issues in this case were not complex enough to warrant the excessive award of attorney fees. Lester points out that during the December 22, 2016 hearing, Gaynor admitted that the issues were not complex when she stated “Were the issues particularly complex? No not really. There was a somewhat novel issue in regard to the request for security. That was a thimbleful of the work we’ve done in five years for this litigation.” However, we find Lester’s reliance on *Yakin* is misplaced.

¶ 39 In *Yakin*, the court found that there was no abuse of discretion in requiring the husband to pay attorney fees, but reduced the overall fee award. *Yakin*, 107 Ill. App. 3d 1103, 1118. The court considered the following factors to determine whether an award of attorney fees was appropriate: “[t]he nature of the controversy; the questions at issue; the significance or importance of the subject matter; the degree of responsibility involved; the standing or skills of the person employed; the time and labor involved; and the relative financial positions of the parties.” *Id.* at 1118-19 (quoting *In re Marriage of Janetzke*, 97 Ill. App. 3d 418, 423 (1981)). Applying these factors, the court held that the award of \$12,000 was not supported by the record despite the fact that “skilled counsel for both parties have been engaged in persistent and contentious litigation” because the issues, although seriously contested, were not complex. *Id.*

¶ 40 Although the *Yakin* court, in reducing the fee award, considered the complexity of the issues involved, the court also considered other factors. In fact, the court found it significant that one-half of the petitioner’s attorney’s time on the case was spent on the telephone and in other conferences with the petitioner and witnesses. *Id.* at 1120. The court found it problematic that a quarter hour was billed for a phone call even if the call lasted less than a quarter hour. *Id.* The court noted that this “practice necessarily would result in an inflated billing figure for telephone conferences.” *Id.* Thus, *Yakin* does not support reversing an award of attorney fees based solely on the lack of complexity of the litigated issues. Rather, the case highlights that a multitude of factors, including the complexity of issues, must also be considered in awarding attorney fees.

¶ 41 In this case, the circuit court considered a wide range of factors in the course of its fee award determination. As previously discussed, the court considered the financial positions of the parties and found that Jean was financially unable to pay her fees whereas Lester had the ability to pay. Moreover, unlike in *Yakin* where a majority of the billing entries were for conferences which might have been over-billed, the billing statements here demonstrate that Jean’s attorneys were engaged in various tasks, *inter alia*, telephone conferences, drafting and revising petitions, scheduled motions, court appearances, and legal research. Lester does not claim, nor does our examination of the record suggest, that the billing entries inaccurately reflected the hours spent by Jean’s attorneys. We find that the circuit court award of \$140,498.24 was appropriate.

¶ 42 Lester further contends that the billing statements offered into evidence were deficient because they fail to meet the specificity requirements as set forth in *Kaiser*, 164 Ill. App. 3d at 978. In *Kaiser*, the court held that a law firm's petition for attorney fees was an inadequate

basis to predicate a fee award where the time summary consisted of entries like “document review,” “file review,” “court appearances,” and “status,” and listed the time spent on each task. *Id.* at 985-86. No additional explanation or details were included. *Id.* Accordingly, the court found that the fee petition was “devoid of any meaningful information.” *Id.* The court further held that to establish that fees are reasonable, the petition “must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor.” *Id.* at 984-85. Additional factors that should be considered by the court include the skill of the attorneys, importance of the matter, nature of the case, difficulty of the issues involved, and the customary charges for these services. *Id.*

¶ 43 Unlike the fee petition in *Kaiser* that was “too vague and general to have any practical utility” (*Kaiser*, 164 Ill. App. 3d at 986), the billing records submitted by Jean in support of her petition clearly shows the services performed, who performed the services, and the time expended thereon as well as the hourly rate charged for the services. The entries were specific and descriptive. For example, one entry was for 1.30 hours which was described as follows: “Court appearance regarding Petition for Rule to Show Cause; negotiated agreed order with Enrico Mirabelli; entered order.” Applying *Kaiser*, we find the descriptions on the billing statements in this case are adequate to inform both the client and the court of the attorneys’ activities. We also note that the circuit court had first-hand knowledge of the extensive litigation in this case as well as the skill and performance of counsel. See *In re Sharp*, 65 Ill. App. 3d 945, 950 (1978) (providing that “it is not error for [a trial judge] to use the knowledge and experience he has acquired in the discharge of professional duties as to the value of legal services”). Therefore, we find the billing statements offered meet the specificity requirements as set forth in *Kaiser*.

¶ 44 We further note that our review of the billing record is limited by Lester’s failure to identify with specificity what charges he finds objectionable. Rather than identifying particular billing entries and explaining why Jean is not entitled to them, Lester offers sweeping statements, such as: “[t]he timesheets contained cryptic entries such as ‘investigated Lester Trilla (E 1216)’ and many entries regarding discovery, revisions of documents, phone calls, and conferences and legal research, none of which indicated the purpose thereof or benefit to the client.” It is not our proper role to comb the record on a party’s behalf to uncover possible errors. *Avery v. State Farm Mutual Auto Insurance Co.*, 321 Ill. App. 3d 269, 277 (2001).

¶ 45 Having addressed the specificity of the billing statements, we now turn to Lester’s argument that the timesheets were admitted into evidence without establishing a foundation. In support of his claim of error, Lester cites to *Aliano v. Sears, Roebuck and Company*, 2015 IL App (1st) 143367, ¶ 31. In *Aliano*, the defendant argued that the circuit court erred by admitting into evidence computer-generated billing records in the absence of underlying time sheets. *Id.* Specifically, the defendant argued, “*inter alia*, that the destruction of the underlying time sheets upon which [the 2013 billing] statement was based rendered the document inadmissible as evidence supporting an award of fee.” *Id.* ¶ 18. The court held that the trial court erred as a matter of law when it admitted the 2013 billing statement into evidence. *Id.* ¶ 34. The court reasoned that without the original timesheets, the defendant was “deprived of an opportunity to test the reliability and accuracy of the statement by comparing the entries contained therein with the original time sheets upon which those entries are based and through cross-examination.” *Id.*

¶ 46 *Aliano* is distinguishable from the present case. In *Aliano*, the central issue was the reliability of computer-generated billing statements in the absence of underlying time sheets. Here, the record is unclear as to how the billing statements were generated. Furthermore, the defendant in *Aliano* filed a response to the plaintiff's fee petition regarding the lack of foundation. Our examination of the record does not show that Lester voiced any objection to the admissibility of the billing statements. Thus, it appears that Lester is raising this argument for the first time on appeal. However, our adversarial system does not allow Lester to introduce new arguments to a reviewing court. See *Pajic v. Old Republic Ins. Co.*, 394 Ill. App. 3d. 1040, 1051 (2009) (arguments first raised at the time of appeal are waived). As such, we find that Lester has waived this argument.

¶ 47 Lastly, in relation to the trial attorney fees, Lester requests that this court take judicial notice that Riley, an associate at the Gaynor firm, was not authorized to practice law at the time the brief was filed and nothing was provided to the court regarding his qualifications that would justify the time billed by him. Here, the record shows that Riley appeared on behalf of Jean as early as the April 25, 2016 hearing. There were also subsequent court appearances by Riley, including the May 17, 2016 hearing and the November 8, 2016 hearing. This provided Lester with notice and he could have very well raised this issue before the circuit court if he believed Riley was unauthorized to practice law. With regards to Lester's argument that his counsel did not learn of the time claimed by Riley until a "motion to unseal records was granted by this Court on September 16, 2017, and the record of appeal was prepared by the Clerk of Court," the record does not show that Lester made any request for billing records or that he claimed that the billing records were not provided to him. Rather, Lester's counsel had the opportunity to review Gaynor's billing statements which

were provided to the court and to his counsel via email. We further note that Lester did not pose any objections in response. Therefore, we decline to take judicial notice and find that Lester has forfeited this argument. Accordingly, we strike any portion of his briefs relating to this contention.

¶ 48

2. Attorney Fees to Defend Appeal

¶ 49

Lester argues that Jean did not provide a viable evidentiary basis for the large amount of fees paid to both Joel Ostrow to defend the appeal in the Appellate Court and to Gaynor for work claimed in the trial court. Lester further contends, without citing to any authority, that it is questionable whether work performed at the trial court level qualifies as a “defense of an appeal” under section 508(a)(3).

¶ 50

We find that the circuit court properly awarded Jean attorney fees for work performed in the trial court. Section 508(a) provides, in pertinent part, as follows:

“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. At the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection. Fees and costs may be awarded in any proceeding to counsel from a former

client in accordance with subsection (c) of this Section. Awards may be made in connection with the following:

* * *

(3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.” 750 ILCS 5/508(a)(3) (West 2012).

¶ 51 Based on a plain reading of section 508(a)(3), attorney fees may be awarded for defense of an appeal of any order or judgment, including post-judgment appeals. We find that the circuit court correctly awarded Jean attorney fees for work performed in the trial court pursuant to section 508(a)(3) of the Act as these fees were incurred in defense of Lester’s appeal of the final judgment. Specifically, Jean incurred attorney fees in defending against Lester’s motion to stay pending appeal, his motion to strike the interim petition for fees to defend appeal, and his motion to set bond. We further find that in awarding Jean \$15,000, the court correctly looked at section 508 of the Act as whole and related sections. Section 508(a) “contemplates three distinct types of fee proceedings: (1) interim attorney fees and costs in accordance with section 501(c-1) (*id.* § 501(c-1)), (2) contribution to attorney fees and costs in accordance with section 503(j) (*id.* § 503(j)), and (3) fees and costs to counsel from a former client in accordance with section 508(c) (*id.* § 508(c)).” *In re Marriage of Kane*, 2018 IL App (2d) 180195, ¶ 17. Here, the circuit court found that section 508 of the Act instructs the court to apply a list of factors in determining whether a party should be required to contribute to the other party’s attorney fees. The court then considered all of the relevant factors in section 503 and 504 of the Act, with respect to contribution of over \$18,787.15 which Jean incurred in attorney fees and costs in defending Lester’s appeal-related motions

before the trial court. The court then held that it was reasonable for Lester to pay \$15,000 as contribution to Jean's fees. As such, we find Lester's argument that section 508(a)(3) precludes the \$15,000 award of attorney fees unavailing given the basis of the circuit court's ruling.

¶ 52 We additionally find that the circuit court's total award of \$45,000 to Jean to defend appeal was supported by evidence. Generally, each party has the obligation to pay for his or her attorney fees. *In re Marriage of Hassiepen*, 269 Ill. App. 3d 559, 569 (1995). However, "[t]he primary purpose of section 508 is to give the court authority in a dissolution proceeding to equalize the relative position of the parties before it, 'diminishing any advantage one spouse may have over the other in the presentation of the case due to the disparity in their respective financial resources.'" *In re Marriage of Pagano*, 154 Ill. 2d 174, 183 (1992)(quoting Ill. Ann. Stat., ch. 40, par. 508, Historical & Practice Notes, at 635 (Smith-Hurd 1980)). Specifically, section 508(a)(3) of the Act provides that attorney fees may be awarded for "the defense of an appeal of any order or judgment under this Act, including the defense of post-judgment appeals." 750 ILCS 5/503(a)(3)(West 2012). In seeking an award for prospective attorney fees for an appeal, a party should request fees in a specific amount as well as present evidence in support of the need and propriety of that amount of fees. *In re Marriage of Krane*, 288 Ill. App. 3d 608, 617 (1997).

¶ 53 Additionally, parties must show not only their own financial inability to pay, but also the ability of the other spouse to do so. *In re Marriage of Pittman*, 213 Ill. App. 3d 99, 63 (1991). The inability to pay fees exists where requiring the party to pay attorney fees would strip his or her means of support and undermine economic stability. *Gasperini v. Gasperini*,

57 Ill. App. 3d 578, 582 (1978). It is not necessary for a party to be destitute to be awarded attorney fees. *In re Marriage of Wright*, 180 Ill. App. 3d 911, 921 (1986).

¶ 54 Here, the circuit court examined Jean’s trial counsel’s affidavit as well as the appellate attorney’s affidavit. The affidavits provided that the trial attorney’s hourly rate was \$580 per hour whereas the appellate attorney’s rate was \$450. The circuit court also considered Jean’s affidavit which provided that she is unemployed and entirely dependent on Lester’s maintenance payments and social security to support herself. Jean also attested that there was a \$2,200 deficit per month between her monthly income and monthly expenses. A review of the record indicates that Jean could not afford to pay the entirety of her fees. We are not persuaded by Lester’s argument, citing *In re Marriage of Norris*, 252 Ill. App. 3d 230, 237 (1992) as support, that there was a lack of evidentiary basis in support of the grant of attorney fees because Jean’s counsel did not testify. In *Norris*, the court awarded prospective attorney fees based on the testimony of the petitioner’s attorney on his experience and the factors that led him to the figures requested. *Id.* at 238. However, *Norris* does not stand for the proposition that testimony of counsel is required or is the only means of determining whether an award for attorney fees is appropriate. As such, we find that the circuit court did not abuse its discretion by ordering Lester to pay Jean attorney fees to defend appeal.

C. Due Process

¶ 55 Lastly, Lester argues that his due process rights were violated when the circuit court reviewed the timesheets records *in camera* and did not allow Lester’s counsel the right to cross-examine Gaynor or see the records. We find Lester’s argument unavailing.

¶ 56 “Procedural due process claims concern the constitutionality of the specific procedures employed to deny a person’s life, liberty or property.” *In re Marriage of Beyer & Parkis*, 324

Ill. App. 3d 305, 317 (2001) (citing *Segers v. Industrial Commission*, 191 Ill. 2d 421, 434 (2000)). Furthermore, “due process requires that a deprivation of property cannot occur without providing notice and an opportunity for a hearing appropriate to the nature of the case.” *Id.* at 318 (citing *City of Marseilles v. Union Bank*, 317 Ill. App. 3d 931 (2000)).

¶ 57 We acknowledge that Lester and any person ordered to pay an opposing party’s attorney fees has their property interfered with by the State and therefore satisfies the threshold question for raising a procedural due process claim. *In re Marriage of Beyer*, 324 Ill. App. 3d at 318 (providing that the threshold question in a due process claim is “whether there exists a liberty or property interest which has been interfered with by the State”). However, we find that Lester was afforded notice and opportunity to be heard. Here, Lester filed a petition for contribution, filed a response to Jean’s petition for contribution, and was aware of the *in camera* inspection of the billing records by the circuit court. Like Jean, Lester also submitted billing statements in support of his petition. As such, Lester had notice. We further note that Lester had both the opportunity to be heard through his responsive pleadings and the opportunity to request an evidentiary hearing which he failed to do. Therefore, we find that Lester’s due process rights were not violated by the circuit court’s *in camera* review.

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, we affirm the circuit court’s judgment.

¶ 60 Affirmed.