

2019 IL App (1st) 181920-U
No. 1-18-1920
Order filed September 5, 2019

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MFG PROPERTIES, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant)	Cook County
)	
v.)	No. 17 M1 711554
)	
ROSHAWN DUBOSE,)	Honorable
)	Cecilia Horan,
Defendant-Appellee.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's judgment where the court did not err in denying appellant attorney fees, appellant waived its arguments regarding its award of damages, and where the court did not err in awarding appellee attorney fees or damages under the RLTO. We also find that appellee is entitled to costs and reasonable attorney fees for defending this appeal and remand the matter to the circuit court for the purpose of allowing her to file a fee petition.

¶ 2 Appellant MFG Properties, L.L.C. filed this action seeking possession and unpaid rent on a residence rented by appellee Roshawn Dubose. Appellee surrendered possession of the property and filed a counterclaim seeking damages for illegal late fees pursuant to the Chicago

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Residential Landlord Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-140 (amended Nov. 6, 1991)) and attorney fees. Appellant filed an amended complaint seeking unpaid rent, late charges, and attorney fees under the RLTO. The court denied both parties' claims for attorney fees and awarded appellant some of the claimed unpaid rent and late fees, but awarded appellee statutory damages for the illegal late fees. Both parties filed motions to reconsider the court's denial of attorney fees under the RLTO. The court subsequently granted appellee's motion to reconsider and awarded attorney fees, but denied appellant's motion.

¶ 3 On appeal, appellant contends that the court erred in denying it attorney fees, that the court erred in considering appellee's answer to the complaint and her counterclaim where those pleadings were unverified, that the court erred in granting appellee attorney fees where there is no fee petition in the record, and that appellee's statutory damages were not proper under the RLTO. For the reasons that follow, we affirm the judgment of the circuit court, but remand the matter to the circuit court for the purpose of allowing appellee to file petitions for court costs and reasonable attorney fees for the work performed on this appeal.

¶ 4 I. BACKGROUND

¶ 5 On July 18, 2017, appellant filed a forcible entry and detainer complaint for possession and back rent on a residence rented by appellee. Appellant sought \$9,357.01 plus costs for appellee's failure to pay rent from April 1, 2016, through June 30, 2017. Appellee surrendered possession of the property and filed a counterclaim. In her counterclaim, appellee contended that appellant charged her an illegal late fee under the RLTO 14 times during her tenancy. Appellee attached a ledger from appellant to her counterclaim detailing the alleged illegal late fees. Appellee contended that she was entitled to twice her monthly rent, a total of \$2,060, in damages under the RLTO, plus attorney fees and costs. Appellee also contended that appellant failed to

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pay her interest on her security deposit. Appellee filed an answer and affirmative defenses to appellant's complaint in which she neither affirmed nor denied the allegations in the complaint, but demanded strict proof.

¶ 6 Appellant filed an amended complaint contending that because appellee had vacated the property, the forcible entry and detainer claim was now moot. Appellant asserted that the resulting claim was only for appellee's violation of the lease contract for failure to pay rent and that appellant was entitled to attorney fees pursuant to section 5-12-180 of the RLTO (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)). In addition to the unpaid rent and late fees sought in the original complaint, appellant sought unpaid rent and late fees for July 1, 2017, through September 30, 2017, for a total judgment amount of \$7,950.50, plus costs and reasonable attorney fees under the RLTO. Appellant also filed a response to appellee's counterclaim in which it acknowledged providing a ledger showing the late fees, but contended that its late fee was in compliance with the RLTO. Appellee filed a response to appellant's amended complaint in which she contended that appellant was not entitled to attorney fees, and neither admitted nor denied, but demanded strict proof of appellant's other claims. Appellee then filed a motion for partial summary judgment on the illegal late fees count of her counterclaim seeking \$28,840, plus costs and attorney fees.

¶ 7 The court entered an order on April 6, 2018, which indicated that it was entered "after trial." The parties acknowledge that there is no report of proceedings filed with the record on appeal and there is no bystander's report. In its order, the court denied appellant attorney fees citing the "American Rule" and that "no such provision existed in the contract between the parties." The court awarded appellant \$1,530 in back rent and \$474.50 in late fees for a total award of \$2,004.50. With regard to appellee's counterclaims, the court awarded appellee \$2,060

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for the illegal late fees, but also denied appellee's claim for attorney fees. The court stated the action was a forcible entry and detainer action and that no attorney fees could be awarded under the RLTO. The court gave both parties leave to file motions to reconsider the court's denial of attorney fees.

¶ 8 In its motion to reconsider, appellant contended that after appellee vacated the premises, the forcible entry and detainer action became a lease contract claim for unpaid rent and late fees under the RLTO. Appellant contended that appellee's failure to pay rent represented "material noncompliance" with the lease contract as described in section 5-12-130 of the RLTO. Chicago Municipal Code § 5-12-130 (amended Nov. 6, 1991). Appellant also raised challenges to the court's calculation of the damages awarded for unpaid rent and late fees. In her motion to reconsider, appellee contended that although appellant's original action was a forcible entry and detainer action, her counterclaim was brought pursuant to the RLTO, which permits the award of attorney fees to a prevailing plaintiff.

¶ 9 The court denied appellant's motion to reconsider and granted appellee's motion. The court ordered the parties to return for appellee's petition for attorney fees, and also granted appellant \$400 in court costs, which would be offset by appellee's award of attorney fees. Although no petitions or pleadings appear in the record, the court subsequently entered an order on appellee's petition for attorney fees "the matter having been fully brief and argued." The court determined that appellee was entitled to attorney fees for 14.75 hours at \$300 per hour, for a total award of \$4,425. Appellant now appeals.

¶ 10

II. ANALYSIS

¶ 11

A. The Record on Appeal

¶ 12 As noted, the trial court's orders and the parties' briefs indicate that there are filings and briefs absent from the record filed on appeal. There is also no report of proceedings or bystander's report detailing the oral proceedings before the circuit court. We note that it was appellant's burden to provide a complete record on appeal, including a report of proceedings or an appropriate substitute, as required by Illinois Supreme Court Rule 323 (eff. July 1, 2017). *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). In the absence of such a record, we presume that any order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* at 392.

¶ 13 We also observe, as appellant points out, that appellee failed to provide citation to the record in both the statement of facts and argument sections of her brief in violation of Supreme Court Rules 341(h)(6) and 341(h)(7) (eff. May 25, 2018). Nonetheless, we find that appellee's violations of the supreme court rules do not hinder our review of the case since we reviewed the record as a whole in addressing appellant's arguments. *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008). However, we will not consider any facts *dehors* the record and any claims based on such facts. *Id.*

¶ 14 B. Appellant's Attorney Fees

Appellant first contends that the court erred in denying its claim for attorney fees. Appellant contends that its amended complaint was brought pursuant to the RLTO for failure to pay rent and the RLTO allows an award of attorney fees to a prevailing plaintiff. Appellant asserts that the court improperly denied its claim for attorney fees citing the "American Rule," but this ruling ignored the language of the RLTO. "The construction and legal effect of the lease agreement and

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the provisions of the RLTO are questions of law, which we review *de novo*.” *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231, ¶ 15.

¶ 15 It well-settled that “[a]part from statute, there is, of course, no right on the part of the successful party to recover ‘attorneys’ fees and the ordinary expenses and burdens of litigation.’ [Citation.]” *Meyer v. Marshall*, 62 Ill. 2d 435, 442 (1976). Here, in Count I of its amended complaint, appellant requested reasonable attorney fees pursuant to section 5-12-180 of the RLTO. Section 5-12-180 of the RLTO provides:

“Except in cases of forcible entry and detainer actions, the prevailing plaintiff in any action arising out of a landlord’s or tenant’s application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney’s fees; provided, however, that nothing herein shall be deemed or interpreted as precluding the awarding of attorney’s fees in forcible entry and detainer actions in accordance with applicable law or as expressly provided in this ordinance.” Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991).

¶ 16 As noted, appellant’s action began as a forcible entry and detainer action, which is excluded from the attorney fees provision of the RLTO. In its amended complaint, however, appellant contended that because appellee had voluntarily vacated the subject premises, the forcible entry and detainer claim was now “moot.” Appellant contended that the resulting claim was based on appellee’s “violation of the lease contract’s promise to pay rent.” Notably, appellant did not cite to any particular provision of the RLTO in support of this claim. In its motion to reconsider, however, appellant contended that appellee’s failure to pay rent represented “material noncompliance” with the lease agreement as described in section 5-12-130 of the RLTO. Chicago Municipal Code § 5-12-130 (amended Nov. 6, 1991). Appellant

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supported this claim by asserting that appellee willfully gave false testimony at trial regarding her payment of the rent.

¶ 17 Noncompliance by a tenant is described in section 5-12-130(b) of the RLTO, which provides that:

“If there is material noncompliance by a tenant with a rental agreement *** the landlord of such tenant’s dwelling unit may deliver written notice to the tenant specifying the acts and/or omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten days after receipt of the notice, unless the breach is remedied by the tenant within that period of time.” Chicago Municipal Code § 5-12-130(b) (amended Nov. 6, 1991).

On appeal, however, appellant asserts that its claims before the circuit court were actually brought under section 5-12-130(a), which concerns a tenant’s failure to pay rent. That section provides that “[i]f all or any portion of rent is unpaid when due and the tenant fails to pay the unpaid rent within five days after written notice by the landlord of his intention to terminate the rental agreement if rent is not so paid, the landlord may terminate the rental agreement.” Chicago Municipal Code § 5-12-130(a) (amended Nov. 6, 1991).

¶ 18 Appellee contends that because appellant’s contentions in the circuit court were brought pursuant to section 5-12-130(b), it may not now raise its contentions regarding attorney fees pursuant to section 5-12-130(a) for the first time on appeal. We agree. Appellant’s first amended complaint states that its claim is based on appellee’s “violation of the lease contract’s promise to pay rent” and does not cite to provision of the RLTO. Its motion to reconsider clearly states that appellee’s failure to pay rent is “clearly ‘material noncompliance’ as described in RLTO’s Sec. 5-12-130.” This is clearly a citation to section 5-12-130(b) and not section 5-12-130(a) as

appellant now claims on appeal. Although a claim for a failure to pay rent obviously could be brought under section 5-12-130(a), the record before us suggests that appellant chose not to do so and instead brought this claim against appellee for material noncompliance with the lease agreement under section 5-12-130(b). We acknowledge that the contention in appellant's complaint is somewhat ambiguous because it does not cite to a specific section of the RLTO and notes appellee's failure to pay rent, but it also references appellee's violation of the lease contract, suggesting a claim for material noncompliance. As noted, because of the incomplete record before us, we construe any doubts which may arise from the incompleteness of the record against appellant. *Foutch v. O'Bryant*, 99 Ill. 2d at 392.

¶ 19 Thus, appellant's claim before the trial court was brought pursuant to section 5-12-130(b), but his claims before this court are based on section 5-12-130(a). It is well-settled that contentions not raised in the trial court are waived and may not be raised for the first time on appeal. See, e.g., *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996); *Moore v. Board of Education of the City of Chicago*, 2016 IL App (1st) 133148, ¶ 35. Accordingly, we find that appellant has waived any argument concerning its right to attorney fees based on section 5-12-130(a).

¶ 20 Waiver aside, even though the trial court awarded appellant damages, it is not even clear from the record the basis for those damages. Appellant's amended complaint contained only two counts. In Count I, appellant contended that the forcible entry and detainer action was now moot because appellee had voluntarily surrendered the premises and the resulting claim was brought pursuant to the RLTO. Appellant requested reasonable attorney fees under section 5-12-180 of the RLTO. In Count II, appellant sought unpaid rent and late fees from April 1, 2016, through September 30, 2017. In the trial court's order, however, the court did not mention Count I of

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appellant's complaint, but denied appellant's request for attorney fees. With regard to Count II, the court awarded plaintiff \$1,530 and with regard to Count III, which was not present in the amended complaint in the record, the court awarded appellant \$474.50 in late fees.

¶ 21 We can presume, therefore, that court divided appellant's complaint into three counts. In Count I, appellant sought to make the forcible entry and detainer claim moot, assert a new claim under the RLTO, and sought attorney fees. Count II was a claim for unpaid rent and Count III was claim for late fees. The court, however, denied both parties' request for attorney fees finding that it characterized the action as a forcible entry and detainer action. This suggests that the court denied appellant's claim that the forcible entry and detainer action was moot and that its resulting claim was under the RLTO. This conclusion is bolstered by appellant's arguments in its motion to reconsider. In that motion, appellant again contended that the action had "chang[ed]" from a forcible entry and detainer action to a "lease contract claim for rent and late fees," which was "applicable" to the RLTO and that, therefore, the court should award it reasonable attorney fees. Appellee likewise argued that the court should award her reasonable attorney fees because her claims were brought pursuant to the RLTO.

¶ 22 Although the court awarded appellee attorney fees following her motion to reconsider, the court declined to award appellant attorney fees. The court's order suggests that it was thus aware of the provision in the RLTO concerning the award of attorney fees to the prevailing plaintiff. Nonetheless, the court still declined to award attorney fees to appellant. This suggests that the court did not accept appellant's argument that appellant's forcible entry and detainer action had been converted to a claim under the RLTO or otherwise found that appellant was not a "prevailing plaintiff" under the RLTO. As noted, the record filed on appeal and the parties' briefs before this court suggest that there were other pleadings and oral proceedings in the circuit

court that could provide further information regarding the trial court's orders and it was appellant's burden to provide these documents or an appropriate substitute as part of the record on appeal. *Rock Island County*, 242 Ill. App. 3d at 462. In the absence of a sufficiently complete record on appeal, we presume that the orders entered by the trial court were in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. Accordingly, we have no other alternative but to find that the court did not err in denying appellant's claim for attorney fees under the RLTO.

¶ 23

B. Appellant's Damages

¶ 24 Appellant next contends that the court erred in not awarding appellant the full amount of the damages it alleged in its complaint. Appellant bases this claim almost entirely on the fact that appellee's answer to the complaint was not verified and was thus a nullity. Appellant asserts that it therefore did not need to prove up its damages because appellee failed to respond to the allegations. Appellant contends that based on appellee's failure to respond to the allegations in the complaint, the trial court should have entered a default judgment against appellee and awarded appellant the full amount of damages sought.

¶ 25 As appellee notes, appellant raises this contention regarding the verification of appellee's pleadings for the first time on appeal. As noted, contentions not raised in the trial court are waived and may not be raised for the first time on appeal. See, e.g., *Haudrich*, 169 Ill. 2d at 536; *Moore*, 2016 IL App (1st) 133148, ¶ 35. The purpose of this rule is to bring issues to the trial court's attention thereby allowing the trial court an opportunity to correct any errors. *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 453 (2007). In other words, "[a] party cannot stand idly by and not object, and then appeal, arguing that the trial court's action was wrong." *Mohica v. Cvejic*, 2013 IL App (1st) 111695, ¶ 85 (citing *People v.*

Piatkowski, 225 Ill. 2d 551, 564 (2007)). Specifically, our supreme court has held that a party who fails to object to the trial court’s ruling on an unverified pleading waives the right to raise that issue for the first time on appeal. *Department of Finance v. Schmidt*, 374 Ill. 351, 354 (1940). Accordingly, we find that appellant has waived for review the argument that it should have been awarded the full amount of its damages on the basis that appellee’s pleadings were not verified.

¶ 26

C. Appellee’s Attorney Fees

¶ 27 Appellant next contends that the court erred in awarding appellee attorney fees. Appellant contends that the RLTO authorizes the court to award fees only to the “prevailing plaintiff,” not the prevailing party. Appellant also contends that there is no fee petition present in the record. Appellant asserts that without a fee petition, the trial court had no basis from which to calculate the amount of the award.

¶ 28 As noted, *supra*, section 5-12-180 of the RLTO authorizes the court to award court costs and attorney fees to the “prevailing plaintiff” in any action “arising out of a landlord’s or tenant’s application of the rights or remedies made available in this ordinance.” Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991). Here, appellee was not the original plaintiff in this action, but did file a counterclaim raising a claim under the RLTO. As this court has found, the term “plaintiffs” in section 5-12-180 includes counterplaintiffs. *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 8 (“In light of the stated purposes of the RLTO, we cannot find that the Chicago City Council intended to discriminate against eviction-defendant RLTO-counterplaintiff tenants in favor of mere RLTO-plaintiff tenants—a truly arbitrary distinction which creates a manifestly capricious result.”). Here, appellee prevailed on her RLTO counterclaim and thus was a

“prevailing plaintiff” under section 5-12-180. Under such circumstances, the court did not err in awarding appellee attorney fees. *Id.* ¶ 11 (citing *Pitts v. Holt*, 304 Ill. App. 3d 871, 873 (1999)).

¶ 29 Appellant contends, however, that appellee is not entitled to fees because the record does not contain a fee petition detailing the amount of fees to be awarded. We agree with appellant that there is no fee petition present in the record—although appellant attached a fee petition from appellee to his brief that it claims was not filed with the circuit court, but was provided by appellee during the pendency of the appeal. Nonetheless, the circuit court’s order awarding attorney fees states that appellee’s petition for attorney fees was “fully briefed and argued.” None of these pleadings or arguments are included in the record filed on appeal, thus, as noted, we presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. We further presume the trial court awarded fees in accordance with the fee petition presented to the trial court. Accordingly, we find that, based on the record before us, the circuit court properly awarded and calculated the amount of the appellee’s attorney fees.

¶ 30 D. Appellee’s Damages

¶ 31 Finally, appellant contends that the court erred in awarding appellee damages pursuant to section 5-12-140 of the RLTO. Chicago Municipal Code § 5-12-140 (amended Nov. 6, 1991). Appellant contends that a party can recover under that section only where the late fee provision in the lease is in conflict with the RLTO. Appellant asserts that the lease provision in this case was not in conflict with the RLTO, but appellant merely erred in calculating the amount of the late fee. Appellant further asserts that appellee never actually paid any of the late fees and thus incurred no damages.

¶ 32 Section 5-12-140 provides that, with some exceptions, no rental agreement may provide that a “tenant shall pay a charge, fee or penalty in excess of \$10.00 per month for the first \$500.00 in monthly rent plus five percent per month for any amount in excess of \$500.00 in monthly rent for the late payment of rent.” Chicago Municipal Code § 5-12-140(h) (amended Nov. 6, 1991). It is undisputed that appellee’s rent payment at the time of the tenancy was \$1,030. Thus, under the statute, the maximum late fee that appellant could charge was \$36.50.¹ However, the ledger attached to appellee’s counterclaim shows that appellant charged appellee a late fee that increased each month based on the amount she owed over \$500. In the first month of late fees, appellant charged appellee a late fee of \$37 (\$10 for the first \$500 of rent, plus \$27.00 as 5% of the amount over \$500). In subsequent weeks, however, as appellee failed to pay the late fees, appellant continually increased the amount of the late fees based on the fact that appellee now owed appellant her original \$1,030 of rent, plus the late fees. Appellant then added 5% of the total amount appellee owed over \$500, rather than using her base rent payment, to calculate the amount of the late fee. In the circuit court, appellant contended that this was the correct interpretation of the statute’s late fee calculation, but before this court has implicitly conceded that this interpretation was incorrect.

¶ 33 Nonetheless, appellant contends that the court erred in awarding appellee damages under section 5-12-140 because the improper late fee calculation was not part of the lease agreement and that section is violated only where the lease agreement itself contains an illegal late fee provision. Here, the only provision in the parties’ lease agreement concerning unpaid rent provided that “unpaid rent shall bear interest at the rate of 15% per annum or the highest legal

¹ Ten dollars for the first \$500 of rent, plus 5% of the amount over \$500, or \$530 based on appellee’s rent of \$1,030. Five percent of \$530 is \$26.50, plus \$10 is a total maximum late fee of \$36.50.

rate of interest, whichever is lower, from the date due until paid.” Rather than using any provision in the lease agreement in calculating appellee’s late fees, however, appellant used an incorrect interpretation of the RLTO’s late fee calculation as represented on the ledger appellant provided to appellee, which appellee attached to her counterclaim. Although this incorrect interpretation was not a term of the lease agreement itself, it was appellant’s burden, as the landlord, to correctly calculate the amount of the late charge in accordance with the RLTO. A landlord may not avoid the mandates of the RLTO merely by omitting a proper late fee calculation from its lease agreement and then improperly overcharging a tenant, whether innocently or otherwise.

¶ 34 Finally, we find that the circuit court properly awarded appellee damages of twice the monthly rent amount. Appellant contends that the award of damages was improper because appellee did not actually pay the late fees and thus suffered no actual damages. Section 5-12-140 provides, however, that “[t]he tenant may recover actual damages sustained by the tenant because of the enforcement of a prohibited provision. If the landlord *attempts* to enforce a provision in a rental agreement prohibited by this section the tenant may recover two months’ rent.” (Emphasis added). Chicago Municipal Code § 5-12-140 (amended Nov. 6, 1991)). Here, appellant *attempted* to enforce the improper late fee and thus appellee was entitled to recover two months’ rent, as the circuit court properly found.²

¶ 35 E. Appellate Attorney Fees and Costs

² Appellant also dedicates a portion of its brief to contending that appellee’s counterclaim included a demand for a jury trial, but the case was heard as a bench trial despite the lack of a jury waiver from either party in the record. Once again, we note the well-established rule that because of the incomplete record filed on appeal, we presume that the trial court acted in conformity with the law and resolve any doubts which may arise from the incompleteness of the record against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 36 Lastly, appellee has requested attorney fees and costs related to the appeal. As noted, the RLTO provides that “the prevailing plaintiff in any action arising out of a landlord’s or tenant’s application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney’s fees.” Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991). In *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶¶ 35, which was a landlord-tenant dispute brought under the RLTO, this court found that “[t]ypically, where a party that prevails in the trial court is required to defend that victory on appeal, courts award attorney fees to that party for their work on the appeal, too, provided they prevail on appeal as they did at trial.” *Id.* ¶ 35. Here, appellee has been required to defend its victory under the RLTO on appeal.

¶ 37 Accordingly, we find that appellee is entitled to reasonable attorney fees and court costs for defending this appeal, as they relate to her original dispute under the RLTO. See *id.* ¶ 40 (finding that the RLTO’s fee-shifting provision covers “any litigation related to the RLTO”) (emphasis in original.) We therefore remand appellee’s claim for appellate costs and attorney fees to the trial court for its initial review. See *id.* ¶¶ 47, 49 (remanding the matter to the trial court so the plaintiff could file petitions for costs and reasonable attorney fees for appellate work).

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court, but remand the matter to the circuit court for the purpose of allowing appellee to file petitions for court costs and reasonable attorney fees for the work performed on this appeal.

¶ 40 Affirmed and remanded with directions.