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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ELIZABETH FRANKENFIELD,)	of McHenry County.
)	
Petitioner-Appellant,)	
)	
and)	No. 08-DV-127
)	
ANDREW FRANKENFIELD,)	Honorable
)	Christopher M. Harmon,
Respondent-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Petitioner failed to show *prima facie* reversible error in the trial court's award of attorney fees to respondent under sections 508(a) and 508(b): the evidence supported the court's section 508(a) finding that petitioner could pay and respondent could not, and thus any error in the court's invocation of section 508(b) as an additional justification for the award was harmless.

¶ 2 Petitioner, Elizabeth Frankenfield, appeals from an order of the circuit court of McHenry County ordering her to pay \$30,290 in contribution to attorney fees and costs to respondent, Andrew Frankenfield, pursuant to sections 508(a) and 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(a), (b) (West 2014)). Elizabeth

argues that trial court erred in granting Andrew's petition, because Andrew failed to establish Elizabeth's ability to pay and his inability to pay. Elizabeth also argues that the trial court's failure to delineate the amount of the award attributable to each statutory section violates her procedural due process rights. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On August 13, 2015, Andrew filed an amended petition for contribution to attorney fees and costs incurred during postdissolution proceedings. Andrew argued that the attorney fees and costs resulted from Elizabeth's noncompliance with court-ordered child visitation and from Elizabeth's wrongful filing for an order of protection against Andrew. Andrew argued that he was entitled to fees under section 508(a) of the Marriage Act (750 ILCS 5/508(a) (West 2014)), based on Elizabeth's ability to pay and his inability to pay, and, alternatively, under section 508(b) of the Marriage Act (750 ILCS 5/508(b) (West 2014)), because Elizabeth needlessly increased the cost of litigation and precipitated hearings for improper purposes.

¶ 5 A hearing took place on March 4, 2016, August 5, 2016, and October 11, 2016. At the outset of the hearing, Andrew's attorney confirmed that Andrew was seeking contribution only for the postdissolution proceedings concerning visitation and the order of protection.

¶ 6 Andrew testified that he lived with his fiancée and their two children, ages three and one. His son had a congenital diaphragmatic hernia, and his fiancée stayed home to care for him. Andrew earned \$67,000 a year, and his fiancée earned \$15,000 a year providing in-home child care. Andrew's father cosigned a \$208,000 mortgage loan with Andrew's fiancée, about one month prior to the hearing, but Andrew's name was not on the title. Andrew paid \$1000 per month toward the \$1400 monthly mortgage payment. Andrew did not own real estate or a vehicle. Andrew paid \$651.73 in monthly child support for his and Elizabeth's daughter,

Julianna. Andrew filed for Chapter 13 bankruptcy in 2013 and entered into a five-year repayment plan, under which he paid \$450 per month. Andrew also testified that his father had paid \$72,000 in attorney fees on Andrew's behalf as a loan to Andrew and that he was currently repaying his father \$100 per week. Andrew had about \$1400 between his two checking accounts and about \$4200 in his savings account.

¶ 7 Elizabeth testified that she lived with her husband and Julianna, who was born on January 22, 2004. Julianna suffered a traumatic birth injury and had received a personal injury settlement of over \$7 million. The proceeds of the settlement were placed in trust with Elizabeth and Northern Trust Company as co-trustees. Elizabeth's home had been purchased in 2010 for approximately \$1,250,000 and deeded into Julianna's trust. There was no mortgage on the home. The principal amount of the trust was about \$6 million. Elizabeth's financial affidavit indicated that her monthly gross income was \$2218.72, which was comprised of \$118.72 in dividend income and \$2100 in rental income. Elizabeth's monthly living expenses totaled \$6166.81. Her liabilities included three credit cards totaling \$4757.16 and \$13,000 in legal fees. Elizabeth received disbursements from the trust to pay her household and living expenses and her monthly credit-card payments. She testified that her parents helped her pay her legal fees. Elizabeth owned a second home, which she rented out. She leased a Cadillac Escalade for \$1500 per month; the lease payments were made with disbursements from the trust. Elizabeth owned two investment accounts with a total value of about \$125,000. She also had \$101,000 in a money-market account. Elizabeth received \$15,000 per year from the trust for annual vacations.

¶ 8 The trial court took judicial notice of a trust accounting that had been filed in *In re Julianna Frankenfield*, No. 09-PR-4 (Cir. Ct. McHenry County), for the period of February 1, 2015, through January 31, 2016. The trust accounting showed distributions over a one-year

period totaling \$285,524. These distributions included, *inter alia*, a \$65,748 annual disbursement to Elizabeth for Julianna's care, a \$21,000 annual disbursement to Elizabeth for household expenses, a \$12,000 reimbursement to Elizabeth for legal fees regarding child support, a \$25,048.39 disbursement to pay monthly vehicle lease payments, and a \$19,232.40 disbursement to Elizabeth for annual recreational and vacation expenses.

¶ 9 Attorney Kevin Bruning testified as to the fees and costs Andrew incurred as a result of postdissolution proceedings. He argued that Andrew was entitled to \$54,565 in contribution from Elizabeth.

¶ 10 Following the hearing, the court found that “Andrew has the inability to pay all his legal expenses and Elizabeth has the ability to contribute to a portion of those expenses.” The court further found that

“the protracted and acrimonious post-decree legal proceedings in this case were largely precipitated by Elizabeth. For example, she denied Andrew visitation with Julianna and attempted to justify this deprivation of visitation by filing multiple pleadings and obtaining an emergency order of protection, after alleging that she felt threatened by communications she received from Andrew's attorney regarding discovery requests.”

The court ordered Elizabeth to pay \$30,290 in contribution to Andrew's attorney fees.

¶ 11 Elizabeth filed a motion for reconsideration, arguing, *inter alia*, that the trial court improperly “conflated [Elizabeth's] income with that of property that does not belong to her; specifically the funds held in trust for the disabled minor child of the parties. Without this conflation, it is impossible to find from the record that [Elizabeth] has an ability—from her own property—to contribute to [Andrew's] attorney's fees.” Elizabeth also argued that the court erred in considering Andrew's \$400 monthly loan repayment to his father in its analysis of

Andrew's inability to pay, as his father had made a gift rather than a loan. In addition, Elizabeth argued that the court failed to indicate the statutory provision upon which it relied and that, to the extent that it relied partially on both sections 508(a) and 508(b), it failed to delineate which fees were awarded under each section.

¶ 12 Following a hearing, the trial court denied the motion to reconsider. The court first stated that its award of fees was based on both section 508(a) and section 508(b) and that it was not required to delineate which fees applied under which section. Next, the court made clear that, in considering Elizabeth's ability to pay, it did not consider the trust disbursements as income to Elizabeth but had instead found that the trust disbursements "free[d] up [Elizabeth's] other income that she derives from other sources." The court specifically noted that Elizabeth owned rental property with equity, from which she derived income, that she had a money-market account, and that she had a retirement account. The court stated: "Everything that she derives from income is, in fact, liquid able [*sic*] to her because all of the expenses are paid because she resides with Julianna." Finally, the court found credible Andrew's testimony that he paid his father \$400 per month toward repayment of a loan.

¶ 13 Elizabeth timely appealed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, Elizabeth argues that the trial court erred in granting Andrew's petition, because Andrew failed to establish Elizabeth's ability to pay and his inability to pay. Elizabeth also argues that the trial court's failure to delineate the amount of the award attributable to each statutory section violated her procedural due process rights.

¶ 16 In resolving the issues raised, we first note that Andrew has not filed a brief in this court. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), our

supreme court explained the options a reviewing court may exercise when an appellee fails to file a brief. Specifically, we may (1) serve as an advocate for the appellee and decide the case when justice so requires; (2) decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief; or (3) reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Id.*

¶ 17 We cannot conclude that this case falls within either of the first two categories. Thus, we are left to decide whether Elizabeth demonstrates *prima facie* reversible error. “ ‘*Prima facie*’ means, ‘[a]t first sight; on first appearance but subject to further evidence or information’ and ‘[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.’ ” *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009) (quoting Black's Law Dictionary 1228 (8th ed. 2004)). As discussed below, we determine that Elizabeth has not met that standard.

¶ 18 Generally, the party who incurred the attorney fees bears the responsibility of paying them. *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 28. However, section 508(a) of the Marriage Act allows the trial court, after considering the financial resources of the parties, to order one party to pay the fees necessarily incurred by the other party. 750 ILCS 5/508(a) (West 2014). The party seeking an award of attorney fees must establish an inability to pay and the other spouse's ability to do so. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36.

¶ 19 Unlike section 508(a), an award under section 508(b) of the Marriage Act does not depend on a party's inability to pay the fees or the other party's ability to pay. Section 508(b) requires the court to award attorney fees and costs if it finds that “a hearing under this Act was precipitated or conducted for any improper purpose ***. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.” 750 ILCS 5/508(b) (West 2014).

¶ 20 The trial court's award of attorney fees in postdissolution proceedings will not be reversed on appeal absent a clear abuse of discretion. *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 60. A trial court abuses its discretion when its 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)).

¶ 21 Elizabeth first argues that Andrew failed to establish her ability to pay his legal fees. According to Elizabeth, because she had an annual income of \$26,624.64, whereas Andrew had an annual income of \$67,000, it was impossible to find that Elizabeth had the ability to pay. Elizabeth, however, neglects to acknowledge that the evidence also showed that she owned two investment accounts with a total value of about \$125,000, a money-market account containing approximately \$101,000, and rental property with equity totaling just over \$200,000. The evidence further established that Elizabeth's income was “liquid” to her (thereby giving her the ability to pay the legal fees) because many of her expenses were paid from Julianna's trust. Although Elizabeth contends that the trial court erred in considering these trust disbursements when determining Elizabeth's ability to pay, Elizabeth cites no authority to support this proposition. Certainly, the court could consider the impact that the disbursements had on Elizabeth's overall financial position and her ability to pay the fees. Indeed, Elizabeth agreed that she used money from the trust to pay for her household and living expenses and to pay the \$1500 monthly lease payment on her Cadillac Escalade.

¶ 22 Elizabeth also challenges the trial court's finding that Andrew had an inability to pay his legal fees, given that Andrew earns \$67,000 per year. She argues that the court should not have considered Andrew's \$400 monthly loan repayment to his father because, according to Elizabeth, Andrew failed to establish that the father's payment of legal fees was anything other than a gift.

She cites *In re Marriage of Marx*, 281 Ill. App. 3d 897 (1996), for the proposition that, in dissolution cases, courts are entitled to be skeptical of transactions between a litigant and his parents. Here, however, the court found Andrew credible, and we have no reason to disagree with this finding.

¶ 23 Based on the foregoing, we find that Elizabeth has failed to make a *prima facie* showing that the trial court abused its discretion in finding that she had the ability to pay Andrew’s legal fees and that Andrew had the inability to do so for purposes of ordering Elizabeth to contribute under section 508(a) of the Marriage Act.

¶ 24 Elizabeth next argues that she was denied her right to procedural due process, because the trial court granted Andrew’s petition based on both sections 508(a) and 508(b) of the Marriage Act without delineating the amount of fees awarded under each section. She cites a single case that states:

“Procedural due process concerns the constitutional adequacy of the specific procedures employed to deny a person’s life, liberty, or property interests. [Citations.] Due process entails an orderly proceeding wherein a person is served with notice, and has an opportunity to be heard and to present his or her objections, at a meaningful time and in a meaningful manner, in a hearing appropriate to the nature of the case. [Citations.]”

Village of Vernon Hills v. Heelan, 2015 IL 118170, ¶ 31.

Here, Elizabeth was afforded notice and opportunity to be heard. Elizabeth has failed to cite any authority, statutory or otherwise, to support her claim that the trial court was required to delineate the amount of fees awarded under each section. Elizabeth argues only that sections 508(a) and 508(b) “are not simply interchangeable” and that she “should not have to guess” at the amount of the judgment attributable to each. To be sure, section 508(a) and section 508(b)

require that different elements be proven; however, they are not mutually exclusive provisions. In addition to making the requisite findings to support its award under section 508(a), the trial court also found that “the protracted and acrimonious post-decree legal proceedings in this case were largely precipitated by Elizabeth,” specifically noting Elizabeth’s actions in denying visitation and filing for the order of protection. Given that Andrew sought fees for the proceedings relating to visitation and the order of protection, the court’s comments indicate that the court found section 508(b) to apply equally to the fees at issue in this case.¹

¶ 25 Based on the foregoing, we find that Elizabeth has failed to establish *prima facie* reversible error.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of McHenry County.

¶ 28 Affirmed.

¹ We note that, although Elizabeth suggests that the trial court’s award of attorney fees under section 508(b) was improper because the court failed to find that any hearing was held for an improper purpose, Elizabeth has forfeited that argument by failing to cite authority. See *People v. Ward*, 215 Ill. 2d 317, 331-32 (2005) (an appellant must present cogent arguments and cite legal authority to support his arguments or else those arguments are forfeited). Indeed, Elizabeth does not cite a single case involving section 508(b). In any event, even if we were to find that the trial court erred in awarding fees under section 508(b), any such error would be harmless as the award was justified under section 508(a). See *In re Marriage of Wilder*, 122 Ill. App. 3d 338, 344-45 (1983) (noting that a trial court’s error warrants reversal only where a party has been prejudiced or it appears that the outcome might have been different had the error not occurred).