

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).

2013 IL App (4th) 120532-U

NO. 4-12-0532

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 26, 2013
Carla Bender
4th District Appellate
Court, IL

JAGRUTI PANCHAL,)	Appeal from
Plaintiff and Cross-Appellant,)	Circuit Court of
v.)	Coles County
HIMAL PANCHAL and VEENA PANCHAL,)	No. 11L66
Defendants and Cross-Appellees.)	
)	Honorable
)	Teresa K. Righter,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where part of plaintiff's requested attorney fees did not go toward the collection of the support obligation required of defendants by federal law, the trial court did not abuse its discretion in denying certain amounts.
- ¶ 2 In January 2010, HIMAL Panchal filed a petition for dissolution of marriage against plaintiff, Jagruti Panchal, in Coles County case No. 10-D-5, later amending it to seek a declaration of invalidity of marriage. In June 2010, Jagruti filed a third-party complaint for breach of contract and/or specific performance in No. 11-L-66 against HIMAL and VEENA Panchal claiming they were contractually obligated to provide for her financial support and her sons as sponsor and household member, respectively, in regard to her immigrant status. Jagruti also sought an award of attorney fees. In March 2012, a jury found in favor of Jagruti and awarded her \$6,431.39. In April 2012, the trial court awarded her attorney fees in the amount of \$42,000.

¶ 3 In her appeal, Jagruti argues the trial court abused its discretion in its award of attorney fees and costs. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Jagruti and Himal were married in India in February 2007. In 2008, Himal, a citizen of the United States, sought to sponsor Jagruti's immigration to this country. In order for Jagruti and her two minor sons, Vraj and Sujad, to obtain permanent residency in the United States, Himal needed to sign a federal I-864 affidavit of support under the Immigration and Nationality Act. See 8 U.S.C. § 1183a (2006) (also known as section 213A of the Immigration and Nationality Act). Under this contract between the sponsor, the United States Government, and the immigrant, the sponsor agrees to provide the immigrant with "any support necessary to maintain him or her at an income that is at least 125 percent of the Federal Poverty Guidelines for his or her household size." The I-864 affidavit (Department of Homeland Security, U.S. Citizenship and Immigration Services, Affidavit of Support Under Section 213A of the Act (OMB No. 1615-0075) (Rev. 10/18/07), at 7) sets forth the consequences of failing to fulfill those obligations, in part, as follows:

"If you [the sponsor] do not provide sufficient support to the person who becomes a permanent resident based on the Form I-864 that you signed, that person may sue you for this support.

If a Federal, State or local agency, or a private agency provides any covered means-tested public benefit to the person who becomes a permanent resident based on the Form I-864 that you signed, the agency may ask you to reimburse them for the

amount of the benefits they provided. If you do not make the reimbursement, the agency may sue you for the amount that the agency believes you owe.

If you are sued, and the court enters a judgment against you, the person or agency that sued you may use any legally permitted procedures for enforcing or collecting the judgment. You may also be required to pay the costs of collection, including attorney fees."

Himal signed and submitted the I-864 affidavit.

¶ 6 Veena Panchal, Himal's mother, also signed an I-864A affidavit (Department of Homeland Security, U.S. Citizenship and Immigration Services, I-864A, Contract Between Sponsor and Household Member (OMB No. 1615-0075) (Rev. 10/18/07)), a contract between the sponsor and a household member. In support of Jagruti's application to obtain permanent residency, Veena promised to "provide any and all financial support necessary to assist the sponsor in maintaining the sponsored immigrant(s) at or above the minimum income provided for in section 213A(a)(1)(A) of the Act (not less than 125 percent of the Federal Poverty Guidelines) during the period in which the affidavit of support is enforceable." While the I-864A affidavit does not expressly refer to attorney fees, it does contain a provision that the household member "[a]gree[s] to be jointly and severally liable for payment of any and all obligations owed by the sponsor under the affidavit of support to the sponsored immigrant(s) ***." Department of Homeland Security, U.S. Citizenship and Immigration Services, I-864A, Contract Between Sponsor and Household Member (OMB No. 1615-0075) (Rev. 10/18/07), at 3.

¶ 7 In April 2009, Jagruti and her two sons were granted permanent residence status

and they immigrated to the United States. They lived with Himal in a residence owned by Himal's brother, Vikrant Panchal, in Aurora, Illinois. In January 2010, Himal filed for divorce in Coles County. In February 2010, Jagruti and Himal separated, and Himal moved out of the residence. In March 2010, Vikrant brought a forcible entry and detainer action (Will County No. 10-LM-713) to evict Jagruti and her sons, alleging violations of the parties' lease agreement and more than \$22,400 in past-due rents. Jagruti later moved to Naperville.

¶ 8 In June 2010, Jagruti filed a third-party complaint for breach of contract and/or specific performance. Jagruti alleged Himal and Veena were contractually obligated to provide for the financial support of Jagruti and her sons and had failed to do so. Jagruti also sought attorney fees for her prosecution of the matter. In August 2010, the forcible entry and detainer action was voluntarily dismissed without prejudice as against Jagruti and in consideration of her agreement to vacate the former marital residence.

¶ 9 In September 2010, Himal amended his dissolution action and sought a declaration of the invalidity of the marriage. In November 2010, the trial court ultimately found in favor of Jagruti and against Himal. No appeal was taken. In September 2010 in No. 10-D-5, Veena filed a combined motion to dismiss the third-party complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2010)). Veena claimed a spouse's family member is not a necessary or appropriate party to a dissolution proceeding. Further, Veena stated any breach of contract claim should be brought in an appropriate forum. In September 2010, Himal also filed a combined motion to dismiss the third-party complaint in No. 10-D-5.

¶ 10 In October 2010 in No. 10-D-5, Jagruti filed a motion for summary judgment

pursuant to section 2-1005 of the Procedure Code (735 ILCS 5/2-1005 (West 2010)), seeking judgment against Himal under the I-864 affidavit and against Veena under the I-864A affidavit.

¶ 11 In December 2010, Jagruti filed a first-amended third-party complaint for breach of contract and/or specific performance. Jagruti alleged Himal and Veena were contractually obligated to provide for the continued financial support of her and her sons as set forth in the I-864 and I-864A affidavits of support. Jagruti sought past support and future support to maintain her at an income at least 125% of the federal poverty guidelines as well as attorney fees and costs.

¶ 12 Jagruti's first-amended complaint for breach of contract and specific performance was tried in March 2012, and a jury found Himal and Veena failed and refused to provide support to Jagruti for her benefit and that of her two minor children during the years 2010 and 2011. The trial court entered judgment against Himal and Veena in the sum of \$6,431.39.

¶ 13 In April 2012, Jagruti filed a memorandum in support of assessment of attorney fees and costs. Jagruti alleged the action taken in the eviction proceedings were false and fraudulent and not well grounded in fact or warranted by existing law. Jagruti also asserted Himal's action in seeking the declaration of invalidity of the parties' marriage was false and fraudulent and not well grounded in fact. Jagruti sought attorney fees and costs in the sum of \$58,474.44 incurred in the I-864 matter as well as the dissolution and eviction proceedings.

¶ 14 Later that month, the trial court held a hearing on the request for attorney fees. Jagruti's counsel, Edward Graham, testified to his background, the time he spent on this case, including on the I-864 affidavit issue, and the fees incurred. He stated the total amount of fees and costs amounted to \$65,117.42.

¶ 15 In May 2012, the trial court issued its written order on attorney fees. The court stated the issues raised in the petition for dissolution and the petition to declare the marriage invalid were interrelated but not identical. The court found Jagruti was not entitled to attorney fees and/or costs associated with the dissolution, a disciplinary claim made against her attorney, or the forcible entry and detainer action. The court also found some of the entries on counsel's time sheets were "imprecise" and some issues benefitted the dissolution action, which warranted a reduction in the requested amount. The court reduced the claim for attorney fees by \$25,000 and set the award at \$42,000.

¶ 16 Himal and Veena filed a notice of appeal and Jagruti cross-appealed. Himal and Veena subsequently voluntarily dismissed their appeal.

¶ 17 II. ANALYSIS

¶ 18 In her cross-appeal, Jagruti argues the trial court abused its discretion by reducing the amount of attorney fees and costs awarded to her to \$42,000. We disagree.

"Under [the] federal [Immigration and Nationality Act], immigrants who are likely to become a public charge are ineligible for admission into the United States, 8 U.S.C. § 1182(a)(4), unless their applications for admission are accompanied by an Affidavit of Support Form I-864, *see* 8 U.S.C. §§ 1182(a)(4)(B)(ii), 1183a(a)1. A person petitioning for the admission of a family-sponsored immigrant must also sign a Form I-864 affidavit. 8 U.S.C. §1182(a)(4)(C)(ii). This affidavit is considered a legally enforceable contract between the sponsor and the sponsored immigrant.

[Citation.] The signing sponsor submits himself to the personal jurisdiction of any federal or state court in which a civil lawsuit to enforce the affidavit has been brought. *See* 8 U.S.C.

§1183a(a)(1)(C). The sponsor's obligation under the affidavit does not terminate in the event of divorce. [Citation.]

By signing the affidavit, the 'sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable.' 8 U.S.C. §

1183a(a)(1)(A). The terms of the affidavit provide for the appropriate 'measure of damages that would put plaintiff in as good a position as she would have been had the contract been performed.'

[Citation.] *** A sponsor may also be held liable for legal fees and other costs of collection. *See* 8 U.S.C. § 1183a(c)." *Younis v. Farooqi*, 597 F. Supp. 2d 552, 554-55 (D. Md. 2009).

¶ 19 "Illinois follows the "American Rule," which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs.' [Citation.] If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.' [Citation.]" *McNiff v. Mazda Motor of America, Inc.*, 384 Ill. App. 3d 401, 404, 892 N.E.2d 598, 602 (2008). A trial court has broad discretion in awarding attorney fees and that decision will not be reversed on appeal absent an abuse of discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44, 578 N.E.2d 985, 990 (1991).

¶ 20 In the case *sub judice*, Jagruti's counsel sought attorney fees in the amount of \$65,117.42. The trial court found Jagruti was entitled to an award of attorney fees but reduced the requested amount to \$42,000. The issue now on appeal concerns whether the court erred in refusing to award attorney fees associated with the forcible entry and detainer action filed by Himal's brother and the dissolution action.

¶ 21 The I-864 affidavit of support sets forth the obligations of the sponsor and the consequences of failing to support the intending immigrant. If the sponsor fails to provide sufficient support, the intending immigrant can sue him. If a judgment is entered against the sponsor, he may be required to pay the costs of collection, including attorney fees. See 8 U.S.C. § 1183a(c) (2006) (remedies available to enforce an affidavit of support include the payment of legal fees and other costs of collection). The I-864A affidavit of support makes the household member liable for any and all obligations owed by the sponsor to the immigrant.

¶ 22 Here, Jagruti's legal fees incurred in the defense of the eviction proceedings did not constitute a "cost of collection" under the I-864 affidavit signed by Himal or the I-864A affidavit signed by Veena. The I-864 allowance for the costs of collection pertains to the sponsor's failure to provide sufficient support, not other third-party litigation that may arise. Moreover, Vikrant was not a party to the I-864 contract, and Jagruti had no rights against him in the event that Himal and Veena failed to provide sufficient support. The trial court did not abuse its discretion in not awarding attorney fees on the eviction proceeding.

¶ 23 Jagruti's claim for attorney fees for the dissolution proceeding was also properly denied. The litigation expenses pertaining to the dissolution did not go toward the collection of support required by federal law. The sponsor's obligation to support the intending immigrant

continues despite a divorce. See Department of Homeland Security, U.S. Citizenship and Immigration Services, I-864, Affidavit of Support Under Section 213A of the Act (OMB No. 1615-0075) (Rev. 10/18/07), at 7 ("Note that divorce does not terminate your obligations under this Form I-864.") (emphasis omitted); see also *Moody v. Sorokina*, 40 A.D.3d 14, 19 (N.Y. App. Div. 2007) (stating courts have held a "sponsored immigrant's right to support under the Form I-864 affidavit of support is unaffected by a judgment of divorce"); *Montgomery v. Montgomery*, 764 F. Supp. 2d 328, 333 (D. N.H. 2011) (stating the sponsor's obligation under the affidavit of support exists independently of his marriage to the immigrant). Thus, Himal's obligation to support Jagruti would still be required even after a divorce. As the attorney fees expended on the divorce proceeding did not constitute collection costs incident to the enforcement of the support obligation, the trial court did not abuse its discretion in denying the requested fees.

¶ 24 On a final matter, Jagruti spends two sentences in her initial brief arguing the time her counsel devoted to the dissolution was "exceedingly small," likely not in excess of her initial \$2,500 retainer, and the trial court's decision to assess that cost as amounting to \$25,000 was arbitrary. However, Jagruti did not provide any documentation as to the time expended and fees incurred to support her argument. Her attempt to do so for the first time in her reply brief is inappropriate. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.").

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.