APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT, SIXTH DIVISION

McDunn v. McDunn

2026 IL App (1st) 241419 · No. 1-24-1419 · Decided June 5, 2026

SUMMARY

The Illinois Appellate Court affirmed a circuit court order apportioning attorney fees and partition expenses in an action under the Uniform Partition of Heirs Property Act. The court held that abuse of discretion is the applicable standard for reviewing the equitable allocation of costs and fees under the Act and concluded that the trial court did not abuse its discretion in charging the defendant with 40% of the plaintiffs' fees and costs. The court also upheld the denial of the defendant's requests for additional fees, lost profits, tax credits, and to strike unfavorable characterizations in the parties' filings.

CASE DETAILS

COURT	Appellate Court of Illinois, First Judicial District, Sixth Division
WRITING FOR THE COURT	Justice Pucinski; Presiding Justice C.A. Walker; Justice Hyman
JURISDICTION	Illinois Appellate Court, First District, Sixth Division
DECIDED	June 5, 2026
DOCKET	1-24-1419
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the circuit court's apportionment of attorney fees and partition expenses, denial of her motion to reconsider, and denial of her motion to strike portions of plaintiffs' submissions.
STANDARD OF REVIEW	Abuse of discretion for apportionment of costs and attorney fees, the reasonableness of fee awards, and the motion to strike; issues concerning mootness were addressed as a matter of appellate procedure.
PRECEDENTIAL VALUE	Published Illinois appellate opinion
PARTIES	Susan McDunn v. Kevin McDunn, William McDunn, Kathleen McDunn, Timothy McDunn

TOPICS

attorney fees | partition | real estate | standard of review | appellate procedure

PRACTICE AREAS

Civil procedure | Appellate procedure | Real estate | Partition | Attorney fees

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by charging defendant with 40% of plaintiffs' attorney fees and costs under section 12 of the Heirs Property Act.
2. Whether the total award of $19,110 for plaintiffs' attorney fees was unreasonable.
3. Whether defendant established a good and substantial defense entitling her to recover all fees paid to outside counsel under section 12 of the Heirs Property Act.
4. Whether defendant was entitled to additional expenses, tax credits, or lost profits from the parties' failure to lease the property.
5. Whether the circuit court abused its discretion by denying defendant's motion to strike allegedly disparaging language in plaintiffs' submissions.

HOLDINGS

1. A circuit court's apportionment of partition costs and attorney fees under section 12 of the Heirs Property Act is reviewed for abuse of discretion because the statute commits the apportionment to what the court deems just and equitable.
2. The circuit court did not abuse its discretion by determining that it was just and equitable to charge defendant with 40% of plaintiffs' attorney fees and costs.
3. The circuit court did not abuse its discretion in approving $19,110 as a reasonable amount of plaintiffs' attorney fees.
4. Defendant's challenges to party designations, statutory pleading, and the property's PIN were technical defects rather than good and substantial defenses affecting the parties' interests in the property; therefore, she was not entitled to recover all of her outside-counsel fees.
5. Defendant was not entitled to reversal or additional awards for claimed lost rental profits, pre-filing expenses, or the 2017 tax credit because she failed to provide record support and supporting authority for those claims.
6. The denial of defendant's motion to strike did not require reversal because review was moot insofar as the requested relief could not affect the parties' rights or liabilities, and the incomplete record independently failed to establish an abuse of discretion.

KEY QUOTATIONS

> *“This is apparent from the statutory language that the court shall apportion costs, including attorney fees “as the court deems just and equitable.””* (¶ 58)

> *“An abuse of discretion occurs only when the trial court’s decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court.”* (¶ 61)

> *“If the bill states the rights and interests of the parties correctly, a defense which is merely formal, frivolous or vexatious, or which is not undertaken in good faith, would not be regarded as good or substantial.”* (¶ 77)

> *“As a general rule, courts of review in Illinois do not decide moot questions or consider issues where the result will not be affected regardless of how those issues are decided.”* (¶ 103)

FACTUAL BACKGROUND

The parties were five siblings who inherited their mother's Palos Hills townhome in equal one-fifth shares under a transfer-on-death instrument. Four siblings sought to sell the property, while Susan McDunn initially refused to consent. After the partition action was filed, the court determined that the property was heirs property, established a $200,000 value, and allowed Susan to buy out the plaintiffs' interests for $160,000. The parties then disputed responsibility for litigation fees, property expenses, alleged lost rental profits, and tax credits.

PROCEDURAL HISTORY

Plaintiffs brought a partition-by-sale action under the Illinois Uniform Partition of Heirs Property Act concerning an inherited townhome. After amendments to correct party designations, statutory pleading, and the property's PIN, the circuit court determined the property was heirs property, established its value, and entered a judicial deed after defendant bought out plaintiffs' interests. The circuit court apportioned plaintiffs' fees and expenses, awarded defendant $1,500 in attorney fees and certain credits, and found defendant liable for a net $2,753.43. It denied defendant's motions to reconsider and strike, and defendant timely appealed.

DISPOSITION

affirmed

CASES CITED

- Bargman v. Wilson, 407 Ill. App. 3d 656, 660-61 (2011)
- Clayton v. Bradford National Bank, 250 Ill. App. 3d 775, 777, 781-85 (1993)
- Peleton, Inc. v. McGivern's Inc., 375 Ill. App. 3d 222, 225 (2007)
- Guerrant v. Roth, 334 Ill. App. 3d 259, 262-63 (2002)
- Pietrzyk v. Oak Lawn Pavilion, Inc., 329 Ill. App. 3d 1043, 1046 (2002)
- Seymour v. Collins, 2015 IL 118432, ¶ 41
- Corral v. Mervis Industries, Inc., 217 Ill. 2d 144, 156 (2005)
- Foutch v. O'Bryant, 99 Ill. 2d 389, 391-92 (1984)
- Midwest Builder Distributing, Inc. v. Lord & Essex, Inc., 383 Ill. App. 3d 645, 655 (2007)
- Metheny v. Bohn, 164 Ill. 495, 501 (1897)
- Bailey v. Bailey, 150 Ill. App. 3d 81, 88-89 (1986)
- Jackson v. O'Connell, 46 Ill. App. 2d 49, 53 (1964)

- Lane v. Budiselich, 17 Ill. App. 3d 914, 917 (1974)
- Forest Preserve District v. Continental Community Bank & Trust Co., 2017 IL App (1st) 170680, ¶ 32
- Trapani Construction Co. v. The Elliot Group, Inc., 2016 IL App (1st) 143734, ¶ 32
- US Bank, National Ass'n v. Avdic, 2014 IL App (1st) 121759, ¶ 18
- In re Barbara H., 183 Ill. 2d 482, 490-91 (1998)

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