

ILLINOIS SUPREME COURT

In re Marriage of Robert N. Tiballi and Sheila J. Ilagan Tiballi

In re Marriage of Tiballi, 2014 IL 116319 (Ill. 2014) · No. 116319 · Decided April 24, 2014

SUMMARY

The Illinois Supreme Court held that fees charged by a professional evaluator appointed under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act are not court costs taxable under sections 2-1009(a) or 5-116 of the Code of Civil Procedure. The court held that section 604(b), which directs allocation based on the parties’ financial abilities and other appropriate criteria, exclusively governs allocation of those fees. The judgments were reversed and the matter was remanded for a hearing on proper fee allocation.

CASE DETAILS

COURT	Illinois Supreme Court
WRITING FOR THE COURT	Justice Thomas; Chief Justice Garman; Justice Freeman; Justice Kilbride; Justice Karmeier; Justice Burke; Justice Theis
JURISDICTION	Illinois
DECIDED	April 24, 2014
DOCKET	116319
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Robert appealed the order requiring him to pay as court costs the fees of a court-appointed section 604(b) custody evaluator after his custody-modification petition was dismissed. The Illinois Supreme Court granted leave to appeal.
STANDARD OF REVIEW	Not expressly stated; the court interpreted the governing statutes and reviewed the legal characterization of the evaluator fees.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential.
PARTIES	Robert N. Tiballi v. Sheila J. Ilagan Tiballi

TOPICS

- child custody
- family law procedure
- costs
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the dismissal of Robert's custody-modification petition was a voluntary dismissal under section 2-1009(a) of the Code of Civil Procedure or a dismissal for want of prosecution.
2. Whether fees charged by a professional custody evaluator appointed under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act are recoverable as court costs under sections 2-1009(a) and 5-116 of the Code of Civil Procedure.
3. Whether allocation of section 604(b) evaluator fees must instead be determined under section 604(b)'s criteria, including the parties' financial ability and other appropriate criteria.

HOLDINGS

1. The dismissal was not properly characterized as a voluntary dismissal under section 2-1009(a) because Robert did not file a motion for voluntary dismissal; it was more appropriately understood as a dismissal for want of prosecution.
2. Fees charged by a professional evaluator appointed under section 604(b) are not court costs recoverable under sections 2-1009(a) or 5-116 of the Code of Civil Procedure.
3. Section 604(b) of the Illinois Marriage and Dissolution of Marriage Act is the specific statute governing allocation or reallocation of professional evaluator fees, and the fees must be allocated based on each party's financial ability and any other criteria the court considers appropriate.

KEY QUOTATIONS

"We hold that section 604(b) is the specific statute that controls the matter before us and that evaluator fees are not "court costs" within the meaning of sections 2-1009 or 5-116 of the Code." (¶ 31)

"For the foregoing reasons, we reverse the judgments of the circuit and appellate courts and remand the cause to the circuit court of Kane County for a hearing on the proper allocation of Dr. Shapiro's fees based upon the criteria set forth in section 604(b) of the Marriage Act." (¶ 34)

FACTUAL BACKGROUND

Robert petitioned to modify residential custody of the parties' daughter, alleging that Sheila interfered with his parental rights and had abused the child. The circuit court appointed Dr. Robert Shapiro as a section 604(b) custody evaluator and initially ordered the parties to split the evaluation cost without prejudice to ultimate allocation. After Shapiro's report recommended no change in residential custody but increased parenting time for Robert, Robert did not proceed with the petition, and Sheila obtained dismissal and reimbursement of the \$4,975 evaluator fee as a court cost.

PROCEDURAL HISTORY

The circuit court of Kane County dismissed Robert's custody-modification petition on Sheila's motion and ordered Robert to reimburse Sheila for the evaluator's fees as court costs. The appellate court affirmed. The

Illinois Supreme Court reversed the circuit and appellate court judgments and remanded for allocation of the evaluator's fees under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court of Kane County must conduct a hearing and reallocate Dr. Shapiro's section 604(b) evaluator fees based solely on the criteria set forth in section 604(b), including the parties' financial ability and any other appropriate criteria.

CASES CITED

- *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 328 Ill. App. 3d 255, 267 (2002)
- *Mizell v. Passo*, 147 Ill. 2d 420, 428 (1992)
- *Hudson v. City of Chicago*, 228 Ill. 2d 462, 483 (2008)
- *Dick Lashbrook Corp. v. Pinebrook Foundation, Inc.*, 134 Ill. App. 3d 56, 62 (1985)
- *Figgie International, Inc. v. Department of Revenue*, 167 Ill. App. 3d 196, 202 (1988)
- *Galowich v. Beech Aircraft Corp.*, 92 Ill. 2d 157, 162 (1982)
- *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill. 2d 295, 300-02 (2003)
- *Irwin v. McMillan*, 322 Ill. App. 3d 861, 867-68 (2001)
- 2013 IL App (2d) 120523