FIRST DIVISION
September 14, 2026

No. 1-25-2578

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re MARRIAGE OF JOHN MATTHEW KENNEY, JR.,	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellant,	)	
v.	)	No. 2018 D 5945
JANET AMBER STRANG,	)	The Honorable Pamela Loza,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

HELD: Trial court's grant of ex-wife's petition for appellate attorney fees incurred in defense of appeal brough by ex-husband is affirmed where ex-husband failed to show abuse of discretion regarding the trial court's examination of the parties' ability to pay and its consideration that ex-husband litigated the appeal.

¶ 1 This matter returns to this Court following our decision in *In re Marriage of Kenney*, 2023 IL App (1st) 221558, wherein we affirmed the trial court's bifurcated judgment dissolving the parties' marriage and resolving issues concerning their minor children, including care and custody, parenting time, and relocation upon an appeal instituted by petitioner-appellant John Matthew Kenney, Jr. (John).[1] At issue in the instant appeal is a trial court order granting a petition for contribution to appellate attorney fees and costs filed by respondent-appellee Janet Amber Strang (Amber) following that prior appeal. John contends that the court's decision was against the manifest weight of the evidence and that the court abused its discretion. For her part, Amber has not filed an appearance or brief in this matter. We entered an order taking the case for consideration on the record and appellant's brief only, and we proceed with our review pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 In our prior decision, which asked us to review a dissolution judgment and the grant of a relocation petition, we set forth in extensive detail the facts and circumstances surrounding the parties, including their dating life and marriage, the birth and growth of their children, and the end of their relationship, taken from a "voluminous" record upon years of "intense" and "protracted litigation." *Marriage of Kenney*, 2023 IL App (1st) 221558, ¶¶ 1, 3. Accordingly, and as the instant appeal concerns only post-dissolution attorney fees, we need not repeat that history and, instead, summarize what is relevant here.

¶ 4 Briefly, John, a Chicago attorney, and Amber, a Colorado commercial real estate agent, began dating in April 2016, quickly became pregnant with twins, and married in June of that year in Santa Barbara, California. They divided their time living in Colorado and Chicago

[1] The bifurcated judgment was entered by the Honorable Debra Walker during her tenure at the trial court. Upon her promotion to the Illinois Appellate Court, trial court judge Pamela Loza was assigned to the instant matter.

until Amber could no longer travel due to the pregnancy. They delivered the twins in Chicago; however, once Amber and the twins were cleared for travel, she frequently brought them to Colorado, where they stayed at her home which she retained there. Amber was the twins' primary caregiver and they lived with her for a vast majority of the time, while John typically stayed in Chicago. After approximately two years, John and Amber's relationship broke down, with Amber and the twins staying in Colorado and not returning to Chicago. In July 2018, John filed a petition for dissolution of marriage and sought return of the children to Illinois. Amber filed a petition to relocate with the children to Colorado. See, *e.g.*, *Marriage of Kenney*, 2023 IL App (1st) 221558, ¶¶ 4-21. After examining testimony from some 10 witnesses including the parties, their relatives, and court-appointed and privately-retained professional witnesses, the trial court entered a "detailed and expansive 54-page oral and 16-page (mostly single-spaced) written decision" awarding sole decision-making over the twins' medical and educational matters to Amber, allocating parenting time between the parties, and granting Amber's relocation petition. *Marriage of Kenney*, 2023 IL App (1st) 221558, ¶¶ 22-26, 67.

¶ 5 John appealed the trial court's decision, asserting that the court had erred in interpreting the applicable statutes and in weighing the evidence. After a thorough analysis, we affirmed, holding that there was "a total absence of any indication of manifest error" in the court's determinations and finding that its decision to allow relocation was a "perfectly reasonable one based on the record." *Marriage of Kenney*, 2023 IL App (1st) 221558, ¶¶ 65-68.

¶ 6 Following our decision, Amber filed a "Petition for Contribution to Appellate Attorneys' Fees and Costs and for Other Relief" in the trial court. Therein, Amber asserted she had incurred a total of $24,183.51 in fees in defense of the appeal instituted by John. Citing sections 503 and 508 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503, 508 (West 2022)), and insisting that John "earns a substantial income" and "has substantial assets," she asked the court to require him to pay either the sum of her appellate attorney fees and costs or "a reasonable amount." John filed a response denying his ability to pay; he asserted that Amber had "received substantial assets and financials from the parties' dissolution" from which she could pay the fees.

¶ 7 The trial court held a two-day hearing in March and June 2024.[2] Briefly, Amber's appellate counsel testified with respect to the amounts and rates he and appellate cocounsel charged Amber for the defense of the appeal and their reasonableness, as well as with respect to Amber's financial affidavits (original and updated) that were provided to the court. Appellate counsel highlighted that Amber was not employed at the time of trial nor during the appeal while John earned $300,000 last year and had recently sold property worth $620,000, and that his contributions to the children's expenses are not "super significant."

¶ 8 John testified that he is an attorney and co-owner of the firm of Faloon & Kenney and had, in the year prior, earned a gross income of $299,847. He confirmed he recently sold a parcel of property in Chicago for $620,000 and netted approximately $130,000 to $140,000 in proceeds. John estimated that, since the entry of the dissolution judgment, he has paid some $50,000 to $60,000 to his counsel and incurred "close to $25,000" in attorney fees to

[2] For the record, a portion of the court's hearing also addressed a petition filed by John seeking additional parenting time following a decision Amber made to enroll the children in a school different from that which had been contemplated at the time of the relocation hearing. Amber moved to dismiss John's petition for failure to state how the school change comprised a substantial change in circumstances, and the trial court granted the dismissal. John has not appealed that determination.

prosecute his appeal. After discussing some expenses related to the children, John stated that he does not pay a monthly amount in child support to Amber and that his total monthly debt payments total $1,400. John further testified that a week prior to this hearing, he accepted a job as an associate at a law firm with an annual salary of $150,000 and that he and his current law partner at Faloon & Kenney were contemplating shutting down that firm. While John did not anticipate collecting any significant monies on accounts receivable there, he and his partner have a holding company that owns the firm's building, which had just been listed for sale for $695,000; John earns revenue from that holding company and has a 50% interest in the property, with no mortgage on it. Additionally, John does legal work for the village of La Grange earning approximately $50,000 to $60,000 annually; he explained this amount was now being paid to his new firm and no longer directly to him. John's home is valued at $460,000 with a mortgage of $330,000; he has a balance of $4,000 in his checking account, owns firearms and watches worth $9,000, and has an IRA and Roth IRA. With respect to debts, John averred he still owes $28,000 in attorney fees to his counsel, fees to an expert witness from the trial, $20,000 to the IRS, $1,000 to the state of Illinois, approximately $60,000 to $70,000 to various credit cards, $43,000 on an outstanding HELOC, and $14,500 on an auto loan.

¶ 9 Amber testified that she had been unemployed during the years before and during the pendency of the trial and appeal, as she was the twins' primary caregiver. Beginning in 2020, she attempted to find employment and, after a multitude of interviews, had just recently returned to work with her prior employer in December 2023, earning an annual salary of $190,000 with the ability to eventually become bonus-eligible. She also consults for another company and receives $2,500 quarterly, and she has $600,000 in a retirement plan. Per the dissolution judgment, Amber does not receive any monthly child support payments from John. The parties' children reside with her about 75% of the time and she is solely responsible for their daily expenses, including care, food and clothing. John was ordered to pay some of the children's expenses (such as medical, academic and extracurricular), but he has not complied. Amber's home is valued at $1 million with a primary mortgage of $400,000 and a home equity loan of $150,000. Apart from some $150,000 in legal fees she owed for the trial, she has a credit card debt of approximately $60,000, and owes $30,000 to the IRS, taxes to the state of Colorado, and is paying down her appellate counsels' fees.

¶ 10 Following the close of the hearing and the parties' submission of their sworn financial affidavits, the court granted Amber's petition. In a lengthy written order, the court began by stating that it had heard the testimony of the parties and "considered their demeanor and credibility." It also made clear it had " reviewed all exhibits entered into evidence," and "the mere fact that a specific exhibit is not mentioned" in its order "d[id] not indicate that [it] did not take said exhibit into consideration."

¶ 11 The court then detailed the parties' assets and liabilities. As to John, the court noted that he had been employed at his own firm earning $300,000 annually, received annual compensation from his property company which owned the firm's $695,000 building (of which John was entitled to half), and earned money for his work with the village of La Grange. The court also noted that "[m]ere weeks prior to commencing" the instant hearing, John left his firm for new employment as an associate earning half his prior salary with no potential for bonuses or commissions and that his payments for his work with the village were now being made to his new employer. Similar to John's testimony, the court listed John's other assets as an IRA of about $70,000; $130,000 to $140,000 net proceeds from the sale of some property; and about $130,000 of equity in his home. It listed his debts as $28,000 to counsel, $22,000 to the IRS, $1,000 to the state of Illinois, $43,000 on a HELOC, $71,000 on credit cards, and $14,500 for an auto loan.

¶ 12 As to Amber, the court noted that she had been unemployed for some three years during the trial and appeal and had supported herself and the children via her savings. She was rehired a few months ago at her prior real estate firm, will earn $190,000 annually plus $2,500 quarterly as part of the board of another company, and has about $450,000 of equity in her home. The court noted that Amber receives no child support from John and that she estimated he owed approximately $32,000 in past-due child-related expenses. Similar to Amber's testimony, the court detailed that she still owes $89,500 to trial counsel, $35,000 to the IRS, about $6,300 to the state of Colorado, and $35,000 to $40,000 in credit cards.

¶ 13 Turning to appellate fees and section 508 of the Act, the court stated that subsection (a)(3) "specifically provides for the contribution to the other parties' [*sic*] attorneys' fees for defense of an appeal." Then, the court acknowledged that it must consider the financial ability of the parties, and that it could consider as well "the litigiousness of the parties and who precipitated these actions." Finding that "[n]either party is in a good financial position," the court commented that the litigation they have faced over the years "has been largely charged by" John who, despite recommendations from both a guardian *ad litem* and a court-appointed expert that the children should live with Amber in Colorado, went on to retain his own expert, was not successful in obtaining custody as evidenced by a "50-page" trial court decision, and failed to prevail on any issue raised in his appeal. In light of all this, the court concluded that Amber's request of $24,183.51 in appellate attorney fees and costs was "not unreasonable," and it entered a judgment for that amount in her favor and against John.

¶ 14 John filed a motion to reconsider, which the trial court denied. In its colloquy, the court commented that "the reality" was that the parties "were in a bad financial situation due to the litigiousness of this case," which had been ongoing for some eight years. It believed a total of "only" $24,183.51 in fees for an appeal was allowed by section 508(a)(3) and was "fair and reasonable," as John litigated the appeal and Amber defended against it. The court further made clear that it had not taken into consideration any conduct or litigation occurring before or during the entry of the divorce decree but, rather, "only the fact" that John "litigated the appeal" and "the cost of the appeal *** alone."

¶ 15 ANALYSIS

¶ 16 On appeal, John asks that we reverse the trial court's award of appellate attorney fees to Amber. He contends that the court's decision was against the manifest weight of the evidence "because it was not based on the evidence," which he insists demonstrated Amber had the ability to pay her own fees and, thus, made her ineligible to receive fees under the Act. He further contends that the court abused its discretion "by failing to exercise it" when it did not make findings on the parties' financial abilities to pay the fees. We disagree.

¶ 17 To begin, we set forth the applicable standard of review, as John seems to conflate abuse of discretion and manifest weight standards. That is, he acknowledges at the outset of his brief that a trial court's decision to award attorney fees is reviewed for "abuse of discretion," but in the next sentence, without more, states that a decision "is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent." To be clear, it is well-established that a trial court's decision to award attorney fees within the context of the Act will be reversed only when there is an abuse of discretion. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005); accord *In re Marriage of Haken*, 394 Ill. App. 3d 155, 160 (2009); see also *In re Marriage of Tronsrue*, 2025 IL 130596, ¶ 29; *In re Marriage of Bussey*, 108 Ill. 2d 286, 299 (1985) (awarding of attorney fees is "within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion"). A trial court abuses its discretion only "when it acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *Haken*, 394 Ill. App. 3d at 160; accord *In re Marriage of O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 60 (abuse occurs only when decision is "arbitrary, fanciful, or unreasonable, or where no reasonable person would take the same view"). Moreover, we will not substitute our judgment for that of the trial court regarding the decision to award attorney fees and, instead, we will affirm "if there is any basis [in the record] to support the trial court's findings." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002).

¶ 18 John does not dispute that the instant matter is governed by section 508(a)(3) of the Act. That section states, in pertinent part:

> "(a) The court from time to time, after due notice and hearing, and after

considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** Awards may be in connection with the following:

***

(3) The defense of an appeal or any order or judgment under this Act, including the defense of appeals of post-judgment orders." 750 ILCS 5/508(a)(3) (West 2024).

Here, following the trial court's decision awarding sole decision-making over the twins' medical and educational matters to Amber, allocating parenting time between the parties, and granting Amber's relocation petition, John filed an appeal. Amber was called upon to defend that appeal and did so. Clearly, section 508(a)(3) applies.

¶ 19 What John does dispute is the trial court's determination that Amber met her burden under section 508(a)(3) to merit an appellate fee award at all. Citing *In re Marriage of Heroy*, 2017 IL 120205,[3] he claims that Amber was required to establish she was unable to pay the fees and that he was able to do so. He insists that, because the "largely uncontested" evidence showed that Amber "was in a slightly better position" financially than him and that Amber "had already paid her attorneys the lion's share of the fees incurred on appeal," she did not meet her burden and the trial court's decision was in error.

¶ 20 John is correct in citing *Heroy* and in stating that a party seeking an award of attorney fees under the Act "must establish that he or she is unable to pay his or her attorney fees and

[3] John consistently miscites *Heroy* as "2017 IL 129295;" the correct citation of that case is as provided herein.

that the other party is able to do so." Indeed, the trial court here cited to and relied on *Heroy* in its decision as well, as it provides the appropriate standard put forth by our supreme court, namely, that the party seeking attorney fees under section 508(a) has to show an inability to pay and the other spouse's ability to pay. See, *e.g.*, *Heroy*, 2017 IL 120205, ¶ 19; accord *Schneider*, 214 Ill. 2d at 174.

¶ 21 However, that is all John cites to in his brief regarding *Heroy*'s principles, and he immediately conducts a comparison of the parties' financials to argue that because Amber has financial resources and because she has virtually paid her own appellate fees in full already, she has not shown an inability to pay. Yet, John ignores several critical concepts outlined in *Heroy* that apply here. Importantly, our supreme court took the time in that case to elaborate on what the inability-to-pay standard specifically means. The *Heroy* court clarified that "the inability to pay standard was never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance." *Heroy*, 2017 IL 120205, ¶ 19. It explained that " 'financial ability does not mean destitution[ ]' " (*Heroy*, 2017 IL 120205, ¶ 19 (quoting *Kaufman v. Kaufman*, 22 Ill. App. 3d 1045, 1050 (1974)), and " 'it is not necessary for the spouse seeking the fees to divest her capital assets [citation], deplete her means of support, or undermine her economic stability [citations] in order to pay [the attorney fees]' " (*Heroy*, 2017 IL 120205, ¶ 19 (quoting *In re Marriage of Weinberg*, 125 Ill. App. 3d 904, 919 (1984) (citing *In re Marriage of Smith*, 100 Ill. App. 3d 1126 (1981), and *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967 (1982))). Instead, a party is considered to be unable to pay if "the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *Heroy*, 2017 IL 120205, ¶ 19.

¶ 22 After setting forth these principles, the *Heroy* court went on to examine the parties' financial statuses in that case. The evidence showed that that ex-wife, who had petitioned for fees, had received assets worth almost $5 million at the time of the divorce, but by the time of the fee petition, her assets had fallen to $2 million largely due to her payment of attorney fees. See *Heroy*, 2017 IL 120205, ¶ 21. She also had minimal prospects for increasing her retirement account (which was being threatened due to fee payments she was making) and for employment, as she had forgone her career to raise the couple's children and would most likely not be able to resume her career as a librarian due to changes in the industry. See *Heroy*, 2017 IL 120205, ¶ 2. By comparison, the ex-husband had received only $4 million in assets at the time of the divorce, but his net worth had since increased, as he had retained an interest in his family's business and in investment and retirement accounts. See *Heroy*, 2017 IL 120205, ¶ 22. Although the ex-wife certainly could have paid the entirety of her attorney fees if she used her retirement account, the *Heroy* court found ample support for the conclusion that she had an inability to pay, and the ex-husband had the ability to pay, her attorney fees. See *Heroy*, 2017 IL 120205, ¶ 22 (finding trial court had not abused its discretion when it ordered ex-husband to pay $160,000 toward ex-wife's attorney fees).

¶ 23 In line with the principles and holding of *Heroy*, we find that the trial court in the instant cause did not abuse its discretion when it ordered John to pay Amber's appellate attorney fees in the amount of $24,183.51. Contrary to John's insistence, Amber was not required to show she has absolutely no resources available to her to pay her appellate attorney fees in order to prevail; nor was she required to deplete all her assets to do so. And, again contrary to John's insistence, the record is clear that the trial court examined the evidence detailing both parties' ability and inability to pay to reach its determination.

¶ 24 The trial court began its written order by stating that it had heard the parties' testimony and "considered their demeanor and credibility." It further stated that it had reviewed "all the exhibits entered into evidence," which included their original and updated financials. And, the court made explicitly clear that "the mere fact that a specific exhibit is not mentioned" in its order "d[id] not indicate that [it] did not take said exhibit into consideration." Then, the court spent the next several paragraphs detailing John and Amber's assets, liabilities, and fiscal circumstances, which very closely tracked the testimony provided by the parties and remains uncontroverted. As to John, the court noted he is a 55-year-old attorney who, in the year preceding the fee hearing, earned about $300,000 while employed as a partner in his own law firm. He also received $50,000 to $60,000 in compensation for work for the village of La Grange, and an additional $30,900 from the holding company he and his law partner owned which managed/owned the building housing their law practice. John and his partner had recently listed that building for sale for $695,000; John has a 50% ownership interest in that property, which carries no mortgage and is otherwise unencumbered. John also sold other property he owned and netted $130,000 to $140,000 in proceeds from that sale, has some $130,000 in equity in the home in which he currently resides, and maintains an IRA worth $69,094. The evidence did not show, and John did not claim, that he had ever been unemployed before, during, or after the appeal.

¶ 25 As for his liabilities, the court noted John's testimony that since the underlying trial, he has paid his attorneys $50,000 to $60,000 and he estimates he still owes them $28,000.

Apart from a home mortgage, he owes the IRS $22,000, the state of Illinois $1,000 (taxes), a HELOC of $43,000, credit cards approximating $71,000 and an auto loan of $14,500. The court also found it worth mentioning that, "[m]ere weeks prior to commencing this hearing" on Amber's appellate fee petition, John left his own law firm where he was a partner and joined another firm as an associate—a firm which John testified paid him, at $150,000, just half of his prior salary; covered only his mileage and a club membership; had not discussed with him a bonus or commission scale; and was netting the extra money he earned from his work with the village.

¶ 26 With respect to Amber, the court noted she owns a home in Colorado worth $1 million, encumbered by a mortgage of $400,000 and a second lien of $150,000, leaving her with $450,000 in equity. As the twins' primary caregiver since their birth, she was unemployed throughout both the trial and John's appeal, which spanned several years. After a three-year-long job-search, she was finally rehired at her prior commercial real estate firm in December 2023, only a few months before the hearing on the fee petition, with an annual salary of $190,000, plus potentially $10,000 a year in additional compensation for attending directors' meetings of the board of another company. Amber further testified she has $600,000 in a retirement plan.

¶ 27 As for her liabilities, the court noted that Amber has paid some $80,000 in attorney fees. It was also cognizant that Amber, with whom the parties' children live the vast majority of the time, receives no child support from John, and it noted her testimony that he owes her approximately $32,000 in past-due court-ordered child expenses. And, the court detailed that Amber still owes $89,500 in attorney fees, $35,000 to the IRS, $6,338 to the state of

Colorado (taxes), and that she withdrew $50,000 from her retirement account to pay her credit card debt, which now has a current balance of $35,000 to $40,000 still owed.

¶ 28 Based on all this, the trial court concluded that while "[n]either party is in a good financial position," Amber was entitled to the appellate fees requested. The evidence before us amply supports the trial court's holding.

¶ 29 From our review of these numbers, it becomes clear that, while Amber has more equity in her home and more money in her retirement account, John owns more real estate, has significant interest in unencumbered property, has already netted profits from a property sale, and in the prior year had multiple revenue sources apart from his main employment, including from his property company and from his work with the village of La Grange. Perhaps most significant, however, are the parties' employment figures. John is an attorney who owned his own law firm, was a partner, and earned an annual salary of $300,000 in the year prior to the fee hearing. Additionally, he had been employed throughout the parties' marriage, their divorce, his appeal, and the instant trial regarding fees. Comparably, Amber had been unemployed since the twins were born in December 2016, when she became their primary caregiver. This was the case throughout the marriage, the divorce and the appeal, and she had only recently begun working again. She testified that she had been supporting herself and the children via her savings and had already withdrawn $50,000 from her retirement account.

¶ 30 John makes much of, and believes this case turns on, the fact that his salary is now $150,000 per year while Amber's is $190,000. This is a red herring. Yes, Amber would technically be earning more at her job; however, she only became employed in December

2023, about three months before the fee petition hearing, and she had been unemployed for many years before that. Meanwhile, John's decrease in salary did not begin until early 2024, six months after Amber filed her appellate fee petition and right before the March 2024 hearing on it. In the years prior, John earned considerably more than the unemployed-Amber, as exhibited by the $300,000 from his legal salary in 2023 alone, plus the $50,000 to $60,000 he was earning annually from his work for the village of La Grange.

¶ 31 Additionally, and just as the trial court noted, the timing of, and testimony surrounding, John's decision to forego his employment at his own firm cannot go unnoticed. We find it incredibly interesting that only weeks before the hearing date on Amber's appellate fee petition, John had begun contemplating leaving his practice and his position as a partner to take a job as an associate earning half his current salary, with the only benefits provided being the coverage of his mileage and a club membership. He testified he accepted that position only days before he appeared for the hearing. He further testified that his annual compensation from the village of La Grange would now be absorbed by that firm and was included in, and no longer separate from, his new $150,000 salary. A licensed attorney since 1993,[4] John did not provide any explanation for this decision, and when asked, he could not provide any testimony about whether he was bonus-eligible or would be receiving any commission or originating fees for the clients he brought to the new firm. He also admitted that his current firm was still operating and would remain open until "the end of the year," (*i.e.*, through 2024), during which time he would be recouping accounts receivable.

[4] See *BAC Home Loans Servicing, LP v. Popa*, 2015 IL App (1st) 142053, ¶ 21 (we may take judicial notice of Attorney Registration and Disciplinary Commission's online records).

¶ 32 What is more, the parties' financial affidavits, submitted to the trial court as exhibits, demonstrate wide discrepancies in the parties' debts that John conveniently never notes in his brief on appeal. While the trial court did not provide a direct discussion of the affidavits in its written order, it did state at the outset of its decision that this did not mean it did not consider them. As they are part of the record before us, we may do so, as well. See, *e.g.*, *Ricketts*, 329 Ill. App. 3d at 177 (reviewing court will affirm trial court's holding "if there is any basis [in the record] to support" its findings). Tellingly, in his affidavit, John reported his monthly household expenses to be $4,509.23 and his total monthly living expenses to be $10,113.24. Per the record and his own testimony, he does not pay anything in child support to Amber for the twins, and he calculated his monthly debt payment to be $1,400. In comparison, Amber's financial affidavit shows her monthly household expenses total $8,504.49, nearly double John's. Moreover, her monthly living expenses, which include the fact that she must support the twins on her own, are $16,053.17, and her monthly debt payment is $7,956.67—six times more than John's.

¶ 33 Ultimately, we believe this evidence sufficiently demonstrates Amber's inability to pay her appellate attorney fees according to the principles of *Heroy*. While she has assets and is not destitute, her expenses far exceed John's, her employment history falls far short of his, and she has already tapped into her retirement account to pay her attorney fees and support herself and the twins. As John points out, she may have already paid a considerable amount of those fees, but she, at the same time, still owes a considerable amount. She was not required to show she has $0 in her bank account, and she certainly was not required to effectively send herself to collections for failing to pay those fees in order to prevail here.

Concomitantly, John's ability to pay is clear, as he has worked at a higher salaried position for years, has had additional streams of income, and his expenses are minimal in comparison. Therefore, we find no abuse of discretion.

¶ 34 As a final matter, John insists that, by granting Amber's appellate fee petition, the trial court "in effect sanctioned [him] *sua sponte*" for exercising his legal right to appeal the divorce decision. He takes issue with the court's reliance on *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, and *In re Marriage of Benjamin*, 2017 IL App (1st) 161862, and claims "the trial court decided Amber's [p]etition, not by evaluating the parties' ability and inability to pay the fees in question as shown by the evidence, but according to the trial court's belief that John was to blame for the extent of the already concluded pre-decree litigation." We disagree.

¶ 35 First, we find John's assertion that the trial court did not base its decision on an evaluation of the parties' ability and inability to pay to be entirely unconvincing. As we have discussed, the trial court conducted a two-day hearing focusing primarily on the parties' fiscal situations, examined their original and revised financial affidavits, and issued a six-page written order detailing their assets and liabilities. We have reviewed that decision at length. For John to suggest, let alone declare, in his brief that the court did not evaluate the parties' ability and inability to pay is, to put it mildly, a mischaracterization.

¶ 36 Moreover, there is nothing inappropriate in a trial court's consideration of the litigiousness of the parties, in addition to their ability to pay, when deciding whether to grant an attorney fee petition under section 508 of the Act. Both *Patel* and *Benjamin*, cited by the trial court in its order, stand for this very proposition. In *Patel*, after examining the parties' ability to pay, the trial court ordered the ex-wife to contribute $60,035.50 in attorney fees incurred by the ex-husband, noting that it had also considered her behavior during the divorce litigation which included, in part, her failure to comply with discovery, her violation of multiple court orders, and her cancellation of scheduled depositions. See *Patel*, 2013 IL App (1st) 112571, ¶ 122. In affirming the trial court's decision, our court noted that it was permissible for a trial court to consider a party's conduct during a legal matter, plainly stating, "[u]nnecessarily increasing the cost of litigation is a relevant factor in *** the allocation of attorney fees." *Patel*, 2013 IL App (1st) 112571, ¶ 117. Similarly, in *Benjamin*, a trial court granted an ex-wife's section 508 petition for attorney fees where the ex-husband had entered into an agreed judgment to make payments to her upon their divorce, but then attempted to void that agreement without any legal basis and refused to make the final payment to her of $150,000, instead litigating the matter for three years and resulting in a three-day hearing before the trial court. See *Benjamin*, 2017 IL App (1st) 161862, ¶¶ 9-13. Again, our court affirmed, stating that, in addition to the ability to pay, "[a] court can also consider the identity of the party who precipitated the need for the legal proceedings when making an award" of attorney fees. *Benjamin*, 2017 IL App (1st) 161862, ¶ 30.

¶ 37 John provides no legal basis to counter *Patel* and *Benjamin* and we have found, in fact, several cases that echo their holdings. See *In re Marriage of Gabriel and Shamoun*, 2020 IL App (1st) 182710, ¶ 74 (attorney fee award affirmed where, after considering parties' ability to pay, trial court also noted ex-husband's discovery violations which increased the cost of litigation); *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 98 ("[a]nother relevant consideration [in determining whether an award of attorney fees is appropriate] is any conduct by either party that unnecessarily increased the cost of litigation"); see also *In re Marriage of Bradley*, 2013 IL App (5th) 100217, ¶¶ 40-41 (finding trial court acted within its discretion in allocating additional attorney fees to ex-wife based on ex-husband's failure to comply with orders, discovery violations, and actions "above and beyond" those necessary to resolve divorce); *In re Marriage of S.D. and N.D.*, 2012 IL App (1st) 101876, ¶ 55 (no abuse of discretion where trial court considered spouse's refusal to abide by already-negotiated marital settlement agreement and request for additional support in assessing attorney fees, as this " 'increased time, cost and difficulty of litigation' ").

¶ 38 In the instant matter, after examining John and Amber's ability and inability to pay, the court stated it could "also *** look at the litigiousness of the parties and who precipitated these actions." It concluded that the "litigation has been largely charged by" John who, after the guardian *ad litem* and the court's expert witness during the divorce litigation both issued reports certifying that the twins should reside with Amber in Colorado, was "not satisfied" and retained his own expert. It further commented that, after he was "not successful" in that litigation, John "again was not satisfied and chose to appeal," where he "failed to prevail on any issue" he raised in that proceeding.

¶ 39 We find no error here. Undeniably, the trial court's statements are true. John instituted the appeal of the divorce decision, specifically, its custody and relocation determinations which held in favor of Amber, gave her residential custody of the twins, and allowed her to move them to Colorado. Obviously, John had the right to appeal. However, pursuant to *Patel* and *Benjamin*, the trial court had the right to consider the context surrounding his decision to do so.

¶ 40 As the trial court here recalled, and as we found quite significant in our affirmance of its divorce decision, the court had appointed a guardian *ad litem* and an expert to evaluate the parties, the children, and the custody situation. Both those witnesses submitted lengthy and detailed reports declaring that it was in the best interest of the twins to live in Colorado, not Illinois, and with Amber, not John. See *Kenney*, 2023 IL App (1st) 221588, ¶¶ 18, 21. We do not find fault with John, who was seeking equal parenting time, in petitioning the trial court to allow him to obtain his own expert witness, which he did. Yet, that witness, Dr. Louis Kraus, came to a similar conclusion as the guardian and the court's expert. Though opining that the children should not be relocated, Dr. Kraus admitted there were "immediate enhancement[s]" for the twins should they live in Colorado that John could not provide in Illinois. *Kenney*, 2023 IL App (1st) 221588, ¶¶ 19.[5] Most significantly, Dr. Kraus testified that, regardless of where the twins lived, John "should not be given [the] equal parenting time" he sought. *Kenney*, 2023 IL App (1st) 221588, ¶¶ 21, 64.[6] And, he revealed that John admitted to him Amber had always been the twins' primary parent and "typically performed 75% of the child care duties and he performed about 25%." *Kenney*, 2023 IL App (1st) 221588, ¶ 19. This was directly in line with testimony given by the guardian *ad litem* and the court-appointed expert, who both stated that John, separately, made the same admission to them. See *Kenney*, 2023 IL App (1st) 221588, ¶¶ 18, 21.

[5] These included that Amber's parents lived nearby the twins in Colorado, they aided in their care, and they spent considerable time with twins, while John did not have a similar support system.

[6] We stated for the record: "Dr. Kraus specifically admitted that John should not receive equal parenting time *even if* Amber were to live with the twins in Illinois. In fact, Dr. Kraus went further to state John should have only alternating weekends and one weekday overnight each week with the twins, were they to live" in Illinois. (Emphasis in original).

¶ 41 Yet, with the guardian and the court's expert determining that the twins should live in Colorado; with all three testifying experts, including John's own, stating they should live with Amber and he should not receive equal parenting time; and with the trial court's "detailed and expansive" 54-page oral and 16-page written decision outlining the reasons in support of Amber retaining custody according to pertinent statutes (*Kenney*, 2023 IL App (1st) 221588, ¶ 67); John still pursued an appeal seeking equal custody and the return of the children to Illinois. He lost on every legal basis he raised. See *Kenney*, 2023 IL App (1st) 221588, ¶ 65. Again, he had the right to appeal, but that did not prevent the trial court in the current matter from considering that he did so, the ramifications of his choice and, inevitably, the fact that appellate attorney fees were incurred by Amber, who had to defend that appeal after some six years of litigation precisely because of his actions. And, lest any credence be given to John's blatant comments in his brief that the trial court here improperly relied on his "pre-decree litigiousness" as opposed to post-decree actions, the record here is to the contrary, as evidenced by the court's colloquy in denying his motion to reconsider. That is, the court clearly stated that it had not taken into consideration any litigation taking place during those proceedings or before the entry of the divorce decree but, rather, "only the fact" that John "litigated the appeal" and "the cost of the appeal *** alone." Thus, we find no error.

¶ 42 CONCLUSION

¶ 43 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 44 Affirmed.