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Doc#: 0532027186 Fee: \$36.50  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 11/16/2005 04:30 PM Pg: 1 of 7

JUDGMENT entered against MICHAEL DiFOGGIO in favor of DIANE M. BRUZAS on June 28, 2002  
against MICHAEL DiFOGGIO in favor of DIANE M. BRUZAS in Case # 84 D 21526 Consolidated with  
84 D 6767, "In re the Marriage of Annette DiFoggio and Michael DiFoggio"  
(June 28, 2002 Judgment Order)

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Judgement Debtor: Michael DiFoggio  
Last Known Address: 3137 S. Normal, Chicago, IL 60609

\$16,003.82 Judgment entered in favor of Diane M. Bruzas and against Michael DiFoggio pursuant to June 28, 2002 Order.

Permanent Real Estate Index Number(s): 17-33-114-020-0000  
17-33-114-021-0000

Address of Property: 3249 S. Normal, Chicago, IL 60616 and  
3251 S. Normal, Chicago, IL 60616

Legal Description: Attached hereto as "Exhibit A"

NAME OF PREPARER AND MAIL TO:

DIANE M. BRUZAS  
120 N. LaSalle Street  
Suite 1040  
Chicago, IL 60602  
(312) 236-2720

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STATE OF ILLINOIS )  
                                  )     SS.  
COUNTY OF COOK    )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:                    )  
  )  
ANNETTE DIFOGGIO                            )  
                                  Petitioner,    )  
  )  
AND    )  
  )  
MICHAEL D. DIFOGGIO, III,                    )  
                                  Respondent    )

NO. 84 D 21526  
Consolidated with 94 D 6767

### ORDER

THIS CAUSE coming before the Court, on Petitioner's former attorney DIANE BRUZAS' Petition for Attorney's Fees, Petitioner ANNETTE DIFOGGIO appearing in her own behalf, Respondent, MICHAEL D. DIFOGGIO, III appearing by and through his attorney ENRICO MIRABELLI of the law firm of Nadler, Pritikin & Mirabelli, all parties appearing in open Court, the Court having conducted a hearing and having heard the testimony of the parties and the arguments of counsel, having reviewed the Illinois Marriage and Dissolution of Marriage Act, and the relevant case law, and now being fully advised in the premises:

#### FINDS THAT:

1. This Court has jurisdiction of the parties hereto and the subject matter thereof.
2. DIANE BRUZAS ("BRUZAS") was the attorney of record for Petitioner ANNETTE DIFOGGIO ("ANNETTE") on post-judgment matters, said representation commencing on or about October 1988 until on or about November 13, 1995 when BRUZAS withdrew from the case. By order entered July 22, 1999, the court disposed of the issues raised in petitions for fees requested for the aforementioned time period. The instant order disposes of BRUZAS' fee petition for fees claimed.
3. The instant order pertains to a petition for attorney's fees and cost for the period of April 13, 1998 until September 28, 1998 totaling \$29,179.71. The fees sought in this petition relates primarily to time expended in the review of transcripts and preparation of closing argument. This fee petition was brought pursuant to Section 5/508 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"). BRUZAS' sought payment of her fees and costs from Respondent MICHAEL DIFOGGIO ("MICHAEL") or ANNETTE.
4. BRUZAS charged \$175.00 per hour for office time and \$225.00 per hour for court time. In BRUZAS' fee petition filed, BRUZAS billed 144.20 office hours at \$175.00 per hour, totaling \$25,235.00 and 12.5 court hours at \$225.00 per hour, totaling \$2,812.50 and \$1,132.21 in costs for a total of \$29, 179.71 in fees and costs.
5. In awarding attorney's fees to a party under Section 5/508, the Court looks to certain factors, including: 1) the skill and standing of the attorneys; 2) the nature of the controversy and the novelty and difficulty of the questions at issue; 3) the amount and importance of the subject matter from a

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family law standpoint; 4) the degree of responsibility involved in the management of the case; 5) the time and labor extended; 6) the usual and customary charge in the community; and 7) the benefits resulting to the client. In re Marriage of Landfield, 209 Ill.App.3d 678 (1<sup>st</sup> Dist. 1991). See also, Rules of Professional Conduct; Rule 1.5.

6. In determining whether a spouse may recover attorney's fees from the other in divorce proceedings, the relative financial position of the parties must be considered. In re Marriage of Drone, 217 Ill.App.3d 758 (5<sup>th</sup> Dist. 1991); 750 ILCS 5/508.

## Parties Respective Abilities to Pay

7. At trial, the parties entered into the following stipulation:  
 "1. That MICHAEL D. DIFOGGIO has the financial ability to contribute to the legal fees and costs incurred by ANNETTE DIFOGGIO, n/k/a ANNETTE FREEMAN to the extent that this Court orders him to do so and to the extent that this Court finds that ANNETTE FREEMAN lacks the financial ability to pay some or all of the legal fees and costs incurred by her and to the extent that this Court finds that the fees and costs charged by DIANE M. BRUZAS are reasonable, allowable, and necessary as per the testimony of the parties, the expert(s) (if any), case law, evidence and argument and opinion of this Court."
8. The finding in paragraphs seven (7) through twelve (12) of the July 1999 order are incorporated and made a part of this order.
9. ANNETTE'S federal income tax returns for the years 1991, 1992, 1993, and 1994 were presented to the Court and introduced into evidence. ANNETTE'S annual adjusted gross income for those years were, respectively: \$18,847; \$14,852; \$12,111; and \$6,419.
10. MICHAEL'S federal income tax returns for the years 1991, 1992, 1993, 1994, and 1995 were presented to the Court and introduced into evidence. MICHAEL'S annual adjusted gross income for those years were, respectively: \$19,745; \$60,443; \$77,565; \$92,978; and \$63,847. With the exception of 1991, all of MICHAEL'S federal income tax returns, which were introduced into evidence, were joint returns filed by MICHAEL and his wife.
11. In addition to her federal income tax returns, ANNETTE also introduced into evidence her Income and Expense Affidavit for the 1996 year. The affidavit shows a gross monthly income of \$0.00 and expenses totaling in excess of \$4,000.00 per month.
12. This Court finds that based upon the evidence submitted to the Court and the stipulation entered into by the parties, ANNETTE lacks the financial ability to pay her attorney's fees and MICHAEL has sufficient financial resources to contribute to ANNETTE'S legal fees. Accordingly, the Court finds MICHAEL should contribute to ANNETTE'S legal fees.

## Skill and Standing of Attorney, Usual and Customary Charges in Community, Importance of the Subject Matter

13. BRUZAS has been licensed to practice law in the State of Illinois since 1978 and has concentrated her practice in the field of matrimonial law since 1980. She is a member of the American Bar Association, the Illinois Bar Association, the Chicago Bar Association and the Women's Bar Association. She is an experienced trial and appellate lawyer in the field of matrimonial law, having conducted or participated in over twenty (20) trials.
14. BRUZAS charged \$175.00 per hour for office time and \$225.00 per hour for court time. The Court finds these rates are at the level normally charged in the legal community for the services rendered.

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15. The Court finds that the issues in this matter included the creation of a Section 503(g) trust, visitation, child support, and the defense of an appeal. The Court finds that while these issues may have been heavily litigated, the issues were not of distinguishable significance from a family law standpoint.

### Reasonableness of the Fees & Modifications for Case Novelty, Case Complexity, Benefit to the Client and Litigiousness

16. Section 5/508 of the IMDMA requires that a fee award be reasonable in amount and necessarily incurred. 750 ILCS 5/508(a).
17. The amount awarded under Section 5/508 should be fair to all parties and should reflect compensation only for reasonable and necessary services. In re Marriage of Powers, 252 Ill.App.3d 506 (2<sup>nd</sup> Dist. 1993). In addition, no party should be required to pay more than the reasonable value of legal services rendered simply because he has the ability to do so. Vendredi v. Vendredi, 230 Ill.App.3d 1061 (1<sup>st</sup> Dist. 1992).
18. Criteria which are used in determining whether attorney's fees are reasonable include the number of hours expended, the skill and standing of the attorney, the difficulty of the questions at issue, the importance of the subject matter from a family law standpoint, the degree of responsibility involved in management of the case, the usual and customary charge for such services in the community, and the benefit resulting to the client. In re Marriage of Winton, 216 Ill.App.3d 1084 (2<sup>nd</sup> Dist. 1991); In re Marriage of Landfield, 209 Ill.App.3d 678 (1<sup>st</sup> Dist. 1991).
19. Consideration of attorney's fees for duplicative time and unnecessarily applied time are proper in making an award of attorney's fees. In re Marriage of Kosterka, 174 Ill. App.3d 954 (2<sup>nd</sup> Dist. 1988). The fee petitions must also contain sufficient information regarding the specific nature of the services performed. Kaiser v. MBPC Am. Props. Inc., 164 Ill.App.3d 978 (1<sup>st</sup> Dist. 1987). It is well established that the party seeking the fees, whether for himself or on behalf of a client, always bears the burden of presenting sufficient evidence from which this court can render a decision as to their reasonableness. Id. at 983. An appropriate fee consists of reasonable charges for reasonable services. Id. at 984. However to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, since this type of data, without more, does not provide this court with sufficient information as to their reasonableness, a matter which cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. Id. at 984. Rather, the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor. Id. at 984. Because of the importance of these factors, it is incumbent upon the petitioner to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. Id. at 984. In determining the reasonableness of the fees billed, a trial judge may rely on the pleadings, affidavits on file, and his own experience. In re Marriage of Sanda, 245 Ill.App.3d 114 (2<sup>nd</sup> Dist. 1993).
20. In determining the amount of attorney's fees to be awarded, the Court should consider the novelty and difficulty of the questions at issue, the nature of the dispute, and the benefits resulting to the client. Christian v. Christian, 69 Ill.App.3d 450 (1979) See also. Kaiser v. MBPC Am. Props. Inc., 164 Ill.App.3d 978, 984 (1<sup>st</sup> Dist. 1987).
21. The Court has considered the results obtained for ANNETTE by BRUZAS. In collecting \$23,333.00 in retroactive child support for ANNETTE, BRUZAS incurred over \$79,179.71 in attorney's fees and costs. Although BRUZAS was unsuccessful in her attempt to defend the \$2,000.00 child support order of Judge Solganick, the Court finds the defense of the order was pursued in good faith to a great extent. BRUZAS also attempted to show MICHAEL'S substantial income, but she was ultimately unable to prove MICHAEL had the substantially greater income. Testimony was adduced at trial that during BRUZAS' tenure as ANNETTE'S attorney of record, certain settlement offers were made and rejected by BRUZAS and ANNETTE. Upon the entry of the State's Attorney as attorney of record for ANNETTE however, the matter was settled with the creation of a \$8,000.00 Section 503(g)

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- trust and a child support award of \$1,300.00 per month. It was adduced at trial that the settlement offers made to BRUZAS were substantially similar to the settlement ultimately made and recorded in an agreed order entered between the parties. The Court finds that the benefits obtained for ANNETTE by BRUZAS were disproportionate to the time and effort expended to obtain such results. In making its award of attorney's fees, the Court has considered these factors and has adjusted the attorney's fees accordingly.
22. The finding in paragraphs sixty-nine (69) through seventy-four (74) of the July 1999 order are incorporated and made a part of this order.
  23. Fees for time spent pursuing legal fees have been reduced by Illinois courts based on the ratio of number of hours spent pursuing fees and the number of hours spent on the merits of the case. Countess Cary v. CHA, 1992 U.S. Dist. LEXIS 15013 (7<sup>th</sup> Cir. 1992). It is clear that BRUZAS spent just as much time pursuing fees for herself as she did pursuing her client's action. Based upon the disproportionate amount of time BRUZAS spent pursuing fees, this Court should reduce the award of attorney's fees.
  24. In the instant fee petitions, the Court finds there are \$7700.00 in fees for services, which are inadequately described in the fee petition. Descriptions such as "read trial transcripts," and additional "reading of trial transcripts," are not sufficiently specific to allow the Court to determine the reasonableness of the fees charged. The Court has also examined the contemporaneous time records submitted and admitted into evidence by BRUZAS and finds those contemporaneous records also do not contain sufficient description from which the Court can determine reasonableness of the items charged. BRUZAS should recover fees for the reasonable value of her services.
  25. This court finds a reasonable fee for services rendered is \$15,426.12. Of the \$28,047.50 in attorney's fees requested in the instant fee petition, the Court finds the award of attorney's fees should be reduced by \$12,621.38 for the reasons given above.
- Costs
26. The general rule in Illinois is that in the absence of a statute or an agreement, a litigant in a civil action may not recover attorney's fees or the ordinary expenses of litigation from his adversary. Saltiel v. Olsen, 85 Ill.2d 484, 488-89 (1981). Section 5/508 of the MDMA allows a court to assess against one party the attorney's fees and costs of the opposing party. 750 ILCS 5/508(a).
  27. In the single written retainer agreement executed by BRUZAS and ANNETTE in 1991 which was presented to the Court and admitted into evidence, BRUZAS and ANNETTE agreed that ANNETTE would be responsible for costs, which were defined as "out of pocket expenses".
  28. Duplicating costs however, unless they are extraordinary, are normally associated with office overhead expenses and are therefore included within the attorney's hourly rate. Losurdo Bros. v. Arkin Distributing Co., 125 Ill.App.3d 267, 276 (2<sup>nd</sup> Dist. 1984).
  29. In the fee petition at issue, BRUZAS billed for ordinary photocopying expenses. BRUZAS billed \$530.70 in ordinary duplicating expenses. The Court finds that the \$530.70 photocopying expense is an ordinary expense, which is normally associated with office overhead expenses. As these types of expenses are included within, and subsidized by, the attorney's hourly rate schedules, this type of ordinary photocopying expense should be omitted from the fee petitions. Accordingly, the Court reduces the award of litigation costs by \$530.70.
  30. In the fee petition at issue, BRUZAS billed for special postage. BRUZAS billed \$3.81 in special postage. The Court finds that the \$3.81 special postage is an ordinary expense, which is normally associated with office overhead expenses. As these types of expenses are included within, and subsidized by, the attorney's hourly rate schedules, this type of ordinary postage expense should be omitted from the fee petition. Accordingly, the award of litigation costs is reduced by \$3.81.

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31. In the fee petition at issue, BRUZAS billed \$20.00 in facsimile costs. The Court finds that in today's technologically advanced world, a facsimile machine is as basic an office appliance as a copier. Use of a facsimile machine can obviate the need for more expensive messenger services and expedite service of court papers. Given the increasingly familiar presence of the facsimile machine in the business office, the Court finds that facsimile costs are those types of expenses which are normally associated with office overhead expenses and such expenses are included within, and subsidized by, an attorney's hourly rate. Accordingly, the Court reduces the award of litigation costs by \$20.00. Losurdo Bros v. Arkin Distributing Co., 125 Ill.App.3d 267, 276 (2<sup>nd</sup> Dist. 1984).
32. The Court finds the other costs billed by BRUZAS and contained within her fee petition at issue in this trial were reasonable and necessarily incurred. The Court therefore should award the sum of \$577.70 for litigation costs.

**IT IS HEREBY ORDERED:**

- A. Judgment is entered in favor of BRUZAS and against MICHAEL for \$15,426.12 in attorney's fees for legal services rendered to ANNETTE between April 1998 and September 1998 and for time spent by BRUZAS in pursuing these legal fees.
- B. Judgment is entered in favor of BRUZAS and against MICHAEL for \$577.70 in litigation costs incurred in pursuing matters on behalf of ANNETTE and for costs incurred by BRUZAS in pursuing legal fees.
- C. Judgment is entered in favor of DIANE M. BRUZAS and against MICHAEL D. DIFOGGIO, III for the sum of \$16,003.82, said sum representing 100% of the total fees and costs awarded to BRUZAS by this Court for attorney's fees and costs incurred by ANNETTE in this matter. Enforcement of this order is stayed for thirty (30) days.

ENTERED:

**ENTERED**

JUN 28 2002

**JUDGE PATRICIA BANKS-1626**

Judge Patricia Banks

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## EXHIBIT "A"

**Lot 21 in Seat and Smith's Subdivision of the South 1/2 of Block 5 in Canal Trustees' Subdivision of Section 33, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois**

**PIN# 17-33-114-021-0000**

**Address: 3249 S. Normal, Chicago, IL 60616**

**AND**

**Lot 20 in Seat and Smith's Subdivision of the South 1/2 of Block 5 in Canal Trustees' Subdivision of Section 33, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois**

**PIN# 17-33-114-020-0000**

**Address: 3251 S. Normal, Chicago, IL 60616**

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