No. 18-

IN THE

Supreme Court of the United States

VICTORIA VASCONCELLOS,

Petitioner,

v.

DEBRA HAMLIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Supreme Court of Illinois denied leave to appeal from a decision of the Illinois Appellate Court, which had upheld a ruling of the circuit court that certain assets were civil union assets after the parties ended their relationship and union, when the State of Illinois did not recognize civil unions during the length of the parties' relationship but later enacted a statute recognizing civil unions, and the parties had traveled to another state to engage in a civil union ceremony at one point during their relationship.

The question presented for review is:

Whether, under the Illinois State and U.S. Constitutions, where a same-sex couple did not enjoy the legally recognized rights and benefits of civil union or married parties at any time during their relationship in the State in which they reside, any such rights, benefits, and obligations can be imposed on them after their relationship is over by the later enactment of a statute that now first recognizes civil unions, such that one party may now by dissolution of a civil union action obtain rights in the property of the other, even when those rights were not recognized and did not exist during their relationship.

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Petitioner and respondent, a same-sex couple, entered into a relationship beginning in 1999, ending that relationship in May 2011. During their relationship, they were unable to form any legally-recognized civil union in Illinois because during that time Illinois did not recognize one. They did travel to Vermont during 2002 solely for a civil union ceremony. Illinois statutory law at the time prohibited the Vermont civil union from being recognized in Illinois.

As of May 6, 2011, the parties separated and ended their relationship, with the respondent moving out of the residence they had shared. As of that date, Illinois still did not recognize a legal relationship between same-sex couples, and in fact disavowed it.

Effective June 1, 2011, Illinois enacted the Illinois Religious Freedom Protection and Civil Union Act (the Civil Union Act, or the Act). 750 ILCS 75/1, *et seq.* The Act defined a civil union as a "legal relationship between 2 individuals, of either the same or opposite sex." 750 ILCS 75/10. The Act was passed "to provide adequate procedures for the certification and registration of a civil union and provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." 750 ILCS 75/5.

Following passage of that Act, respondent on August 19, 2011, filed a petition for dissolution of a civil union, naming petitioner. After trial, the circuit court entered a judgment of dissolution of the parties' civil union. The

circuit court first gave full faith and credit to the parties' civil union entered in Vermont on July 20, 2002. The court then by its judgment identified and distributed the parties' civil union property.

Petitioner appealed. Respondent cross-appealed. Ruling on the petitioner's appeal, the Appellate Court of Illinois held the Civil Union Act, while generally applied prospectively, would apply retroactively to any legal civil union like the Vermont civil union ceremony here that predated the effective date of the Act, and it affirmed on the petitioner's appeal. *In re Civil Union of Hamlin and Vasconcellos*, 2015 IL App (2d) 104231 (*Hamlin I*), ¶43. The court otherwise reversed on the respondent's cross-appeal, and remanded for further proceedings related to the distribution of civil union property. *Hamlin I*, ¶73.

Following remand, the circuit court entered an amended judgment of dissolution. (Appendix B) The circuit court then denied petitioner's motion to amend and reconsider that amended judgment of dissolution. (Appendix C) Petitioner appealed once again.

By written decision of March 14, 2018, the Appellate Court of Illinois affirmed the judgment and decision of the circuit court. (Appendix A) By order entered September 26, 2018, the Supreme Court of Illinois denied petitioner's petition for leave to appeal to that Court. (Appendix D)

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

STATEMENT OF THE CASE

The parties, petitioner Victoria Vasconcellos and respondent Debra Hamlin, met in 1998, entered into an exclusive dating relationship in 1999, and respondent moved in at petitioner's residence on Poplar Avenue in Elmhurst, Illinois (the Poplar home). Petitioner had purchased the home back in 1988.

As related at trial later, in July of 2002 the parties traveled to Vermont to enter a same-sex union. Respondent testified they entered a union there because Vermont allowed civil unions between same-sex couples, while Illinois did not. Petitioner likewise related they participated in the civil union ceremony in Vermont because the same-sex civil union "wasn't recognized in Illinois." Petitioner also related they had no expectation that obtaining a civil union in Vermont would have any impact on the parties or their property in Illinois.

In September 2009, petitioner started a company known as Cignot, Inc. (Cignot), by utilizing a line of credit on her home for capitalization. The company was an electronic cigarette (e-cigarette) retail enterprise. Petitioner remained sole shareholder from the inception; respondent never held any ownership interest in Cignot, and never became involved in its activities or holdings.

The parties separated as of May 6, 2011; respondent moved out of the residence, and engaged directly in a new romantic relationship with a different partner. About a month after moving out of petitioner's home, respondent purchased a property on Pick Avenue in Elmhurst, Illinois, liquidating a joint T. Rowe Price investment account she held with petitioner to use as the down payment for the new residence.

Effective June 1, 2011, Illinois enacted the Illinois Religious Freedom Protection and Civil Union Act (the Civil Union Act, or the Act). 750 ILCS 75/1, *et seq.* It defined a civil union as a "legal relationship between 2 individuals, of either the same or opposite sex." 750 ILCS 75/10. The Act was passed "to provide adequate procedures for the certification and registration of a civil union and provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." 750 ILCS 75/5.

On August 19, 2011 – following enactment of the Civil Union Act in Illinois – respondent filed a petition for dissolution of the civil union.

After various motions, including for summary judgment, the matter proceeded to trial on respondent's amended petition for dissolution.

Following trial, the circuit court on November 7, 2013, entered a judgment of dissolution of the parties' civil union. The court decreed that same-sex unions were not against public policy in Illinois, and gave full faith and credit to the parties' civil union entered in Vermont in July of 2002. The court found Cignot, the company started by petitioner with funds from her home equity line of credit, constituted "marital property" and the "vast portion of the marital assets." The court awarded Cignot to the petitioner, but required her to make a $75,000 payment to respondent.

Petitioner appealed. Respondent cross-appealed. *In re Civil Union of Hamlin and Vasconcellos*, 2015 IL App (2d) 104231 (*Hamlin I*).

The Appellate Court of Illinois, Second Judicial District, held the Civil Union Act applied prospectively, yet would apply to any legal civil union predating the effective date of the Act. *Hamlin I*, ¶43. That is, while the Act was prospective, it may operate upon antecedent facts, such as the fact of a civil union entered before the Act's effective date, like this Vermont civil union from 2002. *Hamlin I*, ¶50. The appellate court therefore upheld the trial court's recognition of the parties' civil union from Vermont in 2002, and deemed the parties' property, including Cignot, civil union property, acquired after the parties' civil union. *Hamlin I*, ¶55.

As to respondent's cross-appeal, the appellate court agreed that the division of the civil-union estate constituted an abuse of discretion, because the court assigned no value to respondent's contributions to the business, Cignot. *Hamlin I*, ¶71. The court accordingly reversed on the cross-appeal and remanded for further proceedings. *Hamlin I*, ¶73.

Following remand and additional motion practice, the circuit court on May 3, 2016, entered an amended judgment for dissolution of the civil union. (Appendix C) The circuit court again found petitioner started the business, Cignot, in 2009 during the seventh year of a nine-year relationship by using a line of credit on her home, further deeming petitioner's home her "separate, nonmarital asset." (Appendix C, at 37a, 38a)

The circuit court by its amended judgment ordered that, except for Cignot, the marital estate be "equally divided between the parties." (Appendix C, at 39a) The court awarded respondent 20 percent of Cignot, and amended the payment it had originally ordered petitioner to make to respondent from $75,000 to $109,587, to reflect this 20-percent share. (Appendix C, at 39a)

On May 31, 2016, petitioner moved in two counts to reconsider and clarify the amended judgment of dissolution. On August 4, 2016, the circuit court denied that motion. (Appendix B, 31a) Petitioner appealed.

On appeal, petitioner noted the recent pronouncement of the Illinois Supreme Court in *Blumenthal v. Brewer*, 2016 IL 118781, that Illinois continues to disfavor the grant of mutually enforceable property rights to "knowingly

unmarried cohabitants," which the court then expressly extended to same-sex couples. That case involved two women in a long-term domestic partnership. *Blumenthal*, 2016 IL 118781, ¶2. While they were together they exercised legal remedies available in Illinois at that time: they cross-adopted children in 2002, and in 2003 they registered their relationship by local ordinance through the Cook County, Illinois, "Domestic Partner Registry." *Blumenthal*, ¶7.

Petitioner noted the Illinois Supreme Court in *Blumenthal* made note of the recent decision in *Obergefell v. Hodges*, 135 S.Ct. 2584, 2604-05 (2015), recognizing that same-sex couples cannot be denied the right to marry. *Blumenthal*, ¶79. Illinois had statutorily prohibited common-law marriages, and had precluded unmarried cohabitants from enforcing mutual property rights rooted in a marriage-like relationship. *Blumenthal*, ¶10. Although the same-sex couple there were in a long-term domestic relationship but were not legally married, the Illinois Supreme Court ruled in that case since no laws were in effect to legalize their domestic relationship, one party could not pursue property rights against the other. *Blumenthal*, ¶81.

Petitioner similarly argued no such laws were in effect in Illinois to legalize their domestic relationship during the entirety of that relationship, and they had no legal rights to each other's property during their relationship. Petitioner argued that like in *Blumenthal*, neither party should not be able to pursue property rights after the relationship ended that they were not allowed to enjoy during their relationship. From beginning to end, petitioner asserted, the parties' relationship had no

recognized legal significance in Illinois as determined by Illinois statutory law and public policy. Since Illinois law would not allow the same-sex relationship to have any legal significance during its existence, Illinois law should not recognize and enforce marriage-like property rights *after* its existence.

The Appellate Court of Illinois, Second District, disagreed. (Appendix A) It found *Blumenthal* "wholly inapposite" because there, unlike in the instant matter, the parties "did not formalize their relationship." (Appendix A, 17a) The parties in the instant matter had by contrast entered into a civil union in the state of Vermont, the Appellate Court determined. (Appendix A, 18a) The Appellate Court also rejected petitioner's argument, "oft and strenuously repeated," that their May 2011 separation meant they were no longer in a relationship at the effective date of the Civil Union Act in Illinois, because they had entered that civil union in Vermont in 2002 and presented no evidence that the Vermont civil union had ever been dissolved. (Appendix A, 18a-19a)

On September 26, 2018, the Illinois Supreme Court denied petitioner's petition for leave to appeal to that court. (Appendix D)

REASONS FOR GRANTING THE PETITION

During the time this same-sex couple was in a relationship, they were denied the "constellation of benefits" that states normally confer upon couples to a marriage, because Illinois at the time did not recognize the legality of their union, and in fact declared it "null and void" by statute and as violative of public policy. The

parties were unable to gain any rights of a married-like couple. Their union was not legally recognized in Illinois, and they had no recognized legal property rights as to each other.

After the relationship was over, and once they were no longer able to enjoy the benefits of that relationship, Illinois enacted the Illinois Religious Freedom Protection and Civil Union Act, first recognizing civil unions in Illinois. Respondent later sought a dissolution of the civil union and a judgment involving distribution of property that the parties formerly had no legally-recognized rights to during their relationship. In other words, while the parties could not enjoy the wide range of any benefits during their relationship because the relationship was not legally recognized, petitioner could now be subject to the "detriment" of having her property removed and divided by a court long after the relationship ended.

This Court recognizes that excluding same-sex couples from marriage violates our Constitution. *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). Excluding same-sex couples from the benefits of marriage, but then exacting upon them – after the relationship is over – the residuals of that relationship by the identification and distribution of their assets in dissolution also violates our Constitution.

DUE PROCESS AND EQUAL PROTECTION CONCERNS ARE VIOLATED WHERE A SAME-SEX COUPLE COULD NOT ENJOY THE RIGHTS AND BENEFITS OF A CIVIL UNION IN THE STATE IN WHICH THEY RESIDED, BUT AFTER THEIR RELATIONSHIP IS OVER, ONE PARTY BY A DISSOLUTION ACTION MAY OBTAIN RIGHTS IN THE PROPERTY OF THE OTHER THAT NEVER PREVIOUSLY EXISTED.

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §1. Equal protection under the Fourteenth Amendment requires that "similarly situated"individuals be treated in a similar manner. *Eisenstadt v. Baird*, 405 U.S. 438, 446–47 (1972); see also, *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (the Equal Protection Clause directs that "all persons similarly circumstanced shall be treated alike").

This Court has long held that the right to marry is a basic right protected by the Constitution. *Loving v. Virginia*, 388 U.S. 1, 12 (1967). That right is premised on four basic grounds: the right to personal choice regarding marriage as inherent in the concept of individual autonomy; the right to marry being a fundamental principle supporting two people in a union unlike any other, and the importance of marriage to committed individuals; the importance in safeguarding children and families; and the fact that marriage is a keystone of our social order. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2599-2601 (2015).

Marriage thus remains a "building block of our national community." *Obergefell*, 135 S.Ct. at 2601. Accordingly:

> For that reason, just as a couple vows to support each other, so does society pledge to support the couple, offering *symbolic recognition* and *material benefits* to protect and nourish the union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and *property rights*; rules of intestate succession; * * * ; the rights and benefits of survivors; * * * ; health insurance; and child custody, support, and visitation rules. * * * The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order.
>
> There is no difference between same- and opposite-sex couples with respect to this principle. Yet by virtue of their exclusion from that institution, same-sex couples are *denied the constellation of benefits that the States have linked to marriage.*

(emphasis added) *Obergefell*, 135 S. Ct. at 2601.

Before *Obergefell*, by statute and by expression of public policy, the parties in this matter as a same-sex couple in Illinois lacked *any* legally enforceable rights in Illinois as to each other throughout the entirety of their relationship. Illinois decreed they could not obtain the rights of a civil-union couple, or of a married couple, while they were together in a committed, marriage-like relationship, living in the same house. Their union could not be recognized in that State. Under Illinois law, they held no property rights as against each other.

In 2002, they did travel to Vermont so that they could participate in a civil union ceremony. But neither party believed that in doing so they were obtaining any rights in Illinois, or that this would have any effect on their property, and testified to this.

In fact, Illinois law in existence at the time expressly denied them any rights as a result of participating in a civil union ceremony in Vermont. Under section 216 of the Illinois Marriage and Dissolution of Marriage Act, in effect at the time (since repealed), any person who went into another state and "contract[s] a marriage prohibited and declared void by the laws of this state, such marriage shall be *null and void for all purposes in this state* * * *." (emphasis added) 750 ILCS 5/216. Indeed, same-sex marriages were prohibited in Illinois until 2014, by express statutory prescription. 750 ILCS 5/212(a)(5), *repealed* June 1, 2014. (See also, section 213.1 ("[a] marriage between 2 individuals of the same sex is contrary to the public policy of this State") (750 ILCS 5/213.1, *repealed* June 1, 2014)).

Aspects of federal law at the time supported this. Under the Federal Defense of Marriage Act, in effect from 1996 until 2013:

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between *persons of the same sex* that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

(emphasis added) 28 U.S.C. 1738C, *held unconstitutional* in *U.S. v. Windsor*,133 S.Ct. 2675 (2013).

Accordingly, the then-Illinois Attorney General issued an advisory opinion on December 29, 2000, that the State of Illinois was not to recognize Vermont same-sex civil unions. 2000 Ill. Gen. Op. 017 (2000).

This changed in Illinois as of June 1, 2011. Effective that date, Illinois enacted the Illinois Religious Freedom Protection and Civil Union Act (750 ILCS 75/1, *et seq.*) (the Civil Union Act). That statute defined a civil union as a "legal relationship between 2 individuals, of either the same or opposite sex." 750 ILCS 75/10. The statute was passed "to provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses" 750 ILCS 75/5.

Yet unquestionably when the parties ended their relationship in Illinois in May 2011, they had no legally recognized relationship in Illinois to legally dissolve: the Illinois the Civil Union Act had not yet taken effect, and same-sex marriages continued to be expressly, legislatively prohibited as contrary to public policy. From beginning to end, the parties' relationship had no legal significance in Illinois as determined by the legally Illinois legislature and as set forth as Illinois public policy; in fact, their attempt to undergo a ceremony in Vermont was expressly declared "null and void" in Illinois.

Since Illinois law would not allow the same-sex relationship any legal significance during its existence, Illinois law should not recognize and enforce marriage-like property rights *after* its existence. However, what had been "null and void" throughout its existence in Illinois – without any property rights or benefits in each other akin to any other committed married couple – then became, after-the-fact through statutory interpretation and judicial pronouncement, viable in Illinois and amendable to an action in dissolution to apportion assets – for property that the parties did not have any right to during their relationship. It did so once respondent, following passage of the Civil Union Act, filed a dissolution action naming petitioner.

Petitioner argued against this literal acceptance and imposition of the Civil Union Act to distribute assets belonging to the other party, citing to a more recent Illinois Supreme Court decision in *Blumenthal v. Brewer*, 2016 IL 118781. Illinois has not recognized common-law marriages for over a century, and the court in *Blumenthal* upheld this century-old prohibition in Illinois against

common-law marriage for unmarried cohabitants in a married-like setting. The court then extended that to unmarried same-sex cohabitants in a married-like setting. *Blumenthal*, 2016 IL 118781, ¶76, ¶79. The *Blumenthal* court also rejected that party's due process and equal protection claims. *Blumenthal*, ¶87.

Following these holdings in *Blumenthal*, petitioner argued in the Appellate Court of Illinois that, because the parties entered into a civil union before the effective date of the Civil Union Act, they were in an unrecognized relationship at all times before the effective date of the Act. Because the parties separated before the effective date of the Act, their unrecognized relationship ended before the effective date of the Act. Petitioner concluded that, as *Blumenthal* now held such partners could not seek the apportionment of marital assets, the parties in this case could not divide the property accumulated during the life of their unrecognized cohabitation and relationship. (Appendix, at 17a)[1]

The Appellate Court of Illinois, Second District, however, found *Blumenthal* "wholly inapposite," deeming the distinguishing feature to be the parties there "did not formalize their relationship," while in the instant case, by contrast, "the parties entered into a civil union in the state of Vermont." (Appendix A, at 17a-18a) In other words, the sole distinguishing feature was the Vermont civil

1. Petitioner argued this was a change in the law where the Appellate Court of Illinois had previously held, in *Hamlin I,* that the Civil Union Act could be given retroactive effect so that the Vermont civil union from 2002, entered before the Act's effective date, would be deemed effective to recognize the parties' union here beginning from that time. *Hamlin I*, ¶50.

union entered here, which was not recognized in Illinois throughout their actual marriage-like relationship. The Illinois Appellate Court rejected petitioner's assertion that the parties' termination of their relationship before the effective date of the Civil Union Act made a difference, disagreeing that the "conflation of an informal separation serving as the legal dissolution of the parties' civil union." (Appendix A, at 18a)

The Appellate Court also rejected petitioner's argument, "oft and strenuously repeated," that the parties' "informal separation" in advance of the passage of the Civil Union Act served to take this matter out of that Act.[2] (Appendix A, at 18a-19a) The Appellate Court decreed that because petitioner could not show that the parties' "legal civil union" was "properly and legally terminated before the effective date" of passage of the Civil Union Act in Illinois, then "the conclusion flows that the parties remained in a recognized legal relationship as of the effective date" of that Act; the trial court thus served as the appropriate venue to dissolve "that legal relationship." (Appendix, at 19a)

The Appellate Court decision implicitly presupposes that the parties could have avoided this setting by

2. The Appellate Court's reference here to petitioner's argument as being that the parties' "informal separation was fully equivalent to a judgment of dissolution ending their legal civil union" (Appendix A, at 19a), is a mischaracterization of petitioner's actual argument. Petitioner's point was that if the parties had no rights to property during their active relationship because Illinois did not recognize those rights during the time of their active relationship, they should not have new rights once their relationship was over merely because Illinois now enacted the Civil Union Act.

returning to Vermont for dissolution of the civil union before Illinois enacted the Civil Union Act.[3] Under Vermont statutory law, this was highly improbable if not downright impossible.

Pursuant to the Vermont statute, a complaint for dissolution of a civil union may be filed in the county in which the civil union certificate was filed by parties who are not residents of Vermont if certain criteria are met, including: that the "parties file a stipulation together with a complaint that resolves all issues in the dissolution action." 15 V.S.A. §1206(b)(4). Given the history of this matter, a stipulation and complaint at the outset resolving all issues is a pipe dream. Further by statute, should either party then wish to litigate any issue related to dissolution before a Vermont court, that party must sign a written acknowledgment that "one of the parties meet the residency requirement" under statute. 15 V.S.A. §1206(b)(4)(C)(i); see also, generally, *Solomon v. Guidry*, 2016 VT 108, ¶12, 155 A.3d 1218, 1221 (2016). Any dispute as to property upon dissolution, then, could not be litigated in Vermont, and could not be the subject of a dissolution judgment in Vermont, since neither of these parties was a resident of Vermont.

In sum, petitioner enjoyed no legal rights during the existence of the parties' relationship in Illinois, based solely upon the nature of their same-sex relationship. When the parties' relationship ended, petitioner had no ability to approach an Illinois court to seek a legal end to

3. The Appellate Court commented petitioner presented no evidence that the Vermont civil union had ever been dissolved. (Appendix A, at 18a-19a)

or dissolution of any such relationship, again based solely on the nature of their same-sex relationship. She also had no true recourse in Vermont. Yet after the relationship undisputedly ended, and after the passage of the Civil Union Act that was meant to "provide [all] persons [same-sex or opposite sex] entering into a civil union with the *obligations*, *responsibilities*, protections, and *benefits* afforded or recognized by the law of Illinois to spouses" ((emphasis added)(750 ILCS 75/5)), petitioner was made to face *responsibilities* that she would not have been afforded during their relationship, when she could not enjoy – and in real fact was prohibited from enjoying – any recognized *benefits* during their relationship from the inception.

"The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution." *Obergefell*, 135 S.Ct. at 2598. Fundamentally, the treatment outlined in the instant matter amounts to grossly dissimilar treatment of similarly situated individuals. This dissimilar treatment based solely on same-sex status exacts a "negative" without a "benefit," thus implicating a fundamental right.

CONCLUSION

For the foregoing reasons, petitioner Victoria Vasconcellos respectfully requests that this Court accept this petition, and this matter, for further review.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, FILED MARCH 14, 2018

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

No. 11-D-2248
Nos. 2-16-0715 & 2-17-0274 cons.

In re CIVIL UNION OF DEBRA HAMLIN,

Petitioner-Appellee,

v.

VICTORIA VASCONCELLOS,

Respondent-Appellant.

Appeal from the Circuit Court of Du Page County.

Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.

Justices McLaren and Burke concurred in the judgment.

Appendix A

ORDER

Held: Respondent cannot evade the law-of-the case doctrine. We interpreted the Illinois Religious Freedom Protection and Civil Union Act in the first appeal of this matter, so respondent's contention that we should revisit that interpretation in this appeal is precluded by the law of the case. Likewise, the law-of-the-case doctrine precludes our review of the classifications of certain assets that were not appealed in the first appeal. The trial court followed our mandate from the first appeal, and respondent's insufficient argument in her opening brief on appeal forfeited her contentions regarding the award of attorney fees.

In 2002, respondent, Victoria Vasconcellos, and petitioner, Debra Hamlin, entered into a legal civil union in the state of Vermont. By 2011, their relationship had soured and, in August 2011, petitioner filed to dissolve her civil union with respondent under the newly effective Illinois Religious Freedom Protection and Civil Union Act (Act) (750 ILCS 75/1 *et seq.* (West 2010). The circuit court of Du Page County entered a judgment dividing the parties' civil union assets. Respondent appealed and petitioner cross-appealed the trial court's judgment. *In re Civil Union of Hamlin & Vasconcellos*, 2015 IL App (2d) 140231, 397 Ill. Dec. 620, 42 N.E.3d 866 (*Hamlin I*).

Appendix A

In *Hamlin I*, the dispute centered around the allocation of the civil union's largest asset, the company Cignot, an e-cigarette vending company founded in 2009 by respondent. Respondent contended that, because the Act was not effective until July 1, 2010, the accrual of civil union assets could not occur before that date, so Cignot had to be non-civil-union property. We held that the Act operated prospectively, but applied to any legal civil union, even those predating the effective date of the Act. *Id.* ¶ 43. We note that respondent did not urge any other grounds to invalidate the allocation of Cignot. For her part, petitioner argued that the trial court's allocation of Cignot was an abuse of discretion because, despite the factual findings that the civil union represented a partnership, the trial court distributed the assets without regard to that partnership. We agreed and reversed the trial court's judgment, ordering it to equitably reallocate the civil-union property.

This case returned to the trial court, which changed the allocation of Cignot, awarding 80% to respondent and 20% to petitioner, in accord with our directions. Respondent again appeals, arguing that, in light of *Blumenthal v. Brewer*, 2016 IL 118781, 410 Ill. Dec. 289, 69 N.E.3d 834, we must revisit and change our interpretation of the Act. Respondent also argues that the trial court did not follow our mandate, asks us to review the trial court's allocation of specific assets, and asks us to review the trial court's awards of attorney's fees. We affirm.

Appendix A

I. BACKGROUND

Hamlin I provides a detailed recitation of the facts surrounding the parties' activities before, during, and after their civil union, including the procedural posture up to and through the resolution of the first appeal. The parties and the court are thoroughly aware of those facts and we will not repeat them here. We instead turn to parties' activities following the resolution of the first appeal and the remand to the trial court.

After we issued our opinion in *Hamlin I*, on July 20, 2015, respondent moved to reconsider the trial court's February 7, 2014, order upon reconsideration of the original dissolution judgment. As the dissolution had been proceeding, the parties' neighbors had sued the parties over property located on Glenview Avenue that they had all purchased together as an investment. The court in that suit had directed the parties to ask the trial court in the dissolution action to clarify how any liability was to be apportioned between the parties, because the original dissolution judgment only disposed the proceeds of the sale of the property and not any liability to the neighbors. The February 7, 2014, order directed that any liability be evenly divided between the parties. Respondent requested clarification, arguing that the suit arose over claims of mismanagement directed solely against petitioner and not involving respondent. The motion remained pending until August 4, 2016.

Following the remand to the trial court, the parties engaged in a preliminary trial conference (the

proceedings of which were not included in the record, but the occurrence of which is fairly inferable.) On March 9, 2016, respondent filed a petition for attorney fees and costs, seeking over $47,000 from petitioner. In support, respondent argued that, due to litigation expense and order of the trial court before the first appeal obligating her to contribute to petitioner's attorney fees, she did not have the ability to pay her own legal fees. Respondent argued that, because petitioner had steady, salaried, and reasonably well-remunerated employment, petitioner was in a better position to pay her own attorney fees and should be obligated to contribute to respondent's in order to level the playing field. The motion remained pending.

On April 4, 2016, respondent moved to file a supplemental memorandum outlining the issues she believed to be contested on the remand. On April 11, 2016, the trial court denied respondent's motion:

> "[T]he reason I'm denying the motion is because I think that that just opens up a whole new can of worms. It was sent back on remand for me to—because they said I could use discretion, even though they agreed in the opinion, to say that a disproportion was okay, but it was too disproportionate. So I think I have to redo it, look at what the evidence was that was presented to me, which were the closing arguments. In my mind that's it, the closing arguments.

> And I should probably review my notes, the closing arguments, what my ruling was, and review the court opinion. That is the record. And my concern of adding more—I'm adding more stuff to the record that wasn't there when I gave my initial opinion, and I think that's where—I think I'm locked in."

The trial court indicated that it would accept additional argument, but also stated that it was leery of accepting a document incorporating further analysis of the record, because "then [petitioner is] doing it, [petitioner is] going to highlight certain things, and then we are just like arguing, going around and around and around. And I think I have to keep the record clear in case someone wants to appeal it again."

On May 3, 2016, the trial court issued its amended judgment for dissolution of the parties' civil union. The trial court began by noting that this court "ruled that although a disproportionate division of the marital [*sic*] estate was appropriate, [the trial court] had committed error by wholly awarding Cignot to [respondent] and assigning no value to [petitioner's] contribution." See *Hamlin I*, 2015 IL App (2d) 140231, ¶¶ 65, 70. The court then proceeded to its amended factual findings:

> "3. [Petitioner] has a career with Bridgestone, and was not a homemaker.
>
> 3.1 [Petitioner], 46 years of age, presented herself as very articulate, intelligent, and forthcoming.

3.2 [Petitioner] was employed by Bridgestone in 1997, prior to the civil union, as a Senior Environmental Engineer. She had a career throughout the civil union. She is currently a Senior Project Manager earning $101,000.00 per year plus bonus.

3.3 [Petitioner] is a college graduate from Michigan State University.

4. [Respondent] is employed by Cignot, Inc., a company she created with funds from her nonmarital real estate.

4.1 [Respondent], 51 years of age, also presented herself as very articulate, intelligent, and forthcoming.

4.2 [Respondent] is a high school graduate.

4.3 [Respondent] is an entrepreneur. She has done construction work, computer software, and now sells electronic cigarettes.

4.4 [Respondent] started Cignot, Inc., in 2009, with funds from a [home equity line of credit] on the Poplar home in Elmhurst, her separate, nonmarital asset. She is paid a salary of $142,000.00 per year.

5. The parties kept their incomes and assets separate. They would equally pay the expenses

of the Civil Union and separately pay their own expenses from their own accounts. They did not jointly combine their efforts.

5.1 [Petitioner] and [respondent] kept separate accounts into which they deposited their paychecks.

5.2 [Petitioner] and [respondent] contributed to a joint account that was used to pay the obligations of the Civil Union. There was an effort to equally pay for joint expenses, and pay individual expenses separately. (Citation.)

5.3 Neither party was dependent upon the income of the other. Each paid their [*sic*] own obligations without financial contribution from the other.

5.4 Cignot was started with a home equity line of credit on the nonmarital, separate, property of [respondent], the Poplar Street home in Elmhurst.

6. The parties shared household duties in the operation of the Civil Union.

6.1 Neither party solely acted as a homemaker.

6.2 Each party had duties maintaining the home, *i.e.*, cleaning, cooking, grocery shopping, cutting grass, general maintenance, etc.

6.3 As indicated above, the parties would jointly contribute to joint expenses, but kept their property separate from the other, and pay their own individual expenses from their own incomes.

7. Neither party sacrificed their career for the civil union, nor did they assist or contribute to the career of the other.

7.1 [Respondent] did little to nothing for [petitioner's] career at Bridgestone. There was no evidence of hosting business dinners, entertaining colleagues, or making a financial sacrifice for her career.

7.2 [Petitioner] likewise, did little to nothing for [respondent's] various business ventures. There was no evidence of hosting business dinners, entertaining colleagues, or making a financial investment in any of the business ventures created by [respondent].

7.3 Their economic lives were separate from their emotional lives.

8. Cignot was created in year 7 of their 9 year relationship.

8.1 The civil union was created in 2002.

8.2 Cignot was created in 2009.

8.3 The parties ceased living together in 2011.

9. Each party contributed minimally to the other party's acquisition of assets.

9.1 The only area of the relationship in which they acted as partners was with the operation of the home. They divided the joint expenses and the household duties. Each benefitted the same from the other's contributions and each bore the same burden. Neither contributed to the career/business enterprise of the other.

9.2 But there is some value to the emotional support of the home during the 9 years that they lived together."

Following these amended facts, the trial court issued its amended judgment. First, the court held that, "[e]xcept for Cignot, the marital estate is equally divided between the parties. [Petitioner] is awarded 20% of Cignot." Next, the court amended its order requiring respondent to now pay petitioner $109,587 instead of $75,000 from the original judgment. Finally, the court emphasized that "[a]ll other aspects of the Judgment remain unchanged."

On May 31, 2016, respondent filed a motion to reconsider and to clarify the amended judgment. In particular, respondent challenged the disposition of a debt accruing from litigation over the Glenview Avenue property that petitioner and respondent had purchased as

an investment with their neighbors. The original judgment apportioned any debt equally between petitioner and respondent, and the amended judgment did not mention the Glenview Avenue property (although the amended judgment did expressly state that "[a]ll other aspects of the [original judgment] remain[ed] unchanged"). Respondent also challenged the classification of certain assets as part of the civil union estate where the factual findings of the amended judgment appeared to cast doubt on that classification. Specifically, respondent contended that Cignot, respondent's Edward Jones account, and the West Olive property in Chicago all should have been classified as non-civil-union property. Supporting these contentions, respondent asserted that this court considered only the issue of the Act's retroactive or prospective application on whether civil-union assets could have been accumulated before the Act's effective date and did not consider the issues of the classifications were against the manifest weight of the evidence. We note, however, that in *Hamlin I*, respondent made no arguments that the specific assets had been misclassified because their origins could be traced to non-civil-union funds, only that they were obtained before the Act's effective date. *Id.* ¶¶ 55-56.

On August 4, 2016, the trial court resolved the outstanding matters. As is pertinent here, the trial court denied respondent's motion to reconsider and reaffirmed the equal distribution of the liability accruing from the Glenview Avenue property. The trial court did not apparently consider or resolve respondent's outstanding March 9, 2016, petition for attorney fees. On August 30, 2016, respondent filed her notice of appeal (case No. 2-16-0715).

Appendix A

On September 13, 2016, petitioner filed a petition seeking a finding of indirect civil contempt against respondent alleging that respondent had not complied with the August 4, 2016, order requiring respondent to pay over to petitioner certain sums of money. On September 28, petitioner filed a petition for attorney fees seeking prospective contribution from respondent to defend the appeal in case No. 2-16-0715. On November 8, 2016, the trial court issued the rule, finding that respondent had not paid $76,576 to respondent pursuant to the August 4, 2016 order. ¶15 On November 10, 2016, respondent filed a motion to determine whether the trial court had ruled on her outstanding March 9, 2016, petition for attorney fees (or alternatively, to set a hearing date). A week later, respondent filed a petition for attorney fees related to defending petitioner's petition for a finding of indirect civil contempt.

On December 9, 2016, the trial court granted petitioner's request for prospective attorney fees in the amount of $10,000, payable to petitioner upon respondent filing her appellate brief in case No. 2-16-0715 and ordered that, if petitioner were not to file a response brief, she should return the money to respondent. On January 17, 2017, the trial court denied respondent's outstanding March 9, 2016, fee petition *nunc pro tunc* to August 4, 2016. Finally, on March 16, 2017, the trial court denied respondent's fee petition seeking contribution for respondent's defense of the petition for a finding of indirect civil contempt. On April 13, 2017, respondent filed her notice of appeal in case No. 2-17-0274. On May 26, 2017, this court granted respondent's motion to confirm appellate jurisdiction and consolidated the two appeals.

Appendix A

II. ANALYSIS

On appeal, respondent seeks to revisit our ruling in *Hamlin I* that civil-union property could be accrued before the effective date of the Act, arguing that *Blumenthal v. Brewer*, 2016 IL 118781, 410 Ill. Dec. 289, 69 N.E.3d 834 compels the opposite conclusion. Respondent also argues that the trial court did not follow our mandate from *Hamlin I*; that Cignot, respondent's Edward Jones account, the West Olive property, and the liability from the Glenview Avenue property were all misclassified as civil-union property; that the trial court abused its discretion in allocating the civil-union property; and that the trial court abused its discretion in rendering the various attorney-fee rulings. We consider each contention in turn, as necessary.

A. Jurisdiction

Before addressing the respondent's contentions, we must first consider whether we have jurisdiction over these consolidated appeals. *Dancor Constr., Inc. v. FXR Constr., Inc.*, 2016 IL App (2d) 150839, ¶ 30, 407 Ill. Dec. 997, 64 N.E.3d 796 (even where the parties do not challenge it, the court has an obligation to consider whether jurisdiction exists over the appeal). On August 4, 2016, the trial court entered an order purportedly deciding all remaining issues in this case, and respondent timely filed a notice of appeal from that order. On September 13, 2016, petitioner filed a petition for a rule to show cause, complaining that respondent had not paid over to her the moneys ordered in the August 4, 2016, order, and later, she filed a petition seeking prospective attorney fees for

her defense of the second appeal. Additionally, respondent realized that there was still an outstanding fee petition and filed a new fee petition to recoup the fees incurred defendant the rule to show cause. These various matters were resolved, with the trial court resolving the petition for rule to show cause, as well as the fee petitions. Notably, on January 17, 2017, the trial court resolved respondent's March 9, 2016, fee petition, purportedly *nunc pro tunc* to August 4, 2016. On March 13, 2017, the trial court denied respondents fee petition related to the rule to show cause and respondent filed a second timely notice of appeal in case No. 2-17-0274. ¶21 As an initial matter, the January 17, 2017, order is not a proper *nunc pro tunc* order. A *nunc pro tunc* order is an entry now for something that was done on a previous date and is entered to make the record speak now for what was actually done then. *Pestka v. Town of Fort Sheridan Co., L.L.C.*, 371 Ill. App. 3d 286, 295, 862 N.E.2d 1044, 308 Ill. Dec. 841 (2007). There is no indication in the record that the trial court made a ruling on August 4, 2016, that disposed of the respondent's open March 9, 2016, fee petition. Thus, we view the fee petition as having been disposed on January 17, 2017. Because the fee petition remained pending, the August 4, 2016, order was not finalized until the fee petition was disposed. Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) operates to save a premature notice of appeal, so once January 17, 2017, order disposed of the open fee petition, the notice of appeal became effective. We therefore have jurisdiction over appeal No. 2-16-0715.

In appeal No. 2-17-0274, respondent filed her notice of appeal within 30 days of the final order terminating all

matters before the trial court, and no other irregularities appear in the record. Accordingly, we also have jurisdiction of appeal No. 2-17-0274.

B. Reinterpreting the Act

Turning to respondent's substantive arguments, she first contends that we must revisit our interpretation of the Act because the recent supreme court case of *Blumenthal v. Brewer* contradicts and supersedes our interpretation of the Act in *Hamlin I*. Respondent's argument effectively asks us to reconsider our decision in *Hamlin I*. Normally, such a request would be flatly barred by the law-of-the-case doctrine. Briefly, the law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end, thus barring the relitigation of an issue previously decided in the same case. *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8, 986 N.E.2d 765, 369 Ill. Dec. 452. The issues previously decided in the same case refer to issues of both law and fact; moreover, any questions of law that were decided in a previous appeal of the same case are binding on the trial court on remand as well as on the appellate court if the case is again appealed. *Id.* Thus, the law-of-the-case doctrine would bar respondent's contention that our interpretation of the Act in *Hamlin I* should be revisited.

Respondent seeks to avoid the law-of-the-case doctrine with the change-in-law exception. Briefly, where

our supreme court enters a rule contradicting an appellate court's determination of a question of law after the first appeal but before the second appeal of the same case, if the same case returns on appeal, then the law of the case (as set forth in the first appeal) is abrogated and the appellate court must follow our supreme court's judgment on the question of law. *Relph v. Board of Education*, 84 Ill. 2d 436, 443-44, 420 N.E.2d 147, 50 Ill. Dec. 830 (1981). Respondent argues that *Blumenthal* fits into the change-in-law exception because it was decided after *Hamlin I* but before the instant appeal and is factually on all fours with this case, so its holding must necessarily supersede our judgment in *Hamlin I*. We disagree.

In *Blumenthal*, a same-sex couple was involved in a long-term domestic relationship that included raising a family together, but they had never married. *Blumenthal*, 2016 IL 118781, ¶ 2. While the parties believed themselves to be and acted as though they were in a marriage, they never entered into a marriage or civil union under the laws of this or any other state. See *Blumenthal v. Brewer*, 2014 IL App (1st) 132250, ¶¶ 7-8, 388 Ill. Dec. 260, 24 N.E.3d 168, *rev'd*, 2016 IL 118781, 410 Ill. Dec. 289, 69 N.E.3d 834. In 2010, Blumenthal filed an action to partition the parties' family home; Brewer counterclaimed seeking an equitable distribution of the parties' family home and some sort of apportionment of Blumenthal's income or interest in a medical partnership that was purchased using funds from the parties' joint account. *Blumenthal*, 2016 IL 118781, ¶¶ 8-9.

Our supreme court held that the prohibition against common-law marriage remained the operative law in Illinois and, because the parties in *Blumenthal* had never formalized their relationship, it could not recognize Brewer's counterclaims because they were inextricably intertwined with their marriage-like relationship. *Id.* ¶ 63. The court amplified that only the legislature could set the public policy regarding unmarried cohabitants living in a marriage-like relationship but had not disturbed the prohibition against common-law marriage despite the changing mores of society, so the prohibition continued undisturbed. *Id.* ¶¶ 80-82.

From these holdings in *Blumenthal*, respondent argues that, because the parties entered into a civil union before the effective date of the Act, they were in an unrecognized relationship at all times before the effective date of the Act. Next, because the parties separated before the effective date of the Act, their unrecognized relationship ended before the effective date of the Act. Finally, respondent concludes that, because *Blumenthal* held that the common-law marital partners could not seek the apportionment of marital assets under the principles of the Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2010)) or equivalent equitable principles to apportion the property, the parties in this case could not divide the property accumulated during the life of their effectively common-law marriage pursuant to the Act or to equitable principles.

Blumenthal, however, is wholly inapposite. There, significantly, the parties did not formalize their relationship

in any manner. *Blumenthal*, 2014 IL App (1st) 132250, ¶¶ 7-8, *rev'd*, 2016 IL 118781, 410 Ill. Dec. 289, 69 N.E.3d 834. Here, by contrast, the parties entered into a legal civil union in the state of Vermont. Respondent attempts to avoid the impact of the formalization of the parties' relationship by asserting that, in May 2011, just ahead of the effective date, the parties separated, thus legally ending their relationship. We disagree with the conflation of an informal separation serving as the legal dissolution of the parties' civil union. There is no evidence in the record that the parties' civil union was dissolved before the effective date of the Act. Further, *Blumenthal* does not speak to a situation in which the parties are part of a legally recognized relationship and then seek to avail themselves of the auspices of the Act or the Marriage and Dissolution of Marriage Act. In *Hamlin I*, we construed the provisions of the Act relating to the parties' situation. *Blumenthal* does not speak to that situation. Accordingly, our holding in *Hamlin I* remains the law of this case and we reject respondent's invitation to reconsider our decision because it is prohibited by the law-of-the-case doctrine.

Respondent strenuously argues that we must accept the May 2011 separation of the parties as the date their civil union was dissolved for purposes of the Act because, until the effective date of the Act, they were participating in no legally recognized relationship in this State. This overlooks the fact that, in 2002, they had entered into a legal civil union in the state of Vermont. Respondent neither presents evidence nor argues that the parties dissolved that legal civil union at any time before the trial court entered its judgment in this case dissolving

the parties' civil union. Without such a legal termination, we reject the argument, oft and strenuously repeated though it may be, that the parties' informal separation was fully equivalent to a judgment of dissolution ending their legal civil union. Because respondent cannot show that the parties' legal civil union was properly and legally terminated before the effective date of the Act, the conclusion flows that the parties remained in a recognized legal relationship as of the effective date of the Act and the trial court was the appropriate venue to dissolve that legal relationship. This fact serves to distinguish *Blumenthal*, which cannot, therefore, serve as the basis of respondent's change-in-the-law exception to the law-of-the-case doctrine.

C. *Hamlin I*'s Mandate

Respondent next contends that the trial court did not follow the mandate of *Hamlin I*. The appellate court's mandate is its judgment; upon transmitting the mandate to the trial court, that court is vested with authority to take action conforming to the mandate. *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152, 769 N.E.2d 1094, 264 Ill. Dec. 257 (2002). The trial court's authority extends only as far as the scope of the mandate, and it must follow assiduously the specific directions of the appellate court's mandate to insure that its order accords with the appellate court's decision. *Id.* If the appellate court's instructions on remand are general, the trial court is required to examine the appellate court's opinion and exercise its discretion in determining what further proceedings are necessary and would be consistent with the opinion on remand; if the

mandate directs the trial court to proceed in conformity with the opinion, then the trial court must (obviously) consult the opinion in determining how to appropriately proceed. *Id.* at 1152-53.

Our mandate in *Hamlin I* instructed the trial court "to reallocate the civil-union property equitably in accordance with this opinion." *Hamlin I*, 2015 IL App (2d) 140231, ¶ 71. On remand, the trial court divided the civil-union property evenly and divided Cignot 80%-20% between respondent and petitioner. This allocation comports with our instructions and we cannot say that it is against the manifest weight of the evidence or an abuse of discretion. Accordingly, we hold that the trial court followed the mandate in *Hamlin I*.

Respondent argues that the trial court refused to allow her to present further evidence. We did not order the trial court to conduct further evidentiary hearings in order to "reallocate the civil-union property equitably." We believe that the trial court acted within its discretion interpreting our mandate and refusing to allow additional evidence. Accordingly, we reject respondent's contention.

In this appeal, as grounds to support her contention, respondent argues that, on the remand, she attempted to challenge certain factual determinations that were not raised in *Hamlin I*, such as the conclusions that petitioner's steady income gave respondent the safety net to take entrepreneurial risks in her business ventures, or that respondent contributed significantly more to the acquisition of civil-union property than petitioner. These

contentions were not made in *Hamlin I* and are barred now under the law-of-the-case doctrine and principles of forfeiture. *Radwill*, 2013 IL App (2d) 120957, ¶ 8 (law of the case applies to factual determinations made in a previous appeal); see *Gardner v. Navistar International Transportation Co.*, 213 Ill. App. 3d 242, 248, 571 N.E.2d 1107, 157 Ill. Dec. 88 (1991) (a party should not be permitted to stand mute in one proceeding, lose the relevant action in that proceeding and then raise the issue later).

D. Erroneous Classification of Certain Assets

Respondent next contends that the trial court erroneously determined that certain assets and liabilities were civil-union assets and liabilities when, in fact, they could be traced to non-civil-union property. Specifically, respondent argues that Cignot was founded and developed from non-civil-union funds, that respondent's Edward Jones account was traced to a non-civilunion gift from respondent's mother, and that the West Olive property was acquired well before the commencement of the parties' civil union and is therefore also non-civil-union property. Likewise, respondent argues that the liability arising from the Glenview Avenue property was incorrectly evenly distributed because the liability arose from petitioner's mismanagement of the property.

Respondent challenged the classification of these assets in *Hamlin I*, on the sole ground that they had been obtained before the effective date of the Act, and she did not make the alternative argument that the trial court's classification was against the manifest weight of the

evidence. *Hamlin I*, 2015 IL App (2d) 140231, ¶¶ 55-56. Respondent had the opportunity in *Hamlin I* to challenge the classification of assets on any ground she chose. She chose not to raise the ground she now seeks to rely on. Respondent, therefore, has forfeited these arguments for purposes of this appeal. See *Gardner*, 213 Ill. App. 3d at 248.

Respondent also challenges the allocation of the liability accruing from the lawsuit regarding the Glenview Avenue property. In the original judgment of dissolution, the trial court noted that the parties received the proceeds of the sale of the property when the property was sold during the pendency of the dissolution proceedings, and the trial court equitably apportioned those proceeds. Respondent did not challenge the apportionment in *Hamlin I*. Respondent moved to clarify the original judgment of dissolution, and the trial court added a provision dividing equally any liability arising from the Glenview Avenue property. As of *Hamlin I*, the lawsuit arising from the Glenview Avenue property had not been resolved. During the proceedings on remand, the lawsuit was resolved and the liability was determined. The trial court persisted in its allocation of the liability, ordering the liability to be evenly divided between the parties.

Respondent argues that the lawsuit was against petitioner for her mismanagement of the property and respondent was not alleged to have caused the liability in the lawsuit. Respondent concludes that the trial court abused its discretion in apportioning the liability. The division of marital property is within the discretion of the

trial court, and its determination will not be disturbed absent an abuse of discretion. *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 72, 404 Ill. Dec. 541, 56 N.E.3d 525. A trial court abuses its discretion only where, in view of all of the circumstances, its decision so exceeded the bounds of reason that no reasonable person would take the view adopted by the trial court. *Id.*

Here, the trial court equitably divided the proceeds of the sale of the Glenview Avenue property between the parties. We see nothing in the record that suggests that the trial court misapprehended the law or the facts of this case in determining the division of the liability of the Glenview Avenue property. Respondent vaguely argues about remedying injustice, but does not argue specifically how the trial court's division of the liability was an abuse of discretion. Because respondent's arguments fail to convince, and because there is nothing apparent in the record that suggests that the trial court's decision so exceeded the bounds of reason that no reasonable person could take the view adopted by the trial court, we cannot find that the trial court abused its discretion in equally dividing the liability arising from the Glenview Avenue property.

E. The Division of Civil-Union Property in the Amended Judgment of Dissolution

Respondent argues that the trial court abused its discretion in the division of the civil-union property in the amended judgment. The division of marital property is a matter within the trial court's discretion and will be

disturbed only where the trial court abuses its discretion. *Id.* An abuse of discretion occurs only where, in view of all of the circumstances, the trial court's decision so exceeds the bounds of reason that no reasonable person would adopt the trial court's view. *Id.*

Respondent specifically challenges the division of Cignot as an abuse of discretion. According to respondent, the additional factual determinations set forth in the amended judgment of dissolution support only the conclusion that she should have received the entirety of Cignot with petitioner receiving nothing. In *Hamlin I*, we determined that the distribution of Cignot wholly to respondent was an abuse of discretion. We consider the additional factual determinations in the amended judgment to be amplifications of the original judgment. Most importantly, in the amended judgment, the trial court determined that there was some value to be attributed to the relationship even though the parties were largely independent economic actors during their civil union. In *Hamlin I*, we determined that it was an abuse of discretion to ignore the value of the relationship. Here, respondent argues for precisely the sort of valuation and division that we found to be an abuse of discretion in *Hamlin I*. Viewing the amended judgment and the original judgment of dissolution together in light of our mandate from *Hamlin I*, we cannot say that the 80%-20% disproportionate distribution of Cignot between respondent and petitioner constituted an abuse of discretion.

To the extent that respondent is generally arguing that the division of civil-union assets constituted an abuse

of discretion, we disagree. In the first place, respondent does not make a sufficient argument, beyond her argument about Cignot, as to how the trial court generally abused its discretion in dividing the civil-union property. Accordingly, any general argument about the division of the civil-union assets is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Second, after amending its judgment by dividing Cignot disproportionately and dividing equally all of the remaining civil-union assets, the ultimate distribution of the civil-union estate moved from 73%-27% to 71%-29% between respondent and petitioner. Thus, respondent largely made up in the equal division of the remainder of the civil-union estate what she perceives that she lost in the division of Cignot. Viewing the amended judgment and division of the civil-union estate in light of our mandate in *Hamlin I*, we cannot say that the trial court abused its discretion. Accordingly, we reject respondent's contentions on this point.

F. Attorney Fees

Respondent argues that the trial court abused its discretion in making the fee awards associated with the August 4, 2016, and December 9, 2016, orders and in denying respondent's fee petitions for fees incurred in defense of petitioner's petition for a rule to show cause and for contribution for the fees to be incurred in this appeal. The trial court's decision to award attorney fees will not be disturbed absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13, 417 Ill. Dec. 648, 89 N.E.3d 296.

Respondent first argues that the trial court abused its discretion in awarding petitioner fees incurred in defending the first appeal and in prosecuting her cross-appeal in the first appeal in the amount of $58,974 as well as awarding petitioner prospective attorney fees for defending the instant appeal in the amount of $10,000. We fully quote respondent's arguments on these two points:

> "Yet no grounds existed for these awards. [Petitioner] earned a good salary, in excess of $100,000 annually. At time of trial, [respondent] had realized an increase in earnings of the two previous years, but that continued ability [to maintain or increase her earnings] was suspect, based on expected federal regulations. Nothing showed that paying her own fees would render [petitioner] lacking in stability, *or* that [respondent] had some greater ability to pay.
>
> In addition, the order that [respondent] pay [petitioner] $10,000 upon filing this appellant's brief is nothing more than an attempt to circumvent this appeal from proceeding." (Emphasis in original.)

The above-quoted material is the complete argument offered by respondent on appeal. We note that respondent adequately cited the rules applicable to her argument and directed us to relevant case law for those general principles. However, as can be seen, there are no citations to the record in the above-quoted material and no citations to other, pertinent legal authority to help

respondent to develop her specific, fact-based argument on these points. We find this argument to be vague, incomplete, and undeveloped resulting in forfeiture of the contentions regarding the challenged awards of attorney fees to petitioner. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Lindenmulder v. Board of Trustees of the Naperville Firefighters' Pension Fund*, 408 Ill. App. 3d 494, 501, 946 N.E.2d 940, 349 Ill. Dec. 444 (2011) (the burden of argument and research may not be foisted upon the appellate court). Forfeiture aside, the trial court commented that it considered the appropriate factors required by the statute (750 ILCS 5/508(a) (West 2016)), and, based on its consideration of those factors, awarded petitioner a portion of the fees she sought. An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 291 Ill. Dec. 601 (2005). It can perhaps be inferred that respondent is concentrating on the parties' ability to pay or perhaps the destabilization to petitioner's finances that would occur if she were required to bear the obligation to pay her own attorney fees. The trial court's explanation discussed the factors and the fact that petitioner was only allowed to receive contribution, not required, and the trial court awarded only a portion of the fees sought by petitioner. We can infer, then, that the trial court did consider the ability to pay and the potential for destabilization (and we note that respondent, by failing to provide citations to the record has failed to demonstrate that the trial court did not adequately consider these factors). Accordingly, we cannot say that the trial court abused its discretion in awarding attorney fees for the defense of the original

appeal, the prosecution of the original cross-appeal, and the prospective award for the defense of this appeal.

We also note that, in respondent's reply brief, respondent develops her argument with citation to the record in order to demonstrate the facts supporting her contention. However, her initial argument on appeal is so lacking, the argument in the reply brief is effectively the first time respondent has raised the argument. An argument sufficiently made for the first time in a reply brief is forfeited. See *DOT v. Dalzell*, 2018 IL App (2d) 160911, ¶ 126, 419 Ill. Dec. 817, 94 N.E.3d 1231. Accordingly, we will not consider the fuller development of the argument in respondent's reply brief to stand in for her deficient argument in her brief on appeal.

Respondent also challenges the trial court's decisions on her petitions for attorney fees regarding the rule to show cause and for contribution to prosecute the instant appeal. Respondent specifically argues: "This [denying the fee petitions] likewise constituted an abuse of discretion. [Respondent] does not have the guaranteed, stable income, while [petitioner] does, including as demonstrated over time." This argument is likewise insufficient and forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Lindenmulder*, 408 Ill. App. 3d at 501. To the extent that respondent successfully raises the ability to pay, the trial court held an evidentiary hearing, and the parties testified about their relative abilities to pay without destabilizing their financial positions. We cannot say the trial court's factual determinations (implicit or explicit) are against the manifest weight of the evidence in this regard, and we

thus cannot say that the trial court abused its discretion in denying respondent's fee petitions. Additionally, to the extent that respondent's argument in her reply brief is more fully developed, we will not recognize it for the reasons discussed above. See *Dalzell*, 2018 IL App (2d) 160911, ¶ 126.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

APPENDIX B — OPINION OF THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, DU PAGE COUNTY, ILLINOIS, DATED AUGUST 4, 2016

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

Trial Court No. 2011 D 2248

IN RE CIVIL UNION OF:
DEBRA HAMLIN,

Petitioner-Appellee,

and

VICTORIA VASCONCELLOS,

Respondent-Appellant.

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter;

IT IS HEREBY ORDERED:

1. Petitioner's Motion to Release and Allocate Appellee Bond is hereby granted. Specifically the Bond

in the amount of $112,115 currently held by the Clerk of the Court of the 18th Judicial Circuit shall be released as follows:

A.) $20,000 (Twenty Thousand Dollars) to the law firm of Katz & Stefani, LLC in conformity with the March 3, 2014 Court Order;

B.) The remaining $92,115 to Debra Hamlin as partial payment of total award in conformity with the terms set forth in the May 3, 2016 Amended Judgment.

Bond shall be released instanter.

2. Petitioner's 3-count Petition for Attorney Fees for Defense/Prosecution of Clams on Appeal is granted in part, specifically: Debra Hamlin is awarded Fifty-Eight Thousand Nine-Hundred Seventy-Five Dollars ($58,974) to be paid by the Respondent, Victoria Vasconcellos as and for contribution to Ms. Hamlin's attorneys fees incurred releasing to the defense and prosecution of the Appeal pursuant to 508(a)(3) and 508(a)(3.1). Said amount shall be payable directly to Katz & Stefani, LLC within (30) days of this Order.

3. Respondent's Motion to Reconsider and Petitioner's affirmative matter are both denied.

4. Paragraph 24.4 of the Court's Judgment as clarified in the February 7, 2014 Order on reconsideration stands. Pursuant to the Chancery Court's Order of June 3, 2016 in the matter of 13 CH 1627, each party shall each pay

half (50%) of the total judgment due ($66,856.66) to the remaining partner in the 200 Glenview partnership.

5. Victoria Vasconcellos shall pay Debra Hamlin the remaining award of Seventeen Thousand Four Hundred Seventy Two Dollars ($17,472) pursuant to the terms set forth in the Amended Judgment of May 3, 2016. All other provisions of the May 3, 2016 Amended Judgment stands.

6. This is a final and appealable order; the matter is taken off call.

ENTER: /s/ Neil W. Cerne
JUDGE

DATE: August 4, 2016

APPENDIX C — AMENDED JUDGMENT OF THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, DU PAGE COUNTY, ILLINOIS, DATED MAY 3, 2016

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

No. 2011 D 2248

IN RE THE CIVIL UNION OF
DEBRA HAMLIN,

Petitioner,

and

VICTORIA VASCONCELLOS,

Respondent.

AMENDED JUDGMENT FOR DISSOLUTION OF CIVIL UNION

THIS MATTER comes before the Court on Mandate from the Appellate Court, 2nd District, filed January 13, 2016, relative to the Judgment entered on November 7, 2013 dissolving the Civil Union of DEBRA HAMLIN (hereinafter referred to as "Debra") and VICTORIA VASCONCELLOS (hereinafter referred to as "Victoria"). Pursuant to the direction of the Appellate Court, the Court has reviewed the Appellate Court decision, and has reviewed the evidence and testimony that had been

received during the Trial of this matter. Based upon that review, the Court makes the following findings;

JURISDICTION

1. The Court has been revested with Jurisdiction.

1.1. On November 7, 2013 this Court entered a Judgment for Dissolution of Civil Union.

1.2. A Notice of Appeal to the Appellate Court 2nd District was filed on March 6, 2014.

1.3. The Appellate Court issued its decision on July 17, 2015 which Affirmed the Court in part, Reversed in part, and Remanded with directions.

1.4. The Mandate from the Appellate Court was filed on January 13, 2016.

DIRECTION OF APPELLATE COURT

2. The Appellate Court ruled that although a disproportionate division of the marital estate was appropriate, that the Court had committed error by wholly awarding Cignot to Victoria and assigning no value in Debra's contribution.

2.1. The Appellate Court wrote;

> "Based on the foregoing, we hold that the trial court's determination that respondent

contributed significantly more to the acquisition of civil-union property was against the manifest weight of the evidence. This is not to say that the parties' contributions were exactly equal, only that, based on all of the evidence, as well as on the trial court's own determinations, we cannot say that respondent contributed *significantly* more to the acquisition of civil-union property. The relative contributions of the parties might justify a disproportionate distribution of a civil-union asset or of all of the assets, but the relative contributions of the parties does not support awarding Cignot wholly to respondent." 2015 IL App (2d) 140231 page 28

2,2. The Appellate Court also wrote;

"While it is true that petitioner did not much participate in the creation and operation of Cignot, she still contributed to its creation and success by maintaining her full-time employment with Bridgestone, earning a steady salary and benefits, thereby allowing respondent to take the entrepreneurial risk in creating Cignot. This is certainly a non-zero contribution to Cignot, although it might be difficult to value. We observe that, while petitioner's contribution is non-zero, than respondent's contribution, so a disproportionate distribution of the asset might be warranted. However, *we* believe that the court abused its discretion by assigning no value to petitioner's contribution to Cignot and

in awarding the entire asset to respondent." 2015 IL App (2d) 140231 page 30

CONTRIBUTION TO THE ACQUISITION OF MARITAL PROPERTY

3. Debra has a career with Bridgestone, and was not a homemaker.

3.1. Debra, 46 years of age, presented herself as very articulate, intelligent, and forthcoming.

3.2. Debra was employed by Bridgestone in 1997, prior to the civil union, as a Senior Environmental Engineer. She had a career throughout the civil union. She is currently a Senior Project Manager earning $101,000.00 per year plus bonus.

3.3. Debra is a college graduate from Michigan State University.

4. Victoria is employed by Cignot, Inc. a company she created with funds from her nonmarital real estate.

4.1. Victoria, 51 years of age, also presented herself as very articulate, intelligent, and forthcoming.

4.2. Victoria is a high school graduate.

4.3. Victoria is an entrepreneur. She has done construction work, computer software, and now sells electronic cigarettes.

4.4. Victoria started Cignot, Inc., in 2009, with funds from a HELOC on the Poplar home in Elmhurst, her separate, nonmarital asset. She is paid a salary of $142,000.00 per year.

5. The parties kept their incomes and assets separate. They would equally pay the expenses of the Civil Union and separately pay their own expenses from their own accounts. They did not jointly combine their efforts.

5.1. Debra and Victoria kept separate accounts into which they deposited their paychecks.

5.2. Debra and Victoria contributed to a joint account that was used to pay the obligations of the Civil Union. There was an effort to equally pay for joint expenses, and pay individual expenses separately. Exhibit 57A

5.3. Neither party was dependent upon the income of the other. Each paid their own obligations without financial contribution from the other.

5.4. Cignot was started with a home equity line of credit on the nonmarital, separate, property of Victoria, the Poplar Street home in Elmhurst.

6. The parties shared household duties in the operation of the Civil Union.

6.1. Neither party solely acted as a homemaker.

6.2. Each party had duties maintaining the home, i.e. cleaning, cooking, grocery shopping, cutting grass, general maintenance, etc.

6.3. As indicated above, the parties would jointly contribute to joint expenses, but kept their property separate from the other, and pay their own individual expenses from their own incomes.

7. Neither party sacrificed their career for the civil union, nor did they assist or contribute to the career of the other.

7.1. Victoria did little to nothing for Debra's career at Bridgestone. There was no evidence of hosting business dinners, entertaining colleagues, or making a financial sacrifice for her career.

7.2. Debra likewise, did little to nothing for Victoria's various business ventures. There was no evidence of hosting business dinner, entertaining colleagues, or making a financial investment in any of the business ventures created by Victoria.

7.3. Their economic lives were separate from their emotional lives.

8. Cignot was created in year 7 of their 9 year relationship.

8.1. The civil union was created in 2002.

8.2. Cignot was created in 2009.

8.3. The parties ceased living together in 2011.

9. Each party contributed minimally to the other party's acquisition of assets.

9.1. The only area of the relationship in which they acted as partners was with the operation of the home. They divided the joint expenses and the household duties. Each benefitted the same from the other's contributions and each bore the same burden. Neither contributed to the career/ business enterprise of the other.

9.2. But there is some value to the emotional support of the home during the 9 years that they lived together.

THEREFORE, based upon the above findings the Court hereby makes the following ***ORDERS AND RULINGS***:

I. Except for Cignot, the marital estate is equally divided between the parties. Debra is awarded 20% of Cignot.

II. Article II paragraph (a)(xiii) is amended to $109,587.

Ill. Article II paragraph (b)(xiii) is amended to $109,587.

IV. All other aspects of the Judgment remain unchanged.

ENTERED this 3rd day of May, 2016.

/s/
Judge Neal W. Cerne

APPENDIX D — DENIAL OF A PETITION FOR LEAVE TO APPEAL IN THE SUPREME COURT OF ILLINOIS, DATED SEPTEMBER 26, 2018

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
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September 26, 2018

In re: In re Civil Union of Debra Hamlin, respondent, and Victoria Vasconcellos, petitioner. Leave to appeal, Appellate Court, Second District. 123604

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

Appendix D

The mandate of this Court will issue to the Appellate Court on 10/31/2018.

Very truly yours,

/s/ Carolyn Taft Grosboll
Clerk of the Supreme Court