2025 IL App (1st) 242469

FIFTH DIVISION
September 26, 2025

No. 1-24-2469

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

HAIDAR ALKHAWAJA, Petitioner-Appellant, v. ZAINAB ALRAMADAN and GAL: MERVATE MOHAMMAD, Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County No. 23-D-330735 The Honorable Thomas J. Kelley, Judge Presiding.

JUSTICE TAILOR delivered the judgment of the court, with opinion.
Justices Mikva and Oden Johnson concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's order that petitioner pay the guardian *ad litem* fees where the court's determination regarding petitioner's available assets was not against the manifest weight of the evidence. We affirm the order that therapeutic and/or reunification therapy between the father and the minor children was in the best interests of the children. The circuit court did not abuse its discretion in not referring the respondent mother's abduction of the minor children for criminal investigation and prosecution. Petitioner's claim that the circuit court erred in striking his motion to modify and reconsider the default judgment was moot.

¶ 2 The circuit court entered a default judgment dissolving the marriage between Haidar Alkhawaja (Haidar) and Zainab Alramadan (Zainab) a few months after Zainab abducted their two

minor children to Saudi Arabia. The court held Zainab in contempt for her failure to return the children to the United States and issued a body attachment to bring her before the court, but as of the filing of the notice of appeal in this case, Zainab had not complied with the court's order. We note that Saudi Arabia is not party to the Hague Convention on Civil Aspects of International Child Abduction, the treaty that establishes an expedited legal framework for a parent to seek the return of a child who has been wrongfully taken to another member country by the other parent.

¶ 3 This appeal, however, relates to four ancillary issues. Haidar appeals the order (1) requiring him to pay guardian *ad litem* (GAL) fees and recoup Zainab's portion from her, even though it had previously granted him a 100% fee waiver; (2) requiring him and the children to participate in therapeutic and/or reunification therapy before they could reside together again; (3) declining his request to refer this case for criminal investigation and prosecution; and (4) striking his motion to modify and reconsider the default judgment. We affirm the decision of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 Haidar and Zainab were married on September 15, 2011, in Saudi Arabia, and had two children together. On September 19, 2023, Zainab filed a petition for order of protection (OP) alleging Haidar physically and verbally abused her and their two children. On October 2, 2023, Haidar, through his attorney, filed a petition for dissolution of marriage, in which he requested the appointment of a GAL. The court then granted Haidar's motion to consolidate the OP case with the dissolution matter. On November 1, 2023, the court appointed Mervate M. Mohammad (Mohammad) as GAL and ordered Haidar to turn over the children's passports to her. On December 7, 2023, the Department of Children and Family Services issued a determination that Zainab's abuse allegations against Haidar were unfounded. The court granted Haidar's attorney leave to withdraw on January 19, 2024, after which Haidar proceeded *pro se*.

¶ 6 A. Abduction of Minor Children

¶ 7 On February 26, 2024, Haidar filed an emergency motion seeking to locate his children and return them to Illinois, stating they were "likely" in Saudi Arabia. On February 29, 2024, the court restrained both parties from removing the children from Illinois. The following day, Haidar filed a hand-written second emergency motion asserting that Zainab had in fact abducted the children to Saudi Arabia earlier that month, and requesting that the court order the children returned to Illinois. On March 6, 2024, the court struck the motion, finding it "illegible."

¶ 8 On March 7, 2024, Haidar filed a third emergency motion, again asking the court to order Zainab to immediately return the children to Illinois and order Mohammad to tender the children's passports. On March 8, 2024, the trial court found there was evidence that Zainab and the minor children had left the United States and were living in Saudi Arabia. The court ordered Zainab to appear in court with the children on March 12, 2024, and stated that a warrant may be issued for her arrest if she did not comply.

¶ 9 Zainab and the children failed to appear in court on March 12, 2024. The court issued a rule to show cause against Zainab for her failure to return the minor children, with a return date of March 26, 2024.

¶ 10 On March 22, 2024, the court ordered Haidar to retrieve the children's passports from Mohammad, which he later did. On the same date, Haidar filed a motion to remove Mohammad as GAL, alleging that Mohammad did not treat his request to locate the children as an emergency. There is nothing in the record, however, showing whether Haidar presented his motion to the court or whether the court ruled on it.

¶ 11 When Zainab failed to appear in court on March 26, 2024, the court held her in indirect civil contempt and ordered her committed to the Cook County Jail until she purged herself of

contempt by returning the minor children to Haidar's care and custody. At the same hearing, the court granted Zainab's attorney leave to withdraw. That order states that Haidar retrieved "all passports for the minor children from the Guardian Ad Litem's office on March 25, 2024." As of the filing of the notice of appeal on December 16, 2024, Zainab had neither appeared in court nor returned the children to Haidar.

¶ 12 B. Fee Waiver

¶ 13 On April 5, 2024, Haidar filed an application for waiver of court fees. Under the "Household Information" section of the application, Haidar stated that he supports two minor children who used to live with him and that he does not receive any public benefits. In the "Financial Information" section, Haidar stated his monthly income was $3,665 (and his yearly income was $43,980) and monthly expenses were $4,149. Under the "Items of Value" section, Haidar stated that the total value of his bank accounts and cash was $1,000. He did not disclose ownership of any "Other real estate (not including the house I live in)."

¶ 14 In the optional section on "Hardship Information," Haidar explained it would be a "substantial hardship" for him and his family if he had to pay the fees, costs, and charges associated with this case, stating: "Attorney's fees, GAL fees, Children fees, extremely difficult divorce, great damages from the respondent, great losses because of the respondent."

¶ 15 The trial court granted Haidar a full (100%) fee waiver on April 5, 2024—the same day Haidar filed his fee waiver application—finding that payments of court fees, costs, and charges "would cause *substantial hardship* for the applicant or their family" (emphasis in original form order). The order was effective as of April 5, 2024.

¶ 16 C. Default Judgment for Dissolution of Marriage

¶ 17 On April 24, 2024, Haidar filed a motion for default judgment for dissolution of marriage. The court then held a lengthy prove-up hearing over the course of three days, on May 8, 2024, June 11, 2024, and July 9, 2024. On the first day of the hearing, the court waived the cost of the transcript of the proceedings, finding Haidar "was granted [a Rule] 298 waiver." On the final day of the hearing, the court entered a default judgment for dissolution of marriage (default judgment), restating its prior finding that "there was evidence that ZAINAB and the minor children left the United States and were living in Saudi Arabia", that Zainab had been held in contempt of court, and that Zainab was "to be committed to the Cook County Jail to remain until she has purged herself of contempt by returning the minor children to the possession of HAIDAR." In addition to dissolving the marriage, the default judgment allocated parental responsibilities, awarded real estate and personal property interests, and ordered payment of GAL fees. The court, however, reserved several issues, including child support for the minor children, maintenance for both parties, and parenting time for Zainab.

¶ 18 1. GAL Fees

¶ 19 As to GAL fees, the default judgment stated the GAL incurred reasonable fees of $7,858.75. It further stated:

> "The Court finds that HAIDAR paid $1,250.00 and, therefore, the balance due to the GAL is $6,608.75 ($7.858.75 - $1,250.00 = $6,608.75). The Court finds that ZAINAB should be 100% responsible for the fees the GAL incurred after February 18, 2024, which was when she abducted the children to Saudi Arabia. The total fees the GAL incurred after February 18, 2024, amount to $5,625.00 ($3,460.00 + $1,257.00 + $907.50). The total fees the GAL incurred prior to the abduction was $2,233.75. The Court finds that the parties

shall split the fees prior to the abduction equally. Accordingly, ZAINAB shall owe HAIDAR $6,742.00 ($2,234.00 x 50% = $1,117.00; $1,117.00 + $5,625.00 = $6,742.00). The Court finds that it is appropriate that HAIDAR be responsible for paying the balance of fees due to the GAL in the amount of $6,608.75, because the GAL spent a substantial amount of additional time drafting pleadings and Court orders because HAIDAR was self-represented after ZAINAB abducted the children. In addition, HAIDAR is the only party living in Illinois. Finally, there was evidence that HAIDAR has substantially more assets (his interests in real estate in Saudi Arabia) than ZAINAB. HAIDAR is in a better position to collect the fees from ZAINAB than the GAL. It is fair that HAIDAR shall collect the fees in the amount of $6,742.00 directly from ZAINAB."

¶ 20 Additionally, the default judgment stated: "HAIDAR owns real estate in Saudi Arabia as a gift from his father. The Court notes that HAIDAR did not list this asset in his disclosure statement. HAIDAR does not own any other property or significant assets."

¶ 21 2. Therapeutic and/or Reunification Therapy

¶ 22 As to therapeutic and/or reunification therapy, the default judgment states:

"According to the GAL's investigation, ZAINAB raised the children and was the primary caretaker, and HAIDAR supported the family financially. The GAL found that the children refused to speak to their father and said they would never forgive him. HAIDAR had video parenting time with the children, but alleged the children would not speak or face the camera. The Court finds that ZAINAB was alienating the children against HAIDAR. On December 7, 2023, DCFS sent a letter to HAIDAR stating '*after a thorough evaluation, DCFS determined that the abuse alleged against ZAINAB was unfounded.*' Based on the evidence and an analysis of all the factors in 602.5 and 602.7, the Court finds HAIDAR

> shall have sole decision-making relative to the minor children. In addition, HAIDAR shall be designated as the residential parent and ZAINAB's parenting time be reserved. The Court agrees with the GAL's recommendation that the children and HAIDAR attend therapeutic and/or reunification therapy prior to the children residing with him." (emphasis in original).

¶ 23 D. Reconsideration and Appeal

¶ 24 On August 5, 2024, Haidar filed a motion to modify and reconsider the default judgment. On August 15, 2024, the court struck Haidar's motion, citing a litany of reasons. The court granted Haidar leave to file an amended motion to modify and reconsider, which he filed on September 30, 2024, the deadline imposed by the court. In his motion, Haidar argued in part that he should not be required to pay the GAL fees. Mohammad filed a response and petition for rule to show cause why Haidar should not be held in indirect civil contempt for failure to pay the GAL fees. On November 25, 2024, the court denied Haidar's amended motion to modify and reconsider. In its order, the court noted that Haidar raised additional issues at the hearing that were not included in his amended motion to modify and reconsider. The court found it was not necessary to address these issues, but then stated that "in abundance of caution and courtesy to the parties [it] will do so." Relevant to this appeal, the November 25, 2024, order on Haidar's motion to reconsider the default judgment acknowledged that Haidar testified he did not list the real estate on his disclosure statement based on advice of his then counsel. The order also addressed Haidar's request to transfer the case to the Cook County State's Attorney. The order states "[t]his Court is under no obligation, under Illinois Law, to transfer this case to the Cook County State's Attorney but HAIDAR is free to bring this matter to any State and Federal authorities."

¶ 25 On April 4, 2025, after Haidar filed his notice of appeal, the trial court entered an order finding that Haidar satisfied his obligation to pay the GAL $6,608.75.

¶ 26 II. ANALYSIS

¶ 27 On appeal, Haidar argues the trial court erred by: (1) ordering him to pay all of the GAL fees and recoup Zainab's share directly from her, (2) requiring therapeutic and/or reunification therapy before the children could reside with him, (3) not referring Zainab's abduction of the children for criminal prosecution, and (4) striking his motion to modify and reconsider the default judgment.

¶ 28 A. Jurisdiction

¶ 29 Although no party raises the issue of our jurisdiction, we have a *sua sponte* duty to consider it and dismiss the appeal if jurisdiction is lacking. *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935 (2007). A judgment is not final unless it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009). When an order resolves fewer than all claims brought by a party, generally the order is not final and appealable. *Id.*

¶ 30 In *In re Marriage of Leopando*, 96 Ill. 2d 114 (1983), our supreme court determined that a dissolution judgment is not final for purposes of appeal until all ancillary issues have been resolved. *Id.* at 119; *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13 ("[G]enerally only a judgment that does not reserve any issues for later determination is final and appealable."). The court was concerned with avoiding "unnecessary piecemeal litigation arising out of the same proceeding." *Leopando*, 96 Ill. 2d at 120.

¶ 31 Here, the default judgment resolved numerous issues, including Haidar's petition for dissolution of marriage, allocation of parental responsibilities, award of real estate and personal

property interests, and GAL fees. However, it reserved several issues, including child support for the minor children, maintenance for both parties, and parenting time for Zainab. In the default judgment, the court found that Haidar was unemployed and last worked as a financial manager in Saudi Arabia where he made $1,500 per month, but that it did not have enough information about Zainab's employment to resolve the issues of maintenance and child support. Additionally, with Zainab absent from the proceedings, the court determined it could not resolve the issue of Zainab's parenting time. Accordingly, the default judgment was not a final judgment because it reserved several ancillary issues.

¶ 32 Since *Leopando*, however, courts have carved out narrow exceptions to find dissolution of marriage orders final and appealable even though the trial court reserved certain ancillary issues. These exceptions "usually involve unique and compelling circumstances" where reserved issues cannot be easily resolved. *Susman*, 2012 IL App (1st) 112068, ¶ 14. See, *e.g.*, *In re Marriage of Toth*, 224 Ill. App. 3d 43, 48 (1991) (finding dissolution judgment was appealable despite reservation of distribution of assets from a pending personal injury suit); *In re Marriage of Parks*, 122 Ill. App. 3d 905, 908 (1984) (finding judgment was appealable where the court lacked *in personam* jurisdiction over the respondent and the court had adjudicated all possible matters to the extent of its jurisdiction).

¶ 33 *In re Marriage of Lord* is instructive. There, the issue of maintenance was reserved because one party had mild symptoms of a disease that could develop into a disabling condition. *Lord*, 125 Ill. App. 3d 1, 3-5 (1984). According to medical testimony, the parties would know within a few years whether the initial symptoms would develop into a disabling condition. *Id.* at 3. The trial court found that the party with the medical condition was not entitled to maintenance at the time of the hearing, but if the disease progressed to a disabling condition, the distribution of property

would be inadequate without a maintenance award. *Id.* Concluding it had jurisdiction, the court found *Leopando* inapplicable where the dissolution judgment "decide[d] fully that which could fairly then be decided." *Id.* at 4. The court reasoned, "the public policy against fragmented litigation" adopted in *Leopando* would "not be significantly undercut by granting finality to the judgment." *Id.* at 3-4.

¶ 34 This case too presents unique and compelling circumstances. Zainab abducted the children to Saudi Arabia and, despite having been found in contempt, has failed to comply with the court's order to return them to the United States and to Haidar's custody. On these facts, the instant appeal is neither unnecessary nor piecemeal. The reserved issues cannot be resolved without Zainab's participation in the lawsuit. Moreover, because Saudi Arabia is not a party to the Hague Convention on Civil Aspects of International Child Abduction (Status Table: 28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, HCCH, https://www.hcch.net/en/instruments/conventions/status-table/?cid=24 (last visited Sept. 4, 2025)), Haidar lacks the benefit of that treaty to enforce his parental rights. The risk of piecemeal litigation is readily outweighed by the possibility Zainab will not return to Illinois with the children and participate in this case, and that the reserved issues of child support, maintenance, and Zainab's parenting time will not be resolved. Haidar would be prejudiced if the default judgment is shielded from appellate review due to Zainab's choice to disobey court orders and leave the country with the children. As in *Lord*, the court here decided fully those issues which could be fairly decided at the time of the default judgment. Unless we exercise jurisdiction over Haidar's present appeal, he may never be able to appeal the disputed orders. Accordingly, this Court has jurisdiction over this appeal notwithstanding the ancillary issues reserved by the default judgment.

¶ 35 Before turning to the merits, we note Zainab has not filed an appellee brief. The GAL filed a brief on the issue of her fees only. Generally, we will not act as advocate for an appellee who has not filed a brief. *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008). Nevertheless, we should decide the appeal on the merits where the record is simple, and the claimed error can be decided without the aid of an appellee brief. See *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, 63 Ill. 2d 128, 133 (1976). Because that is the case here, we will address the merits of Haidar's claims of error.

¶ 36 B. GAL Fees

¶ 37 On appeal, Haidar argues the court erred in ordering him to pay all of the GAL fees incurred after his fee waiver was granted on April 5, 2024, and to recoup Zainab's portion from her. Alternatively, he argues that the court erred by ordering him to pay the GAL fees after he moved for the GAL's removal on March 22, 2024.

¶ 38 1. Effect of Fee Waiver Order on GAL Fees

¶ 39 By way of background, court fee waivers are governed by section 5-105 of the Code of Civil Procedure, which states in relevant part, "[i]f the court finds that the applicant is an indigent person, the court shall grant the applicant a full fees, costs, and charges waiver entitling [the applicant] to sue or defend the action without payment of any of the fees, costs, and charges." 735 ILCS 5/5-105(b)(1). The Code defines an "indigent" person as any person whose "available personal income is 125% or less of the current poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges." *Id.* § 5-105(a)(2)(ii). Alternately, a person may be "indigent" if they are "in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs,

and charges would result in substantial hardship to the person or [their] family." *Id.* § 5-105(a)(2)(iii). A litigant who qualifies for a fee waiver order is not liable for GAL fees. *Id.* § 5-105(a)(1) (The "fees, costs, and charges" subject to waiver are defined in section 5-105(a)(1) as "payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: * * * guardian *ad litem* fees").

¶ 40 To qualify for a waiver of court fees, a litigant must submit an application providing details of their financial status. *Id.* § 5-105(c); Ill. S. Ct. R. 298 (Application for Waiver of Court Fees, Costs, and Charges). Here, Haidar reported in his application $3,665 in monthly income and $4,149 in monthly expenses. For assets, Haidar reported $1,000 in "[b]ank accounts and cash." The application form also requires disclosure of "[o]ther real estate (not including the house I live in)", but Haidar did not list any real estate on his application. In the Hardship Information section, Haidar stated: "Attorney's fees, GAL fees, Children fees, extremely difficult divorce, great damages from the respondent, great losses because of the respondent."

¶ 41 Using a form order approved by our supreme court, the court granted Haidar a full (100%) fee waiver, finding that payments of court fees, costs, and charges "would cause *substantial hardship*" to Haidar (emphasis in original). The fee waiver order states it is effective as of April 5, 2024.

¶ 42 Haidar argues he is not liable for the GAL fees because the circuit court granted him a full waiver, which includes GAL fees, and modified his fee waiver without following the process specified in the fee waiver statute. Mohammad counters that, despite the full (100%) fee waiver entered in Haidar's favor, the court did not err in ordering Haidar to pay all of the incurred GAL fees and recoup Zainab's portion of the GAL's fees directly from Zainab. Mohammad contends

that Haidar misrepresented his income and assets when he applied for a fee waiver, and that the default judgment superseded the fee waiver order.

¶ 43 The reconsideration of a fee waiver order is governed by subsection f-5 of section 5-105 of the Code, which states in pertinent part:

> "If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person whose fees, costs, and charges were initially waived was not entitled to a full or partial waiver at the time of application, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the initial waiver might be reconsidered. The court may require the applicant to provide reasonably available evidence, including financial information, to support his or her eligibility for the waiver, but the court shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subdivision (b)(1) or (b)(2) of this Section. If the court finds that the person was not initially entitled to any waiver, the person shall pay all fees, costs, and charges relating to the civil action, including any previously waived fees, costs, and charges. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing under this subsection more often than once every 6 months." 735 ILCS 5/5-105(f-5).

¶ 44 We begin our review by looking to the plain language of the statute to ascertain the legislature's intention. *Village of Lincolnshire v. Olvera*, 2025 IL 130775, ¶ 19. Subsection f-5 establishes a process by which a fee waiver order may be reconsidered. It provides that where information comes to the court's attention "suggesting" that the applicant was not entitled to a fee waiver, "the court may require the person to appear at a court hearing by giving the applicant no

less than 10 days' written notice of the hearing and the specific reasons why the initial waiver might be reconsidered." The use of the word "may" indicates that the court has discretion to require a person to appear at a court hearing to reconsider a previously granted fee waiver if new information comes to its attention suggesting the applicant was not entitled to it. See *People v. Reed*, 177 Ill. 2d 389, 393 (1997) (Generally, the use of the word "may" indicates a permissive rather than a mandatory reading). In other words, the court has discretion to decide whether it will reconsider a fee waiver order and, depending on the circumstances, may opt not to reconsider the fee waiver and let it stand. We see nothing in the text of the statute to suggest that "may" has a mandatory meaning. But that does not answer whether the process delineated in the statute to reconsider a fee waiver is likewise permissive, or whether it is mandatory.

¶ 45 We find once the court decides to require a person to appear at a court hearing to reconsider the fee waiver the statute triggers a mandatory process for doing so. The statute does not provide the court "may" provide the beneficiary of a fee waiver order "10 days' written notice of the hearing" and the reasons why the fee waiver may be reconsidered. Rather, it provides for "no less than 10 days' written notice of the hearing", and identification of the "specific reasons" why the fee waiver might be reconsidered. In so doing, the statute establishes a procedural framework to permit the fee waiver beneficiary a meaningful ability to respond and defend his fee waiver. Interpreting the statute to mean that these procedural safeguards are merely permissive would defy common sense because it would render them meaningless.

¶ 46 Our conclusion is supported by the surrounding text. The burden to trigger subsection f-5 is slight, requiring only that the court obtain information "suggesting" a party was not entitled to a fee waiver such that the original fee waiver "might be reconsidered." To suggest something is merely "to mention or imply as a possibility", or "to offer for consideration or as a hypothesis."

Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/suggest (last visited Sep. 4, 2025). Likewise, "might" is used to say that "something is possible." *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/might (last visited Sep. 4, 2025). Subsection f-5 then requires that the court "find[] that the person was not initially entitled to any waiver" before his fee waiver may be vacated and he be required to pay fees. However, judicial findings cannot be drawn on mere suggestions or possibilities. Rather, in order to revoke a fee waiver, a court may be required to consider evidence, including any evidence that the party with the fee waiver may offer to rebut the "suggestion" that he was not entitled to a fee waiver. Any interpretation that the process prescribed in subsection f-5 is not mandatory would leave a fee waiver beneficiary without the ability to meaningfully respond to the "suggestion."

¶ 47 *Rawlings v. Illinois Department of Law Enforcement*, 73 Ill. App. 3d 267 (1979), supports our conclusion. There, the plaintiff appealed the denial of her application for a firearm owners identification card. On administrative review, the circuit court allowed plaintiff to file her action as a "poor person" based on her motion and supporting affidavit as required by the relevant statute in effect at the time. *Id.* at 278. However, after upholding the denial of her firearm owners identification card, the circuit court ordered Rawlings to pay costs within 60 days. *Id.* at 271. On appeal, this court reversed the circuit court's assessment of costs against Rawlings. When *Rawlings* was decided, there was no provision in the statute (Ill. Rev. Stat. 1977, ch. 33) for notice and opportunity for hearing for the reconsideration of a fee waiver order. Nevertheless, *Rawlings* held that a court may not "reverse itself at will" on the question of eligibility for a fee waiver. *Id.* at 279. To do so "would be totally inequitable with respect to the person given court leave to file and proceed as a poor person." *Id.* A fee waiver decision may only be reversed if "it is shown either that the information given was significantly erroneous or that the financial condition of the

applicant has significantly improved in such manner that the applicant would no longer be entitled to file as a poor person." *Id.*

¶ 48 We observe that notice and an opportunity to be heard before a fee waiver order may be reconsidered is the practice followed in the federal courts. See e.g. *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) ("In cases such as this, where the appellant was authorized to proceed *in forma pauperis* [IFP] in the district court, a district judge who after receiving the notice of appeal doubts that it is in good faith should, before yanking the appellant's IFP status, notify the appellant of the impending change of status and give him an opportunity to submit a statement of his grounds for appealing."); *Galka v. Cooper*, 2013 WL 1499576, at *1 (E.D. Mich. Apr. 10, 2013) (notice and opportunity to explain required before *in forma pauperis* status may be revoked); *In re Kauffman*, 354 B.R. 682, 684-85 (Bankr. D. Vt. 2006) (bankruptcy court must provide notice and opportunity to be heard before vacating a party's *in forma pauperis* status).

¶ 49 Having determined that the process prescribed in subsection f-5 to revoke a fee waiver is mandatory, we turn to the present case. The court did not provide Haidar 10 days' written notice of a hearing with the specific reasons why his fee waiver might be reconsidered. Nor did the court expressly find that Haidar was not entitled to a fee waiver, as required by subsection f-5. 735 ILCS 5/1-105(f)(5) ("If the court finds that the person was not initially entitled to any waiver, the person shall pay all fees, costs, and charges relating to the civil action, including any previously waived fees, costs, and charges."). During the prove-up hearing, the court did not inform Haidar that it might revoke or modify the previously granted fee waiver. Yet, in its default judgment, the court effectively modified its fee waiver by requiring Haidar to pay the GAL's fees incurred after April 5, 2024 (the fee waiver's effective date) and to recoup Zainab's share from her. The court erred by

not following the statutory process prescribed in subsection f-5 before modifying Haidar's fee waiver order.

¶ 50 However, we find the error was harmless. Our review of the record shows that the issue of Haidar's undisclosed property in Saudi Arabia, which was his only significant asset, was raised and Haidar was given multiple opportunities to address it. Therefore, we need not remand this matter to the circuit court and may turn to the merits of the court's decision to effectively modify Haidar's fee waiver by ordering him to pay GAL fees.

¶ 51 We review the circuit court's decision to modify Haidar's fee waiver under the manifest weight of the evidence standard. Subsection f-5 states: "If the court finds that the person was not initially entitled to any waiver, the person *shall* pay all fees, costs, and charges relating to the civil action, including any previously waived fees, costs, and charges." 735 ILCS 5/1-105(f-5) (emphasis added). Because the statute employs the mandatory term "shall", if the trial court elects to hold a hearing to reconsider the fee waiver and finds that the beneficiary was not initially entitled to a fee waiver, then it is mandated to order the fee waiver beneficiary to pay fees and costs. Cf. *Battle v. Chicago Police Department*, 2022 IL App (1st) 200083, ¶ 14 (where legislature amended statute to provide that the court "shall" waive fees from "may" waive fees, the trial court lacks discretion to deny fee waiver order if applicant establishes indigency). In determining whether one is indigent for purposes of the fee waiver statute, the circuit court must consider the precise criteria delineated in section 5-105(a)(2) of the fee waiver statute. The court's decision on indigency is reviewed under the manifest weight of the evidence standard. *Id.* ¶ 15. We apply the same standard in reviewing a court's decision to reconsider a previously granted fee waiver. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Id.*

¶ 52 At the default judgment prove-up hearing, which occurred over three days on May 8, 2024, June 11, 2024, and July 9, 2024, Haidar was asked about the land in Saudi Arabia several times. He testified that his father "gifted all of the children a piece of vacant lot", that the land was unimproved, that it did not generate any income, and that his attorney told him it was not part of the marital estate because it was a gift. When asked to clarify what he meant by a "piece of a vacant lot", he said that he got his own piece of the vacant lot. He testified that "if the Saudi government doesn't seize it based on this messy situation" and he could get access to it and sell it, then it would be worth at most 1 million Saudi Riyals, which is about $266,666. He said he didn't know if he could sell it because Zainab put him in a compromising situation with the Saudi government. As for income, he said he was pursuing a Ph.D. in quantitative finance from the Illinois Institute of Technology, and that he receives a student scholarship of $3665 per month paid by the Saudi government. His scholarship was supposed to last until the end of the year but the Saudi government stopped paying him on February 21, 2024. The court asked him if he had documents to prove his finances and he said no. At the next hearing on June 11, 2024, the court asked Haidar how he is paying his bills and he testified, "At this moment no one [is helping pay the bills], but I will seek help from my family either to sell this piece of land or something." The court then asked about his outstanding legal fees and how he managed to pay his former attorney $3500. He responded, "from my income and help from my family." At the final hearing on July 9, 2024, the court said to Haidar, I've heard your argument. Unless you give me some evidence. I need some evidence. So, do you have anything else to add?" Haidar reiterated that his income has been suspended since February and did not add any information about the real estate.

¶ 53 The record shows that the court modified Haidar's fee waiver to require him to pay the GAL's fees because, although he was unemployed, he owned land in Saudi Arabia. We cannot say

this decision was against the manifest weight of the evidence. Haidar testified that he did not have any income because his scholarship from the Saudi government was suspended. In the default judgment, the circuit court makes a finding that Haidar is "unemployed" and makes no reference to the stipend. Based on Haidar's testimony that he had no current income, Haidar would qualify as "indigent" on the basis of the income guidelines, unless his assets are of a nature that would enable him to pay fees. 735 ILCS 5/5-105(a)(2)(ii) (defining "indigent" person as any person whose "available personal income is 125% or less of the current poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges.").

¶ 54 We turn, then, to Haidar's assets. His only asset of substantial value is the real estate he owns in Saudi Arabia. We must determine if this unimproved real estate qualifies as a non-exempt asset under Part 9 or 10 of 735 ILCS 5/art. XII (West 2022). Part 9 provides for a homestead exemption for property that a person occupies as a residence. Because Haidar does not claim that he lives on the real estate in question, the property he owns in Saudi Arabia is not an exempt asset. Likewise, the real estate is not exempt under Part 10, which only applies to personal property.

¶ 55 Next, we consider whether the circuit court's determination that the real estate was "of a nature and value" that Haidar would be able to pay GAL fees was against the manifest weight of the evidence. One may be asset-rich and yet still be "indigent" because he is cash-poor and cannot easily liquidate his assets. Cf. *In re Miller*, 2002 Iowa App. LEXIS 990, *4 ("Tamara's argument for increased alimony is supported by the reality she may be asset rich, but is cash poor. As she argued, to 'untangle this financial knot' will take time, and no ready solution was presented at trial to put cash in her pocket."). To be clear, we do not suggest that an asset-rich, but cash-poor litigant must be deemed indigent for purposes of the fee waiver statute; rather, each case must be

determined on its own facts and circumstances. Here, Haidar testified the property was worth approximately $266,666, substantially in excess of the GAL fees at issue here. However, Haidar provided vague testimony about whether he could sell his property in Saudi Arabia. When asked if he could sell the property now if he wanted to, he blamed Zainab for putting him in a "very compromising situation with the Saudi government" but did not directly answer the question. When asked who is paying his bills, Haidar stated, "At this moment no one, but I will seek help from my family either to sell this piece of land or something, and by the way -- ". Haidar did not provide any documentation relating to the real estate in question.

¶ 56 Based on Haidar's testimony regarding the significant value of his property in Saudi Arabia, and his plan to consider selling the land to pay for his expenses, we cannot say that the opposite conclusion is clearly evident or that the circuit court's finding is unreasonable, arbitrary, or not based on the evidence presented. The court asked Haidar about his property in Saudi Arabia multiple times over the course of three prove-up hearings and Haidar did not clearly dispute that he could sell the property to pay the GAL fees. On this record, we hold that the court's decision to effectively modify its fee waiver order to require Haidar to pay GAL fees was not against the manifest weight of the evidence. Although the court erred in not following the statutory procedure to revoke Haidar's fee waiver, our review of the record shows that the error was harmless. See *Jackson v. Pellerano*, 210 Ill. App. 3d 464, 471 (1991) ("where the reviewing court can see from the entire record that no harm has been done, the judgment will not be disturbed.")

¶ 57 2. Effect of Haidar's Request for the GAL's Removal

¶ 58 Alternatively, Haidar argues that he should not be required to pay any GAL fees after he moved to disqualify Mohammad. Courts have discretion to appoint a GAL in contested custody disputes to assist in determining a child's best interest. *Roth v. Roth*, 52 Ill. App. 3d 220, 227

(1977). A GAL acts as "an arm of the court", and has a duty to represent the best interests of the child and offer recommendations to the court. *In re Br. M.*, 2021 IL 125969, ¶ 59.

¶ 59 After Zainab abducted the children, Haidar filed a motion to remove Mohammad as GAL, arguing Mohammad did not treat the abduction of his children with the necessary urgency. On appeal, Haidar makes additional arguments as to why the trial court should have removed Mohammad, stating in his brief that Mohammad was supposed to be holding the children's passports at the time they left the country, and yet the children were able to fly to Saudi Arabia. In the order of March 26, 2024, however, the court stated Haidar retrieved "all passports for the minor children from the Guardian Ad Litem's office on March 25, 2024." Additionally, Haidar states he has serious concerns about Mohammad's conflicts of interests and asks us to order Mohammad "to tender to the Appellate Court a conflict check from all attorneys in her office."

¶ 60 The record does not establish whether the court ruled on Haidar's motion to remove the GAL. When a court does not rule on a motion, we do not presume the motion is denied. *Morse v. Donati*, 2019 IL App (2d) 180328, ¶ 33. "It is the moving party's responsibility to request the judge to rule on [their] motion, and when no ruling has been made, the party is presumed to have abandoned the motion, absent circumstances indicating otherwise." *Id.* Because the record does not contain an order disposing of Haidar's motion to remove the GAL, we treat the motion as abandoned, rather than as denied. Accordingly, we have no occasion to consider Haidar's alternate argument. Finally, we note that the record shows Haidar informed the circuit court multiple times about the GAL's alleged conflicts of interests, and after considering Haidar's concerns, the circuit court determined Mohammad "did a tremendous job in a very difficult case."

¶ 61 C. Therapeutic and/or Reunification Therapy

¶ 62 Haidar next argues that because the children have been abducted by Zainab to Saudi Arabia, the trial court erred in ordering therapeutic and/or reunification therapy before the children can move back in with him. Haidar asks that we amend the default judgment so that if the children are returned to Illinois, they are permitted to reside with him immediately before participating in therapeutic and/or reunification therapy.

¶ 63 In the trial court's order on reconsideration, entered November 25, 2024, the court stated "it is in the best interest of the minor children that they be enrolled in reunification therapy prior to them residing with HAIDAR because it has been over six months since the children have had any contact with HAIDAR. ZAINAB may return to the State of Illinois with the children or HAIDAR may move back to Saudi Arabia; so it may be practical for the children to attend reunification therapy prior to residing with HAIDAR. If future circumstances make reunification therapy impractical, HAIDAR may always file a Motion modifying the requirement."

¶ 64 The significance of the children's abduction here is not lost on us. Yet, we cannot say that reunification therapy would not be in the children's best interest given their extended separation from Haidar and their reported unwillingness to talk to him due to Zainab's alienation of them from Haidar. See *In re B.S.*, 2022 IL App (2d) 220271, ¶¶ 38-43 (holding trial court did not err in ordering family reunification therapy services when it was in the best interests of the child to engage in the services before returning to live with her mother who had not been the child's custodial parent for several years, and the child was apprehensive about engaging in a relationship with her mother). We point out that, as the circuit court found, Haidar may ask the court to modify the requirement or timing of reunification therapy if future circumstances warrant a change. However, it would be premature for us to consider any changed circumstances. See *Weber v. St.*

Paul Fire & Marine Insurance Company, 251 Ill. App. 3d 371, 372-73, (1993) ("whether an action is 'premature', that is, not ripe for adjudication, focuses on an evaluation of the fitness of the issue for judicial decision at that point in time."). The circuit court did not abuse its discretion in requiring therapeutic and/or reunification therapy prior to the children being returned to Haidar.

¶ 65 D. Referral for Criminal Investigation and Prosecution

¶ 66 Haidar next argues that the court erred by not referring this case for criminal investigation and prosecution by the State's Attorney based on Zainab's "Violations of the Plenary order of protections and the child abduction and kidnapping." In its order on reconsideration, the court stated: "HAIDAR requested for this Court to transfer this case to the Cook County State's Attorney. This Court is under no obligation, under Illinois Law, to transfer this case to the Cook County State's Attorney but HAIDAR is free to bring this matter to any State and Federal authorities."

¶ 67 Haidar cites no law that would require a court to refer a matter for criminal investigation. There is, of course, no law prohibiting a judge from doing so. Even if the court were to refer the matter to law enforcement authorities, only a law enforcement agency has the authority to decide whether to investigate and prosecute a case. See *People v. Dandridge*, 152 Ill. App. 3d 941, 943 (1987) ("The State's Attorney is vested with exclusive discretion in the initiation and management of a criminal prosecution.") It is fundamental to the separation of powers that courts do not have the authority to order that a matter be criminally investigated or prosecuted. See *People v. Edwards*, 97 Ill. App. 3d 407, 410 (1981) (holding the trial court lacks authority to "assume the mantel of prosecutor" as that role is reserved for the State's Attorney by the State Constitution and by statute.). Again, we do not minimize Zainab's abduction of the children to another country. But

the court did not abuse its discretion by declining to refer this case to a prosecutor and instead informing Haidar that he may bring the matter to law enforcement authorities himself.

¶ 68 E. Order Striking Motion to Reconsider

¶ 69 In addition to appealing the default judgment and the denial of his amended motion to reconsider the default judgment, Haidar also appeals the August 15, 2024, order striking his original motion to modify and reconsider default judgment. The court cited a litany of reasons to strike the motion and require him to file an amended motion. We agree with Haidar that the court erred in doing so, but we need not belabor the point because Haidar's appeal of this order was effectively mooted after he was granted leave to file an amended motion to reconsider and did so, and the court then ruled on the amended motion.

¶ 70 III. CONCLUSION

¶ 71 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 72 Affirmed.