2013 IL App (1st) 112683-U

FIRST DIVISION
March 4, 2013

No. 1-11-2683

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF MATTHEW YATES, Petitioner-Appellee, and FELICIA YATES, Respondent-Appellant.	)))))))))))	Appeal from the Circuit Court of Cook County No. 01 D2 30832 Honorable Grace Dickler and Jeanne Reynolds, Judges Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court erred in imposing sanctions on respondent personally because her attorney sought financial information about petitioner's current wife; accordingly, the trial court's August 16, 2011, order is modified to reflect a $2,500 award of monetary sanctions in favor of petitioner and against respondent's attorney. Otherwise, the trial court did not abuse its discretion in: (1) denying child support to respondent for 2006; (2) allowing offsets against respondent's child support awards; (3) refusing to strike petitioner's petition for a change of custody; (4) abating child support and refusing to hold petitioner in contempt for nonpayment of support; (5) voiding prior child support awards to respondent and awarding child support to petitioner; (6) ordering respondent to contribute to the children's college expenses; and (7) denying respondent's request for contributions to her attorney fees. In addition, respondent

> failed to provide a complete record on appeal to this court with respect to the issues concerning the retroactivity of her child support order, the offsets against her child support awards, the abatement of petitioner's child support obligations, and her petition for attorney fees. We are thus compelled to hold that the trial court's orders were in conformity with the law and supported by sufficient evidence. Moreover, the evidence in the record before this court supports the trial court's decision. Accordingly, we modify the trial court's order regarding sanctions, but affirm the judgments of the trial court in all other respects.

¶ 2 Respondent, Felicia Yates, appeals from various orders of the trial court concerning child custody, child support, sanctions, and attorney fees. On appeal, Felicia contends the trial court abused its discretion by: (1) denying child support to Felicia for 2006, (2) allowing offsets against Felicia's child support awards, (3) refusing to strike petitioner Matthew Yates's petition for a change of custody, (4) abating child support and refusing to hold Matthew in contempt for nonpayment of support, (5) voiding prior child support awards to Felicia and awarding child support to Matthew, (6) ordering Felicia to contribute to the children's college expenses, (7) imposing sanctions on Felicia for seeking financial information about Matthew's current wife, and (8) denying Felicia's request for contributions to her attorney fees. For the following reasons, we affirm as modified.

¶ 3 **BACKGROUND**

¶ 4 The case before this court has had long history of acrimonious litigation spanning nearly ten years and three prior appeals. See *In re Marriage of Yates*, No. 1-08-2705 (2009) (unpublished order under Supreme Court Rule 23) (dismissed for want of prosecution); *In re Marriage of Yates*, Nos. 1-09-3440 and 1-10-0758 (cons.) (2011) (unpublished order under Supreme Court Rule 23) (dismissed for lack of jurisdiction). Matthew and Felicia were married in March 1991, and have two children: Louise, born September 24, 1991; and Andrew, born May 23, 1995. On November 26,

2003, the trial court entered a judgment dissolving the marriage between the parties. The dissolution judgment incorporated a marital settlement agreement (MSA) executed by both Felicia and Matthew. The MSA specifically provided that Matthew and Felicia would have joint custody of the children and would be "co-residential parents," with Matthew having the children live with him three days each week and Felicia having them four days. Under the terms of the MSA, child support would be reserved as long as the parties maintained the co-residency of the minor children. Finally, under the MSA, the parties would share equally in all medical and dental expenses incurred on behalf of the children, as well as all academic, camp, and extracurricular expenses.

¶ 5 On August 16, 2005, Matthew filed a petition for a rule to show cause against Felicia, alleging in part that she failed to maintain a healthy environment for the children and that she failed to pay for her one-half of the children's educational expenses. On that same date, Matthew also filed a petition to modify the dissolution judgment, seeking in part (1) sole legal custody of the children while maintaining the existing co-residency provisions of the MSA, and (2) periodic reconciliation and payment of expenses.

¶ 6 On January 13, 2006, Felicia filed a petition seeking child support from Matthew. Felicia first asserted that the trial court failed to comply with section 505 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505 (West 2004)) and that the MSA improperly reserved the matter of child support while the parties were co-residential parents of the children. Felicia also alleged that she should be awarded child support because she had been unemployed since January 2005.

¶ 7 On May 9, 2006, the trial court issued a written order as to Felicia's petition for child support

and Matthew's petitions for rule to show cause and to modify the dissolution judgment. The trial court ordered Felicia to (1) meet with a psychiatrist for an evaluation within the subsequent ten days and (2) seek gainful employment and maintain a job search diary.

¶ 8 On August 8, 2006, Matthew filed an amended petition to modify the dissolution judgment, alleging, *inter alia*, that Felicia had refused to pay one-half of the children's medical, education, and other expenses. In her response filed on October 18, 2006, Felicia admitted that she was unable to pay for "some" of the children's medical expenses.

¶ 9 On November 14, 2006, Matthew filed a second petition for a rule to show cause based in part upon Felicia's failure to obtain a psychiatric evaluation "within 10 days" of the trial court's order dated May 9, 2006. Matthew further noted that the matter had been pending for 15 months without any resolution. Felicia's response indicated that she had an appointment scheduled for an evaluation. The psychiatric evaluation took place on August 10, 2007.

¶ 10 On December 8, 2006, Matthew filed a motion for discovery sanctions against Felicia. Matthew's motion noted that he had served a request for production of documents upon Felicia around September 20, 2005, and following an unsuccessful attempt at mediation, the trial court had granted Matthew's motion to compel Felicia's compliance with his discovery request, ordering her to comply with discovery before February 6, 2006. Matthew's motion for sanctions claimed Felicia still had not tendered the requested documents. Felicia's response, filed on December 21, 2006, admitted receiving three letters from Matthew's counsel requesting her compliance with the discovery order. Her response further indicated, *inter alia*, that her counsel had informed Matthew's counsel (on December 8, 2006) that certain of the documents (namely, credit card statements) would

be provided within one week and that the delay was due to the fact that Felicia did not have possession of any of those statements and had to request copies from the credit card companies.

¶ 11 On January 12, 2007, Felicia filed an amended petition for child support. This amended petition made substantially the same allegations as in her original petition, but claimed that she had been employed from June 2006 through January 2007.

¶ 12 On March 19, 2008, the trial court issued a memorandum opinion referencing in part Alissa's testimony and the "completion of Proofs in this Cause." The trial court found that a significant change in circumstances had occurred, primarily on the basis that Matthew increased his income, remarried (to Alissa Yates), and had another child, whereas Felicia was unemployed for significant periods, saw her income decrease even when employed, and suffered from depression and anxiety. The trial court also reiterated Matthew's concern that Felicia may have been abusing alcohol. The trial court, however, found that a deviation from the statutory guideline award of $1,715 per month was warranted "after considering all the factors" in section 505 of the Act. In particular, the trial court noted that the children spent a substantial amount of time with Matthew, resulting in his spending a significant amount of money on the children's care. The trial court further noted that, due to Felicia's unemployment, she was unable to comply with the requirement that she pay for one-half of the children's expenses, resulting in Matthew paying for Felicia's share and a consequent unpaid judgment against Felicia and in favor of Matthew of $5,700.

¶ 13 The trial court further observed that Andrew's medical needs might increase in the future and that Felicia "has proven that she is not contributing to the uncovered expenses," resulting again in Matthew being responsible for those expenses in addition to the children's medical insurance

premiums. The trial court then found that, although the psychiatric evaluation found Felicia to be suffering from depression and anxiety, impairing her ability to return to the same level of employment that she had at the time of the dissolution judgment, Felicia was nonetheless "not so incapacitated that she cannot maintain some employment." The trial court concluded in awarding Felicia monthly child support of $800 per month retroactive to January 2007, to be offset by the $5,700 judgment. On June 23, 2008, the trial court entered an order incorporating the provisions of the March 19, 2008, memorandum opinion. Felicia filed a motion to reconsider on July 17, 2008, challenging, *inter alia*, the trial court's granting of child support retroactive only to January 2007 and not January 2006 as alleged in her first petition. On August 25, 2008, the trial court denied Felicia's motion in a written order after hearing argument.

¶ 14 On October 15, 2008, Matthew filed an emergency petition for residential custody of their children. The petition noted that Louise, then 17 years old, had expressed a desire to live with Matthew on a full-time basis. In addition, the petition alleged that Felicia had failed to pay the heating bill, resulting in the heat being disconnected, and begun "drinking heavily on a daily basis and sleeping throughout the day." The trial court initially ordered that Louise spend four days with Matthew and three days with Felicia. Louise's child representative and Matthew filed petitions seeking to modify that order, both of which realleged that Louise wished to reside with Matthew on a full-time basis. In response to those petitions, the trial court ordered that Louise have the option of choosing which parent she would reside with on any given day or evening.

¶ 15 On April 21, 2009, and following a hearing addressing "a variety of petitions," the trial court entered an order finding that the amount of child support owed to Felicia from January 2007 to the

date of the order totaled $38,580 and was subject to a $32,697 offset. The offset was comprised of (1) support owed by Felicia to Matthew from November 2008 to the date of the order ($4,200), (2) support actually paid to Felicia ($9,600), (3) support paid by Matthew to Felicia pursuant to the trial court's October 2008 order ($3,000), (4) an unpaid January 2007 judgment entered against Felicia for unpaid extraneous children's expenses ($5,937), and (5) Felicia's 50% share of the extraneous children's expenses from January 2007 to the date of the order ($9,960). The trial court also ordered that Matthew pay child support of $700 per month to Felicia for Andrew, beginning on May 2009 and "superced[ing] any prior court order." The trial court then ordered that, going forward, Felicia would have no further obligation to contribute to the children's medical, education, or other extraneous expenses except for their extracurricular school activities, for which she would have to contribute 50%. Finally, the trial court denied (1) Matthew's petition for sanctions against Felicia regarding a January 14 and 15, 2009, hearing; (2) Matthew's petition to reallocate contributions to the guardian *ad litem* and attorney fees; (3) Felicia's January 2009 petition for contribution to attorney fees, barring her from requesting such fees for services rendered through June 23, 2008 (other than those fees awarded in a January 15, 2009, order); and (4) Felicia's petition for sanctions.

¶ 16 On May 19, 2009, Felicia filed a motion to reconsider. Felicia's motion asked the trial court to increase her monthly child support award from $700 to $2,500, to award retroactive support from January 2006, and to vacate all judgments against her for "child related expenses." Felicia specifically argued that she had never abandoned her January 2006 petition to modify child support and that her January 2007 amended petition only updated her financial information.

¶ 17 On July 6, 2009, in a written order noting that it had heard argument and conducted a hearing,

the trial court increased Felicia's monthly child support award to $800 but otherwise kept all other "aspects" of the April 21, 2009, order in effect. Felicia filed a motion to reconsider this order on August 4, 2009. Felicia again requested an increase in monthly child support to $2,500, an award of retroactive support from January 2006, and that the trial court vacate all judgments against her for "child related expenses" including all offsets against her child support award. She reiterated that she never abandoned or withdrew the January 2006 petition for child support, and that the trial court never struck or dismissed it. On September 10, 2009, the trial court issued a written order taking the matter under advisement and noting that the cause had come before it, in part, "for argument on respondent's motion for reconsideration filed August 4, 2009 *** and the court being advised ***."

¶ 18 On November 13, 2009, the trial court granted in part and denied in part Felicia's August 2009 motion to reconsider. The trial court initially observed that it had conducted "numerous hearings over a span of years in this cause" and that the proceedings were made more difficult due to Felicia's "failure to participate" in the proceedings, the physical health of one of the minor children, "the transfer of possession [*sic*] of one child from the mother to the father," and the changed employment status of the parties.

¶ 19 Nonetheless, the trial court again rejected Felicia's claim that her January 2006 petition for modification of child support was not abandoned. The trial court found that Felicia failed to inform the trial court of any request to schedule the January 2006 petition for a hearing. The trial court further found that Felicia failed to obtain leave of court to file her amended petition in January 2007. Consequently, the trial court deemed the amended petition to be a new petition and the January 2006 petition to have been abandoned. The trial court added that, in "balancing the equities," it would be

unfair to grant retroactivity to a petition "not actively pursued by the movant for a one[-]year period."

¶ 20 The trial court then agreed with Felicia's contention that the trial court should not have reduced her retroactive award by offsetting the amount of retroactive child support owed to her by the amount owed to Matthew because he had not filed a petition seeking such relief. The trial court thus found it did not need to consider whether imputing income to her was in error. The trial court, however, rejected her contention that it should not have reduced her retroactive support award by the amount due Matthew from her for support-related expenditures. The trial court explained that Matthew was being credited for the children's "support[-]like" expenses he paid that, under the dissolution judgment, required contribution by her. The trial court confirmed that it was not reducing ongoing support, but instead was merely reducing the retroactive amounts owed to her "ensuring thereby that the credit does not cause a current or future deprivation to the minor child."

¶ 21 Finally, the trial court's written order rejected Felicia's claim for attorney fees. The trial court found that she "failed to prove to this [c]ourt that she genuinely attempted to set the matter for hearing." The trial court found that a hearing would have been necessary because there was no marital estate that would allow the allocation of future attorney fees, Felicia had a prior history of earning a substantial income, and she was able to meet her living expenses despite being unemployed. The trial court noted that she failed to appear when the hearing was scheduled and thus failed to show that she was incapable of paying her fees.

¶ 22 On December 22, 2009, the trial court issued an order finding that the total child support owed to Felicia from Matthew for the period from January 2007 to December 2009 was $58,380, which would be offset by $25,283 in child support already paid to her and $8,000 in child-related

expenses owed by Felicia and paid by Matthew. The trial court, however, stayed enforcement of this order while Matthew's motion to reconsider was pending, the hearing for which was set for February 22, 2010. On that date, following argument from the parties, the trial court granted in part Matthew's motion to reconsider the order of November 13, 2009. The trial court found that the offset in favor of Matthew for child-related expenses should be $15,897, rather than $8,000 (as found in the April 21, 2009, order). Noting that the total child support owed by Matthew to Felicia from January 1, 2007, to December 2009 was $58,380, and that Matthew had already paid child support of $25,283 during that period, the total arrearage, net of this revised offset, was now $17,200.

¶ 23 On January 26, 2010, Matthew filed an emergency petition seeking to modify the dissolution judgment and to provide for temporary and permanent custody of Andrew. The petition included an affidavit from Krista Clarke, a guidance counselor at Andrew's school, indicating that Andrew wanted to spend more time with Matthew because Andrew felt that Felicia did not care that Andrew was there. Andrew said that Felicia spent a lot of time in the kitchen on the computer and did not engage in conversation with him. Andrew added that he felt like he had to be the parent, especially on weekends when Felicia would get drunk and "pass out," requiring Andrew to get her to her bed. Andrew also noted that Felicia would frequently fall asleep at her computer, and he would have to wake her up. Andrew further said that Felicia did not ask him about his homework, and she was on the computer during most of the evening. With respect to his school attendance, Andrew said Felicia "calls him out" more often than Matthew. The letter indicated that (1) Andrew was on attendance probation and at risk of being dropped from a class if he were to miss school again, and (2) school records confirmed that Andrew's absences were on the days that he was with Felicia (Mondays,

Tuesdays, and Wednesdays). By contrast, Andrew said that Matthew would "get after him [Andrew]" to make sure Andrew did his homework and would not let Andrew "get away with" things. Andrew, however, emphasized that he did not want to move out entirely "like his sister did"; rather, he wanted to spend school days at his dad's and most weekends with his mom. Finally, Clarke indicated that, after reviewing her notes, Andrew said he had nothing further to add.

¶ 24 On February 4, 2010, Felicia filed a motion to strike and dismiss Matthew's emergency petition seeking custody of Andrew. Felicia argued that Matthew's petition failed to comply with section 610(b) of the Act, that Andrew, at 15 years of age, was "fully capable of administering his own medication," and that there was "no evidence that Copaxone, [Andrew's medication], is effective." Felicia further claimed that Matthew failed to indicate an emergency that would "justify this petition taking precedence over all other motions." The trial court denied Felicia's motion to strike on February 26, 2010, after "hearing argument" from the parties, and continued the matter to March 3, 2010, as to the parenting schedule. On March 3, 2010, the trial court issued an "agreed temporary order" modifying the parenting schedule with respect to Andrew, providing that Andrew would sleep at Felicia's residence on every two consecutive weekends, and at Matthew's residence on Sunday through Thursday nights as well as every third weekend. The matter was then continued to March 17, 2010, on this issue. The trial court subsequently entered an agreed order modifying Andrew's residency to provide that (1) during the summer, he would spend Monday and Tuesday evenings with Felicia; (2) if, during the school year, there was no school on the Friday preceding or Monday following his weekend with Felicia, he would spend that evening with Felicia; (3) his Christmas break would be split evenly between Matthew and Felicia; (4) after spending two

consecutive weekends with Felicia, Andrew would decide where he would spend the third weekend; and (5) all other pending petitions regarding custody and parenting time were withdrawn.

¶ 25 On April 28, 2010, the trial court issued a written order regarding (1) Felicia's petitions for attorney fees and for contempt regarding Matthew's nonpayment of child support arrears, and (2) Matthew's petitions to abate child support and for payment of child support by Felicia. The written order indicated that the trial court had heard the testimony of Felicia, Matthew, and Alissa on April 2, 2010, and had considered the pleadings, exhibits and case law submitted by the parties. The trial court denied Felicia's petition for attorney fees, finding that neither party had the financial ability to pay Felicia's attorney fees, and none of the fees were incurred "due to the misconduct of the parties." The trial court then rejected Felicia's petition for contempt, finding that the order of February 22, 2010, did not set forth a payment schedule for the $17,200 in child support arrears, and that Matthew's failure to pay the arrearage was not wilful or contemptuous; rather, it was due to his lack of assets or disposable income.

¶ 26 The trial court then granted Matthew's petition to abate child support retroactive to February 25, 2010 (the date Matthew filed his petition), finding that both children spent the majority of time with Matthew and that Matthew provided the majority of support. As to Matthew's petition for child support from Felicia, the trial court found that, although Felicia lacked the income or assets to pay child support to Matthew and that she suffers from "undiagnosed mental issues," there was no evidence that she was unable to seek or hold employment. The trial court therefore ordered her to keep a job diary and to share it with Matthew, and reserved ruling on the issue until it heard Matthew's then-pending petition for custody. Finally, the trial court continued Matthew's March

2010 petition for contribution to Louise's college expenses.

¶ 27 On May 25, 2011, Matthew filed a third motion for sanctions against Felicia and her attorney based upon, *inter alia*, Felicia's counsel's attempts to depose Matthew's current wife, Alissa. Matthew's motion explained that the trial court had quashed a subpoena for Alissa's deposition on April 12, 2011, noting that Felicia's counsel failed to seek a prior order of the court for the issuance of the subpoena. Matthew then stated that Felicia's counsel again attempted to depose Alissa, requiring another trial court order, dated May 17, 2011, that Alissa's deposition was not permitted because the trial court had quashed the subpoena. Matthew's motion then informed the trial court that, on May 19, 2011, Felicia's counsel again served Matthew's counsel with a notice under Supreme Court Rule 237 to produce Matthew's current wife, Alissa, for a deposition. Matthew argued that these actions were sanctionable and sought an award of his attorney fees incurred in responding to this. Felicia's response admitted filing a Rule 237 notice to produce Alissa and stated "affirmatively" that the trial court erred in finding that Alissa's income was not relevant.

¶ 28 On June 1, 2011, the trial court held a hearing on Matthew's petition for child support and petition for contribution to college expenses for Louise, as well as Felicia's petition for attorney fees. During the hearing, Felicia testified that she was currently employed, but earning significantly less than previously, and that she suffered from no medical or mental conditions that would affect her ability to maintain employment. Felicia also agreed that she was not receiving counseling or taking medication at that time. Felicia further admitted that, although she did not have enough income to pay her rent and had no savings, she had no debt other than her attorney fees and had never missed a rent payment. Felicia then confirmed that, when Louise was allowed to choose where she would

reside, Louise "predominantly spent time with Matthew." With respect to her finances, Felicia conceded that her family gives her money to ensure that her living expenses are paid. In response to the trial court's questioning, Felicia agreed that an affidavit dated April 15, 2011, indicated that she "operated a negative of" $4,022 per month, and again confirmed that the only debts she had were for a student loan and her attorney fees. She explained that her father was helping her until she could find a job. On redirect examination, Felicia added that she obtains food through state assistance programs. On recross examination, she stated that her father has also been paying her electric bill. Felicia further agreed that she paid no child support, did not pay for the children's health insurance premiums or any unreimbursed medical expenses, and had not paid for any part of the children's extracurricular activities prior to 2009.

¶ 29 Regarding attorney fees, Felicia could not recall ever making a payment to either her attorney or the children's representatives, but that her father paid some of her attorney's expenses. She conceded she had no formal arrangement with her attorney and did not know the "specific arrangement" between her father and her attorney. Felicia also conceded that she never discussed with her attorney either the fees, a payment plan, or her ability to make any payments toward the fees. In addition, Felicia admitted her attorney has never required that she make any payments. In response to questioning from the trial court, Felicia's attorney said that he did not have any agreement with Felicia's father for the payment of attorney fees and costs. Felicia's attorney also confirmed that Felicia "has not paid anything towards attorney's fees or costs ever in this case."

¶ 30 Matthew testified that, in addition to Louise and Andrew, whom he had with Felicia, he and his new wife, Alissa, had two children who were 3½ and 1½ years old, respectively. He added that,

pursuant to the MSA, he and Felicia had, in essence, 50/50 parenting time with Louise and Andrew until November 2008, when Louise came to live with only him and Alissa. Matthew confirmed that Felicia never paid him any child support for Louise, and Matthew paid for all of Louise and Andrew's expenses, medical insurance premiums, unreimbursed medical expenses, and extracurricular and educational expenses. Matthew also stated that he owed his attorney just over $10,000, he owed one of the child representatives about $5,000, and he had paid another child representative around $8,000.

¶ 31 On August 16, 2011, the trial court announced its ruling on various petitions and motions, including "[child] support issues," Matthew's request for contribution for college expenses, Felicia's request for attorney fees, and Matthew's motions for sanctions against Felicia. The trial court noted that, at the time of the dissolution judgment, both parties had joint custody of the two minor children, but that Louise had lived exclusively with Matthew since 2008. The trial court also added that Felicia's counsel's attachment of her psychiatric examination report to her counsel's fee petition was "seriously problematic" in light of Felicia's testimony during the hearing the she had no mental health issues that would prevent her from maintaining gainful employment. The trial court summarized the testimony of Felicia and Matthew, and commented that, although Matthew had a greater earning capability than Felicia, he also had greater responsibility "and has shown that he is willing to and has financially supported both children for significant periods of time and will continue to do so." The trial court added that Matthew had fully supported Louise since 2008, had spent more time caring for Andrew, had other dependents, and had a decrease in his income during subsequent years. The trial court then ordered Matthew's child support abated and denied Felicia's

petition for child support. Next, the trial court ordered that Felicia pay Matthew $3,000 in child support for both children for the period January 2010 to June 2010, and $1,500 for Andrew's child support for the period July 2010 to December 2010. Thereafter, Felicia was ordered to pay Matthew child support for Andrew of $3,000 annually, with $2,000 due for the period beginning January 1, 2011, to August 31, 2011. The trial court found that Matthew overpaid Felicia $2,780 because his employer continued withholding child support after his child support obligation had been abated.

¶ 32 The trial court also granted Matthew's petition for contribution to Louise's college education expenses, ordering Felicia to pay $3,000 annually for each year that Louise is in college, and finding that Felicia owed Matthew $6,000 for Louise's college education expenses for the 2010-2011 and 2011-2012 academic years. The trial court stated that it had considered "all of the requisite statutory factors" in section 513 of the Act.

¶ 33 Finding that Matthew owed Felicia $17,200 for previously-stayed child support arrearages, the trial court ordered a set-off of that amount with the amounts owed by Felicia, which were $15,280, resulting in Matthew owing Felicia $1,920.[1] The trial court stated that, if Felicia failed to pay Matthew the $250 in monthly child support as ordered, Matthew could deduct that amount from the $1,920 Matthew owed Felicia until that balance reached $0, at which point Felicia would be obligated to pay the $250 monthly child support as ordered.

¶ 34 With respect to Felicia's petition for attorney fees, the trial court recounted the testimony at the hearing, and specifically found that Felicia, based upon her affidavit and testimony, was able to

[1] The trial court initially miscalculated this amount but subsequently corrected itself. The written order reflects this corrected amount.

pay her own attorney fees. The court observed that there were numerous pleadings and extensive litigation, and that Matthew also had incurred substantial attorney fees and had a significant balance still payable. The trial court noted that the fee petition, brought under section 508(a) of the Act, was filed after the dissolution judgment had been filed and that the parties' marital assets were not at issue. The trial court then denied Felicia's petition for attorney fees.

¶ 35 At the hearing on Matthew's motion for sanctions, Matthew's counsel stated that the request to add Alissa as a defendant was denied, but Felicia's counsel "subpoenaed Alissa several times" by serving her in the morning with the children present and had subpoenaed Alissa's employers to the point where the trial court barred Felicia's counsel from doing that without order of the trial court. Matthew's counsel reiterated that, although the trial court quashed a subpoena for Alissa's deposition and closed discovery on April 12, 2011, Felicia's counsel filed a motion for discovery and a Rule 237 notice to produce Alissa for a deposition, on May 5, 2011, and May 19, 2011, respectively. Matthew's counsel argued that Rule 237 did not apply to nonparties and that the subpoena for Alissa's deposition had been "pretty soundly" quashed. In response to the trial court, Matthew's counsel asked for a monetary sanction as well as "some sort of injunction to prohibit different various filings unless *** they get leave of [the trial court] to do that." In response, Felicia's counsel stated, "I have maintained from the beginning and I maintain today that when parties file a joint tax return, the income and resources of the new wife are relevant and must be considered."

¶ 36 At the conclusion of the argument, the trial court granted Matthew's motion for sanctions against Felicia in the amount of $2,500, based upon her attorney's "repeated and numerous requests to add [Alissa Yates] as a party to obtain the financial information which had already been

provided." The trial court, however, rejected Matthew's request to preclude Felicia's attorney from filing any further pleadings without leave to court.

¶ 37 Felicia now pursues this timely appeal of the trial court's orders of June 23, 2008; April 21, 2009; July 6, 2009; November 13, 2009; February 22, 2010; February 26, 2010; April 28, 2010; and August 16, 2011.

¶ 38 **ANALYSIS**

¶ 39 ***Felicia's briefs filed in this court***

¶ 40 At the outset, we must address issues with respect to Felicia's briefs filed with this court. Felicia has attached as an appendix to her brief transcripts of various hearings, but the record on appeal does not contain a bound and certified copy of those transcripts, as required by Supreme Court Rules 321 and 324. See Ill. S. Ct. R. 321 (eff. Feb. 1, 1994), Ill. S. Ct. R. 324 (eff. May 30, 2008). Nor has she filed an acceptable substitute, such as bystander's report or an agreed statement of facts, as provided for in Rule 323. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record. *McGee v. State Farm Fire and Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000); *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1069 (1994). The appellant (here, Felicia) has the burden of providing a sufficient record of the trial proceedings to support her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Id.* Furthermore, any doubts arising from an incomplete record will be resolved against the appellant. *Id.* Accordingly, we will disregard the transcripts or any references to those materials

appended to her briefs.

¶ 41 In addition, we note that Felicia included federal income tax returns for Matthew and Alissa in the separate appendix to her reply brief (filed with this court on October 15, 2012), but Felicia failed to redact the social security numbers listed therein and elsewhere in the record on appeal, in violation of Supreme Court Rule 15. Ill. S. Ct. R. 15 (eff. Apr. 26, 2012). Nor has Felicia included a table of contents to the record on appeal, which comprises 18 volumes and over 3,700 pages, as required by Supreme Court Rule 342(a). Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). Matthew also contends that Felicia's opening brief is "replete with omissions, misstatements and lack of proper citations to the record," and asks that we either strike Felicia's brief in its entirety, or either strike or disregard the argument that violate supreme court rules.[2]

¶ 42 Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. "Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal." *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). We recognize, however, that striking a brief for failure to comply with supreme court rules is a harsh sanction. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005); *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006). We further note that Felicia provides

[2] We also have found a troubling number of factual errors in Felicia's briefs. In addition to the errors Matthew points out, Felicia misstates the amount of an offset, implying that, after being awarded $8,000, Matthew was awarded "an additional $15,897." That statement, however, is grossly inaccurate: the $15,897 award was a correction of (not an addition to) the prior $8,000 award. Unfortunately, these errors are not limited to her opening brief. Felicia also asserts in her reply brief that Matthew's parenting time with Andrew (following a May 31, 2011, agreed order) increased from 157 days per year to "182 days per year." It did not. To the contrary, it increased by nearly two-thirds, from approximately 157 days to nearly 250 days per year.

some citations to the record in her opening and reply briefs. Accordingly, and with these limitations in mind, we will consider the merits of this appeal, but we will disregard the arguments or statements of fact that do not comply with supreme court rules. See *Thomas*, 364 Ill. App. 3d at 97; *Canel and Hale, Ltd. v. Tobin*, 304 Ill. App. 3d 906, 911 (1999).

¶ 43 ***The retroactivity of Felicia's child support award***

¶ 44 We turn to the issues raised in this appeal. Felicia first challenges the trial court's June 23, 2008, order awarding Felicia child support for the period beginning January 1, 2007, and ending April 30, 2008. Specifically, Felicia argues that the trial court abused its discretion in awarding child support retroactive to January 2007, rather than January 13, 2006, the date her petition was filed. Felicia claims that, contrary to the trial court's ruling, she never abandoned her January 13, 2006, petition, and her amended petition only updated her financial information.

¶ 45 At the outset, the trial court's June 23, 2008, order incorporated by reference the trial court's memorandum opinion dated March 19, 2008. This memorandum opinion referenced the testimony of Matthew's new wife, Alissa, as well as the closure of the "Proofs" that formed the factual underpinning of the trial court's findings. In addition, Felicia filed a series of motions to reconsider (on July 17, 2008, May 19, 2009, and August 4, 2009) challenging various orders of the trial court (dated June 23, 2008, April 21, 2009, and July 6, 2009, respectively). Felicia argued in all three of those motions to reconsider, as she does before this court, that (1) the trial court erred in awarding child support retroactive to January 2007 and not January 2006, and (2) Felicia never abandoned her original petition for child support filed in January 2006. Each of the three trial court orders noted above indicated that the trial court either (1) held a hearing, (2) heard argument, or (3) referred to

witness testimony and the closing of proofs (as in the June 2008 order that incorporated the March 2008 memorandum opinion). As to Felicia's August 4, 2009, motion to reconsider, the trial court "heard argument" and took the matter under advisement on September 10, 2009, and issued its order on November 13, 2009, denying Felicia's request for child support retroactive to January 2006.

¶ 46 The record before this court, however, does not include a report of proceedings or acceptable substitute as provided for by Rule 323 for any of the dates referred to by the trial court. Nor does Felicia cite to any such part of the record or challenge the trial court's reference to Alissa's testimony and the proofs presented to it. While Felicia cites to a portion of the report of proceedings from a September 18, 2007, hearing attached as an appendix to brief (purportedly to show "the deterioration of her financial situation since 2005, and her efforts to secure employment"), we may not consider attachments to briefs that are not included in the record on appeal. *McGee*, 315 Ill. App. 3d at 679; *Barker*, 261 Ill. App. 3d at 1069. Moreover, the portion Felicia appended to her brief indicates that the hearing was subsequently continued to the following day. Nothing regarding that hearing is in the record on appeal.

¶ 47 As noted above, it is Felicia's burden to present a sufficient record on appeal, and in the absence of a complete record on appeal, we must presume that the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Foutch*, 99 Ill. 2d at 391-92. Felicia presented precisely the same arguments presented to us as she presented to the trial court through her numerous motions to reconsider. The trial court, however, rejected Felicia's repeated claim that her award of child support should have been retroactive to January 2006. Although it is possible the trial court's reasoning was erroneous, Felicia failed to provide this court with a complete record, and

any doubts arising from an incomplete record must be resolved against the appellant. See *id.* at 393 (holding that it "must be presumed that the denial of the motion was in conformity with the law and was properly supported by evidence" where, in the absence of a record, the trial court's order noted that counsel were present and that the court had heard evidence and arguments of counsel, and was " 'fully advised' "). Accordingly, here, as in *Foutch*, we must presume that the trial court's orders granting retroactivity only to January 2007 were in conformity with the law and had sufficient evidentiary support. Therefore, on this basis alone, Felicia's claim is without merit.

¶ 48 Moreover, even assuming, *arguendo*, that Felicia had provided this court with a sufficient record on appeal, we still would have rejected her claim. With certain exceptions not relevant here, section 510(a) of the Act provides in pertinent part that a child support order "may" be modified only as to installments accruing subsequent to due notice by the movant of the filing of the motion to modify and "upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2006). Section 510 thus clearly provides that a trial court is permitted, but not obligated, to grant retroactivity to the date of the filing of the petition to modify. *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 820 (1992). A trial court's determination that there has been a substantial change in circumstances to warrant the modification lies within its discretion and will not be disturbed absent an abuse of that discretion. *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 194 (2003) (citing *Villanueva v. O'Gara*, 282 Ill. App. 3d 147, 149 (1996)). We will find an abuse of discretion "where no reasonable person would take the view adopted by the trial court." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52 (citing *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 49 In *Carpel*, the respondent argued that the trial court abused its discretion in refusing to award

a retroactive increase in child support to September 1989, the date that she filed her petition to modify the judgment of dissolution. *Carpel*, 232 Ill. App. 3d at 820. This court rejected respondent's argument, noting that the respondent did not delay the trial court's hearing of respondent's petition, and that the trial court heard the petition in a timely fashion. *Id.*

¶ 50 Felicia argues that *Carpel* is factually distinguishable because here, Matthew caused a delay in the trial court hearing the petition because of numerous "specious, redundant and vexatious" petitions. We disagree. The record in this case reveals that, between the time that Felicia filed her initial petition for child support (in January 2006) and the time she filed her "amended" petition (in January 2007), Matthew filed three documents: (1) an amended petition to modify the dissolution judgment (filed in August 2006), which merely removed the notarization under Matthew's verification statement that had been present in the original August 2005 petition to modify the dissolution judgment; (2) a second petition for a rule to show cause (filed in November 2006), based upon Felicia's failure to obtain a psychiatric examination; and (3) a motion for discovery sanctions (filed in December 2006), based upon Felicia's failure to tender certain documents following the trial court's prior order directing Felicia to comply with Matthew's discovery requests. Under these circumstances, Matthew's three filings were hardly specious, redundant, or vexatious. Rather, as in *Carpel*, Matthew was not the cause of delay and the trial court did hear her petition in a timely fashion. Felicia's attempt to distinguish *Carpel* is thus unavailing.

¶ 51 Felicia also argues that the "child support payable to Felicia should have exceeded the [statutory] guidelines, in 2009, in 2010, and in 2011 [*sic*]" due to Matthew's and Alissa's earnings. Felicia, however, has not asked this court to review the amount of child support for 2009 to 2011.

The question presented is whether the trial court's refusal to grant retroactive child support to 2006 was an abuse of discretion. The record in this case indicates that it was not. Felicia failed to pay for the children's expenses "almost immediately" despite (1) the requirement in the MSA that she and Matthew split the expenses evenly, (2) her employment in the latter half of 2006, and (3) her later admissions that her parents had been assisting her with her $4,022 in monthly living expenses and that she had no debt other than a student loan and her attorney fees. Felicia also testified that she had not paid any of the children's health insurance premiums or their unreimbursed medical expenses, nor any of their extracurricular activities prior to 2009. Matthew thus paid for all of the children's expenses, including Andrew's healthcare, which the trial court noted could increase substantially due to his diagnosis of pediatric multiple sclerosis. Although the psychiatric report concluded that Felicia's depression and anxiety precluded her from maintaining full time employment, Felicia is incorrect to state that the trial court "adopted each of these findings" in its March 2008 order. Rather, the trial court found that Felicia's depression and anxiety only impaired her ability to return to the same level of employment that she had at the time of the dissolution judgment, and that she was "not so incapacitated that she cannot maintain some employment." This finding was supported by Felicia's subsequent testimony that she was not receiving counseling or taking medication and that she had no medical or mental conditions that would affect her ability to maintain employment. On these facts, the trial court's order limiting the retroactivity of Felicia's child support award to January 2007, was not a view that "no reasonable person" would have taken. *O'Brien*, 2011 IL 109039 at ¶ 52. As such, the trial court did not abuse its discretion.

¶ 52 Nonetheless, Felicia asserts in reply that section 510(a) of the Act is inapplicable because the

dissolution judgment reserved child support, and therefore her January 13, 2006, petition was "technically not for modification of support." Felicia does not coherently argue how this assertion advances her claim, but we need not divine her reasoning: this court rejected this precise argument over 25 years ago. *Nerini v. Nerini*, 140 Ill. App. 3d 848, 853-54 (1986); see also *In re Marriage of Peterson*, 2011 IL 110984, ¶¶ 20-22. Felicia's claim of error therefore fails.

¶ 53 ***Matthew's offsets against the retroactive child support awarded to Felicia***

¶ 54 In her second claimed point of error, Felicia contends that the trial court improperly allowed Matthew's requested offsets against awards of retroactive child support in the trial court orders of April 21, 2009, November 13, 2009, February 22, 2010, and August 16, 2011. Felicia argues that some of the retroactive child support was delinquent, Matthew's petition for reimbursement was less than what was allowed, and Matthew's claimed expenses were unproven. Felicia's claim centers on the trial court's discharge of vested child support arrearages, which is reviewed for an abuse of discretion. *In re Marriage of Hardy*, 191 Ill. App. 3d 685, 691-92 (1989).

¶ 55 As with the orders she challenges in her first claim of error, the orders of April 2009, November 2009, and February 2010 were based upon either a hearing or the arguments of the parties. Felicia, however, has again failed to provide a transcript or acceptable substitute for the hearings or arguments. Accordingly, we must presume that those trial court orders were in conformity with the law and had sufficient evidentiary support. *Foutch*, 99 Ill. 2d at 391-92.

¶ 56 In her reply brief, Felicia states, "No hearings were conducted *** after November 13, 2009." That statement is demonstrably wrong. The record provided by Felicia includes a report of

proceedings for the hearing that took place on May 31, 2011, and June 1, 2011.[3] This hearing resulted in the trial court's August 16, 2011, order.

¶ 57 With respect to the August 16, 2011, order, the trial court found that Matthew had overpaid Felicia $2,780 as a result of a withholding order at Matthew's employer remaining in place despite the fact that Matthew's child support obligation had been abated. This finding was supported by Matthew's testimony, including his testimony as to an exhibit that the trial court admitted. However, Felicia neglected to include this exhibit in the record on appeal. His testimony regarding this admitted exhibit apparently also showed various additional expenses that Matthew had paid for, including fees for the child representatives, Louise's college costs, and child support for the time period when Louise and Andrew lived exclusively with Matthew. Therefore, on this record, there was no abuse of discretion on the part of the trial court.

¶ 58 Moreover, Felicia's argument that section 505 of the Act precludes this type of setoff is meritless. Section 505 provides a mechanism for determining ongoing child support. See 750 ILCS 5/505 (West 2010). Here, the trial court's order concerned the discharge of previously awarded child support based upon either Matthew's prior overpayment of child support that had been previously abated or his prior payment of Felicia's share of the children's expenses. We agree with Matthew that a trial court is empowered to order an offset against child support arrearages. See, *e.g.*, *In re Marriage of Metz*, 233 Ill. App. 3d 50, 57 (1992) (holding that the trial court did not abuse its discretion in failing to impose incarceration as a sanction to coerce payment on a child support

[3] Although it does not affect our disposition of this appeal, we note that the report of proceedings for the May 31, 2001, hearing is missing five pages.

arrearage where the trial court "fashioned a scheme whereby the arrearage would be decreased by offsetting the amount of child support the mother owed to the father"); *In re Marriage of Hardy*, 191 Ill. App. 3d 685, 691 (1989) (holding that a trial court's setting of the discharge procedure of vested support payments, "as in the awarding of interest, is governed by equitable considerations of chancery"). Consequently, Felicia's claim of error fails.

¶ 59 ***Felicia's motion to strike Matthew's petition as to Andrew's custody***

¶ 60 Felicia next contends that the trial court abused its discretion when, on February 26, 2010, it refused to strike Matthew's emergency petition for a change in custody with respect to Andrew. Felicia notes that the trial court order allowing Louise to set her own parenting schedule was allowed on November 25, 2008, and Matthew's emergency petition, which was filed within two years of that order, did not include any affidavits of child endangerment.

¶ 61 Felicia's motion to strike was brought pursuant to section 610 of the Act and section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010). In essence, she contended Matthew's petition was insufficient as a matter of law. We review *de novo* the trial court's denial of Felicia's motion to strike. *Karas v. Stevell*, 227 Ill. 2d 440, 451 (2008).

¶ 62 Section 610(a) of the Act provides that, "Unless by stipulation of the parties ***, no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health." 750 ILCS 5/610(a) (West 2010). In addition, section 610(b) of the Act provides in relevant part as follows:

"The court shall not modify a prior custody judgment unless

> it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that *** in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. *** The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination." 750 ILCS 5/610(b) (West 2010).

Although there is a legislative presumption in favor of a child's current custodian in order to promote the stability and continuity of a child's custodial and environmental relationship, once the trial court has determined that the presumption has been overcome, a reviewing court will not disturb that determination "unless it was contrary to the manifest weight of the evidence or amounted to an abuse of discretion." *In re Marriage of Kramer*, 211 Ill. App. 3d 401, 409 (1991) (citing *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499 (1985)).

¶ 63 Felicia's claim is patently without merit. At the outset, as Matthew points out, Felicia agreed to the March 3, 2010, temporary order modifying Andrew's custody. We further note that Felicia also agreed to the trial court's subsequent order that modified the March 2010 order. Felicia's agreement to this change in Matthew's parenting time with Andrew was therefore a stipulation under section 610(a) of the Act. 750 ILCS 5/610(a) (West 2010).

¶ 64 In addition, Matthew's petition was supported by an affidavit from Andrew's guidance counselor indicating in pertinent part that Andrew wanted to spend more time with Matthew because (1) Andrew felt that Felicia did not care that Andrew was there, instead spending a great deal of time on the computer and not talking to Andrew; (2) Felicia would get drunk and "pass out" on weekends, requiring Andrew to get her to her bed; (3) Felicia would frequently fall asleep at her computer, requiring Andrew to wake her up; and (4) Felicia would keep him out of school to the extent that Andrew was on attendance probation and at risk of being dropped from one of his classes if he were to miss school again (and which the school's records confirmed).

¶ 65 Finally, Felicia's response to Matthew's petition disputed, *inter alia*, the necessity of her having to assist Andrew with his medical injections, stating that Andrew was "fully capable of administering his own medication" and (without providing a scintilla of factual support) challenging the efficacy of his medication. On these facts, there was "clear and convincing evidence" that a modification was necessary to serve Andrew's best interests. 750 ILCS 5/610(b) (West 2010). The trial court's decision was neither against the manifest weight of the evidence, nor was it an abuse of discretion. Accordingly, the trial court did not err in denying Felicia's motion to strike Matthew's emergency petition to modify Andrew's custody. We therefore reject this meritless claim.

¶ 66 ***Matthew's motion to abate child support and Felicia's motion for contempt***

¶ 67 Felicia also challenges the trial court's order dated April 28, 2010, which, in pertinent part, granted Matthew's motion to abate child support and denied Felicia's motion to hold Matthew in contempt for nonpayment of child support. As noted above, we review the trial court's decision with respect to the modification of child support for an abuse of discretion. *Sassano*, 337 Ill. App. 3d at

194. In addition, the trial court's decision as to motions for contempt are also subject to an abuse of discretion standard of review. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 62 (2008).

¶ 68 Felicia asserts that the trial court "inexplicably and improperly excused Matthew from the payment of this obligation, citing his lack of assets or income with a straight face." Felicia further asserts that the trial court's agreed temporary order of March 3, 2010, changed Felicia's parenting time with Andrew "from four days per week, on average, to an average of three days per week."

¶ 69 We first note that, consistent with her prior claims, Felicia has failed to provide a report of proceedings for the April 2, 2010, hearing that took place (and which formed the basis of the trial court's April 28, 2010, written order). At that hearing, the trial court heard the testimony of Felicia, Matthew, and Alissa and considered the pleadings, exhibits, and case law submitted by the parties. It is Felicia's burden to provide a sufficient record of the trial proceedings to support a claim of error. *Foutch*, 99 Ill. 2d at 391-92. She has failed to do so. Accordingly, we must resolve any doubts due to an incomplete record against her and presume that the trial court's April 28, 2010, order was in conformity with the law and had a sufficient factual basis. *Id.* We may therefore affirm the judgment of the trial court on this basis alone.

¶ 70 With respect to that portion of the trial court's order abating Matthew's child support, contrary to Felicia's claim, the trial court did not abate the child support arrearage; it abated Matthew's future child support obligation to Felicia from the date of the filing of his petition for abatement, February 25, 2010. Felicia's reliance upon *Edwards v. Edwards*, 125 Ill. App. 2d 91 (1970), is thus misplaced.

¶ 71 Felicia also claims that the trial court abused its discretion in finding a substantial change of

circumstances occurred because there was only a "modest" change in Matthew's parenting time with Andrew following the trial court's March, 3, 2010, temporary agreed order. On this point, she asks that we consider an unpublished order in another case involving completely unrelated parties to be controlling precedent, asserting that the exception to Supreme Court Rule 23(e) applies. It does not. Unpublished orders are "not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case ***." See Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). None of those exceptions apply, and this court is not empowered to amend the rules of the Illinois Supreme Court. *Walton v. Norphlett*, 56 Ill. App. 3d 4, 5 (1977). Consequently, Felicia's assertion is meritless, and we will not consider the unpublished decision.

¶ 72 Furthermore, Felicia seriously underestimates Matthew's change in parenting time with Andrew. The original provisions of the MSA had Felicia spending four days per week with Andrew and Matthew spending 3 days per week. The March 3, 2010, agreed temporary order significantly changed that. Under that temporary order, Felicia would spend two weekends (*i.e.*, Friday and Saturday) out of every three with Andrew and Matthew would spend the "third" weekend as well as Monday through Thursday of every week with him. On an annual basis, Felicia's parenting time with Andrew thus fell by more than half, from approximately four days per week to slightly over one day per week. By contrast, Matthew's parenting time nearly doubled, from three days per week to approximately six.

¶ 73 Finally, the subsequent order on this particular point did not meaningfully change this. The order gave Felicia and Matthew each one entire week with Andrew during his Christmas break, and Felicia two additional days during Andrew's summer break as well as an extra day during the school

year if there was no school on the Friday or Monday surrounding her weekend. The prior March 2010 order was otherwise undisturbed. Compared with the original time set forth in the MSA, Felicia's parenting time decreased by nearly half, from four days per week to about two. By contrast, Matthew's time increased by nearly two-thirds, from three days per week to just under five.

¶ 74 Therefore, based upon (1) the substantial increase in the parenting time that Matthew has with Andrew (and the consequent decrease in Felicia's parenting time), (2) the fact that Matthew had already been paying for essentially all of Andrew's expenses, and (3) the absence of a complete record, we are compelled to hold that the trial court properly ordered the abatement of Matthew's obligation to pay child support and denied Felicia's motion for contempt. Since the trial court did not abuse its discretion, Felicia's claim of error on this point is unavailing.

¶ 75 ***The award of child support to Matthew and denial of child support to Felicia***

¶ 76 Felicia's fifth claim of error is that the trial court abused its discretion by "voiding the child support awards to Felicia *** and awarding child support to Matthew" on August 16, 2011. Specifically, she claims there was not a substantial change in circumstances warranting the change. Felicia reiterates that the change in Matthew's parenting time with Andrew was not a substantial change from the amount of time set forth in the MSA.

¶ 77 Section 510 of the Act provides in pertinent part that child support orders may be modified "upon a showing of a substantial change in circumstances." 750 ILCS 5/510 (West 2010). The trial court must first determine the threshold issue of whether a substantial change in circumstances has occurred, and then determine the amount of the change in child support. *Sassano*, 337 Ill. App. 3d at 194. The party seeking the modification bears the burden of proving this change. *Id.* To

determine the amount of increase in child support, a trial court considers the same factors used in formulating the original amount, such as: (1) the financial resources of the child; (2) the financial resources of the custodial parent; (3) the standard of living the child would have enjoyed had the marriage not been dissolved; (4) the physical and emotional condition of the child and his educational needs; and (5) the financial resources and the needs of the noncustodial parent. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 35 (1997). "A petition to modify child support must be decided on the facts of each case ***." *Id.* As we have just discussed, the modification of child support is reviewed for an abuse of discretion. *Mitteer*, 241 Ill. App. 3d at 224. An abuse of discretion occurs "only where no reasonable man would take the view adopted by the trial court." *Singleteary*, 293 Ill. App. 3d at 35-36.

¶ 78 Here, Felicia's contention centers on the factors related to the financial resources of the custodial and noncustodial parents.[4] Felicia reiterates that the parenting time Matthew spent with Andrew did not constitute a substantial change because, following the agreed temporary order of March 3, 2010, Matthew's parenting time went from an average of three days per week to four. As previously discussed, it did not. The change in Matthew's parenting time with Andrew following the March 2010 order increased from three days per week to nearly six. Although not discussed by

[4] Felicia also challenges the trial court's jurisdiction under the collateral estoppel doctrine and asserts that Matthew's November 2009 petition for child support was in reality a posttrial motion under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2010)). These, however, are merely conclusory assertions unsupported by any coherent argument, nor by citation to the record or relevant authority. Accordingly, they are forfeited, and we need not consider them. See Ill. S. Ct. R. 341(h) (eff. July 1, 2008); *Prairie Rivers Network v. Illinois Pollution Control Board*, 335 Ill. App. 3d 391, 408-09 (2002).

Felicia, even the "permanent" order in May 2010 resulted in an increase to nearly five days per week for Matthew. Felicia's confusion as to this basic fact fatally undermines her claim as to this point.

¶ 79 Felicia also argues that the trial court erred in imputing income to Felicia based upon her father's gifts of cash to her in order to meet her daily living expenses. Felicia claims the trial court's reliance upon *In re Marriage of Rogers*, 213 Ill. 2d 129 (2003) was misplaced because here, the gifts Felicia received were the difference between her "survival and starvation."[5] We disagree.

¶ 80 In *Rogers*, the father earned $15,000 in net income, which was supplemented by about $46,000 in gifts and loans from his parents every year. *Id.* at 133. He did not, however, have to repay the loans. *Id.* at 134. The supreme court held that the "loans" were also, in essence, merely gifts, and the entire amount of gifts constituted income. *Id.* at 137. Nothing in *Rogers* indicates that gifts that are the difference between "survival and starvation" must be excluded from income. Of further note, the *Rogers* court went on to overrule *In re Marriage of Bowlby*, 338 Ill. App. 3d 720 (2003), and *In re Marriage of Harmon*, 210 Ill. App. 3d 92 (1991), both of which had held that money received as gifts must be excluded from net income. *Id.* at 138-39.

¶ 81 Here, in response to the trial court's questions, Felicia conceded that, although her expenses exceeded her work income by $4,022, she had no debt other than a student loan and her alleged attorney fees because her father gave her money for her living expenses. Regarding her attorney fees, Felicia admitted that she had never paid any attorney fees or discussed a payment plan for them,

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[5] As with her prior claim, Felicia asserts in her reply that another unpublished order is instructive with regard to the trial court's purported error in imputing income to her and should be a "permitted exception" under Supreme Court Rule 23(e) in support of her contention. For the reasons discussed above, this assertion is also without merit.

but that her father paid the attorney fees. By contrast, Matthew testified that his income, although exceeding Felicia's, had fallen. In addition, his expenses had increased, and he had already been paying all of the expenses for Louise and Andrew (rather than splitting them equally with Felicia as originally provided in the MSA), as well as the two additional children he had had with his new wife. Matthew also stated that he owed $10,000 to his attorney, $5,000 to one of the child representatives, and that he had paid another child representative around $8,000. At the conclusion of the hearing, the trial court ordered Felicia to begin paying child support to Matthew and Matthew to cease paying child support to her. Under the facts of this case, we cannot hold that no reasonable person would have taken the view adopted by the trial court. *Singleteary*, 293 Ill. App. 3d at 35-36. The trial court therefore did not abuse its discretion, and we must reject Felicia's claim of error.

¶ 82 ***Matthew's petition for contribution to college expenses***

¶ 83 Felicia next contends that the trial court abused its discretion when it granted Matthew's petition for contribution to college expenses in its August 16, 2011, order. Felicia first argues that only expenses that are incurred after the filing of the petition for reimbursement should be awarded. Felicia cites in support *Petersen v. Petersen*, 403 Ill. App. 3d 839, 845 (2010), *overruled in part on other grounds sub nom. In re Marriage of Petersen*, 2011 IL 110984.

¶ 84 As Matthew points out, he filed his petition for contribution to college expenses in March 2010, *prior* to Louise's commencement of her college studies the following fall. Felicia's reply does not address this fact. Her opening brief also incorporates her arguments in her fourth claim of error (*i.e.*, the claim of error regarding Matthew's motion to abate child support). We reject those arguments here, however, for the same reasons we rejected them there. Therefore, Felicia's claim

regarding Matthew's petition for contribution to college expenses fails.

¶ 85 ***Matthew's petition for sanctions against Felicia***

¶ 86 Felicia's seventh issue raised on appeal challenges the trial court's partial granting of Matthew's petition for sanctions on August 16, 2011. Felicia claims that the trial court "was apparently unaware of [a] line of Illinois cases" allowing her to inquire into the finances of Alissa (Matthew's current wife).

¶ 87 Supreme Court Rule 137 requires that either an attorney for a party or a party sign every "pleading, motion or other paper" to certify that "it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose such as to harass ***." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). The purpose of the rule is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact or law. *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074 (1995). A trial court's decision to impose sanctions is entitled to significant deference, and we will not disturb its decision absent an abuse of discretion. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 33. To reiterate, a trial court abuses its discretion "only where no reasonable person would take the view adopted by it." *Fremarek*, 272 Ill. App. 3d at 1074. "If reasonable people would differ as to the propriety of the court's action, a reviewing court cannot say that the trial court exceeded its discretion." *Id.*

¶ 88 In this case, the trial court did not abuse its discretion in finding the actions of Felicia's attorney sanctionable. As Matthew notes in his response, the trial court imposed the sanctions

because Felicia's attorney issued a subpoena to Alissa's employer in violation of a court order barring any further subpoenas from being issued without court approval. Matthew's third motion for sanctions alleged that Felicia's attorney attempted to depose Alissa without seeking a prior order of the court for the issuance of the subpoena not once, but three times. Felicia attorney's response to this motion for sanctions freely admitted filing a notice to produce Alissa for deposition and "affirmatively" stated that the trial court erred in finding Alissa's income irrelevant.

¶ 89 In reply, Felicia claims that the subpoena was issued by her attorney "without her knowledge." We note that the record indicates that the subpoenas at issue were signed by Felicia's attorney and not Felicia. The trial court's sanction should therefore have been against Felicia's attorney and not Felicia. See Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). Accordingly, we modify the trial court's August 16, 2011, order to reflect a $2,500 award of monetary sanctions in favor of Matthew Yates and against Felicia's attorney, Patrick C. O'Day. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994).

¶ 90 ***Felicia's petition for contribution to attorney fees***

¶ 91 Felicia's final contention on appeal is that the trial court abused its discretion in denying her petition for attorney fees on April 21, 2009, July 6, 2009, November 13, 2009, and August 16, 2011. In particular, Felicia complains that the August 16, 2011, denial of her petition for attorney fees was improperly based upon her "mythical imputed income."

¶ 92 As a general rule, attorney fees are the responsibility of the party who incurred the fees. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007) (citing *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005)). Section 508 of the Act, however, allows for contribution to attorney fees "where one party lacks the financial resources and the other party has the ability to pay." *Id.* at 657

(citing *Schneider*, 214 Ill. 2d at 174). The trial court's decision to award fees is a matter of discretion and will not be disturbed on appeal absent an abuse of discretion. *Id.*

¶ 93 At the outset, and as noted above, the trial court's April, July, and November 2009 written orders were issued following either a hearing or argument, but Felicia failed to provide a transcript or appropriate substitute for those hearings and arguments that took place. As we have repeatedly stated throughout this decision, in the absence of a complete record (which was Felicia's obligation to provide), we must presume the trial court's orders were in conformity with the law and had a sufficient evidentiary basis. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we reject Felicia's challenge to those particular orders. We now turn to the August 16, 2011, order, for which Felicia did provide a report of proceedings.

¶ 94 Felicia's testimony at the hearing that formed the basis of the August 2011 order entirely refutes her claim. First, there was no evidence that Felicia was responsible for the payment of her attorney fees. Testifying at the hearing, Felicia had no memory of ever paying her attorney, and readily admitted that (1) she had no formal arrangement with her attorney; and (2) she never discussed with her attorney either the fees, a payment plan, or her ability to make any payments toward the fees; and (3) her attorney has never required that she make any payments. By contrast, Felicia did recall that her father paid some of her attorney's expenses, but said she did not know what arrangement her father and her attorney had. Although Felicia's attorney claimed there was no agreement with Felicia's father for the payment of attorney fees, the attorney also confirmed that Felicia had never paid anything towards attorney fees or costs "ever."

¶ 95 Second, Felicia failed to establish that she was unable to pay for her attorney fees. She

conceded that, although her expenses exceeded her work income by $4,022, she had no debt other than a student loan and her purported attorney fees. Her explanation for this was that her father gives her money for her living expenses. This is not "mythical" imputed income. It is real income that the trial court was right to impute to Felicia. See *Rogers*, 213 Ill. 2d at 137.

¶ 96 As to Matthew, the trial court noted that, although his household income exceeded Felicia's, his income had fallen while his expenses had continued to increase. He was already paying all of the expenses for his and Felicia's children, as well as the two additional children he had with his new wife. Moreover, the trial court correctly observed that he still had a sizeable debt to his own attorney. Matthew thus was unable to pay the attorney fees incurred on Felicia's behalf.

¶ 97 Finally, our decision is unaffected by *In re Marriage of Minear*, 181 Ill. 2d 552 (1998), which Felicia cites in support of this claim. In *Minear*, the supreme court noted that the trial court had before it evidence that the wife was unable to pay her attorney fees. *Id.* at 562-63. By contrast, the trial court here found that it was only Felicia's father, and not Felicia, who has paid any attorney fees throughout this litigation. There is nothing in the record before us to challenge that finding.[6] Unlike the wife in *Minear*, Felicia is able to pay her attorney fees, either through her father's direct payments to her attorney or through the additional cash gifts that Felicia receives to pay for her $4,022 in additional living expenses. Felicia's reliance upon *Minear* is therefore misplaced, and her final contention on appeal is without merit.

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[6] The record indicates that the trial court granted, over Matthew's objection, Felicia's motion to supplement the trial court record with a copy of the agreement purportedly between Felicia and her attorney. We have not found that document in the record before us, however, and Felicia does not cite to any portion of the record that contains it.

¶ 98 **CONCLUSION**

¶ 99 The trial court erred in imposing sanctions on Felicia for seeking financial information about Matthew's current wife; accordingly, we modify the trial court's August 16, 2011, order to reflect a $2,500 award of monetary sanctions in favor of Matthew Yates and against Felicia's attorney, Patrick C. O'Day. Otherwise, the trial court did not abuse its discretion in: (1) denying child support to Felicia for 2006; (2) allowing offsets against Felicia's child support awards; (3) refusing to strike Matthew's petition for a change of custody; (4) abating child support and refusing to hold Matthew in contempt for nonpayment of support; (5) voiding prior child support awards to Felicia and awarding child support to Matthew; (6) ordering Felicia to contribute to the children's college expenses; and (7) denying Felicia's request for contributions to her attorney fees. In addition, Felicia failed to provide a complete record on appeal to this court with respect to the issues concerning the retroactivity of her child support order, the offsets against her child support awards, the abatement of Matthew's child support obligations, and her petition for attorney fees. We are thus compelled to hold that the trial court's orders were in conformity with the law and supported by sufficient evidence. Moreover, the evidence in the record before this court supports the trial court's decisions. Accordingly, we modify the trial court's order regarding sanctions, but affirm the judgments of the trial court in all other respects.

¶ 100 Affirmed as modified.