2016 IL App (2d) 150322-U
No. 2-15-0322
Order filed August 15, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* the MARRIAGE OF<br>LOWELL A. TAYLOR,<br><br>Petitioner-Appellant,<br><br>and<br><br>NANCY L. TAYLOR,<br><br>Respondent-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court<br>of Winnebago County.<br><br><br><br>No. 09-D-621<br><br>Honorable<br>Joseph J. Bruce,<br>Judge, Presiding. |

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err when it denied petitioner certain net-income deductions (for his alleged debts and income taxes) toward his son's child support, and the court properly determined petitioner's financial obligations for his daughter's college expenses, which included her health insurance.

¶ 2 This is a post-decree matter under the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/101 *et seq.* (West 2012)). In April 2015, petitioner, Lowell A. Taylor, appealed from portions of the trial court's omnibus order that resolved several financial issues against Lowell and in favor of respondent, his former wife, Nancy. We previously entered a summary order dismissing this case for lack of jurisdiction because the record indicated a

pending rule to show cause entered against Lowell in November 2014 had not been resolved. See *In re Marriage of Taylor*, 2016 IL App (2d) 150322-U (March 28, 2016) (summary order). Lowell filed a petition for rehearing (see generally *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (2007)), which included a copy of an order from the trial court entered in April 2016 to "clarify" that the rule to show cause "is dismissed." Nancy filed a response to Lowell's petition for rehearing in which she made the general point that Lowell did not strictly comply with our instructions in the summary order; *i.e.*, that he demonstrate that the rule to show cause had already been resolved in the trial court (see *Marriage of Taylor*, 2016 IL App (2d) 150322-U, ¶ 9) (March 28, 2016) (summary order)), as opposed to "clarif[ying]" that the rule had been formally vacated *after* our summary order had been entered. Thus, Nancy argued that Lowell needed to file a new notice of appeal from the April 2016 order.

¶ 3 At this point, we have no cause to doubt our jurisdiction in this case. The action that Lowell took *vis-à-vis* his rehearing petition, although not strictly in keeping with the directions in our summary order, was nevertheless effective for us to treat his April 2015 notice of appeal as valid once the trial court formally disposed of the rule to show cause. See Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) ("a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** becomes effective when the order disposing of said motion or claim is entered") Accordingly, we grant rehearing, vacate our earlier summary order, and turn now to the merits.

¶ 4 Lowell and Nancy were married in 1990. Their daughter Kelsey was born in 1994 and their son Reid was born in 1999. Both Lowell and Nancy worked in the education field. Lowell was the superintendent of the Forrestville School District, where he earned approximately $200,000 per year (we have rounded all figures where appropriate). Nancy was a school teacher

in the same district. In 2009, Lowell and Nancy entered into a joint parenting agreement (JPA) and a marital settlement agreement (MSA). The trial court approved those arrangements, and a dissolution judgment was entered.

¶ 5 The JPA and MSA were fairly standard. They provided that the parties would have joint custody of the children, who would reside with Nancy, and that Lowell would contribute child support at $625 per child per month. The MSA provided that Lowell and Nancy would maintain the children's health insurance coverage and split their unreimbursed healthcare expenses, but no provision was made concerning the children's college expenses.

¶ 6 In 2013, a number of things happened. First, Kelsey, who was in her senior year of high school, had been accepted to several colleges and in January 2013 decided to enroll in Drake University, in Des Moines, Iowa (where she would begin taking courses in August 2013). In March 2013, Nancy learned that she would likely be unemployed the following school year due to the school district's planned reduction in force. (Nancy was ultimately not rehired.) Accordingly, in May 2013, Nancy, in order to offset the loss of her income and health coverage, filed a petition for contribution to Kelsey's college expenses and a petition to modify Lowell's child support obligation. Specifically, Nancy's petition sought to eliminate Lowell's child support obligation to Kelsey (since she had reached the age of majority), and to increase Lowell's child support to Reid to the statutory guideline, or 20% of Lowell's income. While Nancy's petitions were pending, Lowell filed a petition to reduce his child support to Reid retroactive to May 2013, because Lowell's "income ha[d] decreased."

¶ 7 Although he was not specific in his petition, Lowell, too, had lost his job in April 2014, though he would continue to be paid for an unspecified period of time. In August 2014, Lowell was set to begin work as the superintendent for another school district, on contract, at a salary of

$100,000. In addition, Lowell had a side line of work, operating a small airplane leasing company, called Airwolf Enterprises, LLC (Airwolf).

¶ 8 The trial court held combined hearings on these and other petitions on two separate dates. The court then entered a detailed, eight-page, single-spaced memorandum opinion in September 2014, which largely resolved these issues. That is the order Lowell is primarily challenging in this appeal.

¶ 9 Lowell's first contention is that the trial court erred in calculating his net income. "Net income" for child support purposes is the total of the noncustodial parent's income from all sources, less certain specified deductions (750 ILCS 5/505(a)(3)), over which the trial court has considerable discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135 (2004); *Blisset v. Blisset*, 123 Ill. 2d 161, 167 (1988); *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 18. Here, the trial court calculated Lowell's net income for 2013 as $202,691 (his salary minus Medicare taxes; Lowell did not contribute to Social Security), or $8,445 semi-monthly. The court ordered Lowell to contribute guideline child support for Reid (20% of income) or $1,689 semi-monthly, for the period from June 1, 2013 to December 31, 2013. As noted, Lowell lost his job on April 4, 2014; the trial court determined Lowell's net income from January 1, 2014 to April 4, 2014 was $7,665 semi-monthly, and ordered Lowell to pay $1,553 in guideline support for Reid. Going forward, the trial court determined that "because of the overall vagueness" of Lowell's financial circumstances, he should pay guideline support for Reid following April 4, 2014, but reserved its determination of Lowell's net income pending the receipt of his contract from the new school district and his first pay stub, or an agreement by the parties. The court ordered Lowell to pay $50 weekly in support until that time.

¶ 10 Lowell claims the trial court abused its discretion, however, when it refused him net-

income deductions for both debts (from Airwolf's losses and alleged loan repayments) and his income taxes. We find no error in the trial court's determination.

¶ 11 We note that Lowell, the appellant, has not provided this court with any of the exhibits that were presented to the trial court, including his own affidavits and financial statements upon which the trial court relied. In addition, Lowell's appellate brief is bereft of any citation to the exhibits, which indicates some degree of his awareness that these exhibits are not part of the record. For what it is worth, the trial court's memorandum opinion notes that Lowell's evidence of his own finances was vague, speculative, and unconvincing; still, any doubts will be resolved against Lowell and in favor of the trial court's judgment. *In re Marriage of Rogers*, 213 Ill. 2d at 140; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 12 First, with respect to Lowell's debts, a noncustodial parent is permitted to deduct funds used to repay debts that were "reasonable and necessary expenses for the production of income." 750 ILCS 5/505(h) (West 2012). Lowell testified that he began operating Airwolf in 2012, and that it was expected to generate retirement income for him in approximately four or five years. Airwolf leased out somewhere between three and five small airplanes, including Lowell's own personal plane. According to Lowell, Airwolf would operate at a $150,000 loss during 2014, although according to the trial court Lowell offered no tangible evidence, such as profit-loss statements, to support that claim. Lowell further indicated that he had used some his income to either secure or to pay down promissory notes issued by his girlfriend, Stephanie Dechro. According to Lowell, he owed Dechro on notes for (1) $325,000 in loans she had made to Airwolf; (2) an $18,000 loan for a personal line of credit; and (3) a note for an unspecified amount on a "mortgage for [Lowell's] home residence." The record is sketchy as to the details of any of these financial arrangements; however, what is most significant is that the trial court noted

Lowell had submitted no repayment schedule for these debts.

¶ 13 We agree with the trial court that Lowell failed to demonstrate that his alleged expenditures and losses were "reasonable and necessary" (750 ILCS 5/505(a)(3)(h)) for the production of his present income (or even his near-future income) to qualify as deductible. See generally *Department of Public Aid ex rel. Schmid v. Williams*, 336 Ill. App. 3d 553, 556 (2003) (observing that the Marriage Act focuses on a parent's *present* ability to pay support). Lowell was apparently seeking to deduct Airwolf's expected $150,000 losses for 2014 as well as unspecified monies that he had paid to Dechro from the calculation of his net income (again, Lowell was not specific)—but those losses were unproven and those loans appear to have been loans in name only (see *In re Marriage of Rogers*, 213 Ill. 2d at 140). Lowell now asserts that the trial court lacked sufficient evidence to conclude his debts and business losses were not deductible, but that flips the standard on its head. It was Lowell who bore the burden of proving the deduction's validity (*In re Marriage of Minear*, 181 Ill. 2d 552, 560 (1998); *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 22; *In re Marriage of Worrall*, 334 Ill. App. 3d 550, 553 (2002)); it did not fall to Nancy or the trial court to prove its *in*validity. If additional facts existed to support Lowell's position, it was his obligation to sufficiently present them to the trial court and, likewise, to present them to this court for our review. *In re Marriage of Rogers*, 213 Ill. 2d at 140. He has not, and so we have no reasonable basis in the evidence that demonstrates Lowell's alleged debts were deductible.

¶ 14 The trial court also refused to deduct Lowell's income taxes from his net income. In this regard, the trial court credited at least some of Lowell's testimony concerning his losses. Based on exhibits, namely Lowell's 2012 W-2 (which again, we do not have), the trial court noted that for tax year 2012, Lowell reported losses sufficient to eliminate his state and federal income tax

liabilities. The court then noted, "Although Lowell has been vague regarding his Airwolf and other investment income and debt after 2012, the evidence leads me to conclude that he will report losses again sufficient to eliminate his actual income tax liability for 2013 and thereafter." The Marriage Act permits a net-income deduction for state and federal taxes, but those deductions are available based only on "*properly calculated withholding* or estimated payments" (emphasis added) (750 ILCS 5/505(a)(3)(a), (a)(3)(b)), in other words the amount a person *actually* has paid or will pay in taxes. *E.g.*, *Schmid*, 336 Ill. App. 3d at 556; *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 391 (2002); *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 732-33 (1996). Again, Lowell has not presented this court with any exhibits. Thus, we are given no basis to conclude the trial court's calculation of Lowell's actual 2013 income tax liability (or lack thereof) was improper. This deduction was also properly refused.

¶ 15 Lowell's next contention is that the trial court erred in calculating the amount he should contribute to Kelsey's college expenses under 750 ILCS 5/513(b). The trial court's memorandum opinion sets out a number of details regarding costs and offsets too numerous for us to restate here. However, the essentials of the court's order are as follows. The cost of attending Drake University full time is $41,516 per year (excluding grants), plus living expenses. For the 2013/14 academic year, Kelsey had obtained grants and student loans worth $13,500. The court found that Kelsey also had some other (modest) assets. Due to her unemployment, Nancy's income was deemed negligible. Thus, the court ordered Lowell to contribute $18,000 towards Kelsey's first year at Drake. Because Lowell lost his higher-paying job, the court determined that he would be unable to contribute to the cost of a private educational institution after Kelsey's first year. Accordingly, based on the estimated costs of attending the University of Illinois, the court ordered Lowell to contribute $12,000 per year for Kelsey's remaining years at Drake.

¶ 16 Lowell argues this is unfair because he will "be responsible for nearly ½ [Kelsey's] remaining tuition," and that we should reverse and remand "with instructions to the trial court on how to correct its decision." There is however nothing for us to correct. The trial court's decision, which was quite thorough as we alluded to earlier, reflects a careful balancing of the factors set forth in 750 ILCS 5/513(b). Lowell further asserts that the trial court "ignored" his testimony that Kelsey had received an $11,000 inheritance that remained in her bank account "untouched" which she could have used to offset Lowell's contribution. But, at the second to last paragraph of page 4 of its decision, the trial court stated that it *did* consider Kelsey's inheritance as part of Kelsey's assets. Again, we are given no basis in the evidence to say the trial court abused its discretion in determining Lowell's contribution. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 627 (2008); *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 243 (2007); *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834 (1999).

¶ 17 Next, Lowell contends the trial court erred when it found him in contempt of court. Here is what happened. Shortly before Kelsey graduated high school, she suffered an injury playing soccer and underwent surgery to repair her ACL in May 2013. Nancy testified that Lowell was informed about Kelsey's injury, and that he had paid for half of the $1,000 upfront cost of Kelsey's surgery ($500), but had not paid for half of Kelsey's remaining unreimbursed costs, of which his portion was approximately $3,300. Nancy filed a petition for indirect civil contempt based on Lowell's failure to pay. At the hearing, Nancy testified that she had sent Lowell bills from Kelsey's surgery and subsequent physical therapy. Lowell returned those bills to Nancy via mail. Lowell testified at the hearing that he had paid those bills, but offered no evidence he had done so. Nancy testified that he had not paid them because she was still receiving bills and collection letters, which were offered into evidence. As a result, Nancy paid more than $7,000 in

connection with Kelsey's medical bills and late fees.

¶ 18 The trial court found that Lowell willfully had refused to pay his share Kelsey's medical bills in violation of the dissolution judgment, which incorporated the parties' MSA. The court held Lowell in indirect civil contempt and ordered him to pay a portion of Nancy's attorney fees as a sanction. Lowell contends there was insufficient evidence to show that his violation of the dissolution judgment was willful or contumacious. We disagree. Nancy's testimony showed by a preponderance of the evidence that Lowell had violated the dissolution judgment's reimbursement provision. The burden was then on Lowell to show that his noncompliance was not willful or contumacious, or that he had an otherwise valid excuse for failing to follow the court's order. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107-08 (2006). Lowell failed to carry that burden. He offered no evidence to show that he had paid anything towards Kelsey's medical bills, let alone his half of them. Accordingly, Lowell has not shown that the trial court's decision to hold him in indirect civil contempt was against the manifest weight of the evidence. See *id*.

¶ 19 We note that, on appeal, referencing an emergency-medical-expenses provision in the JPA, Lowell asserts that Kelsey's surgery was "[n]on-emergency"; that he was not told Kelsey "required" surgery and that he "certainly" did not agree to it. Lowell's assertion, which has been raised for the first time on appeal and has clearly been forfeited (*In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85), is belied by the record. Lowell never directly disputed Nancy's testimony that he both knew about Kelsey's surgery beforehand and paid half of the upfront cost of her surgery. Few things indicate one's agreement in stronger terms than advance payment, even if that advance payment is only partial.

¶ 20 Lowell next contends that the trial court erred when it ordered him to contribute 100% to

Kelsey's health insurance costs while she attended college (provided his new employer offered such a plan) and 50% of her unreimbursed medical costs. He suggests it was inequitable to "forc[e]" him to put Kelsey on his (potential) health insurance plan without also "requir[ing]" Nancy to also contribute to the cost of any premiums. Again, the trial court has considerable discretion concerning the award of "educational expenses" (*In re Marriage of Deike*, 381 Ill. App. 3d at 627) which, under 750 ILCS 5/513(a)(2) specifically includes costs for "room, board, dues, tuition, transportation, books, fees, registration and application costs, [and] *medical expenses including medical insurance* ***." Given the court's determination that Nancy is unemployed and has negligible income—a determination which Lowell does *not* challenge—we cannot say the trial court's allocation of the health insurance premiums for Kelsey was an abuse of its discretion.

¶ 21 It is difficult to discern the precise contours of Lowell's final contention. In its memorandum order, the trial court noted that Lowell would, as a result of the order, owe "substantial sums" for retroactive child support and education costs, medical bills, and Nancy's attorney fees. In anticipation of those arrearages, and in anticipation of Lowell's high-dollar tax refunds, the trial court ordered Lowell not to disburse his 2013 tax refund, *if* he had not already, and not to disburse any of his future tax refunds. The court ordered Lowell instead to deposit his 2013 tax refund (assuming it had not been spent already) and all future tax refunds in Nancy's attorney's client trust account. It was apparently not lost on the trial court that its memorandum opinion was being entered in September 2014. Accordingly, the trial court noted that the issue of what to do with certain arrearages would be reserved if Lowell had already received and spent his 2013 tax refund.

¶ 22 Shortly after the order adopting the memorandum opinion was entered, Nancy filed a

petition for indirect civil contempt. Nancy's petition had two components to it. The first was that Lowell had not paid Kelsey or Drake University as directed to by the court's order. The second was that Lowell had already received and disbursed his near $50,000 tax refund for 2013. The trial court issued Lowell a rule to show cause.

¶ 23 On the date of the show-cause hearing, the court entered an order directing Lowell to pay Nancy $3,630 in owed child support and to Drake University $5,000 within 30 days. The court's order also states the following: "In the event the above payments are made, the pending rule to show cause shall be dismissed."

¶ 24 Lowell asserts that the trial court's directions regarding his 2013 tax refund was "a double[-]edge[d] sword"—since the trial court recognized that Lowell may have already spent his 2013 tax refund, he argues that "it is unreasonable and arbitrary to then hold [him] in contempt for not maintaining [his] 2013 tax return." As we pointed out in our summary order however (see *In re Marriage of Taylor*, 2016 IL App (2d) 150322-U, ¶ 8) (March 28, 2016) (summary order), the trial court did *not* hold Lowell in contempt; rather, the court's March 2015 order clearly stated that *if* Lowell made the ordered payments within 30 days, it would *dismiss* the rule to show cause, which is a far cry from being held in contempt. See *In re Marriage of Betts*, 200 Ill. App. 3d 26, 49 (1990) (contempt orders set forth factual findings and impose punishments). In other words, neither the trial court's rule to show cause, nor the order suggesting the rule-to-show-cause's dismissal penalized Lowell in any way for having already disbursed his 2013 tax refund.

¶ 25 To the extent Lowell asks us to reverse the March 2015 order suggesting the dismissal of the rule to show cause we decline his request. That order was not final and it was not otherwise appealable. In point of fact, the order used to supplement the record (see *supra* ¶ 2) was the final

order in this appeal, and that order reflects that Lowell paid the required sums and the show-cause order was dismissed. Thus, with respect to the issue of Lowell's 2013 tax return, the trial court took no action for us to review.

¶ 26 In sum, we have determined that Lowell's contentions lack merit. The judgment of the Circuit Court of Winnebago County is therefore affirmed.

¶ 27 Affirmed.