2018 IL App (1st) 170635-U
No. 1-17-0635
January 30, 2018

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE MARRIAGE OF JOHN C. O'FLAHERTY, Petitioner-Appellant, v. JULIE A. O'FLAHERTY, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court Of Cook County. No. 13 D 4792 The Honorable John T. Carr, Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* An appeal is not moot when a contemnor's incarceration is too short to be fully litigated in a reviewing court and there is a reasonable expectation that the contemnor will be subjected to the same action again. A motion to dismiss a contempt proceeding filed to enforce a dissolution judgment is properly denied where the motion is based on the doctrine of *res judicata*, and where the movant cannot prove the identity of the causes of action element - - that there is a separate and distinct lawsuit - - because contempt proceedings are a continuation of dissolution proceedings and, as the same not subsequent proceedings, there is only one lawsuit. A motion to dismiss a contempt proceeding is also properly denied where the motion is based on the articles in a marital settlement agreement but, where all the articles are not included in the record, the record is incomplete, therefore, there is a presumption that the court acted in conformity with the law. Finally, where the evidence establishes that a party has money to satisfy a judgment but elects to pay other debts, the

circuit court's finding that the contemnor is in contempt for willfully refusing to satisfy the judgment is not against the manifest weight of the evidence.

¶ 2 John and Julie O'Flaherty entered into a marital settlement agreement (MSA) which was incorporated into a judgment for dissolution of marriage and awarded Julie $800,000, with the first installment of $400,000 to be paid within the first sixty days after entry of the judgment. When John failed to pay the first $400,000 within the first sixty days after the entry of the judgment, the court found that John's failure to pay violated the judgment for dissolution of marriage. The court held John in contempt and ordered a body attachment but stayed the commitment for 30 days so John could pay the $400,000 plus interest. John failed to pay the $400,000 before the expiration of the 30 days and was incarcerated. However, he subsequently paid the $400,000 plus interest and was released from custody. John filed this appeal and maintains that the circuit court erred when it denied his motion to dismiss and when it held him in contempt. Finally, Julie argues that John's appeal is moot because he has already been released from custody and paid the first $400,000 plus interest.

¶ 3 We find that this case is not moot because John's incarceration was too short to be litigated in a reviewing court and there is a reasonable expectation that if John fails to pay the second installment of $400,000, the circuit court may be called upon to revisit the issue of John's nonpayment of the remaining $400,000. We also find that John’s motion to dismiss the contempt proceeding filed to enforce a dissolution judgment was properly denied where the motion was based on the doctrine of *res judicata,* and where the movant cannot prove the identity of the causes of action element - - that there is a separate and distinct lawsuit - - because contempt proceedings are a continuation of dissolution proceedings and are the same and not subsequent proceedings, there is only one lawsuit. We further find that a motion to

dismiss a contempt proceeding is properly denied where the motion is based on the articles in a MSA but where all the articles are not included in the record, the record is incomplete, therefore, there is a presumption that the court acted in conformity with the law. Finally, we find the circuit court did not err when it held John in contempt because the evidence established that John had the money to satisfy the $400,000 judgment but elected to pay other debts, therefore, the circuit court's finding that John willfully refused to satisfy the dissolution judgment was not against the manifest weight of the evidence.

¶ 4 BACKGROUND

¶ 5 Judgment for Dissolution of Marriage

¶ 6 John and Julie O'Flaherty were married on August 10, 1996, in Chicago, Illinois. The parties had four children during the course of their marriage. Due to irreconcilable differences, John and Julie's marriage was dissolved.

¶ 7 Before the judgment was entered, the parties' executed a joint parenting agreement and a MSA which were incorporated into the April 19, 2016 judgment for dissolution of marriage. John only included three pages of the MSA in the record: (i) the first page; (ii) Article 17.1 which, addressed "security for payments due;" (iii) and Article 19.6, which was the signature page. John also testified about Paragraph (f)[1] of the MSA, and answered yes when he was asked if Paragraph 11(f) reads as follows:

> "As and for further division of property John shall pay Julie the sum of $800,000.00 to be paid as follow: Sub 1, $400,000 shall be paid to Julie within 60 days after the entry of judgment. In order to allow John to secure a loan

[1] Paragraph (f) refers to paragraph 11(f) of the MSA, and will be hereinafter referred to as paragraph 11(f).

> against the Wisconsin property in connection with his funding of the $400,000 payment, John has advised Julie that he will be engaging in transactions with one or more third parties. John shall not encumber the Wisconsin property in any amount greater than $400,000 and shall pay the entire amount of the loan proceeds to Julie."

¶ 8 John testified that under the MSA, he had to pay Julie the first $400.000 within 60 days after the entry of the Judgment: on or before June 14, 2016. John also testified that he was aware that in the event that he failed to pay, he would immediately accrue interest on the $400,000 judgment at a rate of 9% retroactive to April 19, 2016, the date the judgment was entered.

¶ 9 Petition for Rule to Show Cause

¶ 10 On October 17, 2016, when John failed to pay the $400,000, Julie filed a two-count[2] verified petition for rule to show cause for indirect civil contempt and for sanctions. Count I alleged that John had sold his property located at 400 W. Talcott Road in Park Ridge for $732,500 but did not use proceeds from the sale to pay the first $400,000 installment on the judgment. Julie's petition sought the following relief: (i) a rule to show cause why John should not be held in indirect civil contempt; (ii) an order requiring John to pay the full $400,000 plus $35,309.54 in interest; or (iii) an order accelerating John's payment obligations to pay the entire $800,000.00.

[2] Count II alleged that John violated the Joint Parenting Agreement but on December 2, 2016, the court entered an order that the issues raised in Count II would be resolved in mediation. Therefore, our review is limited to the issues raised in Count I.

¶ 11 John's Answer and Motion to Dismiss

¶ 12 On November 10, 2016, John filed an answer and a section 2-619 motion to dismiss the petition for rule to show cause. In his answer, John admitted that he had sold the Talcott property for $732,500, but maintained that he received less than $400,000 from the sale because other investors and certain expenses were required to be paid first before John received any proceeds. John maintained that he made a good faith business decision to reinvest the funds with the hope of being able to pay Julie the entire $800,000 within a reasonable period of time.

¶ 13 In one paragraph of his section 2-619 motion to dismiss, John maintained that he could never be held in contempt because the $400,000 and $800,000 provisions in the judgment for dissolution "constituted a complete resolution of the issue" and therefore, seeking enforcement by way of a contempt proceeding was barred by the doctrine of *res judicata.* 735 ILCS 5/2-619(a)(4) (the cause of action was barred by a prior judgment). In another paragraph of his section 2-619 motion to dismiss, John maintained that his motion to dismiss should be granted because the MSA was incorporated into the judgment and included an election of remedies provision which barred Julie from filing indirect civil contempt proceedings. 735 ILCS 5/2-619(a)(9) (the claim asserted is barred by other affirmative matter avoiding the legal effect of or defeating the claim).

¶ 14 On December 1, 2016, Julie responded to John's section 2-619 motion to dismiss and argued that John's obligation to pay her $400,000 was not satisfied by the MSA's provision for interest accruing at a rate of 9% per annum or the provision to record liens on John's properties. Julie also argued that if John could not be held in contempt, then she could never

force John to pay the first installment of $400,000 that was unpaid or the $400,000 that remained to be paid because John could forever ignore his obligation to pay Julie as long as interest was accruing and Julie had liens on John's properties.

¶ 15 On December 2, 2016, the court denied John's section 2-619 motion to dismiss finding that the remedies in the judgment for dissolution of marriage were not the only remedies Julie could pursue, and that the interest provisions in the MSA did not prevent the circuit court from enforcing its judgment.

¶ 16 Petition for Rule to Show Cause Hearing

¶ 17 On December 7, 2016, the court held a hearing on Julie's verified petition for rule to show cause. John testified at the hearing that he sold the Talcott property sometime towards the end of May, 2016 for over $1,000,000. John testified that he personally received a total of $449,596.71, but was left with about $350,000, which he invested in a different property, after paying his previous attorney, paying his child support arrearage, and paying himself two months' salary. John also testified that after he invested the money from the Talcott property sale, he attempted to secure a loan for the $400,000 he owed Julie from three separate lenders, all of whom refused to loan him money.

¶ 18 But on December 12, 2006, during cross examination, John admitted that he never actually filled out a formal application for a loan. Specifically, John testified that he did not fill out a loan application with Wintrust or Chase bank. Although John never applied for a loan, he told Julie in a text message that the loan he was processing would not close until June 15th or 16th and that he would write Julie a check for the $400,000 immediately after the loan closed.

¶ 19 On December 19, 2016, Julie made a motion for a directed finding on her petition for rule to show cause arguing that John willfully violated the circuit court's judgment. John responded that his decision not to pay Julie was not willful but was based upon his interpretation of the judgment and his belief that the penalties for not paying Julie the $400,000 were built into the judgment. The court found that John had the money to pay Julie but chose not to pay her. The court also found that John's decision to text Julie and promise to deliver the check, but then to invest the $350,000.00 without paying Julie was willful.

¶ 20 On January 23, 2017, the court found that John had the money but did not give legally sufficient reasons for his failure to pay Julie $400,000 plus interest. The court also found that John's failure to comply with the order was willful and contumacious, that John's conduct had defeated and impaired the rights and interests of Julie, and that John impeded and obstructed the court in its administration of justice. The court held John in indirect civil contempt for his willful failure to obey the court's April 19, 2016 judgment for dissolution of marriage. Finally, the court entered an order to take John into custody until he purged himself of contempt by posting a cash bond of $455,036 but stayed his commitment until February 23, 2017.

¶ 21 Body Attachment

¶ 22 On February 22, 2017, John filed a motion for an extension of time to purge himself from indirect civil contempt and requested an additional 90 days because he did not have the present ability to comply with the court's order. On February 23, 2017, the court (i) denied John's motion for extension of time; (ii) issued an attachment order with a cash bond of $455,036.00; and (iii) suspended John's parenting time with his children finding that

arresting John in the presence of his children would present a risk of serious endangerment to the children. There are no documents in the record which indicate when John was incarcerated or when he was released from custody.[3]

¶ 23 On February 23, 2017, John filed a notice of appeal seeking to reverse the following orders: (i) the December 2, 2016 order denying John's section 2-619 motion to dismiss; (ii) the January 23, 2017 order finding him in contempt; (iii) and the February 23, 2017 attachment order.

¶ 24 ANALYSIS

¶ 25 Mootness

¶ 26 The threshold question we must address is Julie's contention that John's appeal is moot because John has already been released from custody and purged himself of contempt by paying the $400,000 plus interest thus making any decision by this court advisory. We disagree.

¶ 27 It should be noted that as a general rule "courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). But there is an exception to this general rule for cases that fall into "a special category of disputes that are 'capable of repetition' while 'evading review.' " See *Turner v. Rogers*, 564 U.S. 431, 439 (2011). In *Turner*, petitioner's appeal of a contempt finding for failure to pay child support was heard after he had completed a 12 month prison sentence. *Turner*, 564 U.S. at 439. The *Turner* court found that the challenged action, petitioner's 12 month sentence, was too short

[3] The parties' briefs state that John was in custody, that John paid the money to purge himself of contempt and that his parenting time was restored.

to be fully litigated through the state courts and arrive at the Supreme Court prior to the challenged action's expiration and that "there [was] a more than 'reasonable' likelihood that [petitioner would] again be subjected to the same action" especially because he was again the subject of upcoming civil contempt proceedings due to the fact his child support payments were in arrearage. *Turner*, 564 U.S. at 440. The *Turner* court held that a case remains live if "(i) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (ii) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Turner*, 564 U.S. at 439–40; see also *In re Benny M.*, 2017 IL 120133, ¶ 20.

¶ 28 Here, it appears that John served his sentence and purged himself of contempt by paying the $400,000 judgment plus interest before the case reached this court. John's commitment did not provide enough time for John's appeal to reach this court. *Turner*, 564 U.S. at 439-440; *In re Benny M.*, 2017 IL 120133, ¶ 19 (finding that a 90 day commitment was too short to allow appellate review). We note that the April 19, 2016 judgment requires John to pay Julie another $400,000, so John could be held in contempt and face incarceration a second time if he does not pay the remaining $400,000. Therefore, because John's sentence was too short to be litigated and have the appeal reach this court before its expiration, and because John still owes Julie another $400,000, there is a reasonable possibility that if John fails to pay, John will be subjected to the same action again. *Turner*, 564 U.S. at 439-440. Accordingly, we hold that John's case is not moot and we will consider the issues John presents in his appeal.

¶ 29 Motion to Dismiss Rule to Show Cause

¶ 30 First, John contends that the circuit court erred when it denied his motion to dismiss the petition for rule to show cause predicated on section 2–619 of the Code of Civil Procedure (Code). 735 ILCS 5/2–619 (West 2016). An order denying a motion to dismiss under section 2–619 of the Code is reviewed *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 31 *Res Judicata*

¶ 32 John argued in his motion to dismiss that he could never be held in contempt because the $400,000 and $800,000 provisions in the judgment for dissolution "constituted a complete resolution of the issue" and therefore, seeking enforcement by way of a contempt proceeding was barred by the doctrine of *res judicata.* John maintains that the contempt proceedings would recover relief already awarded in the judgment for dissolution. Whether a claim is barred by the doctrine of *res judicata* presents a question of law which this court reviews *de novo*. *Matejczyk v. City of Chicago,* 397 Ill. App. 3d 1, 7 (2009).

¶ 33 In *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, the Supreme Court held that three elements must be satisfied in order for the doctrine of *res judicata* to apply: (i) a final judgment on the merits rendered by a court of competent jurisdiction, (ii) an identity of causes of action, and (iii) an identity of parties or their privies. *Richter,* ¶ 21. In order to be final, "a judgment or order must terminate the litigation and fix absolutely the parties' rights, leaving only enforcement of the judgment. *Richter*, ¶ 24. Here, considering the first element, we find that the judgment was final because the circuit court (i) terminated the litigation

when it dissolved the parties' marriage on April 19, 2016, and (ii) absolutely fixed John and Julie's rights when the court awarded Julie $800,000 plus interest. *Richter*, ¶ 24.

¶ 34 The second element -- an identity of causes of action -- requires the existence of a separate and distinct lawsuit. *Murneigh v. Gainer*, 177 Ill. 2d 287, 299 (1997) (finding that a final judgment on the merits of a cause operates as a bar to subsequent litigation of the same claim, demand, or cause of action.) Case law makes it clear that an indirect civil contempt proceeding is not a new cause of action but is a continuation of the original cause of action, herein the dissolution proceeding. *In re Marriage of O'Malley ex rel. Godfrey,* 2016 IL App (1st) 151118, ¶ 27; see also *Levaccare v. Levaccare*, 376 Ill. App. 3d 503, 509 (2007) (citing *People v. Budzynski*, 333 Ill. App. 3d 433, 438 (2002)). We find that John and Julie's dissolution proceeding and the contempt proceeding are one proceeding. John cannot prove the identity of causes action element -- that there is more than one lawsuit -- because contempt proceedings are a continuation of dissolution proceedings and, since dissolution and contempt proceedings are the same and not subsequent proceedings, there is only one cause of action. Therefore, we hold that there was no identity of causes of action in this case because there was only one cause of action or lawsuit.

¶ 35 Finally, with respect to the third element, we find that there was no identity of parties because civil contempt proceedings are a continuation of dissolution proceedings and are the same proceedings and are not separate or distinct proceedings or a new cause of action. Therefore, because there is one lawsuit or proceeding, there is only one set of parties. See *In re Marriage of O'Malley ex rel. Godfrey,* 2016 IL App (1st) 151118, ¶ 27. Therefore, we find that the doctrine of *res judicata* does not apply because John cannot satisfy two elements - -

the identity of causes of action and the identity of parties - - because the contempt proceeding was a continuation of the dissolution proceeding and there were no new lawsuits and no new parties.

¶ 36 Election of Remedies

¶ 37 Next, we must determine if there is an election of remedies provision in the MSA, and if there is an election of remedies provision, does the election of remedies provision bar Julie from filing indirect civil contempt proceedings against John. John maintains that contempt proceedings would be an improper remedy for non-payment of the $400,000 judgment because the parties already agreed on the remedies for non-payment in the MSA, and those remedies did not include contempt. Julie argues that if John's argument is to be accepted, then John never has to actually pay Julie any portion of the $800,000 because John will simply rely on the interest and lien provisions in the MSA and Julie's $400,000 judgment plus interest will never be satisfied. We find that the only way a money judgment can be satisfied is with the payment of money unless the parties agree otherwise. *Home State Bank Nat'l Ass'n v. Potokar*, 249 Ill. App. 3d 127, 131 (1993). Moreover, the Interest Act provides that judgments draw interest at a rate of 9% annum until satisfied, but the Act does not provide that the accrual of interest satisfies a judgment. 735 ILCS 5/2-1303 (West 2016). Finally, John fails to cite a case to support his contention that an interest provision or a lien provision are substitutes for satisfying a money judgment.

¶ 38 The Supreme Court has made it clear that a "court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Supreme Court Rule 342 also provides that

"[t]he appellant's brief shall include . . . . any pleadings or other materials from the record which are the basis of the appeal or pertinent to it." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

¶ 39 Here, John based his election of remedies argument on the MSA but only included in the record (i) Article 17.1, which addressed "security for payments due," (ii) Article 19.6 which was the signature page, and (iii) John testified about paragraph 11 (f) of the MSA, which was read into the record at the contempt hearing. John failed to include all the articles of the MSA in the record so this court could determine (i) if the parties agreed that Julie was limited to the remedies of interest accruing on the judgment and placing liens on John's properties, and (ii) if Julie was barred from filing a rule to show cause against John. We note that John did include the MSA in the appendix of his brief. However, documents included in the appendix but not included in the record are not properly before the court and cannot be used to supplement the record. *Koshinski v. Trame*, 2017 IL App (5th) 150398, ¶ 9. A party cannot rely on matters outside the record to support its position on appeal (*Oruta v. B.E.W. & Cont'l*, 2016 IL App (1st) 152735, ¶ 32) because attachments not included in the record are not considered. *In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 21.

¶ 40 A "marital settlement agreement is a contract subject to the same rules of construction of any other contract" *(In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992), and "intent of the parties is not to be determined from detached portions of a contract or from any clause standing by itself." *In re Marriage of Karafotas*, 402 Ill. App. 3d 566, 571 (2010). Therefore, with articles missing from the MSA and with only detached portions of the MSA in the record, we cannot determine John and Julie's intent.

¶ 41 We find that John had the burden of presenting a "sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch,* 99 Ill. 2d at 391–92. John's failure to include all the articles of the MSA in the record mandates that this court presume that the circuit court did not err when it denied John's motion to dismiss. Accordingly, because John filed an incomplete record, we presume that the circuit court's order was in conformity with the law and hold that the circuit court did not erred when it denied John's motion to dismiss based on a claim of election of remedies.

¶ 42 Contempt

¶ 43 Second, John argues that the circuit court erred when it held him in contempt because his failure to pay Julie the $400,000 was neither willful nor contumacious. Julie maintains that she can enforce the April 19, 2016 judgment for $400,000 by filing a petition for rule to show cause and by praying that John be held in contempt for his failure to pay the judgment. We agree with Julie.

¶ 44 In *In re Marriage of Berto*, 344 Ill. App. 3d 705 (2003), the court outlined the process for enforcing judgments in marital settlement agreements as follows:

> "Generally, provisions regarding maintenance and child support contained in a marital settlement agreement and incorporated into a judgment of dissolution are enforced through contempt proceedings. [Citations]. The contempt petition is known as a "petition for rule to show cause." [Citations]. A trial court's grant of

> the petition results in its issuance of a "rule to show cause." [Citations]. A rule to show cause is one means by which to bring an alleged contemnor before the trial court when the failure to comply with a court order is the alleged contemptuous behavior. *Berto,* at 711."

Moreover, section 511 of the Illinois Marriage and Dissolution of Marriage Act permitted Julie to file a petition to enforce the April 19, 2016 judgment for dissolution (750 ILCS 5/511)(West 2016)), and section 502 of the Act permitted Julie to request that the court enforce the judgment for dissolution by using all remedies available, including contempt. 750 ILCS 5/502(e)(West 2016). Therefore, we hold that Julie had a right to file a petition for rule to show cause and, after a hearing finding that John violated the judgment of dissolution, to enforce the judgment and compel John's compliance with a contempt proceeding.

¶ 45 In *In re Marriage of Logston,* 103 Ill. 2d 226 (1984), the court found petitioner's conduct was willful when he failed to pay about $4000 in maintenance to his former wife but, instead, spent over $11,000.00 on a trip. *Logston,* at 286. The *Logston* court held that in order for the contemnor to prove his behavior was not willful, he must show that "he neither has money now with which he can pay, nor has disposed wrongfully of money or assets with which he might have paid." *Logston,* at 285.

¶ 46 The *Logston* court also has held that a reviewing court should not disturb a circuit court's contempt finding "unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Logston,* at 287; see also *In re Marriage of Anderson,* 409 Ill. App. 3d 191, 210 (2011). We find the evidence supports the circuit court's finding of contempt. John admitted in his answer to Julie's petition for rule to show cause that he sold

the Talcott property for over $1,000,000 at the end of May 2016, approximately two weeks before June 14, 2016, the date the first $400,000 installment was due to be paid to Julie. John testified at the hearing on the petition for rule to show cause that instead of using the proceeds from the Talcott sale to pay Julie, he elected to invest the $449,596.71 he personally received in a different property and to pay off other debts. Finally, John testified that he promised to pay Julie $400,000 with a loan he had secured, but admitted on cross examination that he never applied for a loan at Wintrust or Chase Bank.

¶ 47 Here, we find that (i) John received $1,000,000 from the Talcott property sale; (ii) John elected to invest the Talcott proceeds in other properties and to pay off other debts; and (iii) John misrepresented facts to Julie when he told her that he had applied for a loan to satisfy the judgment when in fact he never applied for a loan. Based on the aforementioned facts, we find that John's failure to pay Julie the $400,000 was willful and contumacious because he sold the Talcott property for $1,000,000, and testified that he personally received $449,596.71 from the Talcott proceeds, but he invested the proceeds in other properties and paid other debts. We further find that John failed to present any evidence which established that he did not have the money to pay Julie or that he did not wrongfully misuse money or assets that could have been used to pay Julie. Therefore, we hold that the circuit court's finding that John's failure to pay Julie was willful and contumacious was not against the manifest weight of the evidence.

¶ 48 John also argues that the circuit court erred when it issued a body attachment and suspended his parenting time. In *Sanders v. Shephard*, 163 Ill. 2d 534, 540 (1994), the Supreme Court held that a commitment for civil contempt is lawful. Moreover, as previously

pointed out, section 502(e) of the Act empowers the circuit court to enforce the terms of a dissolution judgment by all remedies available, including contempt. 750 ILCS 5/502(e)(West 2016). We note that John only argues in his brief that he was incarcerated but does not provide any evidence of his incarceration, and therefore, we can only presume that the circuit court acted in conformity with the law. *Foutch*, 99 Ill. 2d at 392 (Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.). We also note that John complains about his parenting time being suspended when the court, after a hearing, issued its February 23, 2016 commitment order to protect his children from injury in the event they were with John at the time of his arrest: the court found that "arresting John in the presence of his children would present a risk of serious endangerment to the children." Given the exigent circumstances -- John's imminent arrest for contempt -- we find that section 502(e) of the Act empowered the circuit court to invoke as a remedy, temporarily suspending John's parenting time until the sheriff executed the commitment order and took John in custody. 750 ILCS 5/502(e)(West 2016). Therefore, we hold that the circuit court did not err when it issued the body attachment after the February 23, 2016 hearing, and temporarily suspended John's parenting time until John was taken into custody.

¶ 49 Civil and Criminal Contempt Proceedings

¶ 50 Finally, we note that John argues that the circuit court incorrectly characterized its findings of contempt as civil, when, in his opinion, it was a criminal proceeding. We disagree. Civil contempt is designed to compel future compliance with a court order; and criminal contempt is punitive in nature and instituted to punish, as opposed to coerce, a contemnor for past contumacious conduct. *People v. Warren*, 173 Ill. 2d 348, 368 (1996).

Here, we find that the circuit court stayed John's commitment for 30 days on January 23, 2017, to provide John with additional time to purge himself of contempt by complying with the court's April 19, 2016 judgment for dissolution which required John to pay Julie $400,000 on or before June 14, 2016. *Warren*, 173 Ill. 2d at 368. When John complied by paying Julie the $400,000 judgment plus interest and purged himself of contempt, he was released from custody. Therefore, we find that the court imposed an indirect civil contempt sanction because (i) John was given an indefinite term of commitment to force compliance and payment of the $400,000 judgment plus interest; (ii) once John paid the $400,000 plus interest, he was released from custody; and (iii) the court did not impose a definite period of time of confinement to punish John.

¶ 51 Conclusion

¶ 52 We find that this case is not moot because the judgment requires John to pay another $400,000 and, if John fails to pay the $400,000, the circuit court may be called upon to revisit the issue of John's nonpayment of the remaining $400,000. We also find that a motion to dismiss a civil contempt proceeding which was filed to enforce a dissolution judgment is properly denied where the motion is based on the doctrine of *res judicata*, and where the movant cannot prove the identity of the causes of action element - - that there is a separate and distinct lawsuit - - because contempt proceedings are a continuation of dissolution proceedings and, as the same not subsequent proceedings, there is only one lawsuit. We further find that a motion to dismiss a contempt proceeding is properly denied where the motion is based on the articles in a MSA, but where all the articles are not included in the record, the record is incomplete, therefore, there is a presumption that the court acted in

conformity with the law. Finally, we find the circuit court did not err when it held John in contempt because the evidence established that John had the money to satisfy the $400,000 judgment but elected to pay other debts, therefore, the circuit court's finding that John willfully refused to satisfy the dissolution judgment was not against the manifest weight of the evidence.

¶ 53 Affirmed.