

No. 1-11-0270

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|-------------------------------|---|------------------|
| <i>In re</i> THE MARRIAGE OF: | ) |                  |
| CLIFTON D. HEALY,             | ) | Appeal from the  |
|                               | ) | Circuit Court of |
| Petitioner-Appellant,         | ) | Cook County.     |
|                               | ) |                  |
| v.                            | ) | 08 D 3027        |
|                               | ) |                  |
| ANNA R. HEALY,                | ) | The Honorable    |
|                               | ) | David Haracz,    |
|                               | ) | Judge Presiding. |
| Respondent-Appellee.          | ) |                  |

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: (1) Petitioner was afforded due process for an indirect civil contempt in receiving notice of two rules to show cause based on the same allegations and received an opportunity to be heard at the hearing. Petitioner was also properly ordered to pay respondent's expenses under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/508(b) (West 2010)). (2) The circuit court did not abuse its discretion in refusing to hear petitioner's counter-claim for a modification of custody where he failed to file a proper motion with supporting affidavits to modify the custody judgment order pursuant to section 610 of the Act (750 ILCS 5/610 (West 2010)). (3) The circuit court did not abuse its discretion in refusing to grant petitioner's motion for sanctions against respondent where he did not allege any false pleading.

Petitioner-Appellant, Clifton D. Healy, appeals the circuit court's entry of contempt against him pursuant to Respondent-Appellee Anna R. Healy's petition for rule to show cause based on Clifton's failure to return their minor children to her custody as ordered in the visitation schedule in their judgment of dissolution of marriage. Clifton argues: (1) he did not receive adequate notice of Anna's appearance before the court on her petitions for rule to show cause and did not receive adequate notice of the hearing on the rules to show cause, that the court conducted an inquisitorial hearing, and that the finding of contempt was against the manifest weight of the evidence; (2) the court erred in not granting his motion for temporary custody; and (3) the court abused its discretion in not granting his motion for sanctions against Anna.

First, we hold that Clifton was afforded due process in receiving notice of the hearing and received an opportunity to be heard, thus satisfying due process requirements for an indirect civil contempt. We also hold that the circuit court's entry of judgment for indirect civil contempt was not against the manifest weight of the evidence and was not an abuse of discretion. In any event, the court correctly found that Clifton purged the contempt by returning the children. We also hold the court's order that Clifton pay Anna's expenses was proper, as the court had no discretion under section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)). Second, we hold the circuit court did not abuse its discretion in refusing to hear Clifton's counter-claim for a modification of custody, because Clifton failed to file a proper motion with supporting affidavits to modify the custody judgment order pursuant to section 610 of the Act (750 ILCS 5/610 (West 2010)). Lastly, we hold the circuit court did not abuse its discretion in refusing to grant Clifton's motion for fees and costs as a sanction against Anna for allegedly filing a false pleading, as Clifton failed

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to show her pleadings were false. Therefore, we affirm the court's order entering judgment based on its finding of indirect civil contempt and finding that Clifton purged the contempt, as well as the court's order that Clifton pay Anna's expenses pursuant to section 508(b) of the Act (750 ILCS 5/508(b) (West 2010).

### BACKGROUND

Petitioner-appellant, Clifton D. Healy, and respondent-appellee, Anna R. Healy, on May 29, 2009, following a bench trial, the circuit court entered a judgment and dissolution of marriage. The judgment awarded Anna sole custody of the children, entitling Clifton to visitation rights. Included in the judgment of dissolution was a winter break parenting schedule. According to the winter break parenting schedule, Clifton was required to return the minor children to Anna at noon on December 25, 2010.

Anna alleged that on December 4, 2010, Clifton emailed her his intention to take the minor children to Wichita, Kansas, for his Christmas visitation with them. Clifton instructed Anna to pick up the children in Wichita, Kansas, on Christmas Day. That same day, Anna replied to Clifton's email and explained that she would be in Des Plaines, Illinois, on Christmas Day and that he would need to return the minor children at noon at the Des Plaines Police Department. The parties agreed that Clifton could begin his visitation with the children earlier than scheduled. On December 14, 2010, Anna sought confirmation on when and where Clifton would return the minor children, and Clifton replied he would return the children in Des Plaines, but questioned why he should return them. On December 15, 2010, Anna responded that she had obligations in Illinois and could not pick the children up in Kansas. On December 17, 2010,

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Clifton left the state of Illinois with the minor children. On December 18, 2010, Clifton emailed Anna, asking her to drive to Wichita, Kansas, to pick up the children. On December 23, 2010, Clifton emailed Anna with a list of reasons as to why he would not be returning the children on Christmas Day in Illinois, including alleged car trouble, and asked Anna to drive to Kansas. Anna responded that it was Clifton's obligation to return to the minor children to Anna in Illinois. Clifton did not return the minor children to Anna on Christmas Day in Illinois, and instead kept them with him in Kansas.

On December 27, 2010, Anna filed an emergency motion to produce the minor children and petition for rule to show cause why Clifton should not be held in contempt for not returning the minor children on Anna at noon on December 25, 2010. On December 27, 2010, the court entered an order finding that a *prima facie* case of indirect civil contempt was shown, issuing a rule *instanter* to show cause why Clifton should not be held in contempt of court for failure to adhere to the winter break visitation schedule, and ordering Clifton to appear on January 5, 2011, to respond to the rule.

On December 29, 2010, Anna filed an emergency petition for a rule to show cause why Clifton should not be held in contempt of court for violating the terms of the judgment of dissolution in that he was detaining the minor children outside the state of Illinois without Anna's consent. According to this second petition for rule to show cause, Anna alleged that she had scanned and emailed a copy of the December 27, 2010, order to Clifton, left him a voice mail about the order, and also sent him a text message about the order. On December 28, 2010, Clifton emailed Anna that he would not be returning the minor children to Illinois because the

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minor daughter had a pain in her leg preventing travel. However, Anna alleged, the minor daughter's condition was best treated with Ibuprofen and keeping her in Kansas would not help her. Anna believed Clifton was using their daughter's condition as an excuse to violate the court's order and keep the children in Kansas.

On December 29, 2010, pursuant to Anna's emergency petition for a rule to show cause, Judge Laquetta Hardy of the circuit court entered an order that: (1) Clifton turn over the minor children to Anna's mother, Mary Ross, of Sand Springs, Oklahoma, instanter; (2) that the local law enforcement authorities are empowered to assist Mary Ross in obtaining the minor children; (3) that the rule entered on December 27, 2010, remained in full force and effect; and (4) that the order may be served by email, facsimile, certified mail, Federal Express, or by any other electronic means or common carrier.

Clifton told Anna by email that he had trouble with the brakes on his car and asserted that he could not get them fixed by his mechanic until December 27, 2010. Clifton told Anna that he would return the children to Anna if she came to pick them up in Wichita, Kansas. Anna responded via email that she contacted another mechanic in the area who could get the necessary repairs done by December 24, 2010. However, Clifton responded that it was too late to move his car to another mechanic.

According to Clifton, on December 27, 2010, his car repairs were complete and he sent an email to Anna, but due to their daughter's complaint of pain in her left thigh, Clifton "thought it prudent" for the children to remain another night before departing the next day. The next day, on December 28, 2010, their daughter complained that the pain in her leg was worse and Clifton

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took her to the emergency care clinic. According to Clifton, the doctor prescribed Tylenol with codeine and ordered that their daughter not travel more than a few hours per day for her comfort. After leaving the clinic, Clifton and the minor children stayed with Clifton's father and stepmother. Clifton sent Anna email copies of the doctor's orders and informed her where they were staying and that they would wait a day before traveling and that it would take 2-3 days to travel back to Illinois. Clifton left Wichita, Kansas, for Illinois the morning of December 29, 2010. That night, he and the children stayed at a hotel near Hannibal, Missouri. When Anna inquired where the children were via text message, Clifton responded that they were near Hannibal, Missouri and were checking into a hotel. On December 31, 2010, Clifton dropped the children off at the Des Plaines police department and Anna took possession of the minor children.

The parties appeared before the court for a hearing on the motion for rule to show cause on January 5, 2011. On January 5, 2011, Clifton appeared and filed a response to Anna's December 27, 2010 emergency petition for rule to show cause and motion for sanctions against Anna, in which he admitted he took the minor children to Kansas, but denied Anna's other allegations. Clifton alleged that he had trouble with the brakes on his car and could not get them fixed by his mechanic until December 27, 2010. Clifton also filed a response to Anna's December 29, 2010, emergency petition for a rule to show cause, in which he claimed the additional reason for his failure to return the minor children was that their daughter's doctor advised against travel. Clifton denied that his actions were willful, contumacious and without just cause. Instead, Clifton alleged that after being informed of their daughter's medical

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condition, Anna “refused to travel to be with her children, choosing instead to remain in Illinois and pursue further litigation against Clifton without serving notice on him for either motion.”

Clifton further claimed Anna had already planned to travel to Oklahoma.

Clifton further alleged that he had no notice of either the December 27, 2010, emergency motion to produce the minor children and petition for rule to show cause or the December 29, 2010, petition for rule to show cause, and therefore was unable to appear for the hearing held on December 29, 2010. Clifton alleges that he did not receive notice of Anna’s petition for rule to show cause until January 3, 2011, several days after the hearing and after the minor children had been returned to her in Des Plaines.

On January 5, 2011, the court held the hearing on the motion for rule to show cause. The court questioned Clifton regarding why he did not return the children as required under the visitation schedule. On January 7, 2011, the circuit court entered an order that Clifton was in contempt of the December 27, 2010, order, but that the contempt had been purged. In that order, the court ordered Clifton to pay Anna expenses in the amount of \$300, pursuant to section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)). Clifton timely appealed.

#### ANALYSIS

On appeal, Clifton argues the following: (1) he did not receive adequate notice of Anna’s appearance before the court on her petitions for rule to show cause and did not receive adequate notice of the hearing on the rules to show cause, that the court conducted an inquisitorial hearing, and that the finding of contempt was against the manifest weight of the evidence; (2) the court erred in not granting his motion for temporary custody; and (3) the court abused its discretion in

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not granting his motion for sanctions against Anna. We address each argument in turn.

## I. Contempt Finding

### A. Notice of Hearing

Clifton first argues he was deprived of due process because he did not receive adequate notice of Anna's December 27, 2010, and December 29, 2010, emergency petitions for rule to show cause and did not receive adequate notice of the hearing. According to Clifton, Anna did not mail a copy of her December 27, 2010 emergency motion for rule to show cause or the court's order until after the hearing on December 27, 2010. Clifton also alleged that Anna did not give any prior notice of her December 29, 2010 emergency motion for rule to show cause, until she placed them in the mail on January 3, 2011, after the children had already returned to Illinois and Anna had already taken possession of the children. Clifton claims he did not receive notice until January 4, 2010, one day before the hearing. The notice must contain an adequate description of the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of an evidentiary hearing on the charge within a reasonable time in advance of the hearing on the contempt charge. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 53 (1990) (citing *Welding Industrial Supply Co. v. Northtown Industries, Inc.*, 58 Ill. App. 3d 625, 629 (1978), *In re Estate of Shlensky*, 49 Ill. App. 3d 885, 893 (1977)). The notice required is notice of the hearing on the rule to show cause or contempt charge, not notice of the motion or petition for a rule to show cause. See *In re Keon C.*, 344 Ill. App. 3d 1137, 1147 (2003) (clarifying that a hearing on the petition for rule to show cause was not a hearing on the rule to show cause itself which required notice). Clifton was not due any notice of Anna's appearances before the court

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on her petitions to obtain a rule to show cause.

Clifton was due notice of the contempt charges and the hearing, which he received. In an indirect civil contempt hearing, respondent is only entitled to minimal due process, which consists of notice and an opportunity to be heard. *In re Marriage of Betts*, 200 Ill. App. 3d at 53. Clifton admits that Anna mailed a copy of her December 27, 2010, petition for rule to show cause, and a copy of the court's order entered on that date ordering Clifton to appear for the hearing on January 5, 2011, after the hearing on her petition on December 27, 2010. Thus, Anna mailed a copy of the court's order for rule to show cause on December 27, 2010, providing Clifton nine days' notice before the hearing.

Clifton further admits he received a copy of the December 29, 2010 rule to show cause, on January 4, 2010, but argues that this was insufficient notice because it was one day before the hearing. However, the December 29, 2010, rule to show cause entered by the court was based on the same allegations as the December 27, 2010, rule to show cause entered by the court. The December 29, 2010, rule to show cause was based on the following allegation: "Clifton's failure to return the 2 minor children to Anna as the custodial parent pursuant to the order entered herein on 12/27/10, a copy of which is attached hereto as Exhibit A." This is the same allegation as Anna's petition for rule to show cause filed on December 27, 2010, and the rule to show cause entered on December 27, 2010. Where a rule to show cause and petition for a rule to show cause set forth substantially the same allegations, the service of the rule to show cause, setting forth the nature of the charges against him and the time and place of the hearing on those charges, satisfies the due process notice requirements. *First Midwest Bank/Danville v. Hoagland*, 244 Ill. App. 3d

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596, 609 (1993) (citing *In re Marriage of Betts*, 155 Ill. App. 3d at 94).

Further, the order entered December 29, 2010, provided that “[t]he rule heretofore entered on 12/27/10, made returnable 1/5/11, remains in full force and effect.” Thus, the rule to show cause entered on December 27, 2010, was, in effect, continued by the court’s order of December 29, 2010.

In any event, Clifton also admits he received notice of the December 29, 2010, rule to show cause on January 4, 2010. Although this date was only one day before the hearing, we find that, combined with Clifton’s admitted receipt of copies of the December 27, 2010, petition for rule to show cause and the rule to show cause entered on December 27, 2010, Clifton was given adequate notice of the allegations of contempt and hearing on January 5, 2010. *Cf. Hoagland*, 244 Ill. App.3d at 609 (held where the petition for rule to show cause set forth one charge against defendant and the rule to show cause required defendant to appear at certain time and place and show cause as to why he should not be held in contempt of court based upon an entirely different unrelated charge, the charge in the petition was abandoned, and defendant did not receive proper notice).

We hold Anna’s service of the rule to show cause and court’s order of December 27, 2010, setting January 5, 2011, for hearing, and service of the December 29, 2010 order based on the same allegation satisfies the due process requirements that a contemnor receive notice of the charges and of the date and time of the hearing on a rule to show cause before a finding of contempt. Our holding is buttressed by the fact that, according to precedent, in cases of indirect civil contempt only minimal due process is required. Clifton was afforded more than minimal

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due process in this case.

### B. Conduct of Hearing

Clifton also argues the court conducted an “inquisitorial hearing.” However, we determine that the circuit court complied with due process in affording Clifton an opportunity to explain why he allegedly could not comply with the visitation order and sought to clarify Clifton’s reasons. An alleged contemnor in an indirect contempt proceeding is entitled to notice, a fair hearing, and an opportunity to be heard. *People v. Ramsell*, 266 Ill. App. 3d 297, 299 (1994) (citing *People v. Waldron*, 114 Ill. 2d 295, 303 (1986)). At the contempt hearing the alleged contemnor has the opportunity to show compliance with the court’s order, or an acceptable reason, like impossibility, for noncompliance. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 829 (2001).

Here, the transcript of the hearing shows that the circuit court merely asked Clifton questions to ascertain whether his reasons for his noncompliance, repairs on his vehicle and traveling delays due to his minor daughter’s doctor’s restrictions on traveling, were acceptable. When Clifton testified that he could not get his car repaired in time to drive the children back to Anna, the court questioned why Clifton did not take his car to the alternate mechanic Anna located for him, who could have repaired his car in time. Clifton responded that his car was already in the shop at his mechanic. The court then followed up and asked why Clifton did not simply take his car out of that mechanic’s shop and take it to the mechanic Anna found. Clifton then responded that his mechanic had already begun working on his car and the brakes were already disassembled.

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Further, when Clifton testified that his inability to return the children promptly continued because of the traveling restriction by the doctor to whom he took his minor daughter (to travel no more than a few hours), the court questioned how Clifton was able to travel 400 miles in one day heading back to Illinois and stopping in Hannibal, Missouri – nearly eight hours – but then only travel 100 miles the next day and stay overnight with his cousin in Springfield. The court questioned why Clifton would not merely continue driving the remaining approximately 200 miles to Chicago and return the minor children to Anna. After further questioning from the court on this issue, Clifton could not adequately explain why he spent the extra night in Springfield with the children. Clifton maintained that he was following the doctor’s orders and looking out for his daughter’s best interest, but the court found that this contention was countered by the amount of time and distance covered during Clifton’s first day of driving. The court then allowed Clifton to continue attempting to explain, but Clifton offered no good reason for not driving directly from Hannibal, Missouri, to Chicago to return the children to Anna. The record shows that the court allowed Clifton ample opportunity to explain why he should not be held in contempt for his failure to follow the visitation schedule as ordered in the judgment of dissolution.

In *People v. Ernest*, 141 Ill. 2d 412, 427 (1990), the defendant similarly argued that the court in a criminal contempt proceeding improperly assumed the role of prosecutor at the hearing. The Illinois supreme court held the defendant was afforded the opportunity to explain the reasons for his actions and to present any defense he might have, and the hearing judge’s questioning of defendant at the hearing was only to clarify certain issues and did not amount to

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prosecutorial questioning. *Ernest*, 141 Ill. 2d at 428. Similarly here, the court's questioning of Clifton was merely to clarify why he allegedly could not return the minor children by December 25, 2010, and why he continued to delay returning the children, and Clifton was given ample opportunity to explain himself. We find the trial court satisfied due process requirements during the contempt hearing and provided Clifton with an opportunity to be heard regarding his reasons for noncompliance with the visitation schedule.

### C. Manifest Weight of the Evidence

Clifton next argues that the court's finding of contempt was against the manifest weight of the evidence. "It is well established that whether a party is guilty of contempt is an issue of fact for the trial court to decide, and a reviewing court will not disturb the trial court's finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *In re Anderson*, 2011 Ill. App. LEXIS 296 at \*43 (1st Dist. March 31, 2011) (citing *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)). A finding is against the manifest weight of the evidence only if (1) the opposite conclusion is clearly evident or (2) the trial court's finding is unreasonable, arbitrary, or not based on the evidence presented. *People v. Covington*, 395 Ill. App. 3d 996, 1003 (2009) (citing *Best v. Best*, 223 Ill. 2d 342, 350 (2006)). " " " 'Abuse of discretion' means clearly against logic; the question is not whether the appellate court agrees with the [trial] court, but whether the [trial] court acted arbitrarily, without employing conscientious judgment, or whether, in view of all the circumstances, the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." ' " *People v. Covington*, 395 Ill. App. 3d at 1002-03 (quoting *Long v. Mathew*, 336 Ill. App. 3d

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595, 600 (2003), quoting *State Farm Fire & Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1083 (2000)).

Here, the manifest weight of the evidence supported the circuit court's finding of contempt, and there is nothing in the record to indicate it abused its discretion. First, the evidence regarding the terms of the visitation schedule was clear and unrebutted. The parenting schedule, as set forth in Article IV, section 4e, of the judgment of dissolution of marriage entered May 29, 2009, attached to Anna's petition for a rule to show cause and testified to by Clifton, specifically provides that in even-numbered calendar years Clifton would have visitation with the children from winter break at 5:00 p.m. on the last day of school until noon on December 25.

The testimony was unrebutted that Clifton did not return the children as required by December 25, 2010. However, Clifton explained at length that he could not get his car repaired by that date because his mechanic was closed over the holiday, and that he could not move his car to the mechanic Anna found because his mechanic had already begun working on his car and had disassembled the brakes. The car was repaired on December 27, 2010. Thus, the circuit court found in its order that Clifton was not guilty of contempt for his conduct up to that date.

However, the manifest weight of the testimony concerning Clifton's actions after December 27, 2010, established Clifton's contempt in disregarding the visitation schedule. On December 28, 2010, Clifton took the couple's minor daughter to an emergency care clinic and obtained an order from the doctor stating that she could travel for more than a few hours per day. On December 29, 2010, Clifton left Wichita and traveled 400 miles, approximately an eight-hour drive in the circuit court's estimation, to Hannibal, Missouri, which directly contravened the

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doctor's order Clifton had just obtained. On December 30, 2010, Clifton drove only about 100 miles further to Springfield, Illinois, instead of driving another few hundred miles directly to Chicago, and spent the night at his cousin Rachel's house, at a point where Clifton was already four days late in returning the minor children to Anna. Anna testified that Clifton's cousin posted on Facebook the previous evening that Clifton and the minor children were coming to visit. Thus, the evidence clearly gave the appearance that Clifton was wilfully delaying his return of the minor children to have an extended vacation and visit with his family. Anna's testimony further established that even after all the extended traveling and visits, when Clifton finally did return to Chicago, he went to his house and sat the minor children down to watch a two-hour movie. Though Clifton maintained that he was looking out for the best interest of his minor daughter's health condition and attempting to comply with the doctor's restriction to not travel more than a few hours a day, the court found this assertion was belied by his extensive driving the previous day. The court specifically found and told Clifton, "You were looking out for your own best interest and your family's best interest." Thus, the court found Clifton was in contempt for his actions after December 27, 2010. The manifest weight of the evidence supports the court's finding.

We further note that the trial court is in a superior position to judge the credibility of the witnesses. *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 607-08 (2011) (citing *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004)). In reviewing the record, it is apparent that the circuit court found Clifton's testimony about his actions contradictory, self-serving, and not credible. Therefore, we hold that the trial court's finding of contempt was not against the

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manifest weight of the evidence or an abuse of discretion.

In any event, the court correctly found that Clifton purged the contempt by returning the children. The court, in its order of January 7, 2011, stated the following: “As the children have been returned, Clifton has purged the finding of contempt.” Thus, Clifton was not punished for the contempt.

### C. Fine for Anna’s Expenses

Lastly, Clifton argues the court erred in ordering that he pay Anna’s expenses in the amount of about \$300, which included costs incurred by Anna’s mother in traveling to Wichita, Kansas to retrieve the minor children. The circuit court did not assess the expenses as a fine for the contempt, but rather ordered the payment of these costs pursuant to section 508(b) of the Act, which provides, in relevant part:

“In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. \*\*\* If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.” 750 ILCS 5/508(b) (West 2010).

“Under section 508(b), a trial court has no discretion as to whether to award fees and

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costs, if it finds that the underlying failure to comply with an order was without cause or justification.” *In re Sanda*, 245 Ill. App. 3d 314, 319 (1993) (citing *In re Marriage of Garelick*, 168 Ill. App. 3d 321, 328 (1988)). “Its only discretion in this regard extends to its determination of the amount of reasonable fees.” *In re Sanda*, 245 Ill. App. 3d at 319. The word “shall” in the 1982 amendment to this section evidenced that the legislature intended a mandatory construction. *Sostak v. Sostak*, 113 Ill. App. 3d 954, 960 (1983). The legislature intended this result to serve as a sanction against parties in marital cases who wilfully disobey court orders. *In re Young*, 200 Ill. App. 3d 226, 231 (1990). The policy behind section 508(b) is to eliminate the financial burden on a custodial parent that is the consequence of an enforcement action. *In re Marriage of Berto*, 344 Ill. App. 3d 705, 716-17 (2003) (citing *In re Parentage of M.C.B.*, 324 Ill. App. 3d 1, 4 (2001), citing *In re Marriage of Wassom*, 165 Ill. App. 3d 1076, 1081 (1988)).

Here, the circuit court properly ordered Clifton to pay \$300 to Anna in costs once it found Clifton’s actions were willful and without cause or justification. In paragraph J of its order, the court found that “Clifton’s actions between December 27th and December 31st were dilatory in nature and meant to deprive Anna of time with the children.” In paragraph K of its order, the court found that “Clifton’s actions with regard to the second Petition for Rule to Show Cause were willful and contumacious and were without compelling cause or justification.” Thus, having found that Clifton’s underlying failure to comply with the visitation schedule in the judgment for dissolution was without cause or justification, the court had no discretion and had to order payment of Anna's expenses under section 508(b). We find no error and affirm the award of expenses.

## II. Motion for Temporary Custody

Clifton also argues that the court abused its discretion in refusing to grant his request for temporary custody of the children. Clifton based his motion for temporary custody on his allegation that “Anna show[ed] a blatant disregard for the health and welfare of the minor child, [the minor daughter],” because Anna filed her emergency motions for rule to show cause based on Clifton’s violation of the visitation schedule, and “minimized” the minor child’s pain in insisting upon her return to Illinois. Thus, Clifton alleged he “does not believe Anna will pursue further diagnosis and treatment of [the minor daughter’s] condition.” Clifton further alleges that Anna disregarded the minor child’s pain and, had it not been for Clifton’s extended visitation with the children, “it is likely that [the minor daughter’s] condition would have continued to have gone undiagnosed and untreated.”

However, within his motion Clifton admits that Anna included as one of her exhibits clinic documents recommending that their daughter have isotope bone scan imaging done, and was aware that their daughter’s condition would take months to alleviate. Thus, Clifton’s own pleading demonstrates that Anna was completely aware of the details of their daughter’s medical condition and was not ignoring their daughter’s medical needs in requesting that Clifton abide by the terms of the visitation schedule in the judgment of dissolution.

Clifton also claims Anna blocked his access to the records of the children’s medical care providers. However, there is no evidence in the record to support Clifton’s claim, nor does Clifton explain the parameters of his alleged right to the children’s medical records. According to Article III, section 3a, of the judgment for dissolution of marriage, Anna has the principal

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authority and responsibility for decision-making and care, and Clifton is to be consulted about any major medical or educational decisions concerning the children and prior to any decisions that would require Clifton to pay any additional money. There is no provision in the dissolution judgment that Clifton be provided access to the children's medical records.

Further, while Clifton claims Anna was not acting in the best interests of the children in insisting that their daughter travel back to Illinois as ordered in the visitation schedule, we point out that Clifton's insistence on taking their daughter to Kansas and keeping her there for an extended stay at Clifton's mother's residence, away from Anna and the child's local doctors in Illinois, can be interpreted as a disregard for the health and best interests of the child.

Moreover, Anna was granted sole custody of the children and was adjudicated the sole legal custodian of the children by the judgment and dissolution of marriage order of May 29, 2009. In his cross-motion for temporary custody, Clifton did not properly seek modification of that custody order. The Illinois Parentage Act of 1984, (750 ILCS 45/1 *et seq.* (West 2010)), provides that modification of custody judgments is governed by the Act (750 ILCS 5/101 *et seq.* (West 2010)). 750 ILCS 45/16 (West 2008). Section 610 of the Act (750 ILCS 5/610 (West 2010)) governs modification of custody awards and provides, in pertinent part:

“(a) Unless by stipulation of the parties or except as provided in subsection (a-5), 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.

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(a-5) A motion to modify a custody judgment may be made at any time by a party who has been informed of the existence of facts requiring notice to be given under Section 609.5 [750 ILCS 5/609.5].

(b) 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 a change has occurred in the circumstances of the child or his custodian, \*\*\* and that the modification is necessary to serve the best interest of the child. The existence of facts requiring notice to be given under Section 609.5 of this Act [750 ILCS 5/609.5] shall be considered a change in circumstance. \*\*\*\*” 750 ILCS 5/610 (West 2010).

Sections 610(a) and (b) of the Act establish a dual-step process for modification petitions filed and heard within two years of the last custody judgment. *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 554, 702 N.E.2d 563, 569 (1998). Thus, if Clifton desired a change in custody, he was required to seek modification of the custody judgment and to make a threshold showing with 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); *Brewer*, 183 Ill. 2d at 555-56, 702 N.E.2d at 569. Only then does the case proceed to an evidentiary hearing. 750 ILCS 5/610(b) (West 2008); *Brewer*, 183 Ill. 2d at 556, 702 N.E.2d at 569-70.

We hold that Clifton failed to properly move to modify the custody judgment as required under section 610 of the Act (750 ILCS 5/610 (West 2010)), including filing affidavits, to make

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the threshold showing of child endangerment necessary under section 610(a). Thus, the court did not abuse its discretion in refusing to enter an order granting Clifton's motion for temporary custody.

### III. Motion for Sanctions

In his motion for sanctions, which was part of his reply to Anna's emergency petition for a rule to show cause, Clifton merely repeated his responses to Anna's petition regarding his version of events surrounding his refusal to return the children to Illinois pursuant to the visitation schedule and his alleged lack of notice. Without further elaboration or citation to authority, summarily alleged "Anna defrauded the court and committed direct criminal contempt." Clifton requested the court enter an order imposing sanctions on Anna "for filing a false pleading and malicious prosecution." Clifton brought his cross-motion for sanctions pursuant to Illinois Supreme Court rule 137, section 602 of the Act regarding the best interests of the child (750 ILCS 5/602 (West 2010)), section 10-5.5 (720 ILCS 5/10-5.5 (West 2010)), and sections 2-603 and 2-608 of the Illinois Code of Civil Procedure (735 ILCS 5/2-603, 2-608 (West 2010)). However, section 137 is the only proper basis for a motion for sanctions, as none of the other provisions relied upon by Clifton are provisions for civil sanctions. Section 602 of the Act does not contain a provision for sanctions, but rather concerns the best interests of the child. Section 10-5.5 sets forth the criminal offense of unlawful visitation or parenting time interference, which is a petty offense (720 ILCS 5/10-5.5(b) (West 2010)). Under this provision, only a police officer with probable cause may issue a notice to appear in court on the charge. See 720 ILCS 5/10-5.5(d) (West 2010). There is no provision for civil sanctions. Section 2-603 of

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the Illinois Code of Civil Procedure concerns the form of pleadings and does not provide for any sanctions. 735 ILCS 5/2-603 (West 2010).

Section 2-608 concerns counterclaims (735 ILCS 5/2-608 (West 2010)), ostensibly because Clifton brought his motion for sanctions as a counterclaim to Anna's emergency motions for rule to show cause. However, a motion for a rule to show cause is not a "claim" but, rather, a motion. Relying on section 2-608 is thus improper, as Clifton's motion for sanctions is not a counterclaim but a motion. Thus, Illinois Supreme Court Rule 137 is the only potentially proper basis cited by Clifton for awarding sanctions.

Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) provides:

"Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. \*\*\* The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry 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 or to cause unnecessary delay or needless increase in the cost of litigation. \*\*\* If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing

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of the pleading, motion or other paper, including a reasonable attorney fee.” Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

However, parties appearing *pro se* are not entitled to recover attorney fees. *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 117-18 (1990), *appeal denied*, 155 Ill. 2d 575 (1994).

Because the rule is penal in nature, it must be strictly construed. *Whitmer*, 335 Ill. App. 3d at 514, 781 N.E.2d at 629, citing *Peterson*, 313 Ill. App. 3d at 7, 729 N.E.2d at 79. The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be reversed on appeal absent an abuse of discretion. *Morris B. Chapman & Associates v. Kitzman*, 193 Ill. 2d 560, 579, 739 N.E.2d 1263, 1275 (2000), citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998).

Rule 137 provides for sanctions for false pleadings, but Clifton does not explain how Anna’s motions for rule to show cause constituted false pleadings. All the facts alleged in both of Anna’s pleadings were supported by the facts adduced at the hearing on the rule to show cause. Clifton indeed took the minor children to Kansas, and he indeed kept them beyond his scheduled visitation period and refused to return them to Anna in Illinois per the visitation schedule in the judgment for dissolution. Thus, the allegations in Anna’s motions for rule to show cause were not false.

The only pleading Clifton alleges is false is Anna’s attached exhibit of a copy of the judgment of dissolution of marriage which did not include certain stipulations. However, the copy of the judgment attached contained the visitation schedule, which was an accurate copy Clifton does not dispute the accuracy of the visitation schedule. Clifton does not explain what

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the subject matter of the stipulations was and what relevance, if any, these stipulations have on his failure to abide by the visitation schedule. Moreover, Clifton points to no false statements in the exhibit. Thus, as no untrue statements are implicated, Rule 137 does not even apply. See *Bouhl v. Gross*, 133 Ill. App. 3d 6, 13 (1985) (where defendant did not point to an untrue statement in a pleading, prior section 2-611 did not apply because this Rule requires the party seeking relief to establish both that statements in the pleadings were untrue and that they were made without reasonable cause).

We find the events detailed by Anna in her petition for rule to show cause were not false, as Clifton admits to the same sequence of events, and admits he kept the minor children beyond his extended visitation schedule, without Anna's permission and without seeking a court order. Therefore, the court did not err in refusing to award Clifton sanctions against Anna.

#### CONCLUSION

First, regarding Clifton's contentions concerning the contempt, Clifton was afforded due process in receiving notice of the hearing and received an opportunity to be heard, thus satisfying due process requirements for an indirect civil contempt. The circuit court's entry of judgment for indirect civil contempt was not against the manifest weight of the evidence and was not an abuse of discretion. In any event, the court correctly found that Clifton purged the contempt by returning the children. Further, the court's order that Clifton pay Anna's expenses was proper, as the court had no discretion under section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)). Second, the circuit court did not abuse its discretion in refusing to hear Clifton's counter-claim for a modification of custody, because Clifton failed to file a proper motion with supporting

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affidavits to modify the custody judgment order pursuant to section 610 of the Act (750 ILCS 5/610 (West 2010)). Lastly, the circuit court did not abuse its discretion in not granting Clifton's motion for fees and costs as a sanction against Anna, as Clifton failed to show Anna's pleadings were false. Therefore, we affirm the court's order entering judgment based on its finding of indirect civil contempt and finding that Clifton purged the contempt, as well as the court's order that Clifton pay Anna's expenses pursuant to section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)).

Affirmed.