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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF THERESA A. LIENAU,)	Appeal from the Circuit Court of Du Page.
)	
Petitioner-Appellant,)	
)	
v.)	No. 08—D—1039
)	
CHRISTOPHER F. LIENAU,)	Honorable
)	James J. Konetski,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in determining a change in circumstance warranting a reduction of unallocated support where evidence showed that the decision of the party seeking modification lowering his salary was a good business decision and not made to evade financial responsibility; judgment affirmed as to this issue.

The trial court erred in its calculation of income for purposes of determining a proper amount of support where the paying former spouse received personal benefits from his company; judgment reversed and cause remanded as to this issue.

The trial court did not abuse its discretion by failing to hold alleged contemnor in indirect civil contempt where the record showed that he had no actual income and no money in his bank account at the time he failed to pay support; judgment affirmed as to this issue.

The trial court erred in its calculation of arrearage of support by not including payments former spouse failed to provide prior to the date of filing of his petition to modify support; judgment reversed and cause remanded as to this issue.

The trial court abused its discretion by granting termination of a party's obligation to pay for education expenses and 401(k) contributions pursuant to a marital settlement agreement incorporated into a judgment of dissolution because the party sought abatement and not termination in his petition and in the trial court; judgment vacated and cause remanded as to this issue.

Petitioner, Theresa A. Lienau, appeals the judgment of the trial court granting respondent's, Christopher F. Lienau's, motion to modify and abate unallocated support, and denying, in part, Theresa's rule to show cause. On appeal, Theresa argues that (1) the trial court erred by granting Christopher's motion to modify and abate unallocated support; (2) even if a change in circumstances occurred, the trial court erred in calculating Christopher's income for the purpose of unallocated support; (3) the trial court erred by failing to find Christopher in contempt of court for failing to pay unallocated support as required by the original judgment of dissolution order; (4) the trial court erred in the calculation of the arrearage amount of unallocated support; and (5) the trial court erred by terminating Christopher's obligations under the judgment of dissolution. We affirm in part, reverse in part, modify in part, and remand.

I. FACTS

A. Background

The parties married in October 1991 and had four children during their marriage; Patrick, born in 1994; Brenden, born in 1998; Bridget, born in 2000; and Meaghan, born in 2004. A judgment of dissolution of marriage was entered on September 10, 2008, which incorporated the parties' marital settlement agreement (MSA). During the marriage, Christopher worked at and was the president and principal shareholder of SIMA Environmental, Inc. (SIMA), which sold water and

sewer supplies to municipalities and distributors. When the marriage ended, Theresa also worked at SIMA.

B. Marital Settlement Agreement

The MSA provided, in part, that Christopher was to pay Theresa unallocated support of \$10,833 per month. The MSA also provided that Christopher would maintain Theresa's employment with SIMA, her current compensation of \$24,000, tuition reimbursement plan, 401(k) contribution plan, and health insurance plan. In the event that Christopher left SIMA, he would maintain Theresa's future employment and benefits.

C. Pleadings

1. Theresa's Petition for Rule to Show Cause

On April 13, 2009, Theresa filed a petition for rule to show cause. Theresa alleged that Christopher willfully and intentionally failed to pay unallocated family support pursuant to the judgment of dissolution of marriage. Specifically, Theresa alleged that Christopher failed to pay the full amount of support for October and November of 2008 and January of 2009. She claimed that Christopher owed an arrearage in the amount of \$1,081.07 for October 2008 through March 2009. Theresa also alleged that Christopher paid no support in April 2009. Theresa requested that the court issue a rule to show cause against Christopher, hold him in contempt of court, compel him to comply with the judgment of dissolution of marriage, award Theresa attorney fees and costs, order Christopher to pay Theresa such attorney fees and costs, order Christopher to pay past due support within 24 hours, order Christopher to pay Theresa within 48 hours the tuition due and owing to Illinois Benedictine University, reinstate her employment with SIMA, provide her with proof of

health insurance coverage, and order Christopher to provide Theresa within 48 hours with proof of a \$1,000,000 life insurance policy naming Theresa as the beneficiary.

2. Christopher's Petition to Modify Support

On April 17, 2009, Christopher filed a petition to modify and abate unallocated support. Christopher alleged that at the time the judgment of dissolution order was entered, his annual gross salary was \$227,5000, but that since that time "several substantial changes have occurred." At the beginning of 2009, Christopher's annual gross salary was supposed to be \$160,000; however, because of SIMA's financial difficulties and to help SIMA survive, Christopher's salary was cut to \$80,000, effective April 1, 2009. Christopher alleged that he was unable to make the support payments for April 1 and 15, 2009. Christopher further alleged that SIMA had been experiencing "extreme financial difficulties with the slow economy and sales." SIMA lost the right to represent Sealing Systems, Inc. (SSI), an important manufacturer, and also other manufacturers in certain states, and this would have "a direct and devastating effect on SIMA's future revenues." Christopher alleged that "drastic salary cuts and tightening of expenses are justified measures to sustain SIMA's viability." Further, Christopher alleged that SIMA's "current financial condition is dire."

Christopher requested that the trial court, *inter alia*, temporarily suspend his obligation to make support payments; reduce his support obligation from \$10,833 a month to \$3,200 a month; "abate" his obligations to pay for Theresa's education, 401(k), and health insurance based on her SIMA employment; pay Theresa's legal fees; and maintain life insurance until he could afford it.

D. Hearing

Christopher testified that he has been in the business of selling water and sewer line products to municipalities and distributors for 47 years. In April 2009, because SIMA had over \$100,000 in

accounts payable more than it had in receivables, Christopher lowered his gross annual salary from \$160,000 to \$80,000 as a last resort. Before lowering his salary, he withdrew his retirement savings and loaned it to SIMA; borrowed money from his “then girlfriend,” Kami; tried to borrow money from others, including Chase Bank and his siblings; and negotiated payment terms with his biggest supplier/creditor, ARI. Eventually, ARI would no longer ship products to SIMA because SIMA owed ARI over \$100,000. Christopher testified that ARI was SIMA’s main product line, and was the “only line that was producing income for me”; he further stated “I couldn’t even make a sale.” Christopher did not draw a salary in April or May 2009 and drew half a paycheck in June 2009 because SIMA did not have enough money. Christopher filed his motion to modify on April 17, 2009.

Christopher testified that he made no support payments in April and May of 2009 and that he made a partial payment in June 2009. Although SIMA had a positive bank balance in March 2009, he did not use that money to pay his support obligation because:

“That would have been a very short-sighted move because there might have been checks already floating out for that. But most likely, there were bills that were immediately due. That money was allocated to pay things such as ARI because if I lost ARI and they were a hundred percent of my income, there would be no income and then there would be no future checks, no future potential for checks with ARI.”

Christopher also testified that, in order to save his company, he agreed to give up a portion of the ARI business; he sold SIMA’s business in Arizona and Nevada to Golden Sun Marketing which agreed to pay off SIMA’s entire debt to ARI and to hire Christopher’s father. The new

company was called SIMA Southwest (SIMA SW). SIMA lost 60-70% of its total revenue due to this deal.

Christopher testified that, while he and Theresa were still married, they began a company called SIMA-Illiana, which they owned “pretty much 50/50.” They began the company for Theresa to run and earn income. However, the corporation was “short-lived” because Theresa did not make sales calls and only did the clerical work. Christopher abandoned the project within 60 days of taking it on “[b]ecause it didn’t really fit the profile of what my company was.” SIMA-Illiana was established to sell “commodity-type products” like those manufactured by a company named APS, which were different than the products SIMA typically sold. However, he stopped representing APS because selling products manufactured by APS took Christopher into “a completely different market” with a “completely different type of” clientele. APS offered products in the water industry, whereas Christopher focused on products in the *waste* water field. An APS executive asked Christopher if he would represent it again but Christopher was not interested because “it takes away from my sales efforts on more profitable lines.” Christopher then suggested that Kami, Christopher’s wife, start her own company (MPT) which would handle APS and similar products. In March 2009, MPT entered into an agreement with APS and another company, SSI, which had terminated its relationship with SIMA. A March 2009 letter from the president of SSI, which was admitted into evidence, states that it was rescinding SIMA’s “right to be a Manufacturer’s Representative” because of its “declining annual sales since 2005.”

Christopher testified that he drives a GMC Acadia truck which is owned by SIMA. It is the only vehicle Christopher “owns.” In 2008, SIMA paid \$717 a month for the truck and also paid the insurance premium. SIMA paid for the gas, maintenance, oil changes and tires for the truck and

anything else “affiliated” with the truck. SIMA’s profit and loss report for January through October 2009, which was admitted into evidence, stated that SIMA paid \$8,843.23 for the truck, insurance and other truck-related expenses. Christopher used the truck for both personal and business, but he did not keep a log of the miles he traveled for business.

Christopher testified that, from May 2008 through May 2009, he lived in and visited his children in his condominium. Christopher ran his business out of his condominium and SIMA paid his rent and utilities which was approximately \$1,400 a month. In addition, SIMA may have paid a fee of \$4,000 when Christopher broke his lease to move in with his new wife, Kami, in June 2009.

Christopher testified that SIMA paid \$4,000 to counsel representing him in this cause.¹ Christopher testified that he used SIMA’s Southwest Rapid Rewards credit card to pay for certain personal expenses in 2009, such as travel, restaurants, and his wedding to Kami. Monthly statements for the SIMA Southwest credit card were admitted into evidence. Charges from January 17 through July 16, 2009 averaged \$1,795.29 a month.

Christopher submitted a “Comprehensive Financial Statement” that purported to show his current monthly gross income, required deductions, living expenses, and concluded with a “recap” stating “\$0.00” for “income available per month.”² This statement was admitted into evidence. The

¹Christopher’s counsel, Nicholas Galasso, filed his appearance on behalf of Christopher in this cause on or about September 11, 2009.

²Christopher is claiming that, because his only source of income is the \$80,000 gross salary, his net income is zero. This has created some confusion regarding gross and net income. The reduction in salary is to be examined as reasonable, not primarily whether it is gross or net.

court also admitted into evidence the bank statements of SIMA and Christopher's personal account. SIMA's bank account statement dated February 28 through March 31, 2009 showed an ending balance of \$12,697.41; the statement dated April 1 through April 30, 2009, showed an ending balance of \$10,899.44. Christopher's personal bank account statement dated February 25 through March 23, 2009, showed an ending balance of \$84.12; the statement dated March 24, through April 22, 2009, showed an ending balance of \$0.00.

Kami testified that she and Christopher married in March 2009. That same month, she quit her current job as a clubhouse event planner and opened a business selling water and sewer products. Before Kami began her new business she had no prior sales experience and no knowledge of water and sewer products. Kami's only customers came from Christopher. Kami used the money she made from her new business for expenses for the home she lived in with Christopher.

E. Trial Court's Findings and Rulings

The trial court's written order stated the following, in pertinent part:

1. "That a substantial change of circumstances has occurred in the income of [Christopher]; this is true whether [his] representations as to his 2008 income were true and accurate in the Judgment of Dissolution of Marriage (\$227,550) or Respondent's Exhibit #9 (\$148,375) *inter alia.*; Respondent's current annual gross income is found to be approximately \$80,000. Accordingly, the Judgment of Dissolution of Marriage is to be modified as follows:
 - A. That Respondent shall pay to Petitioner as unallocated support the sum of \$3,500 retroactive to the date his Petition was filed April 17, 2009;

However, the amount of support is to be measured by net, not gross, income.

- B. That the amount of Child Support due from April, 17 2009 [*sic*] through October 31, 2009 is \$22,983.00; Respondent has paid \$9,500.00; therefore, there is an arrearage for said period of \$13,483.00. Accordingly, Judgment is entered in favor of Theresa A. Lienau and against Christopher F. Lienau in the amount of \$13,483.00.
- C. That Respondent [Christopher] shall have no further obligation under Article VI, paragraph #2.³
- D. That Respondent shall have no further obligation under Article X, paragraph #1 through 4.⁴
2. That Petitioner's Petition for Rule to Show Cause is granted with respect to Article VII of the Judgment (Life Insurance); accordingly[,] Christopher Lienau is held in Civil Contempt of Court; the Petition is otherwise denied.
3. This matter is set for Status on December 2, 2009 at 9:25 A.M. in Courtroom #3009 for Sentencing and setting of a purge.”

II. ANALYSIS

Initially, we note that we take judicial notice of the circuit court file. It is closed and no proceedings are pending below, thus we have jurisdiction pursuant to Supreme Court Rule 303(a)(2).

³ “[M]aintain Theresa’s employment with SIMA.”

³ “Theresa will retain her current employment position with the same responsibilities, salary, and benefits at” SIMA or any new business that Christopher is involved in. Benefits include: 401(k), tuition reimbursement (if such is terminated, Christopher must pay all costs and expenses of education and must contribute to her 401(k) based on an annual salary of \$24,000).

A. Modification of Unallocated Support

1. Change in Circumstances

Theresa first argues that the trial court erred by granting Christopher's motion to modify and abate unallocated support because the change in circumstances alleged by Christopher was voluntary and made in bad faith.

Sections 510(a) and 510(a—5) of the Illinois Marriage and Dissolution of Marriage Act (Act) provide that awards of maintenance and child support may be modified “upon a showing of a substantial change in circumstances.” 750 ILCS 5/510(a)(1); (a—5) (West 2008). A trial court's determination that there has been a substantial change in circumstances sufficient to warrant a modification of maintenance and child support will not be disturbed on review absent an abuse of discretion. *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 307 (2002). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *Turrell*, 335 Ill. App. 3d at 307.

Theresa argues that Christopher is self-employed, owns 67% of the stock in SIMA, and that he, alone, made the decision to reduce his salary from \$160,000 to \$80,000. Therefore, she contends, his decision was voluntary. Theresa cites *In re Marriage of Sweet*, 316 Ill. App. 3d 101 (2000) and *In re Marriage of Heil*, 233 Ill. App. 3d 888 (1992), to support her argument. These cases are factually distinguishable from this case.

In *Sweet*, the evidence showed that the payor was capable of paying considerably more than he claimed to be earning. *Sweet*, 316 Ill. App. 3d at 108-09. In contrast, in this case there was no evidence that Christopher was capable of earning more money.

In *Heil*, the appellate court reversed the trial court's finding that there was not a substantial change in circumstances. *Heil*, 233 Ill. App. 3d at 891. The evidence showed that the respondent's income had increased from \$10,400 to \$23,000. Most of the increase (\$7,450) came from income he received from his company as a "director's fee" and his current wife's company. *Heil*, 233 Ill. App. 3d at 891. However, the appellate court also imputed as income to the respondent benefits he received from his company, including half of the costs (\$3,150) his company incurred for a hunting lodge that respondent visited frequently for personal and business purposes. *Heil*, 233 Ill. App. 3d at 892-93. In this case, Theresa did not present evidence that Christopher enjoyed benefits that increased his income by such a significant amount (14% of income). However, even if we assume that Christopher's 2009 annual gross income increased by 14%, it would be only \$91,200, which the trial court would have compared to respondent's 2008 annual gross income of \$227,550. Theresa fails to establish that the trial court's determination of a substantial change of circumstances, even based on these figures, constituted an abuse of discretion.

Next, Theresa argues that Christopher voluntarily reduced his income by transferring business to Kami and to his father in an attempt to reduce his income to evade financial responsibility to the parties' children. Theresa notes that Kami became the sales representative for SSI and APS in place of SIMA, and received approximately \$19,000 and \$1,200 in commissions from SSI and APS, respectively. Theresa argues that Kami had no prior sales experience and no prior knowledge of water and sewer products. Kami used the money she made from her new sales business for expenses for the home she lived in with Christopher.

None of these facts establish that Christopher's decision to forgo selling APS products constituted a voluntary reduction in his income. Christopher's testimony provided a reasonable

explanation as to why he decided to forgo representing APS. APS sold a different type of product than Christopher specialized in selling and was familiar with, and selling its products took “away from his sales efforts on more profitable lines.” The record established that he was not doing business with APS at the time Kami began selling APS products. Further, regarding SSI, the record reveals, through Christopher’s testimony and a letter, that SSI ended its relationship with Christopher and SIMA before Kami became SSI’s new representative. Thus, there is no evidence in the record to support Theresa’s argument that Christopher voluntarily reduced his income by transferring APS’s or SSI’s business to Kami.

Theresa also argues that, although Christopher alleged in his petition that he was forced to enter into an agreement whereby SIMA ceased being the manufacturer’s representative for ARI in Nevada and Arizona, he failed to present evidence to support this allegation. Theresa notes that Christopher voluntarily signed an agreement whereby SIMA relinquished being the manufacturer’s representative for ARI in Nevada and Arizona to a company that Christopher’s father and another former SIMA employee worked for, selling ARI products in Nevada and Arizona.

Theresa fails to acknowledge that testimony is evidence. Christopher testified that the deal was necessary because SIMA owed ARI almost \$100,000 and the company that bought the right to sell ARI in Nevada and Arizona agreed to pay that debt. Christopher also testified that he made this deal in an effort to save SIMA.

Most importantly, the record contains evidence that Christopher’s decision to lower his salary was a reasonable business decision and was not made to evade financial responsibility to his children. A decision which results in a voluntary reduction in income may constitute a material change in circumstances sufficient to warrant a reduction of support, if the decision is made in good

faith. *In re Marriage of Webber*, 191 Ill. App. 3d 327, 330 (1989). A decision is made in good faith if the change is not prompted by a desire to evade financial responsibility for supporting the children or otherwise jeopardize their interests. *Webber*, 191 Ill. App. 3d at 330 (the noncustodial father's decision to reduce his hours of employment and income to attend college full-time was made in good faith). In this case, Christopher testified that, in April 2009, he lowered his own salary as a last resort. He tried other measures before he cut his own salary: he lent the company money from his retirement account; borrowed money from Kami; asked other to lend the company money; and negotiated payment terms with suppliers and other creditors. However, SIMA owed more than \$100,000 and its biggest supplier would no longer ship products to it. It is apparent from the trial court's decision that it found Christopher's testimony credible regarding this issue, and we will not second-guess its determination since it was in the best position to make credibility decisions and factual findings. See *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007). In light of the evidence contained in the record, the trial court's determination that a substantial change in circumstances occurred is not an abuse of discretion.

Theresa also argues that the trial court incorrectly found that Christopher's W-2 income for 2008 for support purposes was \$148,375 because the trial court failed to include \$11,624.94 Christopher had contributed to his 401(k) account. However, Theresa's contention that Christopher's 401(k) contribution should be considered income for purposes of support is without merit. Retirement contributions are excluded from income pursuant to section 505(a)(3)(d) of the Act (750 ILCS 5/505(a)(3)(d) (West 2010)). Subsection 505(a)(3)(d) of the Act provides that the retirement contribution exclusion applies to such contributions that are mandatory. However, Theresa has neither argued nor established that Christopher's 401(k) contribution were not

mandatory. Further, Christopher's financial statement listed his 401(k) contribution as a mandatory deduction. Thus, the trial court did not err by failing to include the money Christopher contributed to his 401(k) account.

In addition, we fail to understand the import of Theresa's argument. If Theresa is correct, and Christopher's 2008 net income was greater, then this adds support to the trial court's finding that there was a substantial change in circumstances because, on April 1, 2009, his salary was reduced to \$80,000. Thus, Theresa's argument regarding Christopher's 401(k) contributions in 2008 has little merit and would not alter the result in any event.

Theresa also argues that the "evidence presented by Christopher as to his income for 2009 was suspect" because SIMA's balance sheet and financial profit and loss statements were incomplete and all of its bank statements were not included. However, these documents were admitted into evidence without objection⁵ and Theresa's attorney used these documents to impeach Christopher. Thus, Theresa has forfeited this issue on appeal. See *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1027 (2006).

Theresa also notes that Christopher failed to file a 2007 corporate tax return. Theresa fails to explain how this missing information established that Christopher's alleged change in circumstances were voluntary or made in bad faith. The relevant time period to determine whether a substantial change of circumstances occurred is from the judgment of dissolution in September 2008 to the time he filed his petition in April 2009. Theresa has failed to explain how Christopher's

⁴Theresa does not assert that counsel objected to the admission of these records; she does not cite to the record of any such objection; and, after reviewing the transcript of the hearing, we did not find any objection to their admission.

2007 corporate tax return is relevant to this issue. In light of the evidence contained in the record, the trial court's determination that a substantial change in circumstances occurred is not an abuse of discretion.

2. Calculation of Christopher's Income

Next, Theresa argues that, even if a substantial change in circumstances occurred, the trial court erred in its calculation of Christopher's income for the purpose of determining the amount of unallocated support.

a. Current Income

Theresa argues that the trial court erred by basing its support determination on Christopher's salary of \$80,000 because Christopher's decision to reduce his salary was "unilateral" and the only proof of his 2009 income was incomplete and suspect. Theresa argues that the trial court should have used the more reliable figure of \$160,000 from Christopher's 2008 W-2.

The trial court found Christopher's "current annual gross income *** to be approximately \$80,000." Christopher testified that he reduced his salary to this annual amount beginning in April 2009. The fact that it was Christopher's decision alone to reduce his salary did not render the trial court's finding against the manifest weight of the evidence. We have already determined that there was sufficient evidence that Christopher's decision to reduce his salary was reasonable and made for business purposes and not to avoid paying support.

b. Wife's Income

Next, Theresa argues that the trial court erred by failing to include Christopher's wife's, Kami's, income in Christopher's income for support purposes. Theresa essentially repeats the argument she made above by contending that, because Christopher gave Kami clients and, thus,

income that Christopher otherwise would have received, that income should have been imputed to him. Theresa further argues that the income should have been imputed to Christopher because he benefitted from Kami receiving the income as Kami used it to enhance their lifestyle.

As we have already determined, the record reveals that there is no evidence in the record to support Theresa's argument that Christopher gave SIMA business to Kami in an effort to reduce his income; rather, the evidence shows that he made reasonable business decisions. Further, when determining the ability of a noncustodial parent's ability to fulfill his obligation of support, a trial court may not consider the financial status of his current spouse. See *In re Marriage of Boland*, 308 Ill. App. 3d 1063, 1067 (1999). Thus, there is no merit to Theresa's argument that the trial court erred by failing to impute Theresa's income to Christopher.

c. Personal Expenses Paid by SIMA

Theresa also argues that the trial court abused its discretion by failing to include the payment of personal expenses from SIMA as income for purposes of determining unallocated child support. Theresa notes that the record contains evidence that in 2009 SIMA paid the following expenses on behalf of Christopher: (1) monthly \$717 truck loan payments; (2) monthly \$1,400 condominium rent and utility payments; (3) a \$4,000 attorney fee payment; (4) monthly health insurance premiums; and (5) monthly personal credit card expenses.

Benefits that a noncustodial parent receives from his business or employer that are personal rather than reasonable and necessary expenditures for the production of income should be included in a noncustodial parent's net income for support purposes. See *Heil*, 233 Ill. App. 3d at 892 (a portion of the mortgage payment, taxes and insurance on a hunting lodge owned by noncustodial father's business would be included in his income because he used it for his personal benefit). The

reason such benefits are included as income is that they represent a valuable benefit to the noncustodial parent, enhance his wealth and facilitate his ability to pay child support. See *Einstein v. Nijim*, 358 Ill. App. 3d 263, 272 (2005) (the trial court did not err by considering the \$300 bimonthly automobile allowance the noncustodial father received from his employer).

In this case, the record contains evidence that Christopher received personal benefits from SIMA that were not reasonable and necessary for the production of income and enhanced his ability to pay support. However, the trial court did not impute any of this as income to Christopher. The trial court found Christopher's "approximate current annual gross income *** to be approximately \$80,000," the salary he received from SIMA. Because the trial court failed to consider any of the personal benefits as income, its finding of gross income, rather than net income, for purposes of support was improper. Further, because the trial court necessarily based its award of \$3,500 of support on its erroneous finding of Christopher's "approximate current annual gross income," its modified award of \$3,500 of support is an abuse of discretion. We, therefore, reverse the modified support award and finding of arrearage and remand with instructions to redetermine Christopher's net income and unallocated support obligation consistent with the views expressed in this court's opinion.

B. Indirect Civil Contempt

Next, Theresa argues that the trial court erred by failing to hold Christopher in contempt of court for his failure to make unallocated support payments. Theresa argues that Christopher's admission that he failed to make payments was *prima facie* evidence of indirect civil contempt. She also argues that Christopher failed to present sufficient evidence to show that his noncompliance was not willful and contumacious and that he had a valid excuse for nonpayment. Theresa argues that

Christopher's failure to pay was contumacious because he failed to provide evidence of extreme circumstances of poverty and misfortune.

We will not disturb a trial court's finding regarding contempt unless it is against the manifest weight of the evidence or its decision is an abuse of discretion. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 (2008). In this case, Theresa's rule to show cause alleged, in part, that Christopher failed to pay unallocated support in April 2009. It is uncontroverted that in 2008, pursuant to the judgment of dissolution, Christopher was ordered to pay Theresa \$10,833 a month in unallocated support. During the hearing on the petition, Christopher testified that he failed to pay Theresa unallocated support for April 2009. Thus, Theresa met her burden of establishing a *prima facie* case of contempt. See *Barile*, 385 Ill. App. 3d at 758-59 (the failure to make support payments as ordered is *prima facie* evidence of contempt). Accordingly, the burden shifted to Christopher to prove that his failure to make the April 2009 support payment was not willful or contumacious and that he had a valid excuse for his failure to pay. See *Barile*, 385 Ill. App. 3d at 758-59.

The record sufficiently supports the trial court's finding and decision not to hold Christopher in contempt for his failure to pay support. Christopher testified that his salary was reduced in March 2009 to \$80,000 a year; \$6,666.67 a month (gross).⁶ Further, Christopher testified that he received no salary in April. His financial statement showed that his salary was his sole means of income. In addition, Christopher's personal bank account statement dated February 25 through March 23, 2009, showed an ending balance of \$84.12, and the statement dated March 24, through April 22, 2009,

⁵Although this was Christopher's decision, we have already determined that there is no evidence in the record that supports Theresa's claim that he reduced his salary in an effort to avoid paying support.

showed an ending balance of \$0.00. When Christopher was asked by his counsel why he stopped paying support in April 2009, he testified:

“It wasn’t a desire to do, but I could not take a paycheck anymore. SIMA had—SIMA was bankrupt. We had no money and there was no income coming in. And the only line that was producing income was cut off for me. I couldn’t even make a sale. I didn’t have anything to sell.”

In light of this evidence, the trial court’s implicit finding that Christopher’s failure to pay support in April 2009 was not willful or contumacious and that he had a valid excuse is not against the manifest weight of the evidence. Accordingly, the trial court’s decision not to hold Christopher in contempt is not an abuse of discretion.

Theresa argues that Christopher’s financial statement erroneously showed that his 2009 monthly expenses exceeded his net income and certain living expenses should not have been included. While Theresa is factually correct, it is of no help to her case because Christopher’s financial statement is immaterial to the ultimate issue presented here; whether the trial court erred by failing to hold Christopher in contempt for failing to pay support in April 2009 (the only month during which it was both alleged and admitted that Christopher did not pay). Christopher’s financial statement represented Christopher’s income and expenses for a typical month in 2009. The financial statement listed his SIMA salary as his only source of income. However, April 2009 was not a typical month because Christopher did not receive a salary in April 2009. Thus, it is immaterial if Christopher’s financial statement erroneously showed that his monthly expenses exceeded his net income or erroneously included certain living expenses, because Christopher had *no* income for the month at issue here.

Theresa also notes that SIMA paid for many of Christopher's personal expenses. While any alleged personal benefits may have decreased Christopher's personal living expenses, there is no evidence that these benefits provided Christopher with actual income that he could have used to pay his support obligation in April 2009. Thus, such personal expenses were immaterial to the issue of whether the trial court erred by failing to hold Christopher in contempt.

Theresa cites *In re Marriage of Lyons*, 155 Ill. App. 3d 300 (1987); *In re Marriage of Betts*, 155 Ill. App. 3d 85 (1987); and *Hess v. Hess*, 87 Ill. App. 3d 947 (1980); in which the appellate courts affirmed the trial courts' holdings of contempt for failure to pay support. In all three cases cited by Theresa there was evidence that the contemnor's claims of poverty were false. *Lyons*, 155 Ill. App. 3d at 308; *Betts*, 155 Ill. App. 3d at 100-01; *Hess*, 87 Ill. App. 3d at 950. In *Lyons*, the contemnor listed as his necessary living expenses a wedding ring for his new wife and a mortgage payment on his new wife's house that she no longer owned. *Lyons*, 155 Ill. App. 3d at 308. In *Betts*, the contemnor's claim that he was destitute was belied by the fact that he paid \$12,950 to purge himself of the trial court's contempt order. *Betts*, 155 Ill. App. 3d at 100-01. In *Hess*, the contemnor made little effort to pay support from the unemployment compensation he received, paid all of his bills and rent on his expensive apartment, and never explained from where this money came. *Hess*, 87 Ill. App. 3d at 950. In contrast, in this case, there was no evidence that Christopher's claim that he could not meet his support obligation in April 2009 was false. Thus, *Lyons*, *Betts*, and *Hess* are not applicable to this case.

C. Calculation of Arrearage

Theresa also argues that the trial court erred in its calculation of arrearage Christopher owed in unallocated support. Theresa correctly notes that Christopher filed his motion to modify and abate

on April 17, 2009, after \$10,833 was already due pursuant to the judgment of dissolution.⁷ Unallocated support payments that are due before a petition to modify is filed constitute a vested and unmodifiable right. See *In re Marriage of Corkey*, 269 Ill. App. 3d 392, 397 (1995). Thus, a trial court may not decrease the amount the petitioner owes in past-due unallocated support. See *Corkey*, 269 Ill. App. 3d at 397. In this case, the trial court failed to include \$10,833 that was due on April 1st and April 15th before Christopher filed his petition. Thus, on remand, the trial court must include this amount in its order.

D. Termination of Education Expenses and 401(k) Contributions

Lastly, Theresa argues that the trial court erred by terminating Christopher's obligations to pay for her education and contribute to her 401(k) because Christopher never requested such relief. Theresa contends that Christopher sought only that these obligations be abated.

It is well-settled that a circuit court's authority is limited to the relief sought in the pleadings. *In re Marriage of Zukauskys*, 244 Ill. App. 3d 614, 619 (1994) (this court held that trial court erred by increasing child support where petition sought only contribution of college expenses). In this case, regarding Theresa's education and 401(k) contributions, Christopher's petition requested that these obligations only "be abated." During trial, Christopher's counsel made the same requests. When an obligation is abated, relief is temporary. *People ex rel. Greene v. Young*, 367 Ill. App. 3d 211, 218 (2006); also see, e.g., Ill. S. Ct. R. 296(f) (eff. Sept. 1, 2008). When an obligation is terminated, relief is permanent. Termination is substantially greater than the specific relief requested.

⁶The judgment for dissolution required Christopher to pay Theresa unallocated support of \$10,833 per month in two equal installments on the 1st and 15th of each month.

Because the trial court ordered that Christopher's obligations to provide Theresa's education and 401(k) contributions pursuant to the judgment of dissolution were terminated and Christopher did not seek such relief, the trial court's order regarding this issue was improper. See *Zukauskys*, 244 Ill. App. 3d at 619; *In re Marriage of Nau*, 355 Ill. App. 3d 1081, 1086-87 (2005). Thus, we modify this part of the trial court's order; such obligations are to be abated. Further, we remand this issue for the trial court to determine how long such abatement will continue.

III. CONCLUSION

For the reasons stated, we affirm the trial court's determination of substantial change of circumstances; we reverse the trial court's modification of \$3,500 in unallocated support; and we remand for the trial court to determine Christopher's net income. Its determination of Christopher's net income shall include personal benefits Christopher received from SIMA.

Further, we affirm the trial court's decision not to hold Christopher in indirect civil contempt. We reverse the trial court's calculation of arrearage and remand for a recalculation after the trial court (1) determines Christopher's actual net income; (2) determines the amount of unallocated support due and owing from the date of filing; and (3) adds \$10,833 due and owing for unpaid April 2009 unallocated support. Finally, we vacate the trial court's decision terminating Christopher's obligations to pay for Theresa's education and 401(k) contributions pursuant to the judgment of dissolution. The cause is remanded for the court to consider if the payments should be abated, and, if so, the nature and extent of the abatement.

Affirmed in part; reversed in part; vacated in part; remanded.