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2011 IL App (3d) 100052-U

Order filed August 8, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
JODIE J. HUTCHISON, n/k/a)	Peoria County, Illinois
JODIE J. STOTLER,)	
)	
Petitioner-Appellee,)	Appeal No. 3-10-0052
)	Circuit No. 08-D-347
and)	
)	
TOBY L. HUTCHISON,)	Honorable
)	David J. Dubicki,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justice McDade concurred in the judgment
Justice Schmidt concurred in part and dissented in part.

ORDER

¶ 1 *Held:* (1) When the respondent's lump-sum worker's compensation settlement was properly considered as income for the purpose of determining child support, the appellate court held that the circuit court did not err when it awarded the petitioner a lump-sum percentage of the settlement. (2) When the respondent failed to provide the transcript from a hearing in which the circuit court found the respondent in indirect civil contempt, the appellate court presumed the circuit court's order was proper and affirmed the circuit court's ruling. (3) The appellate court affirmed the circuit court's decision to deny the respondent credit for child support paid prior to due notice of the filing of the respondent's petition for modification.

¶ 2 The circuit court entered an order directing the respondent, Toby L. Hutchison, to pay the petitioner, Jodie J. Stotler, a lump-sum percentage of Toby's lump-sum worker's compensation settlement as child support. On appeal, Toby argues that the circuit court erred when it: (1) ordered him to pay a lump-sum percentage of his lump-sum worker's compensation settlement as child support; (2) held him in indirect civil contempt for failing to pay \$20,000 of the child support he owed Jodie; and (3) failed to properly credit him, or reduce his child support obligation, for the time period during which he had residential custody of one of the parties' children. We affirm.

¶ 3 **FACTS**

¶ 4 Toby and Jodie married on November 5, 1988, and divorced on April 30, 1999. The parties had three children born during the marriage: Joseph (July 1990), Jacob (August 1991), and Jessie (July 1994). The dissolution order directed Toby to pay Jodie \$878.21 per month in child support, which amounted to 32% of his net income from Mitsubishi Motors.

¶ 5 After the divorce, Toby sustained several different work-related injuries. As a result of these injuries, Toby was placed on disability and was given disability benefits. Eventually, Toby was terminated from Mitsubishi and he received a lump-sum worker's compensation settlement for \$105,669.26, which was paid on November 13, 2007.

¶ 6 Since the divorce, both parties have filed multiple petitions to modify child support. Relevant to this appeal, these petitions included: (1) Toby's August 5, 2008, petition, in which he alleged that he was no longer gainfully employed and that his income had "been relegated essentially to disability payments"; (2) Jodie's October 29, 2008, petition, in which she claimed Toby's worker's compensation settlement constituted income such that she was entitled to 32% of

the net proceeds as child support; and (3) Toby's November 26, 2008, petition, which was served on Jodie on that date, in which he sought a modification based on Joseph attaining the age of majority and on Jacob residing with Toby.¹

¶ 7 On September 8, 2009, the circuit court held a hearing on the three aforementioned petitions. Toby and Jodie entered into a joint stipulation in which they agreed, in relevant part, that Toby had residential custody of Jacob from May 1, 2008, to June 19, 2009. They also agreed that Toby paid Jodie \$878.21 per month in child support between April 1999 and April 2007. In April 2007, that amount was modified to \$710.30 per month due to Toby's injuries, employment termination, and decreased income. The stipulation also indicated that Toby's last child support payment to Jodie was received on May 9, 2009.

¶ 8 The joint stipulation also noted Toby's worker's compensation settlement of \$105,669.26, as well as social security disability payments made to Toby and the children. Each child was paid \$11,266.00 in retroactive social security dependent disability benefits for the time period between April 2006 and April 2009. Joseph was paid directly because he was over 18 years old at the time of payment. Toby was paid for Jacob and Jodie was paid for Jessie. Toby also received \$58,000.00 in retroactive social security disability benefits.

¶ 9 Both Jodie and Toby testified at the hearing. Jodie testified that she was physically capable of working, but was not working at the time of the hearing. She stated that her new

¹ Toby also filed a petition on June 12, 2008, in which he requested both a change in residential custody of Jacob and a modification of child support, but that petition was dismissed after the circuit court entered an order by agreement of the parties. In that order, Toby's child support obligation was not modified.

husband's income was sufficient to support their family, so she placed the child support payments from Toby in an education trust fund for the children.

¶ 10 Toby testified regarding his physical ailments, stating that he has monthly expenses of approximately \$100 for doctor visits and \$250 for medications. Toby claimed that after all deductions and business ventures were accounted for, including his child support payment, he had a net monthly income loss of \$712.91.

¶ 11 Regarding his worker's compensation settlement, Toby testified that he used \$10,000 to pay his current wife and \$80,000 to pay off a mortgage on his mother's farm. By November 2008, approximately \$7,500 of the settlement remained. While a court order of November 2008 prohibited him from spending any more of the money from the settlement, Toby testified that by the time of the hearing, the money was gone.

¶ 12 In a lengthy written order dated October 28, 2009, the circuit court denied Toby's August 5, 2008, petition to modify child support and granted Jodie's October 29, 2008, petition for lump-sum child support. The court denied Toby's August 5, 2008, petition because it was premised on the claim that he was no longer employed, yet Toby was already unemployed in April 2007 when child support was set at \$710.30.

¶ 13 With regard to Toby's worker's compensation settlement, the circuit court found that it constituted income for purposes of child support pursuant to *In re Marriage of Dodds*, 222 Ill. App. 3d 99 (1991). In addition, the court rejected Toby's argument that his child support obligation was satisfied by the social security dependent disability payments his children were receiving, as Toby's worker's compensation settlement was meant to compensate for loss of income—just like social security disability payments—and was therefore properly included in the

support determination.

¶ 14 The circuit court determined that a deviation from the previously ordered 32% child support amount was warranted with regard to Toby's worker's compensation settlement. The court specifically addressed the relevant statutory factors and determined that a 23% figure was appropriate. Among other things, the court noted that Toby was currently receiving a social security disability payment of \$1,860 per month, and that, other than the \$27,389 Toby paid in child support between April 2006 and May 2009, there was "little explanation" as to where the \$58,000 and the \$105,669.26 went. The court also stated that it would not order Jodie to pay child support for the time Toby had residential custody of Jacob because Toby's current petition did not request it.

¶ 15 Thus, the court ordered Toby to pay Jodie \$24,303.92, minus a credit for the child support Toby paid Jodie between November 26, 2008, and May 9, 2009, when Toby had residential custody of Jacob. Further, the court ordered Toby to pay Jodie \$20,000 of that amount within 14 days of the court's order.

¶ 16 Toby filed a motion to reconsider on November 25, 2009, in which he argued, *inter alia*, that the circuit court erred when it: (1) considered his worker's compensation settlement as income; (2) ordered him to pay Jodie \$20,000 when the evidence indicated he did not have the ability to pay; (3) declined to order Jodie to pay child support to Toby for the time period he had residential custody of Jacob; (4) failed to rule that Toby's child support obligation was satisfied by social security dependent disability payments; and (5) ordered Toby to pay Jodie child support from his worker's compensation settlement when the evidence indicated that she did not need the money. The court denied the motion.

¶ 17 On January 12, 2010, the circuit court held a hearing on Jodie's December 1, 2009, petition, which sought a finding of contempt against Toby for failure to pay the court-ordered \$20,000.² That day, the court entered a written order finding Toby not credible as a witness and finding that Toby had the ability to pay, but made no reasonable efforts to do so. The court ordered Toby to pay the amount by withdrawing funds from his 401(k) account, or, alternatively, by selling his property in Minier, Illinois. Accordingly, the court entered an order finding Toby in indirect civil contempt.

¶ 18 Toby appealed.

¶ 19 ANALYSIS

¶ 20 I. LUMP-SUM CHILD SUPPORT AWARD

¶ 21 First, Toby argues that the circuit court erred when it ordered him to pay a lump-sum percentage of his lump-sum worker's compensation settlement as child support. Specifically, Toby argues that: (1) Toby's child support obligation was already met by the social security dependent disability payments; (2) Jodie did not need additional support; and (3) the court's order amounted to an impermissible award of retroactive support.

¶ 22 Section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a) (West 2008)) provides, in relevant part, that a child support order "may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." Modification of a child support order requires that a substantial change in circumstances has occurred. 750 ILCS 5/510(a)(1) (West 2008). In deciding whether to modify a child support order, the circuit court must determine the supporting parent's "net

² The transcript from this hearing is not a part of the record on appeal.

income" (750 ILCS 5/505(a)(1) (West 2008)) and consider certain factors, including the financial resources of the child, custodial parent, and noncustodial parent (750 ILCS 5/505(a)(2) (West 2008)). *Dodds*, 222 Ill. App. 3d at 102. While the review of a court's modification decision is typically reviewed for abuse of discretion, we review Toby's first and third claims on this issue under the *de novo* standard because these matters on appeal concern questions of law regarding issues of statutory interpretation. *In re Marriage of Pettifer*, 304 Ill. App. 3d 326, 327 (1999). We review Toby's second claim on this issue under the abuse of discretion standard. See *In re Marriage of Bussey*, 108 Ill. 2d 286, 298 (1985).

¶ 23 In support of his claim that the social security dependent disability payments satisfied his child support obligation, Toby cites to *In re Marriage of Henry*, 156 Ill. 2d 541, 552 (1993). In *Henry*, the noncustodial parent was ordered to pay \$50 per week in child support in 1981, and those payments were in arrears in October 1987 when the children began receiving social security disability payments. *Henry*, 156 Ill. 2d at 543. The amount of social security dependent disability payments greatly exceeded the noncustodial parent's child support obligation. *Henry*, 156 Ill. 2d at 543. The *Henry* court held that the social security dependent disability payments could satisfy the noncustodial parent's child support obligation. *Henry*, 156 Ill. 2d at 551. Toby claims that *Henry* therefore stands for the blanket proposition that any time the social security dependent disability payments are made, the noncustodial parent's child support obligation is satisfied. We disagree with Toby's narrow interpretation of *Henry*.

¶ 24 The *Henry* court did not specifically address whether the social security dependent disability payments could apply against the arrearage that accrued prior to the point at which the payments began. *Department of Public Aid ex rel. Pinkston v. Pinkston*, 325 Ill. App. 3d 212,

216 (2001). In fact, *Henry* has been interpreted to mean that "[t]he dependent's benefit satisfied only the amount of the child support arrearage that accrued during the period that the dependent's benefit was received." *In re Marriage of Rash*, 406 Ill. App. 3d 381, 387 (2010) (citing *Pinkston*, 325 Ill. App. 3d 212). Thus, we believe *Henry* is properly read to stand for the proposition that when social security dependent disability payments are being made, that amount should be credited against the noncustodial parent's child support obligation. See *Henry*, 156 Ill. 2d at 550-51 (noting the distinction between modifying a child support obligation and crediting an amount against the obligation). Accordingly, *Henry* does not support Toby's claim that his worker's compensation settlement was untouchable because the children were already receiving social security dependent disability payments.

¶ 25 Further, we disagree with Toby's argument that the circuit court's order was erroneous because Jodie did not need the money. The court specifically mentioned that it considered this as a factor in its decision to award Jodie a lump-sum percentage of Toby's worker's compensation settlement—a decision in which the court deviated downward from 32% to 23%. We hold that the court's order is therefore not assailable on this ground.

¶ 26 Lastly, with regard to Toby's claim that the circuit court's order amounted to an impermissible award of retroactive support, we find *Dodds* to be instructive. In *Dodds*, the court determined that a worker's compensation award could be considered as income when determining child support payment obligations. *Dodds*, 222 Ill. App. 3d at 103-04. In so holding, the *Dodds* court upheld the circuit court's decision to order the father to pay a lump-sum amount of his lump-sum worker's compensation award as child support. *Dodds*, 222 Ill. App. 3d at 103-04.

¶ 27 In *Dodds*, the lump-sum worker’s compensation settlement was finalized in January 1989 and the custodial parent filed her petition to modify and allocate part of that lump-sum settlement as child support after that settlement. *Dodds*, 222 Ill. App. 3d at 100-01. The *Dodds* court found it illogical to conclude that a lump-sum payment was not income because it was not periodic pursuant to the statute. *Dodds*, 222 Ill. App. 3d at 103. That is, the *Dodds* court referred to what is now section 706.1 of the Act (750 ILCS 5/706.1 (West 2008)) and held that a parent who receives a lump-sum payment may not escape his or her duty to apply the award to his or her child support obligations. *Dodds*, 222 Ill. App. 3d at 103-04. Following the *Dodds* court’s rationale, it is also illogical to construe section 510(a) in a manner that treats a one-time, lump-sum payment as a “past installment” when a petition to modify is filed after the date of the award.

¶ 28 Given that the Act’s provisions are to be “liberally construed and applied to promote its underlying purposes” such as child support (750 ILCS 5/102(5) (West 2008)), there is nothing untimely about a custodial parent filing a petition for modification upon learning of the other parent’s lump-sum worker’s compensation award. Generally, the most important proof necessary to obtain a modification of support is presenting the changed circumstances supporting the request. Although the earliest point at which retroactive modification of support “installment” payments may be ordered is the date on which the nonmoving party receives due notice from the moving party of the filing of the modification petition (750 ILCS 5/510(a) (West 2008)), it would be illogical to take a narrow reading of “installments.” After a divorce, it is not always possible for the custodial parent to be aware of the financial circumstances of the noncustodial parent, unlike the more unusual circumstance in *In re Marriage of Wolfe*, 298 Ill. App. 3d 510, 513

(1998) (custodial parent knew of noncustodial parent’s pending personal injury claim), even in situations in which the noncustodial parent is under court order to inform the custodial parent of financial changes. In fact, courts have justified retroactive support in situations in which a noncustodial parent failed to inform the court of his resumption of employment contrary to a specific court order. See, e.g., *People ex rel. Williams v. Williams*, 191 Ill. App. 3d 311, 317 (1989); *People ex rel. Greene v. Young*, 367 Ill. App. 3d 211, 220-21 (2006). To suggest that a custodial parent can only receive child support from a noncustodial parent’s lump-sum worker’s compensation award if the custodial parent files a petition *before* the award is made is to create an effectively impossible standard for the custodial parent.

¶ 29 When a parent receives a worker’s compensation award in a lump sum, which is authorized by section 9 of the Workers’ Compensation Act (820 ILCS 305/9 (West 2008)), a one-time, lump-sum child support installment payment is not made until ordered by the court. Only at that time is the total amount of the lump-sum award divided for child support purposes—not in periodic intervals, but in one child support payment. That one-time installment payment is the kind of extraordinary event discussed in *Williams* and *Greene*, albeit in a different context, that does not run contrary to the retroactive payment rule. See *Williams*, 191 Ill. App. 3d at 317; *Greene*, 367 Ill. App. 3d at 220; see also *Skaggs v. Industrial Comm’n*, 371 Ill. 535, 539 (1939) (noting that the payment of a worker’s compensation award in a lump sum is the exception, not the rule); *Kosick v. Hospital Service Corp.*, 12 Ill. App. 2d 291, 294-95 (1956) (describing a lump-sum worker’s compensation settlement as “a commutation of periodical payments into one single, all inclusive payment, thus enabling an employee to obtain the entire amount of compensation due at one and the same time as distinguished from weekly payments”).

¶ 30 In *Dodds*, the fact that the parent filed the petition to modify after the date of the award was not an impediment to seeking a percentage of the lump-sum award as child support. See *Dodds*, 222 Ill. App. 3d at 100-101. Likewise, courts in paternity actions have modified child support orders from lump-sum settlements, even though the petitions—which are subject to section 510(a) pursuant to section 13.1 of the Illinois Parentage Act of 1984 (750 ILCS 45/13.1 (West 2008))—were filed after the settlement was reached. See *Villanueva v. O’Gara*, 282 Ill. App. 3d 147, 149-51 (1996) (petition to modify, which sought a lump-sum percentage of a personal injury settlement, was filed after the settlement; case remanded for reconsideration of the amount of the settlement to be applied as income); *Illinois Department of Public Aid ex rel. Jennings v. White*, 286 Ill. App. 3d 213, 215-18 (1997) (petition to modify, which sought a lump-sum percentage of a Federal Employers Liability Act settlement, was filed after the settlement). As suggested in *Dodds*, the fact that a parent elects to receive the award in a lump sum, rather than in periodic installments, does not justify a narrow interpretation of section 510(a) that leads to unreasonable consequences.

¶ 31 Under these circumstances, we hold that the circuit court did not err when it ordered Toby to pay a lump-sum percentage of his lump-sum worker's compensation settlement as child support.

¶ 32 II. CONTEMPT ORDER

¶ 33 Second, Toby argues that the circuit court erred when it held him in indirect civil contempt for failing to pay \$20,000 of the child support he owed Jodie.

¶ 34 A civil contempt finding "results from the failure to do something which the court has ordered for the benefit or advantage of another party to the proceeding, and the court acts to

compel the contemnor to obey the order for the benefit of that other party." *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 628 (1991). Indirect civil contempt occurs outside the court's presence and is coercive in nature. *Pryweller*, 218 Ill. App. 3d at 628. "Due process mandates that certain procedural safeguards be afforded to a person charged with indirect contempt, including an evidentiary hearing with adequate notice of the time and place of such hearing." *Pryweller*, 218 Ill. App. 3d at 629. Whether a circuit court properly held a party in contempt is a question of fact that we will not disturb absent an abuse of discretion or unless the decision was against the manifest weight of the evidence. *Pryweller*, 218 Ill. App. 3d at 628.

¶ 35 The appellant has the burden of providing a record on appeal that is sufficient for this court to review the appellant's contentions of error. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). "Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." *Marriage of Gulla*, 234 Ill. 2d at 422. In this case, the circuit court held a hearing on the contempt issue, at which both sides presented evidence, but Toby did not include the transcript from that hearing in the record on appeal. In its written order finding Toby in contempt, the court found that Toby was not credible and that he had the ability to pay the \$20,000, but did not make reasonable efforts to do so. Without a transcript from the hearing, a bystander's report, or an agreed statement of facts, we presume the court's order was proper. See *Marriage of Gulla*, 234 Ill. 2d at 422-24; see also Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 36 III. CHILD SUPPORT CREDIT

¶ 37 Third, Toby argues that the circuit court failed to properly credit him, or reduce his child support obligation, for the time period during which he had residential custody of Jacob. Toby

asserts not only that he should have been credited for the period he had residential custody of Jacob prior to the November 26, 2008, petition, but also that he should have been awarded child support from Jodie for the entire period he had Jacob. We review the circuit court's decision on child support modification in this regard under the abuse of discretion standard. See *Marriage of Bussey*, 108 Ill. 2d at 296.

¶ 38 The record in this case indicates that the only petition filed by Toby that sought modification of child support based on residential custody of Jacob was his petition of November 26, 2008. While it is true that Toby's June 12, 2008, petition to modify requested both a change in residential custody and a modification of child support, that petition was dismissed by an agreed order of June 20, 2008, which did not modify Toby's child support obligation.

¶ 39 In his November 26, 2008, petition, which was served on Jodie on that date, Toby requested only a modification of his support obligation and did not request that Jodie pay him child support for the time he had residential custody of Jacob. While the agreed time period that Toby had residential custody of Jacob was May 1, 2008, to June 19, 2009, the joint stipulation also indicated that Toby's last child support payment was made on May 9, 2009. The circuit court found that it could only modify Toby's obligation back to November 26, 2008, and granted Toby a credit for child support that he paid to Jodie during the time period between November 26, 2008, and May 9, 2009, when he had residential custody of Jacob and was making child support payments. As the court noted in its order, Jodie agreed that Toby was entitled to a credit for that time period. The court's ruling was proper under the circumstances. See 750 ILCS 5/510(a) (West 2008) ("the provisions of any judgment respecting *** support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the

motion for modification").

¶ 40

CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 42 Affirmed.

¶ 43 Justice Schmidt, concurring in part, dissenting in part:

¶ 44 I concur with the majority's holding and analysis from part III of its order: that being the trial court did not abuse its discretion when refusing to credit Toby or reduce his child support obligation for the time period during which he had residential custody of Jacob. I dissent, however, from the remainder of the court's order and holdings.

¶ 45

A. Lump-Sum Award

¶ 46 I find the lump-sum child support award amounts to an impermissible retroactive award in violation of section 510(a) of the Act. 750 ILCS 5/510(a) (West 2008). As the majority correctly notes, the Act only permits modification "as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2008). When discussing this provision of the Act, our supreme court made it clear that:

"Dissolution of marriage and collateral matters such as child support are entirely statutory in origin and nature [citation], and, in light of the legislature's clear pronouncement that 'any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party,' a trial court has no authority to retroactively modify a child support order (750 ILCS 5/510(a) (West 1992))." *In re Marriage of*

Henry, 156 Ill. 2d 541, 544 (1993).

It is undeniable that Toby received his worker's compensation award on November 13, 2007, and that Jodie did not file her petition until October 29, 2008, 11 months thereafter.

¶ 47 I agree with the majority's characterization that Toby's worker's compensation award is income as contemplated by the Act. Slip op. at 8. Clearly, the award is income. Also, I am not suggesting that all lump-sum awards are improper. The point the majority misses is that wages the worker's compensation award replaced were already considered, in full or certainly in part, when calculating Toby's support obligations. Most critically, even though Toby was not receiving those wages, the record is clear that he continued to make all required support payments.

¶ 48 The judgment for dissolution of marriage, entered April 30, 1999, set Toby's monthly child support obligation at \$878.21 per month based upon his rate of compensation from his employer, Mitsubishi. Between July 16, 1999, and August 8, 2005, Toby suffered five work-related injuries at Mitsubishi. The lump-sum worker's compensation award he received "prorated" his compensation "over the life expectancy of the injured worker." 820 ILCS 305/10.1 (West 2008). That is, the agreed award provided payment for wages lost after July 16, 1999, due to his work-related injuries.

¶ 49 Toby paid the monthly installments originally set at \$878.21 from 1999 until at least April 24, 2007, when those installments were lowered to \$710.30. Given his injuries and the status of his worker's compensation claims, however, Toby did not continue to receive the wages upon which the amount of those installments was based. Nevertheless, Toby continued to make his monthly child support payments to Jodie. It is clear that at least a portion, and likely a

significant portion, of his worker's compensation award was intended to compensate him for wages lost during a time when he collected no income from his employment at Mitsubishi, but yet for which he had already made support payments.

¶ 50 To award Jodie a flat percentage of the total lump-sum worker's compensation award effectively increases the amount Toby already paid. This, I find, is an impermissible retroactive increase of Toby's child support obligation. To the extent that the lump-sum payment represents wages lost before October 29, 2008, Toby is required to pay 23% of those wages, *over and above* the support payments he already made! Clearly, this is a retroactive increase and a steep one at that. I would remand to the trial court with direction to determine what portion of Toby's worker's compensation award is attributable to wages lost after the filing date of Jodie's petition. Awarding Jodie a portion of those future wages is, undoubtedly, within the trial court's authority. 750 ILCS 5/510(a) (West 2008).

¶ 51 I am aware of only one post-*Henry* decision holding that a circuit court may "impose a retroactive child support obligation ***." *People ex rel. Greene v. Young*, 367 Ill. App. 3d 211, 220 (2006). In *Greene*, the court acknowledged "that under normal circumstances" a court may only modify child support prospectively "after the nonmoving party has been notified that a motion to modify has been filed ***." *Greene*, 367 Ill. App. 3d at 220. The *Greene* court, however, noted it was presented with "extraordinary" facts in which the nonmoving party "failed to inform the court of his having resumed employment as required by court order." *Greene*, 367 Ill. App. 3d at 220.

¶ 52 No such extraordinary facts are present in the case at bar. No order existed directing Toby to inform the court, or Jodie, of his employment status or of the status of his worker's

compensation claim.

¶ 53 The authorities cited by Jodie, and referenced by the trial court and majority, fail to persuade me that the court's order is anything but an impermissible, and very steep, retroactive modification of child support. I disagree with the majority that *Dodds* is instructive. Slip op. at 8. While the trial court and majority correctly note that *Dodds* holds a lump sum worker's compensation award is income as contemplated by the Act (750 ILCS 5/101 *et seq.* (West 2008)), that is the only question of law answered by the *Dodds*' court which specifically stated:

"Respondent raises only the issue of whether his lump-sum worker's compensation award constituted income for the purposes of determining his obligation to pay child support under the Marriage Act. Respondent does not raise, and therefore has waived, the issue of whether the trial court properly determined the specific amount of child support respondent was ordered to pay."

Dodds, 222 Ill. App. 3d at 104.

¶ 54 Toby has not waived this issue. The trial court herein acknowledged that Toby questioned whether ordering him to pay a portion of his worker's compensation award amounted to an impermissible retroactive award of support.

¶ 55 The mere fact that the award is income does not give the trial court the authority to retroactively redistribute it. Again, the *Henry* court clearly, and unequivocally, stated that "matters such as child support are entirely statutory in origin and nature." *Henry*, 156 Ill. 2d at 544. While section 510 of the Act allows for the modification of "installments accruing subsequent to" the filing of a petition to modify, the plain language of the statute does not allow

for a modification taking the form of one lump-sum of money based upon money earned and received 11 months prior to the filing of the petition to modify.

¶ 56 The trial court's order dated October 28, 2009, addressed issues beyond the worker's compensation award, such as \$1,172.72 in medical expenses. The only portion of the court's order at issue in this appeal concerns the worker's compensation award and the contempt finding flowing therefrom. I would reverse and vacate the portion of the trial court's order that directs Toby to pay \$24,303.92, or 23% of his worker's compensation award to Jodie, as well as the portion of the order mandating "\$20,000 [of that amount be paid] *** within 14 days of the date of this order."

¶ 57 Had Toby not been making child support payments all along while unemployed, and had there been an arrearage owed, I could go along with the trial court's disposition of the lump-sum award. However, here, Toby made all his support payments even while unemployed. The trial court and majority now effectively order him to make those payments again! They have no authority to do this.

¶ 58 B. Contempt

¶ 59 During the litigation of Toby's motion to reconsider, Jodie instituted contempt proceedings. Ultimately, the trial court found Toby in indirect civil contempt for failure to pay the \$20,000 as ordered. Toby argues this contempt finding was erroneous for many reasons, one being that the trial court was without authority to order him to make the \$24,303.92 lump-sum payment.

¶ 60 In *In re Marriage of Kuhn*, 221 Ill. App. 3d 1 (1991), the court considered an appeal from a noncustodial parent ordered to pay 50% of his child's college expenses. *Kuhn*, 221 Ill. App. 3d

at 2. The trial court order directing the noncustodial parent to make the payment forced him to do so in 10 days. *Kuhn*, 221 Ill. App. 3d at 2. The trial court denied the motion of the noncustodial parent to stay the enforcement of the college expense order pending appeal and ultimately held the noncustodial parent in contempt for failure to pay the college expenses as ordered. *Kuhn*, 221 Ill. App. 3d at 3.

¶ 61 Even though the appellate court upheld the award of college expenses, it reversed the finding of contempt stating that failure to pay "was not done to show any disrespect to the court; [the noncustodial parent] was merely seeking temporary appellate relief from the effects of the court's order." *Kuhn*, 221 Ill. App. 3d at 4.

¶ 62 The case for reversal of the contempt order herein is even stronger than in *Kuhn*. While Toby quarrels with the trial court's assessment of his ability to pay and purge the \$24,303.92, his failure to make the payment was not a display of disrespect to the trial court. Toby merely sought review, first through a motion to reconsider and then on appeal, of an order he believed to be invalid.

¶ 63 A trial court's issuance of a contempt citation will not be reversed on appeal unless the court has abused its discretion. *Kuhn*, 221 Ill. App. 3d at 4. "However, the power to impose contempt is subject to limitations, and it should only be exercised in extreme situations." *Kuhn*, 221 Ill. App. 3d at 4. I find the trial court abused its discretion in holding Toby in contempt for failure to pay the amount ordered as the trial court was without authority to order the support award in the first place. Keep in mind, Toby made every payment ordered by the court, save the one he appeals here. As such, I would also reverse the trial court's order holding Toby in contempt.

