

NOTICE

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2011 IL App (5th) 110042-U

NO. 5-11-0042

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<p><i>In re</i> MARRIAGE OF</p> <p>BRADLEY JACKSON,</p> <p style="padding-left: 40px;">Petitioner-Appellant,</p> <p>and</p> <p>MICHELLE JACKSON,</p> <p style="padding-left: 40px;">Respondent-Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Appeal from the</p> <p>Circuit Court of</p> <p>Clinton County.</p> <p>No. 08-D-112</p> <p>Honorable</p> <p>Dennis E. Middendorff,</p> <p>Judge, presiding.</p>
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JUSTICE WEXSTTEN delivered the judgment of the court.
 Presiding Justice Chapman and Justice Donovan concurred in the judgment.

ORDER

¶ 1 *Held:* In its judgment for dissolution of marriage, the circuit court properly awarded sole custody and child support to wife, properly held husband in contempt for failing to pay temporary child support pursuant to its previous order, and properly awarded attorney fees; however, the circuit court erred in failing to allocate the parties' property.

¶ 2 The circuit court of Clinton County entered a judgment for dissolution of marriage, from which the petitioner, Bradley A. Jackson, appeals. Bradley argues on appeal that the circuit court erred in awarding sole custody of the parties' minor child to the respondent, Michelle A. Jackson, in ordering him to pay child support to Michelle, in finding him in indirect civil contempt, in awarding attorney fees to Michelle, and in failing to allocate all of the parties' assets and liabilities. We affirm in part and reverse in part.

¶ 3

FACTS

¶ 4 The parties were married in Illinois on September 17, 2005, and their son, Garrett

Jackson, was born on February 6, 2007. On October 15, 2008, the parties separated. On December 4, 2008, Bradley filed his petition for dissolution of marriage, along with a petition for temporary custody and child support.

¶ 5 On February 13, 2009, the circuit court entered a temporary order requiring Bradley to pay Michelle \$4,500 and to turn over the Murano vehicle to her. The circuit court also ordered Bradley, through the parties' business, Tint Pro, Incorporated (Tint Pro), to continue paying the car loan installments on the Murano. The circuit court reserved the remaining matters of child custody, visitation, and support.

¶ 6 On June 12, 2009, the circuit court entered an order awarding the parties temporary joint legal custody of Garrett. The circuit court awarded Michelle temporary physical custody on Monday, Tuesday, Wednesday, and every other weekend, and Bradley had temporary physical custody on Thursday, Friday, and every other weekend. The circuit court ordered Bradley to pay \$150 per week, and Michelle to pay \$40 per week, to Garrett's daycare provider.

¶ 7 On October 1, 2009, Michelle filed a petition for temporary child support, maintenance, and attorney fees. On October 19, 2009, Bradley filed an amended financial statement revealing a monthly net income of \$1,398.82. This statement revealed that Bradley's year-to-date gross income, as of September 18, 2009, amounted to \$8,560.98.

¶ 8 In its March 1, 2010, order, the circuit noted that it had reviewed the parties' 2008 tax return, indicating that Tint Pro earned \$84,023 that year. The circuit court held that Bradley had commingled debts and expenses to the point that he and Tint Pro had become the same entity. The circuit court ordered Bradley to pay \$750 per month in child support, retroactive to October 1, 2009.

¶ 9 Thereafter, on March 23, 2010, the circuit court entered an order stating as follows:
"The parties are ordered to cooperate in the completion of tax returns for calendar

years 2008 and 2009. Having heard temporary issues in this cause, the Court finds that the current state of proof of income is insufficient to allow a determination of child support, maintenance[,] or property apportionment."

¶ 10 On April 19, 2010, Michelle filed a petition for rule to show cause, asserting that Bradley had failed to pay the court-ordered monthly child support of \$750 and that Bradley had failed to pay the Murano payment as ordered by the court, causing its repossession by the financial institution.

¶ 11 At hearings held on June 2, 2010, September 7, 2010, September 30, 2010, and October 28, 2010, the court heard the following evidence regarding Michelle's petition to show cause and all the remaining issues.

¶ 12 During the course of the parties' marriage, they operated Tint Pro, which provided after-market tinting of automobile windows. Bradley performed the labor for Tint Pro, and Michelle was responsible for bookkeeping. Tint Pro migrated to St. Louis, Missouri, where Bradley continued to work at the time of the hearings. Michelle ceased working at Tint Pro upon the parties' separation.

¶ 13 Bradley testified that he lived in a four-bedroom home in Trenton, Illinois, with Garrett and his eight-year-old daughter, Lillian, who visited every other weekend. Bradley testified that Garrett enjoyed his own room, as did Lillian. Bradley testified that Michelle moved from the home in October 2008.

¶ 14 Bradley testified that he and Garrett fished and boated together and that he cared for Garrett's needs. Bradley characterized his and Garrett's relationship as close. Bradley testified that Lillian and Garrett enjoyed a positive brother-sister relationship. Bradley testified that Michelle had been unwilling to compromise with regard to visitation so that Garrett and Lillian could spend their visitation weekends together. Bradley testified that Lillian's mother, Jessica Cagle, accommodated the situation, however, so that visitation with

both children occurred during the same weekends. Bradley testified that although he had tried to accommodate Michelle during holiday visitations, she made doing so difficult. Bradley testified that he believed that Garrett should spend holidays with both parents and that, if granted custody, he would be willing to accommodate Michelle for holidays and regular visitation.

¶ 15 Bradley testified that Sharon Thornton began babysitting Garrett when he was two weeks old. Bradley testified that he had expressed concern regarding this babysitting arrangement in April 2010, because he had heard that Sharon's daughter, who had allegedly been involved in the pornography industry, had returned to Sharon's home to live. Bradley testified that he no longer used Sharon for babysitting services during his visitation.

¶ 16 Bradley acknowledged that Michelle notified him regarding Garrett's doctor appointments. Bradley testified that after the separation, when Michelle lived with her previous boyfriend, Garrett began exhibiting separation anxiety and clinged to Bradley.

¶ 17 Bradley testified that he performed the day-to-day labor of tinting windows for Tint Pro. Bradley testified that Tint Pro obtained a \$10,000 loan from his mother, Sandra Thompson, and that \$6,060 was still due on that loan. Bradley testified that his father's company, Advanced Mechanical Systems, loaned Tint Pro \$11,500.

¶ 18 Bradley testified that he received a weekly paycheck of \$437.92 (\$10 an hour for 49 hours a week) from Tint Pro and that he paid his mortgage, electric, and utility payments from the Tint Pro business accounts. Bradley testified that Tint Pro's income fluctuated and that Tint Pro had been administratively dissolved by the Illinois Secretary of State on January 8, 2011.

¶ 19 Bradley testified that although the marital residence was in default and he had received notice of foreclosure, his father had indicated that he would help to pay for the home. Bradley testified that he recently paid \$3,000 to Tempo Bank as payment against the

first mortgage on the marital home. Bradley testified that he did not have the ability to pay the second mortgage titled only in Michelle's name.

¶ 20 Bradley testified that he drove a 2007 GMC Yukon, for which he paid \$25,000. Bradley testified that he paid the monthly loan payments of \$491 for the vehicle from his personal account. Bradley testified that he purchased the 2007 Yukon approximately two months prior to the hearings, making a down payment of \$5,000, which he considered to be a distribution from Tint Pro. Bradley testified that his previous Grand Marquis did not adequately provide for the business's needs.

¶ 21 Bradley requested that he keep the property in his possession and that Michelle keep the property in hers. Bradley acknowledged that Tint Pro ceased making payments on the Murano that Michelle had been driving.

¶ 22 Bradley acknowledged that, other than a couple hundred dollars, he had not paid Michelle child support from October 2009 to the hearing date. Bradley acknowledged that he had received the withholding order, the complaint, and the petition to show cause why he had not paid child support but that Tint Pro did not withhold any funds to pay child support to Michelle. Bradley testified that he believed that child support had not been effectively ordered, considering the circuit court's holding of March 23, 2010, that proof of income was insufficient to determine child support. Bradley acknowledged that despite a February 2009 order requiring him to pay for the Murano vehicle that Michelle had been driving, he stopped payments and the vehicle was turned over to the bank. Bradley further acknowledged that he was ordered to pay the babysitter \$150 a month but that he did not do so. Bradley acknowledged that he at no time failed to pay the \$422 monthly child support due Jessica.

¶ 23 Jessica testified that Lillian was eight years old at the time of the hearing. Jessica testified that Bradley was a good father to Lillian and treated her well. Jessica testified that

she and Bradley communicated regularly and openly regarding Lillian's needs. Jessica testified that Lillian enjoyed a good relationship with Garrett and loved him. Jessica testified that Bradley exercised his visitation with Lillian and was current on his child support obligations for Lillian.

¶ 24 Tanya Kantor testified that she had witnessed Michelle belittle, grab, and spank Brooke Hasemann, Michelle's 11-year-old daughter from a previous marriage. Tanya testified that she had observed Bradley with Garrett approximately twice a month. She testified that Bradley appropriately disciplined and cared for Garrett. Tanya testified that Garrett and Lillian's relationship was close and affectionate.

¶ 25 David Johnston, who worked as Tint Pro's accountant from 2006 to 2009, testified that he had prepared draft tax returns, which had not yet been filed, for 2008 and 2009. David testified that in 2008, more funds were removed from Tint Pro than collected. David testified that because Tint Pro was an S corporation, the tax amount due flowed to Bradley and Michelle, as shareholders of Tint Pro, to report on their personal tax returns. Tint Pro's 2008 federal tax return revealed an ordinary business income of \$80,336 and a gross income of \$189,992. David testified that Michelle had earned funds from a source other than Tint Pro and that Michelle and Bradley's 2008 federal income tax return revealed a combined personal income of \$85,767. David testified that Michelle and Bradley owed more than \$6,000 for 2008 federal taxes and more than \$3,000 for 2008 state taxes. David testified that because the parties had not paid the 2008 taxes, penalties and interest were accruing.

¶ 26 David testified that he prepared for Bradley a 2009 individual income tax return, which revealed his total income to be more than \$44,000. David testified that that Bradley's 2009 outstanding tax liability for federal and state taxes amounted to more than \$1,000, excluding the taxes and penalties. David testified that for the first four months of 2010, Bradley received gross income of \$4,725. David testified that the prepared 2008 and 2009

tax returns were merely drafts because the parties were awaiting court clarification regarding who can claim Garrett as a dependent. David testified that Tint Pro had no monetary value.

¶ 27 Michelle testified that she was 34 years old and lived in a two-bedroom home in Trenton, Illinois, with her boyfriend, Justin Ketrow. Michelle testified that Garrett stayed in a toddler bed in her and Justin's bedroom and that Brooke stayed in the remaining bedroom. Michelle testified that she and Brooke's father, Phil Hasemann, shared joint custody of Brooke but that Brooke attended O'Fallon's school district, where Phil lived. Michelle testified that before she lived with Justin, but after the parties' separation, she at different times lived with Garrett's babysitter, Phil, and a previous boyfriend.

¶ 28 Michelle testified that she was employed as a part-time nanny and housekeeper receiving \$150 per week and that she was currently enrolled at junior college. Michelle testified that she filed an individual income tax return for 2009 which revealed a federal adjusted gross income of \$17,343 and a state taxable income of \$13,343. Michelle acknowledged that she must amend her 2009 return to include a \$4,500 payment that she received from Tint Pro. Michelle acknowledged that although Tint Pro had also made payments on the vehicle she had been driving, she did not claim those payments as income.

¶ 29 Michelle testified that when she and Bradley operated Tint Pro, they paid their personal bills from Tint Pro's corporate account. Michelle testified that from the corporate account she and Bradley made payments for three automobiles, in addition to cable, electric, and mobile phone expenses. Michelle testified that the parties had two mortgages on the marital home, but the second mortgage was solely in her name. Michelle testified that she had recently purchased a 2001 Hyundai Elantra for \$1,500. Michelle testified that she received a loan from her ex-father-in-law to purchase the vehicle and that Phil was paying the loan in lieu of child support.

¶ 30 Michelle acknowledged that during the parties' marriage, Sandra had loaned Tint Pro

funds, as did Bradley's father, David Flushell, through Advanced Mechanical Systems. Michelle testified that Sandra loaned Tint Pro \$10,000, and a ledger exhibit indicated that \$8,060 of the loan remained outstanding. Michelle testified that Sandra made the check payable to Bradley. Michelle testified that Advanced Mechanical Systems loaned Tint Pro \$11,500. Michelle acknowledged that although Tint Pro made loan repayments to Advanced Mechanical Systems, she was unaware of the amount still due. Michelle testified that neither she nor Bradley signed documents with regard to the funds loaned by Sandra and Advanced Mechanical Systems.

¶ 31 Michelle testified that she wanted no portion of Tint Pro and did not want to accept any debts of the business. Michelle testified that she did not consider herself responsible for any tax liability because it was tied to Tint Pro, which she now considered to be Bradley's business. Michelle testified that she also did not seek to obtain any property from the marital residence.

¶ 32 Michelle testified that she twice attempted to commit suicide when she was 18 years old, received treatment, and received a medical release. Michelle testified that she had attended counseling in the previous few years. Michelle testified that she at times "smack[ed]" Brooke in the back of the head and also "tap[ped]" Garrett on the back of the head.

¶ 33 Michelle testified that, pursuant to a court order, Bradley, through Tint Pro, was required to pay for the Murano vehicle she had been driving but that the payments were not kept current, so the car was surrendered. Michelle testified that Bradley had also not paid the court-ordered temporary child support. Michelle testified that when they separated in October 2008, Bradley paid her \$300 for child support. Michelle testified that since October 2008, she had received additional payments of \$550 and \$200. Michelle acknowledged that during the previous two years, she had received \$4,500 and \$600 distributions from Tint Pro

and that Bradley helped pay daycare and medical expenses.

¶ 34 Michelle testified that although she had claimed Garrett as a dependent on her tax return forms, she had not discussed the matter with Bradley. Michelle acknowledged that although the court had ordered the parties to share joint custody of Garrett, she changed Garrett's pediatrician and chose Garrett's preschool without Bradley's consent. Michelle testified that she and Bradley could not communicate. Michelle acknowledged that Bradley properly fed, clothed, and cared for Garrett. Michelle testified, however, that she was concerned regarding Garrett's stability when in Bradley's custody, considering that Bradley had transferred Garrett from his regular babysitter and instead took him to work or to his mother's, grandmother's, or sister's home. Michelle testified that she was willing to inform Bradley of events, medical treatment, and other concerns regarding Garrett. Michelle did not believe that Bradley would be so willing if he were awarded sole legal custody of Garrett. Michelle testified that she did not want Bradley to lose time with Garrett.

¶ 35 Michelle testified that in 2004 Bradley spanked Lillian, leaving red marks on her bottom, while Lillian was screaming and banging against a door. Michelle testified that she felt that the discipline was appropriate considering that Lillian, who was two at the time, had run into the street.

¶ 36 Kim Johnson Charaker testified that during the parties' marriage, she would occasionally babysit Garrett while Bradley and Michelle worked. Kim testified that Bradley and Michelle both treated Garrett well and cared for him appropriately but that Michelle was the main caregiver because Bradley worked long hours. Kim testified that she considered Michelle to be a good mother.

¶ 37 Phil testified that he and Michelle shared joint custody and worked together with regard to Brooke's needs. Phil testified that Michelle appropriately disciplined Brooke. Phil characterized Michelle and Garrett's relationship as excellent. Phil testified that he hired

Michelle as an assistant manager at his tanning salon from February 2009 until June 2010, paying her \$9 per hour for 20 hours a week. Phil testified that he paid Michelle \$200 per month in child support.

¶ 38 After evidence was presented at the hearings, Bradley and Michelle filed position statements reciting, *inter alia*, the factors to be considered in determining child custody. In a position statement filed on November 12, 2010, Marsha D. Holzhauer, Garrett's guardian *ad litem*, recommended that Michelle be awarded sole custody of Garrett, subject to Bradley's liberal visitation. In a previous report filed on September 3, 2010, Marsha indicated that joint parenting would not serve Garrett's best interests because the parties were unable to communicate and cooperate with regard to Garrett's needs.

¶ 39 On November 23, 2010, Michelle filed a petition for attorney fees, asserting that she had incurred attorney fees of \$18,786.38 as of November 1, 2010.

¶ 40 In its order entered on January 3, 2011, the circuit court characterized both parties as "narcissistic, self-centered[,] and immature." The court held that, during the marriage, the parties used Tint Pro accounts as a "personal checkbook," paying for vehicles, meals, entertainment, and their home mortgage. The court noted that the Tint Pro accounts were in such "bad shape that the part[ies] have been unable to file income tax returns for several years." The court held that the parties' frivolous purchases during the marriage exceeded their income.

¶ 41 In its order, the court held that, during the pendency of the divorce, Michelle had lived in different residences with different men. The court characterized Michelle's work history as "spotty and sporadic." The court found "little evidence that she ha[d] sought other employment[] or made a serious attempt to improve her job skills in order to be able to better provide for her children."

¶ 42 The court awarded sole custody of Garrett to Michelle and awarded Bradley visitation

on every other weekend, on two evenings each week, for two weeks uninterrupted during the summer, and during specified holidays. The court found that the parties were unable to adequately cooperate to effect joint custody. The court found that Bradley's claim for sole custody was made largely as a result of his desire to avoid child support payments. The court found that Bradley failed to pay child support, even after the temporary order of support was entered.

¶ 43 The court ordered Bradley to pay child support of \$750 per month, in addition to \$150 per month towards the arrearage accumulated since the entry of the temporary child support order. The court acknowledged "the difficulty in determining [Bradley's] income." The court stated, "The evidence at the final hearing was essentially identical to that presented previously."

¶ 44 The court found Bradley in indirect civil contempt of court for his willful violation of the order of temporary support. The court sentenced Bradley to serve weekend time in jail until the accumulated arrearage was paid in full. The court stayed the sentence until the first Friday after Bradley failed to make a payment ordered toward the current support obligation or the support arrearage.

¶ 45 The court ordered Bradley to contribute \$7,500 towards Michelle's attorney fees. In making this determination, the court considered Michelle's limited assets, the fact that a significant portion of the proceeding was dedicated to the enforcement of prior orders, and the fact that Bradley had caused a serious escalation of litigation costs.

¶ 46 The court ordered that each party retain the personal property in their possession at the time of the filing of the petition for dissolution of marriage. The court awarded Bradley the ownership of the marital residence, along with all the indebtedness thereon, making provision that Bradley free Michelle of the indebtedness on the marital residence within 60 days.

¶ 47 On January 31, 2011, Bradley filed a timely notice of appeal.

¶ 48 ANALYSIS

¶ 49 Child Custody

¶ 50 Bradley challenges the circuit court's custody award by claiming that the circuit court failed to properly consider all the relevant factors contained in section 602 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/602 (West 2008)). Section 602 of the Act provides as follows:

"(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [(750 ILCS 60/103 (West 2008))], whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; and

(9) whether one of the parents is a sex offender.

(b) The court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child.

(c) Unless the court finds the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, the court shall presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child. There shall be no presumption in favor of or against joint custody." 750 ILCS 5/602 (West 2008).

¶ 51 In the present case, the circuit court failed to make clear and specific findings pursuant to section 602 of the Act. Although reciting those findings and conclusions is prudent, section 602 of the Act does not require that any specific findings or recitals be made, and the record on appeal contains sufficient evidence concerning the relevant factors in determining custody. See *Hollo v. Hollo*, 131 Ill. App. 3d 119, 126 (1985) ("There is compliance with the [A]ct where the record contains sufficient evidence concerning the specified factors.").

¶ 52 The circuit court heard extensive testimony from Bradley and Michelle and from their friends and relatives. This testimony revealed that both parties wished to have sole custody of Garrett, that Michelle had been Garrett's primary caregiver during the marriage, that Garrett was too young to express his wishes, that both parties remained in the same community to which Garrett was accustomed, and that Garrett interacted well with Michelle, Bradley, Lillian, and Brooke. The evidence demonstrated that Garrett had been required to make numerous recent adjustments while Michelle moved into various living spaces, that Michelle had in the far past struggled with mental health issues, that Michelle had "slap[ped]" Brooke and Garrett on the back of the head to get their attention, and that

Bradley had in the past spanked Lillian. The evidence revealed that no other physical violence or domestic violence occurred in either party's home and that while both parties asserted that they were willing to facilitate and encourage a close and continuing relationship between the other parent and the child, both had behaved otherwise. See 750 ILCS 5/602 (West 2008). The circuit court received Garrett's guardian *ad litem*'s recommendation to award Michelle sole custody, observed each witness's demeanor, temperament, personality, and capabilities, and resolved conflicts in the testimony. The evidence before the court included information concerning each of the factors listed in section 602 of the Act and in our opinion constituted a sufficient basis for the circuit court's custody decision. See 750 ILCS 5/602 (West 2008); *Hollo*, 131 Ill. App. 3d at 126.

¶ 53 Child Support

¶ 54 Bradley argues that because the circuit court failed to expressly determine his net income or set forth its child support calculations in its order, the circuit court erred in requiring him to pay \$750 child support to Michelle.

¶ 55 The trial court's findings of income and the awarding of child support are within its discretion and will not be disturbed on review absent an abuse of that discretion. *In re Marriage of Ford*, 377 Ill. App. 3d 181, 188-89 (2007). Section 505(a)(1) of the Act sets forth guidelines for determining the percentage amount of child support. 750 ILCS 5/505(a)(1) (West 2004). These guidelines provide that, for one child, the supporting party is to contribute 20% of his net income for the child's support. 750 ILCS 5/505(a)(1) (West 2008).

" 'Net income' is defined as the total of all income from all sources, minus the following deductions:

- (a) Federal income tax (properly calculated withholding or estimated payments);

(b) State income tax (properly calculated withholding or estimated payments);

(c) Social Security (FICA payments);

(d) Mandatory retirement contributions required by law or as a condition of employment;

(e) Union dues;

(f) Dependent and individual health/hospitalization insurance premiums;

(g) Prior obligations of support or maintenance actually paid pursuant to a court order;

(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period." 750 ILCS 5/505(a)(3) (West 2008).

¶ 56 "If the present net income is difficult to ascertain or uncertain, a court may consider past earnings." *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 92 (1998). "The credibility and forthrightness of the noncustodial parent in disclosing income is a factor to be considered in accepting evidence of net income." *Id.*

¶ 57 The trial court is generally required to make a threshold determination of the party's net income before determining child support. *Id.* However, in section 505(a)(5) of the Act, the legislature recognized situations where the amount of the noncustodial parent's net

income cannot be accurately determined. *In re Marriage of Takata*, 304 Ill. App. 3d 85, 96 (1999). Section 505(a)(5) of the Act provides as follows:

"If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case. The final order in all cases shall state the support level in dollar amounts." 750 ILCS 5/505(a)(5) (West 2008).

¶ 58 In the present case, Bradley's testimony regarding his income was inconsistent and bewildering. The circuit court was certainly justified in discrediting Bradley's assertion that his weekly income was limited to \$437.92. Bradley acknowledged that he paid additional personal expenses directly from Tint Pro's business account, and David testified that, in the past, the parties' spending had exceeded Tint Pro's income. See generally *In re Marriage of Tegeler*, 365 Ill. App. 3d 448, 461 (2006) ("to the extent that respondent's personal spending exceeded his 'net income' ***, we agree that the source of such money is unexplained and should be considered as an additional resource for child support" (emphasis omitted)). Without credible evidence of Bradley's net income, the trial court was compelled to make the award of child support in an amount that was reasonable in the present case. In accord with section 505(a)(5) of the Act (750 ILCS 5/505(a)(5) (West 2008)), it ordered a reasonable support level of \$750 per month. We do not find that the court abused its discretion in setting Bradley's monthly child support obligation at \$750. See *In re Marriage of Takata*, 304 Ill. App. 3d at 96.

¶ 59 Moreover, when extrapolated to annual income in the context of the guidelines, the monthly support level indicated that the circuit court found Bradley to be earning a net monthly income of \$3,750 and a net annual income of \$45,000. The evidence at the hearing revealed that the parties' 2008 annual business income, through Tint Pro, exceeded \$80,000. Even accounting for the subsequent loss of income due to the struggling economy, we find

no error in the circuit court's determination.

¶ 60 Contempt Order

¶ 61 Bradley argues that the circuit court erred in finding him in indirect civil contempt because, in failing to comply with the court's temporary order of child support, he was merely acknowledging the court's difficulty and inability to set child support based on the evidence before it.

¶ 62 Section 505(b) of the Act provides as follows:

"Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt. In addition to other penalties provided by law the Court may, after finding the parent guilty of contempt, order that the parent be:

(2) sentenced to periodic imprisonment for a period not to exceed 6 months; provided, however, that the Court may permit the parent to be released for periods of time during the day or night to:

(A) work; or

(B) conduct a business or other self-employed occupation." 750

ILCS 5/505(b) (West 2008).

¶ 63 "The failure to make support payments as ordered is *prima facie* evidence of contempt." *In re Marriage of Barile*, 385 Ill. App. 3d 752, 758-59 (2008). "Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make support payments was not willful or contumacious and that there exists a valid excuse for his failure to pay." *Id.* at 759. "Contumacious conduct consists of 'conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or lessening the authority and dignity of the court.'" *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108 (2006) (quoting *In re Marriage of*

Fuesting, 228 Ill. App. 3d 339, 349 (1992)). " '[W]hether a party is guilty of contempt is a question of fact for the trial court, and *** a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion.' " *In re Marriage of Barile*, 385 Ill. App. 3d at 759 (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)).

¶ 64 In the present case, the circuit court found Bradley in indirect civil contempt of court for his willful violation of the temporary support order. The court sentenced Bradley to serve weekend time in jail until the accumulated arrearage was paid in full. The court stayed the sentence until the first Friday after Bradley failed to make a payment ordered towards the current support obligation or the support arrearage.

¶ 65 We have recognized the circuit court's difficulty in determining the child support amount in this case. However, pursuant to the Act, the circuit court ordered Bradley to pay reasonable monthly child support. Bradley admitted that, despite the court's order requiring him to pay \$750 per month child support to Michelle, he had failed to do so. Yet, Bradley continued to pay Jessica \$422 per month for Lillian's child support, purchased a new vehicle, paying \$5,000 as a down payment, and continued to pay his mortgage, utilities, car payments, and entertainment expenses. Although the circuit court's March 23, 2010, order, characterizing the evidence of income as insufficient to determine child support, seemed to contradict its March 1, 2010, order awarding temporary child support, "the law is well settled that one must comply with a court order unless such order is utterly void, and it is no defense in a contempt proceeding to show that the order is merely erroneous." *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 481 (1997). To hold otherwise would encourage parties to disregard a trial court's order, impeding a trial court's power and effectiveness. *Id.* Accordingly, we find no error in the circuit court's finding of indirect civil contempt.

¶ 66

Attorney Fees

¶ 67 Bradley argues that the circuit court erred in ordering him to pay \$7,500 of Michelle's attorney fees.

¶ 68 "Generally, it is the responsibility of the party who incurred attorney fees to pay for those fees." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 667 (2008). However, section 508(a) of the Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. 750 ILCS 5/508(a) (West 2008); *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so." *In re Marriage of Schneider*, 214 Ill. 2d at 174. "Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *Id.* To determine whether to award attorney fees, a court should consider the allocation of assets and liabilities between the parties, any maintenance awarded, and the relative earning abilities of each of the parties. *In re Marriage of Keip*, 332 Ill. App. 3d 876, 884 (2002); *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 478 (1999).

¶ 69 Moreover, section 508(b) of the Act provides as follows:

"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." 750 ILCS 5/508(b) (West 2008).

¶ 70 Under section 508(b) of the Act, "a court need not determine the ability or inability of a party to pay the requested fees." *Davis v. Sprague*, 186 Ill. App. 3d 249, 252 (1989). "Rather, a court shall award reasonable attorney fees incurred by the custodial parents during child support enforcement proceedings if the court finds the non[]custodial parent's failure

to pay was without cause or justification." *Id.* "When a court determines that a party's failure to comply with a child-support order is without compelling cause or justification, an award of fees and costs under section 508(b) is mandatory." *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 397 (2002). "A finding of contempt is sufficient to require an award of fees under this provision, but such a finding is not necessary." *Id.* "The party that fails to comply with an order bears the burden of proving that compelling cause or justification for the noncompliance exists." *Id.* "[A] trial court's decision to award or deny fees will be reversed only if the trial court abused its discretion." *In re Marriage of Schneider*, 214 Ill. 2d at 174.

¶ 71 In the present case, the circuit court ordered Bradley to contribute \$7,500 towards Michelle's attorney fees. In making this determination, the court considered Michelle's limited assets, the fact that a significant portion of the proceeding was dedicated to the enforcement of prior orders, and the fact that Bradley had caused a serious escalation of the costs of litigation.

¶ 72 Pursuant to section 508(a) and section 508(b) of the Act, the record supports the circuit court's award of attorney fees. The evidence presented at the hearing indicated that Michelle was operating on a very limited income while Bradley enjoyed Tint Pro's business proceeds and access to its accounts. Accordingly, Michelle sufficiently established her inability to pay and Bradley's ability to do so. See 750 ILCS 5/508(a) (West 2008); *In re Marriage of Schneider*, 214 Ill. 2d at 174.

¶ 73 Further, Bradley had refused to pay court-ordered child support for Garrett and had refused to pay court-ordered payments to provide Michelle with the Murano vehicle. Before the hearings, Michelle had filed a petition for a rule to show cause why he should not be held in contempt of court for violating the court's orders, and the evidence at the hearings thereafter revealed that Bradley's failure to comply with the court's orders was without

compelling cause or justification. See 750 ILCS 5/508(b) (West 2008). For these reasons, we cannot conclude that the circuit court erred in ordering Bradley to pay funds towards Michelle's attorney fees.

¶ 74 Distribution of Marital Property

¶ 75 Bradley lastly argues that the circuit court erred in failing to allocate all the parties' assets and liabilities in its judgment for dissolution of marriage. Bradley requests that we reverse the circuit court's decision and direct the circuit court to award Tint Pro to him and to allocate Tint Pro's debts and tax liability between the parties.

¶ 76 Section 503(d) of the Act requires the trial court to divide marital property in "just proportions" while taking into consideration the following relevant factors:

- (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non[]marital property, including the contribution of a spouse as a homemaker or to the family unit;
- (2) the dissipation by each party of the marital or non[]marital property;
- (3) the value of the property assigned to each spouse;
- (4) the duration of the marriage;
- (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
- (6) any obligations and rights arising from a prior marriage of either party;
- (7) any antenuptial agreement of the parties;
- (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
- (9) the custodial provisions for any children;

- (10) whether the apportionment is in lieu of or in addition to maintenance;
- (11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and
- (12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2008).

¶ 77 "In a marriage dissolution action, it is the burden of both parties to provide the trial court with sufficient evidence to evaluate and distribute marital property." See *In re Marriage of Heroy*, 385 Ill. App. 3d at 663. The circuit court's decision is considered to be against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the court's findings are unreasonable, arbitrary, and not based on any of the evidence. *Id.*

¶ 78 In the present case, the parties presented evidence regarding Tint Pro's value (or lack thereof), its outstanding debt, the value and debt related to the parties' vehicles, the parties' personal tax liabilities, and the marital home's value and debt. In its order, the circuit court ordered that each party retain the personal property in his or her possession, and the court awarded the ownership of the marital residence, along with its indebtedness, to Bradley. The circuit court failed to allocate the debts and any assets related to Tint Pro. Additionally, David testified that because Tint Pro was an S corporation, Bradley and Michelle must report that income on their personal tax returns, and he testified that they had not paid the taxes due and that penalties and interest were accruing on the parties' overdue tax amounts. However, the circuit court failed to allocate this tax liability. We therefore reverse that part of the circuit court's order that failed to allocate Tint Pro's assets, if any, and debts, including the personal tax liability that flowed to the parties. We remand the cause so that the circuit court can divide that property and those debts. See 750 ILCS 5/503(d) (West 2008).

¶ 79 **CONCLUSION**

¶ 80 For the foregoing reasons, we affirm in part and reverse in part the judgment of the

circuit court of Clinton County, and we remand the cause so that the circuit court may allocate those marital assets and liabilities that it failed to allocate in its order.

¶ 81 Affirmed in part and reversed in part; cause remanded.