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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
EARL M. SCHNEIDER,)	of Lake County.
)	
Petitioner-Appellee,)	
)	
and)	No. 00-D-1841
)	
JODI ANN SCHNEIDER,)	Honorable
)	Joseph R. Waldeck,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Although the trial court erred in its determination of college expenses owed, it did not abuse its discretion in failing to find the petitioner in indirect civil contempt of court.

¶ 2 The respondent, Jodi Ann Schneider, appeals from a trial court order determining that the petitioner, Earl Schneider, owed her \$2,479 in unpaid college expenses but finding that his failure to pay was not willful and contumacious. We affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 Earl and Jodi were married in 1985 and divorced in 2002. The parties had three children: Ashley, Justin, and Jordan. On July 16, 2004, the trial court entered an agreed order relative to Ashley's college expenses. The agreed order provided as follows. Jodi would pay one-third and Earl would pay two-thirds of any such college expenses, limited to what it would cost for Ashley to attend the University of Illinois at Urbana (UIU). College expenses included tuition, fees, books, and room and board. Any college expenses that exceeded the cost of UIU were to be paid by Ashley through an annuity account in her name that was controlled by Earl. The parties agreed that, for Ashley's freshmen year of college (2004-2005), Earl was to pay \$11,793 and Jodi was to pay \$5,897.

¶ 5 On October 17, 2006, Jodi filed a petition to compel contribution to college expenses and for a rule to show cause. Jodi alleged that for the 2006-2007 school year, she had paid in excess of her one-third of Ashley's college expenses and Earl had neither paid his two-thirds share nor released the necessary funds from Ashley's annuity account. Jodi requested that the court enter a rule to show cause and direct Earl to pay the requisite college expenses and release the necessary funds from Ashley's annuity account. Jodi also requested that Earl be ordered to pay her attorney fees and costs.

¶ 6 On January 16, 2009, following a hearing, the trial court entered a rule to show cause against Earl and noted that, in a hearing on the rule to show cause, the trial court would determine the amount of Ashley's 2006 through 2008 college expenses owed by Earl. The hearing date was set for January 23, 2009.

¶ 7 At the start of the hearing on January 23, 2009, both parties agreed that, at issue, were Ashley's college expenses for her junior year (2006-2007), senior year (2007-2008) and her one semester as a super-senior (Fall 2008). Jodi contended that Earl had owed \$34,452 for those expenses but had only paid \$5,891. Accordingly, Jodi argued that Earl owed her an additional \$28,561. Earl stated to the court that he would pay that amount. The trial court asked Earl if he

could write a check that day. Earl indicated that he did not have the money. He stated that he did not have the income that Jodi believed he had and argued that Jodi had not provided sufficient proof of the college expenses owed. The hearing then proceeded, beginning with Jodi's testimony. Jodi testified that for Ashley's junior year, UIU cost \$20,702 and Earl's two-third portion was \$13,801. This was based on information from UIU's website setting forth the estimated expenses for tuition, room and board, books, fees, and miscellaneous expenses. Jodi provided this information as Exhibit 1. Jodi testified that, of the amount owed, Earl had only paid \$4,651. Jodi further testified that Ashley attended Bradley University and that her actual expenses for that year were \$32,955.

¶ 8 Jodi further testified that for Ashley's senior year, the cost to attend UIU was \$23,140. Ashley had received an \$8,000 grant from Bradley University, which reduced the cost to \$15,140. Earl's two-third portion was \$10,093, of which he paid only \$1,240, leaving a balance of \$8,853. Jodi's Exhibit 8 was a printout from the UIU's website indicating that the total estimated costs for residents for the 2007-2008 school year ranged from \$20,640 to \$24,432. Jodi further testified that Ashley went to summer school in 2008 and that the cost was \$3,480. Earl's portion of the summer school expense was \$2,320. Jodi's Exhibit 11 included the bills from Bradley University for summer school in the amount of \$3,480. Finally, Jodi testified that Exhibit 12 showed the amount owed for Ashley's final semester in Fall 2008. She took the expenses for UIU for the 2008-2009 school year and divided that by two, resulting in a cost of \$12,357. Earl's two-third portion was \$8,238. Exhibit 12 included a printout from the UIU website showing that the minimum estimated expenses for freshmen tuition and fees for 2008-2009 were \$24,714.

¶ 9 Jodi further testified that she reviewed all the 2006 checks written and credit card statements for Earl's businesses, Esthetique Wellness Spa, Inc. (Esthetique) and Earl M. Schneider DDS, Ltd. (Schneider DDS), and determined that he had paid \$371,755.93 in personal expenses through his

businesses in that year. He paid attorney fees, mortgage payments, automobile expenses, country club expenses, and expert fees. He paid money to his girlfriend, his sister, his mother, and his brother-in-law. There were no 1099 or W-2 tax forms issued to any of those people. He paid his credit card bills through his businesses. Jodi went through the credit card statements and circled items that were personal expenses such as baby clothes, vacations, etc. Jodi's Exhibit 17 was Earl's credit card statements detailing the expenses for the seven vacations Earl took in 2006. Jodi's Exhibits 18 and 21 were copies the 2006 general ledger for Esthetique and Schneider DDS, in support of her allegation that personal expenses, including credit cards, were being paid through the businesses. On April 15 and 21, 2009, the trial court entered written orders noting that Jodi's Exhibits 1 through 27 were tendered to the court and entered into evidence subject to cross examination.

¶ 10 On May 12, 2009, Jodi testified that Exhibit 26 showed deposits made into Earl's personal checking account in 2006. The deposits totaled \$68,535 and were supported by Earl's bank statements. The deposits came from either Esthetique or Schneider DDS. Jodi testified that Earl's 2006 claimed gross income was \$34,000 with a net income of \$22,000. Exhibits 24 and 25 showed that in 2006 Earl purchased two new cars. On the two loan applications he represented that his annual income was \$144,000 and \$175,000.

¶ 11 Jodi further testified that Exhibit 28 showed the wages paid in 2006 by Esthetique to five people, including Earl. Additionally, there was a 1099 form issued to a sixth person. Jodi argued that the relevance of the exhibit was that there were no W-2s or 1099s issued to Earl's family who had received funds, such as his mother, sister, and girlfriend. Earl's attorney argued that simply because there were no 1099s issued to Earl's family members did not show that Earl retained the money paid to them. Rather, it could simply have been an accounting error. The trial court noted

that the failure to file 1099s did not mean that Earl retained the funds paid and, to make that determination he would need the recipients on the stand.

¶ 12 On cross-examination, Jodi acknowledged that she did not have documentation to show that the people who received funds from Esthetique but did not receive 1099s subsequently gave the money back to Earl. Jodi acknowledged that in 2006 Earl was paying \$4,250 per month in child support. He also paid his mortgage, albeit through his business. He did not pay child support through his business. Jodi testified that the costs for UIU, including fees, were determined by using the internet and speaking with the bursar. Jodi acknowledged that an exemption for the health insurance fee of \$360 might apply because Earl provided Ashley with health insurance. There were also other fees totaling \$84 that could be subject to exemption.

¶ 13 Jodi acknowledged that Exhibit 8, showing 2007-2008 UIU costs, was actually the costs for a freshmen. In 2007-2008, Ashley was a senior. Jodi testified that the freshmen costs were the only thing she could find on the internet. Jodi acknowledged that for Ashley's summer 2008 semester, she only had the Bradley invoices. She did not have comparative costs for UIU. She also acknowledged that the bill for the final semester at Bradley was not included in the exhibits. She had the bill and must have overlooked including it in the exhibits. Finally, Jodi testified that she sent Earl demands for payment every semester. All of Jodi's exhibits were either entered into evidence, admitted subject to cross-examination, or admitted as demonstrative evidence.

¶ 14 On May 28, 2009, Earl was called as an adverse witness. Earl acknowledged that Exhibit 31 was a financial affidavit signed by him and dated February 27, 2006. His gross monthly income was stated to be \$13,700. Earl acknowledged that the affidavit listed monthly tuition costs of \$1,000. The only child in college at the time was Ashley but he had education expenses for his other children as well, although he could not recall what those were. Exhibit 31 was admitted. Earl

acknowledged that Exhibit 32 was a financial affidavit signed by him and dated March 12, 2007. This affidavit listed his gross monthly income as \$16,000. Exhibit 32 was admitted into evidence. Earl agreed that for the school years 2006-2007 and 2007-2008, he only contributed \$5,891 to Ashley's college expenses.

¶ 15 Earl acknowledged that Exhibit 15 was his 2006 federal tax return for Esthetique. It listed loans to shareholders of \$113,824. Earl acknowledged that he was the only shareholder. Earl could not say whether that loan was paid back before Esthetique went bankrupt. (The record indicates Esthetique filed for bankruptcy in 2007.) Earl acknowledged that Exhibit 14 showed that he had taken \$78,000 out of his businesses in 2006. All of that money was used for services for the business. The 1099 tax forms for those funds were currently being issued. There were so many people working for the business that his accountant was not sure who was an employee or a contractor. Earl testified that any money issued to him from his businesses, for which there was no W-2 or 1099 form, was used for business expenses.

¶ 16 Earl further acknowledged that from September through December 2006, he paid his monthly mortgage out of his Esthetique business account. The payments totaled \$14,811. He also acknowledged that he paid his February mortgage payment from his dental business. Earl acknowledged that he paid an attorney, Roger White, \$33,856.89 in 2006 from his Esthetique business checking account. White had represented him in post-dissolution proceedings and other matters. He had also made payments to White via credit card. He wrote checks from Esthetique to Richard Columbik, an expert who conducted financial analysis of Jodi's funds. Earl testified that the country club expenses paid out of Esthetique were business expenses. Finally, Earl acknowledged that he paid vehicle expenses, temple dues, and association fees from his business accounts.

¶ 17 At the close of the hearing on May 28, the matter was continued to June 9, 2009. There is no indication in the record that any hearing took place on that day. The next event of record is on September 18, 2009, when Earl filed a motion to continue the hearing on college expenses. The continuance was granted and the matter was again continued by request several times thereafter.

¶ 18 February 24, 2010, was the final day of the hearing. Preliminary discussions were had between the parties and the trial court as to where they had left off:

“MR. SBERTOLI (Earl’s counsel): Judge, I think he was finishing up. That was the cross-examination.

MR. MORRIS (Jodi’s counsel): Actually what happened, Your Honor, is we put her on as rebuttal witness. We basically are both done.

MR. SBERTOLI: Well, no. As to the—no. Actually I have my client up there.

MR. MORRIS: You were ready to cross your client. You rested.

MR. SBERTOLI: I don’t think that’s true, Judge.

THE COURT: I think it is true. You rested and I brought her back up. He made a statement saying I never got—

MR. SBERTOLI: Oh, all right. I think that might have been, Your Honor.”

Thereafter, Jodi was called again to testify on her own behalf. Jodi testified that she wanted to correct a statement that she made last time she was in court. She had mailed bills to Earl regarding Ashley’s college expenses. However, her counsel had not actually accompanied her to the post office. When she said “we” mailed the bills, she meant it in the corporate sense. The parties rested and the trial court ordered them to submit written closing arguments.

¶ 19 On March 19, 2009, Jodi filed her closing argument. Jodi argued that Earl had an obligation to contribute \$28,561 for Ashley’s college expenses for the years 2006 through 2008. Jodi further

argued that Earl had not presented any evidence or testimony to justify his refusal to pay Ashley's college expenses. Jodi asserted that the evidence she presented demonstrated that Earl had more than sufficient funds to pay the college expenses. Specifically, Jodi argued that her testimony and exhibits showed that Earl had withdrawn over \$70,000 from his businesses in 2006 for which there were no W-2s or 1099s issued. Additionally, Earl had paid over \$90,000 worth of personal expenses out of his business accounts. He paid over \$100,000 to family members and \$36,000 to his girlfriend for which there were no W-2s or 1099s issued. He had signed credit applications indicating that his income was at least \$144,000 per year. Jodi requested that Earl be ordered to pay the \$28,561 with interest and that he be found in indirect civil contempt and ordered to pay her attorney fees.

¶ 20 On June 14, 2010, Earl filed his closing argument. Earl acknowledged that the petition at issue was a request to determine how much he owed for the last two and a half years of Ashley's college attendance and noted that the parties agreed there were no issues as to Ashley's first two years of college. Earl further noted that the real issue in this case was not the amount of the contribution for the last two and half years. Jodi was requesting approximately \$28,000 and Earl acknowledged that he owed his share, although he believed that share was closer to \$24,000. Earl argued that the real issue was whether his failure to make the requisite payments was willful and contumacious. Earl argued that the mere fact that a hearing was required to determine what he owed was sufficient to show that his failure to pay was not contemptuous. Earl noted that the case was interrupted by his Chapter 7 bankruptcy proceedings in 2007. He had paid in excess of \$80,000 towards the college expenses of his second oldest child and continued to pay \$3,400 per month in child support during these proceedings. Earl argued that these factors showed that he did not wilfully refuse to pay Ashley's college expenses and requested that Jodi's petition for a finding of contempt be denied.

¶ 21 On October 28, 2010, the trial court entered a written order finding that Earl owed Jodi \$2,479 for Ashley's college expenses. The trial court noted that Earl owed \$11,793 for the 2004-2005 school year as set forth in the July 16, 2004 agreed order. The trial court further found that Earl owed \$8,238 for 2005-2006 college expenses and \$4,119 for the 2006 fall semester. The trial court further found that Earl had paid \$17,552 and that he therefore owed an additional \$2,479 [(\$11,793 + \$8,238) - \$17,552]. (Although the trial court found that Earl owed \$4,119 for the 2006 fall semester, it does not appear to have included that amount in its calculations.) The trial court further found that:

“That during the cause of the proceedings on the within petition, the court has heard evidence as to allegations of Earls [*sic*] income, spending habits, credit card activity, bankruptcy proceedings, automobile purchases, travel itinerary's [*sic*] and spending habits. The court further acknowledges the lack of respect and communication between the parties as evidenced during the almost three (3) years of proceedings on the within petition. This court therefore finds, based upon the evidence presented herein, that the failure of Earl to pay said sums as and for the educational support of Ashley was neither willful nor contumacious and therefore discharges the Rule entered January 16, 2009, and further orders that each party shall be responsible for their own attorney fees.”

¶ 22 On November 23, 2010, Jodi filed a notice of appeal docketed in this court as appeal number 2-10-1201. The record indicates that Earl filed a motion to dismiss the appeal for lack of jurisdiction, as there were other matters still pending in the trial court. Specifically, the record reveals that on April 5, 2007, Earl had filed a petition to set the college contribution for Justin. On May 25, 2011, Jodi had filed a petition for college expenses for Jordan. On July 18, 2011, this court granted Earl's motion and dismissed the appeal for lack of jurisdiction. On November 9, 2011, an

agreed order was entered as to the pending petitions related to college expenses for Justin and Jordan. On November 15, 2011, Jodi filed a timely notice of appeal from the trial court's October 24, 2010, order.

¶ 23

II. ANALYSIS

¶ 24 At the outset, we note that Earl argues that Jodi's statement of facts violates Supreme Court Rule 341(h)(6) (eff. July 1, 2008) and should not be considered by this court. We agree with Earl that Jodi's statement of facts fails to comply with the requirements set forth in Rule 341(h)(6). Rule 341(h)(6) requires that the relevant facts be stated accurately and fairly without argument or comment. In the present case, Jodi's statement of facts contains impermissible argument. Nonetheless, it is within our discretion to consider an appellate brief notwithstanding an appellant's failure to comply with Rule 341(h)(6). *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 228 (2008). Jodi's violations are not so egregious as to hinder our review, and it is therefore not necessary to strike her statement of facts. Rather, we will simply disregard any improper statements. *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008).

¶ 25 Earl also argues that Jodi has presented an incomplete record on appeal and that this court therefore must presume the trial court had a sufficient factual basis for its holdings and that its order conformed with the law. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Earl makes several arguments in support of this contention. First, Earl points out that the first day of testimony in the record is from July 23, 2007, when Earl's certified public accountant, Anthony Mentz, testified. It is clear from the transcript that Anthony Mentz was to offer further testimony on a subsequent date. However, the next report of proceedings in the record is from January 23, 2009, and it contains no further testimony from Anthony Mentz. Earl argues that we are "left to guess" at the remainder of Mentz's testimony. This argument is without merit. It is clear from the transcript of the July 23,

2007, hearing that Mentz was not testifying relative to Jodi's petition for contribution to college expenses and there is no indication that Earl requested to incorporate Mentz's testimony as part of this proceeding. Accordingly, whether or not Mentz offered further testimony at a subsequent hearing unrelated to the petition at issue is irrelevant.

¶ 26 Next, Earl argues that there are missing transcripts because at the May 12, 2009, hearing, Jodi's counsel commented that Exhibits 25, 26 and 27 had been admitted on an earlier date. Earl notes that those exhibits were not addressed at either the July 23, 2007, or the January 23, 2009, hearings, and concludes that there must be missing hearing dates. This argument is also without merit. The record indicates that the trial court entered Exhibits 25, 26, and 27 at status hearings on April 15 and 21, 2009.

¶ 27 Finally, Earl notes that there was confusion at the beginning of the February 24, 2010, hearing date as to where the parties left off. The parties ultimately concluded that Earl had rested and Jodi was called back up. This did not occur at the previous hearing date of record on May 28, 2009. Accordingly, Earl argues that there must be missing transcripts of other hearing dates. However, at the May 28, 2009, hearing, Earl was testifying. Jodi was not called up, but the record indicates that there were multiple petitions between the parties pending before the trial court at the time. The parties could have recalled a hearing related to one of the other pending petitions. There is no affirmative indication in the record that there are any missing reports of proceedings relative to the petition for Ashley's college expenses. Earl does not specifically identify any alleged missing transcripts or testimony. Accordingly, we find his argument, that the record on appeal is incomplete, unpersuasive.

¶ 28 We now turn to the merits. On appeal, Jodi argues that the trial court erred in determining the amount of money owed by Earl for Ashley's college expenses. The standard of review in a bench

trial is whether the trial court's judgment is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008); see also *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 244 (2007) (reviewing a trial court's determination of the amount owed for college expenses based on the manifest weight of the evidence). A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable, or not based on the evidence. *Chicago's Pizza*, 384 Ill. App. 3d at 859.

¶ 29 In the present case, the trial court's determination as to the amount Earl owed for Ashley's college expenses was clearly against the manifest weight of the evidence. The trial court's determination was based, in part, on what was owed for the 2004-2005 and 2005-2006 school years. However, at issue, based on the petition and the agreement of the parties, was what Earl owed for the 2006-2007 and 2007-2008 school years, summer school 2008, and Ashley's final semester in the fall of 2008. Furthermore, although the trial court determined that Earl had paid \$17,552 toward his obligation for Ashley's first two years of college, Earl agreed at trial that he had only paid a total of \$5,891 for the last two and a half years, which were the years at issue.

¶ 30 Additionally, Earl agreed in his closing argument that he owed at least \$24,000, only \$4,561 less than Jodi was asking for. Jodi presented computer printouts of the costs for UIU for the various semesters. She did not have the summer school cost for UIU but presented evidence that Ashley attended summer school at Bradley in 2008 at a cost of \$3,480. Earl did not challenge this cost. The evidence Jodi presented as to the costs of UIU was essentially uncontroverted. The only challenge raised by Earl as to the costs were the amounts charged for fees. Earl pointed out that certain fees were subject to deduction, such as the annual \$360 health insurance fee for the 2006-2007 school year. Jodi acknowledged that Earl provided health insurance for Ashley. Additionally, there were

\$84 in other possibly deductible fees for that school year. However, Earl did not present evidence as to possibly deductible fees for the 2007-2008 school year or for Ashley's final semester. Based on the evidence presented, the amount Earl owed for Ashley's college expenses for the years 2006 through 2008 was \$28,117. This amount represents the amount Jodi was requesting, \$28,561, minus the \$444 in deductible fees for Ashley's 2006-2007 school year. Accordingly, we modify the trial court's judgment to reflect that Earl owed \$28,117 in fees for Ashley's college expenses. See 155 Ill. 2d R. 366 (eff. Feb. 1, 1994) (on appeal, a reviewing court may enter any judgment or make any order that ought to have been given or made).

¶ 31 Jodi's second contention on appeal is that the trial court erred in holding that Earl's failure to pay Ashley's college expenses was not willful and contumacious. Generally, civil contempt occurs when a party fails to do something ordered by the trial court. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2006). The existence of an order of the trial court and proof of willful disobedience of that order is essential to any finding of indirect civil contempt. *Id.* "The failure to make support payments as required by court order is *prima facie* evidence of contempt." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006). College expenses are in the nature of support. *In re Marriage of Koenig*, 2012 IL App (2d) 110503, ¶ 13.

¶ 32 Once *prima facie* evidence of contempt is presented, "[t]he burden then rests on the alleged contemnor to show that his noncompliance was not willful or contumacious and that he has a valid excuse for his failure to pay." *Sharp*, 369 Ill. App. 3d at 279. Whether noncompliance is willful is a question of fact for the trial court, and a reviewing court will not overturn the trial court's determination unless it is against the manifest weight of the evidence or the record reveals an abuse of discretion. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 210 (2011). A trial court abuses its discretion where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person

would take the view adopted by the trial court. *In re Marriage of DiGiovanni*, 2012 IL App (1st) 101876, ¶ 29.

¶ 33 In the present case, we cannot say that the trial court abused its discretion in finding that Earl's failure to pay was not willful or contumacious. Admitted into evidence as Exhibits 31 and 32 were financial affidavits for Earl dated February 2006 and March 2007. Both of those affidavits showed that Earl's monthly income, after taxes and payment of child support, was less than his monthly living expenses. Additionally, the record indicated that Earl's 2006 wages were only \$34,193 and that his business, Esthetique, filed for bankruptcy in 2007. The record also indicated that in 2007, Earl started paying the college expenses of his second child, Justin.

¶ 34 We acknowledge that, based on Jodi's testimony, Earl had income in 2006 of over \$400,000. Jodi presented evidence that, in 2006, Earl wrote checks, totaling more than \$150,000, out of his business accounts to himself and family members for which there were no 1099s or W-2s issued. She also presented evidence that Earl paid personal expenses out of his business accounts. Earl testified that 1099s were currently being issued and that all the funds withdrawn were used for business expenses. We note that it is the function of the trier of fact to decide what reasonable inferences to draw from the evidence, to evaluate whether witnesses are credible, and to resolve any conflicts in the evidence. *In re Detention of Ehrlich*, 2012 IL App (1st) 102300, ¶ 72. The trial court apparently found Earl's testimony credible.

¶ 35 In arguing that Earl failed to meet his burden to explain his lack of payment, Jodi relies on *Sharp*. In *Sharp*, the respondent was required to pay \$5,000 per month in temporary child support and maintenance. *Sharp*, 369 Ill. App. 3d at 273. The respondent failed to pay as required and the petitioner filed a petition for rule to show cause. *Id.* This court held that the respondent did not meet his burden to show that he was financially unable to make the required payments and affirmed the

trial court's finding that the respondent's failure to pay was willful and contumacious. *Id.* at 280. The evidence indicated that the respondent had received over \$180,000 of income from a trust and had borrowed \$8,000 since the entry of the support order and had failed to make the requisite support payments. *Id.* The respondent testified that he spent the trust income on rent, car payments, attorney fees and "other unidentified expenses totaling \$31,000." *Id.* at 283. This court noted that "financial inability to comply with an order must be shown by definite and explicit evidence, and that burden is not met by general testimony with regard to financial status." *Id.* at 282 (citing *In re Marriage of Ramos*, 126 Ill. App. 3d 391, 398 (1984)). This court held the evidence was not sufficient to sustain the respondent's burden because he was unable to account for a large portion of the money he received. *Id.*

¶ 36 The unidentified expenses in *Sharp* render that case distinguishable from the present case. Here, in his financial affidavits, Earl specifically set forth his gross monthly income and his required monthly deductions, including taxes and child support. Additionally, Earl itemized his monthly living expenses. It is proper to pay bare living expenses before being required to make payments on a decree. *Ramos*, 126 Ill. App. 3d at 399-400 (citing *Shaffner v. Shaffner*, 212 Ill. 492, 496 (1904)). Earl's claimed monthly living expenses were not unduly excessive. Moreover, the record indicated that Earl was paying college expenses for the parties' second oldest child commencing in 2007 and that his business, Esthetique, filed for bankruptcy in that same year. During this time, Earl continued to fulfill his monthly child support obligation. This evidence was sufficiently specific to meet Earl's burden to show that his noncompliance was not willful or contumacious.

¶ 37 In so ruling, we note that Jodi argues that the trial court was prejudiced against her. Jodi notes that in its October 24, 2010, written order, when addressing whether Earl's conduct was willful and contumacious, the trial court stated that it "further acknowledges the lack of respect and

communication between the parties as evidenced during the almost three (3) years of proceedings on the within petition.” Jodi argues that this showed the trial court held the length of the proceedings on her petition against her. We disagree. A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Allegations of judicial bias or prejudice must be viewed in context. *People v. Jackson*, 205 Ill. 2d 247, 277 (2001). When read in context, the statement by the trial court indicates the lack of respect and communication was applied equally to both parties. The foregoing statement is insufficient to overcome the presumption of the trial court’s impartiality.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, the judgment of the circuit court of Lake County is affirmed as modified.

¶ 40 Affirmed as modified.