NOTICE
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2012 IL App (5th) 100361-U

NO. 5-10-0361

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
WEIYING DUANMU TAO,	)	Jackson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 99-D-283
	)	
RONGJIA TAO,	)	Honorable
	)	William G. Schwartz,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's order after judgment, entered almost 10 years after the parties' marriage was dissolved, which *inter alia* awarded interest against husband with regard to the parties' bank accounts, awarded the wife's debt, which consisted of a loan from her brother, refused to credit the husband for overcompensation to the wife with regard to the Invesco-AIM account, denied the husband's motion *in limine* and objection to jurisdiction, found the husband in contempt, and awarded the wife attorney fees and costs associated with the instant litigation.

¶ 2 Original respondent, petitioner herein, Rongjia Tao (the husband), appeals from an order of the circuit court of Jackson County, entered almost 10 years after the parties' marriage was dissolved. The new order, *inter alia*, (1) requires the husband to pay interest on amounts owed to original plaintiff, respondent herein, Weiying Duanmu Tao (the wife), (2) finds the husband in indirect civil contempt, (3) requires the husband to pay attorney fees and costs incurred by the wife regarding the instant litigation in the amount of $22,750, (4)

requires the husband to pay the wife $4,110 to reimburse the wife for a loan from her brother, and (5) requires the husband to pay the wife $10,400, plus $3,605 in expert witness costs, to reimburse her for losses occasioned by his unlawful trading. On appeal, the issues we are asked to address are: (1) whether the award of interest with regard to bank accounts was in error, (2) whether the trial court's award of the wife's debt, which consisted of a loan from her brother, was in error, (3) whether the trial court's refusal to credit the husband for overcompensation to wife with regard to the Invesco-AIM account was in error, (4) whether the trial court's denial of the husband's motion *in limine* and objection to jurisdiction, reliance on evidence submitted after the denial, and subsequent finding of dissipation of $10,400, plus witness costs of $3,605, was in error, and (5) whether the trial court's finding of contempt and award of attorney fees was in error. We affirm in part and modify in part.

¶ 3 BACKGROUND

¶ 4 The parties were married in the People's Republic of China on December 22, 1976. Two children were born during the marriage, but have since reached the age of majority. In 1989, the parties and their children moved to Carbondale after the husband secured employment as a professor of physics at Southern Illinois University. On July 17, 1999, the wife filed a petition for dissolution of marriage. In September 2000, the husband moved to Pennsylvania after he accepted a position in the physics department at Temple University.

¶ 5 On August 10, 2001, a judgment of dissolution was entered, which not only granted the parties a divorce but also distributed their assets. Pursuant to the judgment, the wife was allowed to stay in the marital home while it was placed on the market for sale. The husband was to make repairs and pay taxes and insurance, which were to be reimbursed following the sale of the house. The proceeds of the sale and the investment accounts were to be divided equally between the parties. The retirement and tax-deferred accounts were to be divided with 60% to the wife and 40% to the husband, the division of which was to be effective

March 16, 2001. Remaining accounts were to be split equally between the parties. The wife was awarded maintenance in the amount of $2,500 per month for 10 years. The judgment covered other matters, including medical bills, debts, and legal fees.

¶ 6 Both parties filed motions to reconsider. On September 20, 2001, both motions to reconsider were denied, and the date of March 16, 2001, was ordered to be used as the date for dividing the investment, retirement, and tax-deferred accounts. Both parties appealed the decision to this court, but the appeals were voluntarily dismissed.

¶ 7 The husband continued to trade shares of stock that were ordered divided as investments in the judgment of dissolution. Most of the stocks were finally divided, but not until almost two years later. The judgment of dissolution did not contemplate a tax refund in 2000. After judgment was entered, the husband amended the tax returns, forged the wife's name on the amended return, and forged the wife's name on the tax refund, without ever telling her about the refund.

¶ 8 On September 26, 2002, the husband filed a request for enforcement of judgment of dissolution and sanctions for failure of the wife to sell the house and sign the paperwork that would divide certain money market and pension accounts. On February 14, 2007, the wife filed a petition for rule to show cause, alleging the husband failed to comply with the terms of the judgment for dissolution and praying he be held in contempt and judgment be entered against him in the form of money damages, sanctions, shares of stock, and other relief. Thereafter, discovery, hearings, and negotiations took place.

¶ 9 On May 21, 2010, the trial court entered an order after judgment of dissolution, holding as follows:

> "1. [The husband] is found to be in indirect civil contempt of this Court. The Court will not impose any additional sanctions on [the husband] as the Court is going to require [the husband] to pay all of the attorney fees and costs of [the wife]. [The

husband] is informed that any further noncompliance with the orders of this Court will result in severe sanction.

2. Interest at the rate of 9% should be imposed on any amount ordered to be paid at the time the Judgment for Dissolution of Marriage was entered on August 10, 2001, except as noted herein.

3. [The wife] is entitled to interest on the amended 2000 tax return. An interest rate of 9% per annum on the $4,221.96 is imposed and $2,352.73 in interest is awarded to [the wife].

4. [The wife] is entitled to interest on the Pennsylvania 2000 tax refund. An interest rate of 9% per annum on the $307.34 is imposed and interest of $0.08 per day is awarded to [the wife].

5. As to the 'bank accounts', the net amount awarded to [the wife] is $4,388.18 plus interest payable by [the husband].

6. The agreement of the parties regarding the TIAA-CREF Accounts is affirmed by the Court.

7. [The wife] is awarded $1,695.00 from the T. Rowe Price accounts based on the agreement of the parties. No interest is to be paid on this amount.

8. The claim of [the wife] for $800.00 for the school expenses of the daughter is denied.

9. [The husband] shall pay to [the wife] $4,110.00 to reimburse her for the loan from her brother.

10. The demand of [the husband] for reimbursement of 148.516 shares of Invesco-Aim Technology Fund is denied.

11. [The husband] shall pay [the wife] $3,605.00 to reimburse her for the cost of expert witness fee which was absolutely required due to the financial manipulations

of [the husband].

12. [The husband] shall pay [the wife] $22,750.00 to reimburse her for the attorney fees she has expended in this matter.

13. [The wife] is awarded $10,400.00 to reimburse her for the losses occasioned to her by the unlawful trading of [the husband] and to disgorge from [the husband] a portion of the tax savings he realized by his stock manipulation. No interest is to be paid on this amount."

The husband now appeals.

¶ 10 ANALYSIS

¶ 11 The first issue we are asked to address is whether the award of interest with regard to bank accounts was in error. The husband argues that the trial court's award of interest back to August 10, 2001, was an abuse of discretion, inequitable, and contrary to the law. He insists that the amount of funds to be divided between the parties was not even certain until May 23, 2008, and, thus, the award of interest on the bank accounts should only have gone back to May 23, 2008. The husband also contends that the trial court's refusal to hear testimony or receive evidence related to the E*Trade account was an abuse of discretion and inequitable. We disagree.

¶ 12 Whether interest should be awarded is a question that lies within the sound discretion of the trial court. *Finley v. Finley*, 81 Ill. 2d 317, 332, 410 N.E.2d 12, 19 (1980). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378, 571 N.E.2d 1135, 1140 (1991).

¶ 13 After examining the record before us, we cannot say the trial court abused its discretion in awarding interest. While the husband would like us to believe that the funds were not divided between the parties until May 23, 2008, the record belies his assertion. In the original judgment of dissolution, the trial court divided the investment accounts,

retirement accounts, tax-deferred accounts, and other accounts, including bank accounts and the E*Trade account. Paragraph 10 of that judgment specifically pertains to "Retirement and Tax Deferred Accounts" and states that the division of the accounts shall be effective "on March 16, 2000." Motions for reconsideration were filed by both parties after which the trial court entered an order on September 20, 2001, providing clarifications with regard to paragraph 9 (investment accounts) and paragraph 10 (retirement and tax deferred accounts) of the judgment of dissolution and ordering the date for effective division of the accounts to be March 16, 2001. While the trial court did not specifically add that date to paragraph 11 (other accounts), which includes the bank accounts in issue here, the husband later argued that the date of March 16, 2001, should be used as the date for division of the accounts because it was the date set by the trial court to divide the retirement and tax-deferred accounts. For the husband now to argue that the award of interest dating back to August 10, 2001, is erroneous is disingenuous. He was aware that he would be responsible for a division at some point, but fought it every step of the way, thereby not only depriving the wife of the money in those accounts but also making it necessary for her to go through extensive additional enforcement litigation.

¶ 14 Moreover, we find no error in the trial court's refusal to hear testimony or receive evidence related to the E*Trade account. Our examination of the record reveals that the trial court did allow additional evidence when it admitted the husband's exhibits 7 and 9, but refused to allow evidence on the E*Trade account because the husband was trying to reopen evidence submitted seven years earlier on this issue. The husband ignores the fact that the record reveals he continued to trade shares of stock that were ordered to be divided as investments in the judgment of dissolution and that it was two years before he divided the stocks; he deprived wife of her rightful share of the money in the accounts for several years. Under these circumstances, we find that the trial court did not abuse its discretion in

awarding interest on the bank accounts, dating back to August 10, 2001, nor did the trial court err in refusing to hear testimony or receive evidence related to the E*Trade account.

¶ 15 The second issue we are asked to address is whether the trial court's award of the wife's debt, which consisted of a loan from her brother, was in error. The husband argues that the loan is questionable because it is from a family member, and the only person who testified about the nature of the loan was the wife and her testimony was inconsistent. The husband further argues that because the trial court ruled on March 16, 2001, that "[e]ach party shall be responsible for debts incurred after the entry of Judgment of Dissolution including his or her attorney fees incurred in connection with this cause," the questionable loan obtained by the wife on March 22, 2001, is her own debt and should not have to be paid by him. However, we agree with the wife that this issue is waived.

¶ 16 The judgment of dissolution entered on August 10, 2001, specifically orders the husband to pay the debts of the wife incurred prior to April 30, 2001. No modification was made to this order of the court. Both parties filed appeals, which were voluntarily dismissed. Thus, the order that the husband was required to pay all the debts of the wife incurred prior to April 30, 2001, is final and cannot be addressed herein. Even assuming *arguendo* the issue was not waived, we would find no error in the trial court's order that the husband be required to reimburse the wife money she was forced to borrow from her brother during the divorce proceedings.

¶ 17 In the instant case, the wife testified that she borrowed $4,110 from her brother on March 22, 2001, to meet living expenses. In early January 2001, the husband cancelled all of the credit cards she previously used to pay for her living expenses. Maintenance payments did not begin until May 1, 2001. Therefore, the wife was forced her to borrow money from her brother. The trial court addressed the issue in its May 21, 2010, order and specifically found the $4,110 loan to be a valid marital debt the husband is required to pay.

> "A court of review should not second-guess the trial court's factual findings on the validity of a debt when that finding is based upon the trial court's assessment of the credibility of witnesses and the weight it gives to their testimony [citations], unless the trial court's findings are against the manifest weight of the evidence." *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 869, 634 N.E.2d 1295, 1304 (1994).

In the instant case, the record is replete with instances of the husband's bad-faith dealings with regard to the wife, including multiple forgeries of her name, lack of distribution of assets for years, and canceling her credit cards, all of which left the wife in a precarious financial situation. Under these circumstances, we cannot say the trial court erred in ordering the husband to pay the $4,110 the wife borrowed from her brother in March 2001 to help her pay her living expenses before maintenance started.

¶ 18 The third issue we are asked to consider is whether the trial court's refusal to credit the husband for overcompensation to the wife with regard to the Invesco-AIM account was in error. The husband insists that the trial court's refusal to grant him credit for overpayment of shares was an abuse of discretion and evidence of judicial bias. We disagree.

¶ 19 While there are certainly instances in which equity would demand that credit be given for overpayments, *i.e.*, *In re Marriage of Tollison*, 208 Ill. App. 3d 17, 566 N.E.2d 852 (1991), the instant case is not one of those instances. Here, the husband was ordered to distribute the investment accounts, including the Invesco-AIM account, in an order entered by the trial court on September 20, 2001. That order further provided that the date of March 16, 2001, as the date to be used for dividing the investment accounts. However, the husband blatantly ignored the trial court's order and instead continued to trade shares of stock that were ordered to be divided. The husband did not divide the Invesco-AIM account until November 21, 2003, over two years after the trial court ordered the husband to do so.

¶ 20 While we are aware that distribution of marital assets must be made "without regard

to marital misconduct" (750 ILCS 5/503(d) (West 2008)), the misconduct here far exceeds any marital misconduct. Not only did the husband fail to comply with the trial court's order to distribute the Invesco-AIM account until two years after he was ordered to do so, but he also continued to trade shares in that account. Eight years after the husband finally distributed the Invesco-AIM account, he then sought reimbursement for overpayment, insisting that the wife's one half of the shares in the Telecommunications Fund were converted into shares in the Technology Fund on April 2, 2001, and he overpaid her.

¶ 21 Our review of the record indicates that over the course of this litigation, the trial court did hear evidence concerning overpayment. For example, during the April 1, 2009, hearing the trial court specifically asked the husband if the husband indeed had divided up the account on April 2, 2001, and had only traded his half of that stock, why did he not sign the other half of those shares over to the wife? At that time, the husband admitted that all the shares of stock were in his name, even though he allegedly only traded his half. The husband was seeking reimbursement based upon the current price of the stock, not the price at the time of disbursement.

¶ 22 Overall, the record indicates that the husband's alleged overpayment was a mess of his own making. The husband has failed to convince us he is entitled to a credit or that there was judicial bias against him. Under the circumstances presented here, where the husband's conduct was so egregious with regard to the distribution of the Invesco-AIM account, we cannot say the trial court erred in denying the husband's demand for reimbursement of 148.516 shares of Invesco-AIM Technoloy some eight years after the account was distributed.

¶ 23 The fourth issue raised is whether the trial court's denial of the husband's motion *in limine*, and objection to jurisdiction, reliance on evidence submitted after the denial, and subsequent finding of dissipation of $10,400, plus witness costs of $3,605, was in error. The

husband argues (1) the trial court was not vested with subject matter jurisdiction to review and assess penalties related to his 2001 federal income tax filing because only the United States Tax Court and federal courts of appeal have the authority to review and assess penalties related to the filing of a federal tax return, and (2) the trial court's classification on the wife's inability to claim the capital gain losses as dissipation was contrary to the law and the trial court's valuation related to the capital loss was against the manifest weight of the evidence.

¶ 24 Contrary to the husband's assertion, we find nothing in the record to indicate that the trial court was attempting to assess a penalty related to his 2001 tax filing. The instant litigation constituted enforcement proceedings with regard to the underlying judgment of dissolution. It is well-settled that a trial court may retain jurisdiction to enforce its orders even after the 30-day period for posttrial motions has passed where the judgment contemplates or orders future performance by the parties. *Anest v. Bailey*, 265 Ill. App. 3d 58, 66, 637 N.E.2d 1209, 1215 (1994). Such is the case here where the judgment required distribution of numerous assets between the parties. In fact, the trial court's judgment for dissolution of marriage entered on August 10, 2001, specifically states, "This court expressly retains jurisdiction of this cause and the parties for the purpose of enforcing all the terms and provisions of this Judgment and any subsequent qualified domestic relations order or orders entered to facilitate this Judgment and its provisions."

¶ 25 With regard to the husband's argument concerning "dissipation," we point out that his posttrial motion does not even use the term "dissipation." The trial court awarded the wife "$10,400.00 to reimburse her for the losses occasioned to her by the unlawful trading of [the husband] and to disgorge from [the husband] a portion of tax savings he realized by his stock manipulation." The only argument asserted in the posttrial motion with regard to this issue is that "[t]he court should reconsider awarding [the wife] the sum of $10,400 and Mr.

Hendricks' $3,605 on an issue that is abstract, speculative, and not a real controversy." However, our review of the record shows a real controversy.

¶ 26 It is clear that the husband did not distribute all of the marital assets and that some of those assets lost value over time. A review of Mr. Hendricks' testimony supports the amount awarded by the trial court. Moreover, because the expert fee of $3,605 was required to prove to the trial court the amount of benefit the husband received ($10,400), the trial court did not err in awarding either amount. We refuse to reverse the award of either $10,400 or $3,605 in expert fees.

¶ 27 The final issue raised is whether the trial court's finding of contempt and award of attorney fees was in error. The husband contends that the award of attorney fees was a penalty, which is an inappropriate sanction for indirect civil contempt, and insists that the award of attorney fees must be vacated. We disagree with the husband that the award of attorney fees must be vacated.

¶ 28 Civil contempt is coercive rather than punitive; a finding of civil contempt results from a 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 party. *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 628, 579 N.E.2d 432, 439 (1991). In civil contempt proceedings, the contemnor must have the opportunity to purge the contempt by being provided with the "keys to his cell" even after he has been imprisoned, and must also have the power to comply with the order. *Pryweller*, 218 Ill. App. 3d at 633, 579 N.E.2d at 442. On the other hand, criminal contempt is an act committed against the majesty of the law in disrespect of the court or its process, and the court acts to preserve its dignity by punishing the wrongdoer. *Pryweller*, 218 Ill. App. 3d at 629, 579 N.E.2d at 439. Criminal contempt sanctions are imposed for the purpose of punishing past misconduct. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43, 558 N.E.2d 404, 415 (1990).

¶ 29 In the instant case, the trial court made a specific finding of "indirect civil contempt." The trial court noted that it "will not impose any additional sanctions on [the husband] as the Court is going to require [the husband] to pay all of the attorney fees and costs of [the wife]." While there is no doubt that the trial court's language makes it appear that the award of attorney fees was punishment, which is an inappropriate sanction for indirect civil contempt, the award of attorney fees to the wife is nevertheless justifiable because she was forced to file enforcement proceedings against the husband.

¶ 30 Section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides in pertinent part 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).

Here, the trial court found the husband's failure to comply with the previous judgment of dissolution unjustified. Accordingly, attorney fees are an appropriate award for the wife's enforcement action in the circuit court. Overall, the substance of the trial court's ruling is sound. Therefore, under the powers available to us under Supreme Court Rule 366 (eff. Feb. 1, 1994), we hereby affirm the award of all attorney fees, but modify the trial court's order to reflect that the award is pursuant to section 508 of the Act rather than as a sanction for indirect civil contempt.

¶ 31 For the foregoing reasons, the judgment of the circuit court of Jackson County is affirmed in part and modified in part.

¶ 32 Affirmed in part and modified in part.