

FIRST DIVISION  
DECEMBER 23, 2013  
MODIFIED UPON DENIAL OF REHEARING FEBRUARY 24, 2014

Nos. 1-12-1250 & 1-12-1591, Consolidated

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE THE MARRIAGE OF:	)	Appeal from the
AMY KAWIECKI,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 09 D 330303
v.	)	
	)	
DAVID KAWIECKI,	)	Honorable
	)	David Haracz,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Connors and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in awarding \$800 monthly maintenance to ex-wife in divorce proceedings; evidence did not support ex-husband's arguments that the trial court abused its discretion with respect to the allocation of interim attorney fees, money advances made to ex-wife and credit card payments made by ex-husband; and the trial court did not err in ordering ex-husband to refinance marital home and in entering a finding of indirect civil contempt against him.

¶ 2 This appeal arises from the December 28, 2011 order entered by the circuit court of Cook County, which dissolved the marriage between petitioner Amy Kawiecki (Amy) and respondent

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David Kawiecki (David), and arises from the court's May 30, 2012 order finding David in indirect civil contempt of court. On appeal, David argues that: (1) the trial court erred in awarding monthly maintenance to Amy; (2) the trial court erred in failing to allocate an award of interim attorney fees to Amy against her ultimate share of the marital estate; (3) the trial court erred in failing to allocate certain money advances made to Amy and credit card payments made by him during the pendency of the litigation, against Amy's ultimate share of the marital estate; and (4) the trial court erred in ordering him to refinance the marital residence and in finding him in contempt of court for his failure to refinance the home. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In 1994, Amy and David married in Niles, Illinois, and three children were born of their marriage in 1996, 2000 and 2005. The family resided in the parties' marital residence in Palatine, Illinois. During the marriage, Amy worked part-time at Alliance Pension Consultants, while David was employed as a network analyst by the Cancer Treatment Centers of America. As part of their employment benefits, both Amy and David contributed to various retirement savings accounts.

¶ 5 On March 25, 2009, Amy filed a petition for dissolution of marriage. During the pendency of the proceedings, Amy increased her work hours to 34 or 35 hours per week and earned \$27 per hour. Amy also completed her college degree at Roosevelt University and received partial tuition reimbursements of up to \$2,500 per year from her employer.

¶ 6 On January 15, 2010, upon Amy's petition for allocation of household expenses and petition for interim attorney fees, the court ordered David to pay Amy \$7,500 in moving expenses, which

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were "subject to further allocation," and \$5,000 to Amy's counsel for legal fees incurred in connection with the divorce proceedings. Thereafter, in February 2010, Amy vacated the marital residence and moved to a rental home in Palatine, Illinois, with the couple's three children. Monthly rent for Amy's new home cost \$1,650, excluding utilities. David continued to live in the marital residence.

¶ 7 On February 24, 2010, the trial court entered an agreed order by which David was ordered to pay temporary child support in the amount of \$1,200 per month and to pay the balance due on the parties' Discover Financial and Target National Bank credit cards. The court also ordered David to pay the children's school-related expenses for the remainder of the 2009-2010 school year. The agreed order stated that Amy represented to the court that her average monthly net income was approximately \$2,000, and that David represented to the court that his average monthly net income was \$6,200.

¶ 8 On August 19, 2010, upon Amy's petition for interim attorney fees, the trial court ordered that the marital home's equity line of credit be used to pay \$10,000 in interim legal fees to Amy's counsel and \$15,000 in interim legal fees to David's counsel in connection with the divorce proceedings. The trial court specified that "[s]aid amounts are without prejudice subject to reallocation."

¶ 9 In an order dated September 22, 2010, the trial court, based on David's "9/17/10 pay stub," ordered David to pay statutory guideline child support to Amy in the amount of \$2,200 per month. The order further stated that Amy and David shall equally split payment for "all uncovered medical expenses, extracurricular activities, school tuition [and] expenses for the children."

¶ 10 On October 4, 2010, Amy and David entered into a parenting agreement, which was

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approved by the trial court, awarding sole custody of the children to Amy and granting David parenting time as follows: (1) "every Thursday from after school until Friday morning, when David shall be responsible for getting the children to school"; (2) "alternating weekends, commencing with his Thursday parenting time, and continuing through Monday morning when he shall return the children to school"; (3) "every Wednesday evening commencing after school, or at 9 a.m. if there is no school, \*\*\* and return the children to Amy's residence on Wednesday night" when school is in session; and (4) alternating holidays and vacation time.

¶ 11 On January 12, 2011, Amy filed a "petition for adjudication of indirect civil contempt" (petition for civil contempt), alleging that David failed to fully comply with the court's September 22, 2010 order. Specifically, she alleged that David owed her \$1,044.07 to date for his share of the costs relating to the children's extracurricular activities, tuition and uncovered medical expenses.

¶ 12 In March 2011, Amy filed a motion for sanctions, alleging that David refused to comply with her discovery requests in a timely manner, and filed an emergency motion for sanctions for David's failure to appear at his discovery deposition.<sup>1</sup>

¶ 13 On April 19, 2011, upon Amy's petition for interim attorney fees, the trial court ordered that the marital home's equity line of credit be used to pay \$30,000 in interim attorney fees to Amy's counsel and \$12,000 in interim attorney fees to David's counsel in connection with the divorce proceedings.

¶ 14 In an order dated June 24, 2011, the trial court found that, only \$246.81 out of the \$1,044.07

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<sup>1</sup>The parties have not indicated in their briefs, and it is unclear in the record, as to whether and when the trial court made any rulings with regard to these motions.

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that Amy's petition for civil contempt alleged was owed by David, was subject to the terms of the court's September 22, 2010 order. The trial court, however, stated that although \$246.81 was not a large sum, David had failed to present any direct evidence that he had made any attempts to pay the requested expenses, that he had failed to provide a legally sufficient reason for not complying with the September 22, 2010 order, and that David's conduct had "defeated and impaired the rights and interests of [Amy] and [had] further impeded and obstructed the [c]ourt in its administration of justice." The trial court then declared David to be in indirect civil contempt of court, which "may be purged by the payment of \$246.81." Thereafter, David paid the \$246.81 to Amy.

¶ 15 On June 27, 2011, Amy filed a second "petition for adjudication of indirect civil contempt" (second petition for civil contempt), alleging that David failed to fully comply with the court's September 22, 2010 order by refusing to reimburse Amy for half of the costs relating to the children's extracurricular activities, tuition, and uncovered medical expenses that were incurred between January 12, 2011 and June 16, 2011.

¶ 16 On August 22, 2011, Amy filed a petition for contribution to attorney fees and costs (petition for contribution), which was subsequently amended on October 17, 2011. The amended petition for contribution alleged that Amy was entitled to a contribution for her attorney fees and costs from David, because it was David's actions and inactions that had caused an unnecessary protraction of the litigation and unnecessary legal fees to be incurred.

¶ 17 Between June 2011 and October 2011,<sup>2</sup> over several days, a trial was conducted regarding

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<sup>2</sup>The record is devoid of a transcript of the trial proceedings, which Amy explained in footnote 3 of her brief was due to the absence of a court report at trial. However, a certified

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the dissolution of the parties' marriage. Amy testified at trial that she worked part-time at Alliance Pension Consultants during a majority of the marriage, but that, during the pendency of the proceedings, she increased her work hours to 34 or 35 hours per week and earned \$27 per hour. In 2010, she earned a gross income of \$44,321. She testified that she completed her college degree from Roosevelt University during the pendency of the divorce proceedings, and that her employer made partial tuition reimbursements of up to \$2,500 per year between August 2008 and May 2010. Amy testified that, prior to the court's entry of the September 22, 2010 order, she was solely responsible for costs relating to the children's extracurricular activities and uncovered medical expenses because David did not contribute to these costs. According to two spreadsheets of expenses for the children's school-related activities, which were admitted as Petitioner's Exhibits 9 and 10, Amy spent approximately \$5,309.64 between July 2009 and March 2010, and \$3,371.60 between April 2010 and September 2010. Amy testified that she regularly emailed David spreadsheets, along with attached invoices and receipts, demonstrating the expenses she incurred regarding the children. However, other than David's payment to her for the amount necessary to "purge" the first indirect civil contempt of court imposed against him, David had yet to pay his share of costs relating to the children's extracurricular activities, tuition and uncovered medical expenses, in violation of the court's September 22, 2010 order. Amy testified that expenses incurred between January 12, 2011 and July 29, 2011, which were due for reimbursement from David, totaled

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bystander's report summarizing the trial proceedings was included as a supplemental record. Although the bystander's report does not include the exact dates of the trial, a transcript of the March 19, 2012 hearing on David's motion to reconsider indicated that trial started in June 2011 and ended in October 2011.

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\$2,525.69 as set forth in Petitioner's Exhibit 8.

¶ 18 Amy testified that their two youngest children were enrolled in Catholic school, while the oldest child attended a public high school. Each party was responsible for paying 50% of the tuition directly to the private school. She stated that she has paid for the children's uniforms, hot lunches, field trips, and other school-related expenses. According to Amy, David informed her that he would not pay for the children's clothing. All of the children were covered by David's employer-provided medical insurance, however, David frequently pocketed reimbursements from the insurance company for medical expenses that Amy paid on behalf of the children. Specifically, Amy testified that she paid a total of \$2,609 in medical expenses for the children (Petitioner's Exhibit 12) in 2010, for which David received reimbursements totaling \$1,564.38 from the insurance company that David failed to give to Amy. At trial, Amy requested that the children be placed on her employer-provided medical insurance. Amy further testified to David's failure to pay a credit card balance, pursuant to the court's February 24, 2010 order, which resulted in Amy's incurring interest charges and late fees totaling \$694.50. Amy stated that, as a result of David's noncompliance with the court's orders, she had been forced to incur substantial attorney fees in connection with the divorce proceeding—such as the filing of several petitions for rule to show cause; a motion to compel discovery and for sanctions; a motion to compel David's deposition; and an emergency motion for sanctions. At the time of trial, Amy owed her attorney \$21,485.67. Amy testified that the marital estate consisted of the marital residence, the parties' retirement accounts, various bank accounts, and two vehicles.

¶ 19 Amy further testified as to her Rule 13.3.1 disclosure statement to the court, which was admitted at trial (Petitioner's Exhibit 11). She noted that she paid for the children's clothing,

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grooming, activities, medical expenses, and school-related items without contribution from David. According to her disclosure statement, as of January 1, 2011, Amy's monthly net income was \$2,967.98 (excluding child support), her monthly living expenses totaled \$5,894, and she had \$7,712 in credit card debt. Amy testified that she was requesting maintenance from David, and that she wanted to equally split all unpaid medical and extracurricular expenses for the children with David.

¶ 20 On cross-examination, Amy testified that the completion of her college degree was not a requisite to keeping her employment, and acknowledged that she received tuition reimbursements from her employer in the yearly amount of \$2,500 in 2009 and 2010. Amy stated that she did not deposit the 2010 funds into the parties' joint account, but retained them in her own personal bank account. Amy acknowledged that the children spent a significant amount of time with David, which was "roughly equivalent to one less overnight per week than her during the school year." She stated that David usually fed the children dinner on Wednesday nights.

¶ 21 David testified as an adverse witness that he had been employed by the Cancer Treatment Centers of America since prior to the parties' marriage. He worked in the information technology group and earned a base salary of \$115,630 annually, and earned a gross annual income of \$138,000 (including bonuses) in 2010. He testified that he deposited both his 2010 and 2011 bonuses into a personal bank account, and did not split any portion of his bonuses with Amy. David testified that he was residing in the marital residence, which carried no mortgage but was encumbered by a home equity line of credit (HELOC). He testified that he paid a monthly installment of \$200 on the HELOC, which was sometimes paid with funds from the parties' joint account. David testified that he wished to retain the marital residence and "buy out" Amy's interest in the equity, and that the



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parties had previously stipulated to the home's fair market value as \$322,500. David further stated that the children were covered under his employer-provided medical insurance, that he contributed to an employer-provided 401(k) account, and that he received matching contributions from his employer. According to David, he did not utilize the direct deposit option for receiving his paychecks; instead, he frequently did not deposit his paychecks and held onto them for weeks at a time. He testified that he deposited his income into his own checking account at First Bank, which he opened in his sole name with a beginning balance of \$23,000 on October 27, 2009. David claimed that he often did not deposit the entire amount of his paychecks, but would retain some funds in cash for personal expenses. At trial, David was questioned about a spreadsheet detailing the differences between his monthly earnings and monthly deposits between April 2009 and November 2010 (Petitioner's Exhibit 19), which indicated that \$41,830.88 of his earnings was unaccounted for and missing from his bank account. David explained that some of those funds were used for his personal expenses, but stated that he used a credit card to pay for living expenses such as food, gasoline and entertainment. He testified that he regularly tithed to his church, bought lunches for himself during the work week, gave spending money to the children, and occasionally used cash to pay for gasoline and other personal expenses. However, David was not able to state with specificity how he spent the cash he retained from his paychecks. He testified that, during the divorce proceedings, he transferred a total of \$15,000 from his checking account into college savings accounts for the children.

¶ 22 At trial, David acknowledged that he failed to make any payments for the children's expenses as required by the court's September 22, 2010 order. He acknowledged that he received multiple

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communications from Amy detailing the amounts she claimed he owed, that some of the expenses were legitimately owed by him, but that he did not make any payments to Amy. David testified that he "took issue with numerous charges itemized by Amy," such as the fact that he did not agree to the children being in therapy. David further testified that he was also entitled to an offset against the charges claimed by Amy for certain expenses he had incurred, such as the children's cellular telephones and his own gym membership. According to David, he had complied with the court's February 24, 2010 order by paying the amount that was due and owing on the credit card ending in number 539, but that the current remaining balance was incurred after the entry of the February 24, 2010 order. David testified that he had a 403(b) savings plan from his previous employment with Moraine Valley Community College, that he left his employment at the community college prior to the marriage, and that he made no additional contributions to the 403(b) savings plan during the marriage. He requested that the court award him the funds in his 403(b) plan as his non-marital property. He further testified that he agreed to the stipulated fair market value of the marital residence at \$322,500, subject to the HELOC balance of approximately \$100,000, and that he would like the option to purchase Amy's interest in the marital residence at the stipulated price.

¶ 23 On November 16, 2011, the trial court denied Amy's October 17, 2011 amended petition for contribution.

¶ 24 On December 28, 2011, the trial court entered a judgment for dissolution of marriage (the judgment). The trial court found that Amy's 2010 gross income was \$44,000, that David's 2010 gross income was \$138,000, and that David's monthly net income was \$6,848.37. Pursuant to the judgment, David was ordered to pay Amy monthly child support of \$2,191.48, which "represents

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guideline child support using a gross annual income of \$138,000." David was further ordered to pay 32% of the net amount of any additional income in excess of \$138,000 as child support. The parties' October 4, 2010 parenting agreement was also adopted and incorporated by reference into the judgment. The judgment ordered Amy to maintain medical and dental insurance for the children, and the parties were ordered to equally split the children's insurance premiums and unreimbursed medical expenses. The parties were also ordered to equally divide costs relating to the children's extracurricular activities, school tuition and school expenses. The judgment also ordered David to pay Amy \$6,000 in child support arrears and \$1,564.38 for unreimbursed medical expenses for March to December 2010, and granted Amy's second petition for civil contempt by finding that David's failure to pay child-related expenses from January to October 2011 was "willful and contemptuous." The court set the purge of David's civil contempt at \$2,032.70. Pursuant to the judgment, David was ordered to pay maintenance to Amy in the amount of \$800 per month, "reviewable in 6 years upon petition by either party," and ordered to pay Amy 50% of the net amount of his 2010 and 2011 bonuses. The judgment allowed David to retain the parties' marital home, ordered David to refinance the debt associated with the residence to remove Amy's name within 60 days of the entry of the judgment, and ordered David to pay Amy for her interest in the property at 55% of the equity—the specific amount of which would be determined by the court on January 5, 2012.<sup>3</sup> The trial court further found David's Moraine Valley Community College 403(b) savings plan to be his separate non-marital property, and ordered the parties' remaining retirement savings

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<sup>3</sup>On March 19, 2012, the trial court made a determination that the HELOC amount was \$107,711.49 and incorporated it into the judgment.

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accounts to be divided 55/45 in favor of Amy. With respect to the parties' debt liabilities, the court ordered David to pay Amy \$694.50 for the parties' Target credit card within 30 days of judgment. The court found that David's previous failure to pay this credit card was not willful and ordered that "each party shall be responsible for any and all current or future debts incurred in his or her sole name." The judgment further ordered David to pay Amy \$5,638.75 for his contribution to her attorney fees, pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/508(b) (West 2010)), but held that each party shall be solely responsible for paying his or her own remaining attorney fees.

¶ 25 On January 27, 2012, David filed a motion to reconsider the judgment (motion to reconsider), alleging that the trial court erred in awarding monthly maintenance to Amy; in failing to allocate an award of interim attorney fees to Amy against her ultimate share of the marital estate; and in failing to allocate certain money advances made to Amy and credit card payments made by him against Amy's ultimate share of the marital estate. On March 19, 2012, the trial court denied David's motion to reconsider, and determined that the HELOC amount to be incorporated into the judgment as due and owing to Amy was \$107,711.49.

¶ 26 On April 12, 2012, Amy filed a third "petition for adjudication of indirect civil contempt and petition to incarcerate [David] for failure to purge contempt" (third petition for civil contempt), alleging that David had yet to pay the amount due to purge his prior civil contempt of court; that David failed to pay his child support arrearages as ordered by the December 28, 2011 judgment; that David failed to pay his 50% share of the children's medical expenses, extracurricular activity expenses, and school-related expenses; that David failed to pay Amy a 55% share of the marital

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residence; that David failed to pay Amy 50% of the net amount of his 2010 and 2011 bonuses; that David failed to pay the balance on the parties' Target credit card; and that David failed to pay \$5,638.75 for his contribution to her attorney fees pursuant to section 508(b) of the Marriage Act (750 ILCS 5/508(b) (West 2010)).

¶ 27 On April 17, 2012, David filed a notice of appeal, which appealed from the court's December 28, 2011 judgment and March 19, 2012 order denying his motion to reconsider (appeal No. 1-12-1250).

¶ 28 On May 30, 2012, the trial court granted Amy's third petition for indirect civil contempt, again finding David in indirect civil contempt of court for failing to pay the amounts specified therein. The order stated that David must pay \$28,000 by June 6, 2012 in order to avoid incarceration. The trial court further ordered David to "bring proof of his efforts to refinance the debt on the marital residence since the judgment," at which point the "remaining purge shall be determined."

¶ 29 On June 4, 2012, David filed a second notice of appeal, which appealed from the court's May 30, 2012 order (appeal No. 1-12-1591).

¶ 30 On June 5, 2012, David tendered a \$21,500 check in open court. In an order dated June 6, 2012, the trial court continued David's "emergency motion for stay of contempt sanctions" until June 7, 2012, ordered David to bring a check for the remaining \$6,500 or else face incarceration, and ordered David to "bring proof of any attempts to refinance" the marital residence. On June 7, 2012, David tendered a \$6,500 check.

¶ 31 On June 12, 2012, this court consolidated the two appeals (appeal Nos. 1-12-1250 and 1-12-

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1591).

¶ 32

#### ANALYSIS

¶ 33 We determine the following issues on appeal: (1) whether the trial court erred in awarding monthly maintenance to Amy; (2) whether the trial court allocated an award of interim attorney fees to Amy against her ultimate share of the marital estate; and (3) whether the trial court allocated certain money advances made to Amy and credit card payments made by David during the pendency of the litigation, against Amy's ultimate share of the marital estate; and (4) whether the trial court erred in ordering him to refinance the marital residence and in finding him in contempt of court for his failure to refinance the home.

¶ 34 We first determine whether the trial court erred in awarding monthly maintenance to Amy, which we review under an abuse of discretion standard. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). Generally, a trial court's determination as to the awarding of maintenance is presumed to be correct, and an abuse of discretion exists only where no reasonable person would take the view adopted by the trial court. *Id.* The party challenging the maintenance award has the burden to show an abuse of discretion. *Id.* Further, a party challenging the trial court's factual findings will not be reversed unless they are against the manifest weight of the evidence—that is, only when the opposite conclusion is clearly evident or if the findings are unreasonable, arbitrary or not based on the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010).

¶ 35 Section 504 of the Marriage Act provides that in a proceeding for dissolution of marriage, the trial court "may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for

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fixed or indefinite periods of time," after consideration of all relevant factors. 750 ILCS 5/504(a)  
(West 2010). Relevant factors enumerated under section 504(a) of the Marriage Act are as follows:

- "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;
- (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
- (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;
- (6) the standard of living established during the marriage;
- (7) the duration of the marriage;
- (8) the age and the physical and emotional condition of both parties;
- (9) the tax consequences of the property division upon the respective economic circumstances of the parties;

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- (10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or licence of the other spouse;
- (11) any valid agreement of the parties; and
- (12) any other factor that the court expressly finds to be just and equitable." *Id.*

No single factor is determinative in considering the duration and amount of maintenance, and the trial court is not limited to a review of the factors outlined in section 504 of the Marriage Act in setting a maintenance award. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008). In considering the relevant statutory factors, the trial court is not required to give them equal weight so long as the balance struck is reasonable under the circumstances, and the court need not make specific findings as to the reasons for its decisions. *In re Marriage of Nord*, 402 Ill. App. 3d at 293. The benchmark for awarding maintenance is the evaluation of the party's reasonable needs in view of the standard of living established during the marriage. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 773 (1998).

¶ 36 David argues that the trial court erred in awarding maintenance to Amy, arguing that, including child support and the award of maintenance, Amy receives 63.5% of the total income earned by the parties, despite the fact that he shares equal parenting time with Amy and is required to contribute to half of all the children's expenses. David contends that the balancing of the statutory factors under section 504 of the Marriage Act should tip in his favor.

¶ 37 Amy counters that David has failed to establish that the trial court erred in awarding her \$800



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in monthly maintenance. She contends that David distorts the facts through inaccurate figures, and that the trial court properly took into account the statutory factors and attendant considerations necessary in awarding maintenance.

¶ 38 Initially, we note that the record, as discussed, is devoid of a transcript of the trial proceedings. However, a certified bystander's report was included as a supplemental record, which summarized the testimony of Amy and David at trial but did not summarize any remarks made by the trial court. Our review of the record reveals that both Amy and David were each given the opportunity to submit a proposed bystander's report to the court, that David's response to Amy's proposed bystander's report stated that it was accurate but requested the inclusion of two extra details pertaining to a credit card balance, and that the trial court allowed the inclusion of the requested details and certified Amy's proposed bystander's report as the final report for purposes of this appeal. Pursuant to Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Sept. 23, 1996), where no verbatim transcript of the evidence of proceedings is obtainable, a certified bystander's report may be included in the record on appeal. Regardless of whether a transcript or a bystander's report is provided on appeal, an appellant "has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392.

¶ 39 David asserts that Amy had a greater monthly cash flow than he did, and makes a number of convoluted arguments relating to the calculations of the trial court's award of child support and

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maintenance in an attempt to demonstrate the "actual math" behind each party's financial condition. He argues in his opening brief that the trial court's judgment allowed Amy to receive 63.5% (Amy's salary, child support and maintenance combined) of the total income earned by both parties, but later argues in his reply brief that the court's ruling allowed Amy to receive a total of 59% (Amy's salary, child support and maintenance combined) of the parties' total combined monthly income.

¶ 40 We find that, notwithstanding these conflicting figures and even if Amy received the higher 63.5% of the total income earned by the parties, David has not established that the trial court abused its discretion in awarding \$800 in monthly maintenance to Amy under the circumstances of this case. Rather, several factors support the maintenance award. The parties were married for 17 years, during which Amy worked part-time but devoted much time to maintaining the household and helping to raise the parties' three minor children while David worked full-time as the family's primary breadwinner. Although Amy increased her work hours during the pendency of the divorce proceedings, she earned a gross income of only \$44,321.18 in 2010. David's 2010 gross income was \$138,000.<sup>4</sup> The court's December 28, 2011 judgment allowed David to retain the parties' marital home, ordered David to pay Amy for her interest in the property at 55% of the equity, assigned David's Moraine Valley Community College 403(b) savings plan as his separate non-marital property, and ordered the parties' remaining retirement savings accounts to be split 55/45 in favor of Amy. The court further apportioned David and Amy each a vehicle from the marital estate. Amy

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<sup>4</sup>According to David's trial testimony and the trial court's judgment, David earned a gross income of \$138,000 in 2010. However, David's 2010 W-2 wage and tax statement indicated that he earned a gross pay of \$128,481.72. Regardless of this discrepancy, it is clear that David's earnings was approximately three times that of Amy's earnings.

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was also awarded sole custody of the parties' three minor children. The evidence shows that, after vacating the parties' marital residence, Amy rented a home for \$1,650 per month. According to Amy's Rule 13.3.1 disclosure statement, which was admitted at trial, as of January 1, 2011, she earned a monthly net income of \$2,967.98, and had monthly living expenses (including the children's expenses of \$1,733) totaling \$5,894—which amounted to a monthly deficit of approximately \$2,926.02 ( $\$2,967.98 - \$5,894 = -\$2,926.02$ ). David's monthly net income was found to be \$6,848.37.<sup>5</sup> While it is true that Amy earned a college degree during the pendency of the divorce proceedings, there was no evidence that the degree would significantly bolster her future income to allow her to enjoy a standard of living commensurate to what she enjoyed during the marriage. See *In re Marriage of Dunlap*, 294 Ill. App. 3d at 773 (the benchmark for awarding maintenance is the evaluation of the party's reasonable needs in view of the standard of living established during the marriage); *In re Marriage of Drury*, 317 Ill. App. 3d 201, 207 (2000) (“[a] spouse seeking maintenance should not be required to sell assets or impair capital to maintain herself in a manner commensurate with the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet both his needs and the needs of his former spouse”). We note that while the parties did not live luxuriously during their marriage, they did live comfortably. They owned a home that was not encumbered by a mortgage, owned two vehicles, sent their children to private schools,

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<sup>5</sup>In his reply brief, David argues that the court's finding that his monthly net income totaled \$6,848.37 was only based on his base gross annual salary of \$115,630, rather than the higher \$138,000 annual salary that included his bonuses in 2010. However, this argument seems to undermine his own position on appeal, by suggesting that his monthly take-home pay was actually *greater* than \$6,848.37 when it is calculated based on his gross income of \$138,000.

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contributed to various retirement savings accounts, and contributed to their children's college and savings accounts. The large disparity in the parties' income suggests that David, who had always been the household's primary financial provider with consistent six-figure annual earnings and performance bonuses, has a strong current and future earning capacity, while Amy does not. Moreover, although David was awarded a lesser share (45% share) of the marital estate—including the parties' retirement savings accounts and the marital residence—David was allowed to reside in the marital home, which was only subject to a \$200 monthly HELOC installment payment at the time of trial, and was awarded the Moraine Valley Community College 403(b) savings plan as separate non-marital property valued at \$40,010.08 as of January 24, 2011 (Respondent's Exhibit 15). See *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075, 1088 (2011) ("the ability of the maintenance-paying spouse to contribute to the other's support can be properly determined by considering both current and future ability to pay ongoing maintenance"); see generally *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 33 (1994) (a spouse's greater financial contributions do not necessarily entitle him or her to a greater share of the marital assets).

¶ 41 Nonetheless, David argues that the second statutory factor—the needs of each party—under section 504(a) of the Marriage Act did not favor either party, contending that he and Amy had equivalent needs and responsibilities. He maintains that the "most significant testimony" at trial concerning the needs of each party came from Amy herself, who allegedly testified on cross-examination that based on the allocation of parenting time between the parties, it would be reasonable for David's expenses to be comparable to hers. He further contends that, with the exception of \$250 for the children's monthly clothing costs which Amy testified she alone paid, all

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other expenses for the children were divided equally between the parties. Thus, David contends, the "needs of each party" factor did not favor either party. We reject this contention. First, we find that David fails to point to anything in the bystander's report to show that Amy testified at trial that David's expenses were comparable to hers. Instead, David cites a portion of the trial court's March 19, 2012 transcript of the hearing on the motion to reconsider, in which David's counsel recounted his recollection of Amy's alleged trial testimony. This is insufficient evidence to support his claim that the parties' expenses were comparable. Second, it is unclear how this argument advances David's position on appeal because, even assuming that the parties' parenting time was equal, there is no evidence that this lessens Amy's expenditures for the children nor increases his expenditures in any significant way. Rather, it only highlights how Amy must meet all the same expenses for the children and herself at a fraction of David's monthly income. David further argues that, in considering the needs of the party, the court should have considered the additional expenses, such as a new mortgage or rental expenses, that David would be forced to pay as a result of the trial court's ordering him to refinance and "buy out" Amy's interest of the marital residence. We reject this contention and find that, at the time the trial court entered judgment dissolving the marriage, the court need not engage in speculation as to the amount of any future mortgage or rental expenses that David may have to incur as a result of refinancing the home. See *In re Marriage of Wade*, 158 Ill. App. 3d 255, 269 (1987) (an award of maintenance "should not be based on speculation as to the future conditions, but on circumstances disclosed by the evidence"); see generally *In re Marriage of Wilder*, 122 Ill. App. 3d 338, 361 (1983) (an award of maintenance will not be reversed "based on some hypothetical and highly speculative argument regarding the possible future increase in the

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reasonable needs of petitioner"). Thus, we find that the first and second statutory factors weigh in favor of Amy.

¶ 42 With respect to the third statutory factor—"the present and future earning capacity of each party"—David concedes that this factor favored Amy *before* accounting for the cost of monthly child support, but argues that it favored him *after* the cost of child support is calculated into the parties' monthly income. He argues that, after receiving monthly child support of \$2,191.48, Amy has a monthly net cash flow of \$5,159.46, while David only has a monthly net cash flow of \$4,656.89 after giving child support to Amy. We find this argument to be unpersuasive. As discussed, there is no evidence in the record to suggest that Amy is capable of earning much more than her current salary, nor that her college degree would significantly bolster her future income to allow her to enjoy a standard of living commensurate with what she enjoyed during the marriage. Further, David has not cited any legal authority to show that the trial court was obligated to ensure a dollar-for-dollar match for each party's monthly cash flow. Thus, we find that this factor weighs in favor of Amy.

¶ 43 With respect to the fourth statutory factor—"any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage"—David asserts that this factor favored neither party. David further argues that the court's award of maintenance to Amy was not permanent but "rehabilitative" in nature, and that Amy was self-sufficient. We disagree.

¶ 44 "Maintenance for a limited period is appropriate where the spouse is employable at an income not overly disproportionate from the standard of living established during the marriage." *In re*

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*Marriage of Wade*, 158 Ill. App. 3d at 269. "Conversely, where the spouse is not employable or is employable only at a low income, as compared to the previous standard of living, permanent maintenance would be appropriate." *Id.* In the December 28, 2011 judgment, the trial court awarded Amy \$800 in monthly maintenance, stating that "[t]his amount shall be reviewable in 6 years upon petition by either party." We find that, as discussed, the evidence shows that Amy only worked part-time during a majority of the marriage and helped to raise the parties' three minor children while David was the primary breadwinner for the family. It was not until the pendency of the divorce proceedings that Amy earned a college degree. Thus, it is reasonable to infer that Amy delayed her education and possible career opportunities and focused on her domestic duties. We further reject David's characterization that the court's maintenance award to Amy was only rehabilitative, not permanent, in nature. The court's judgment awarding maintenance did not contain a time limit by which David would be relieved of his obligation, and clearly stated that the *amount*, not propriety, of the maintenance award was reviewable in six years upon petition by either party. We find that the evidence supports the court's decision to award permanent maintenance, where, as discussed, Amy is employable at a low income compared to her previous standard of living, and the facts of this case required a conclusion that Amy's overall standard of living had been diminished by the divorce and that she would not likely earn a future income to support herself at a comparable level to what she enjoyed during the marriage. See *In re Selinger*, 351 Ill. App. 3d 611, 618-19 (2004) (permanent maintenance is justified where receiving spouse has employment skills but there is a discrepancy between her probable future income and the amount of income that would provide the standard of living she enjoyed while married).

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¶45 Further, we reject David's argument that the award of maintenance was inappropriate because Amy was financially protected due to the court's apportionment of a larger share (55%) of marital assets to her. We find his reliance on *In re Marriage of Bratcher*, 383 Ill App. 3d 388 (2008) to be misplaced. In *In re Marriage of Bratcher*, the reviewing court reversed the ex-wife's \$12,500 per month maintenance award, where she had been awarded over \$1.6 million in marital assets, had the potential for making additional income as a real estate agent, and she was receiving \$8,193 per month from income-producing property and \$5,845 in interest income derived from an \$876,759 lump-sum payment. *In re Marriage of Bratcher*, 383 Ill. App. 3d at 389. The reviewing court particularly noted that while the ex-wife would never generate the income that the ex-husband did, there was no need for her to work because she was awarded substantial assets. *Id.* at 391. We find *In re Marriage of Bratcher* to be factually distinguishable from this case, where Amy had received no income-producing property from the marital assets, and it is clear that Amy needs to work. We further reject certain arguments made by David that awarding maintenance to Amy, who was also receiving 55% of the marital assets, could only be described as "punitive." David cites no authority in support of this contention and thus, we need not address whether the court's maintenance award was "punitive." Based on our review of the record, we cannot say that no reasonable person would take the view adopted by the trial court, even if this court may have reached a different conclusion. See *In re Marriage of Ribordy*, 128 Ill. App. 3d 1073, 1077 (1984) (mere fact that a reviewing court may have reached a different result regarding the award of maintenance does not amount to an abuse of discretion). Therefore, we hold that the trial court did not abuse its discretion in awarding \$800 in permanent monthly maintenance to Amy.



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¶ 46 We next determine whether the trial court failed to, but should have, allocated an award of interim attorney fees to Amy against her ultimate share of the marital estate. We also review the awarding of attorney fees under an abuse of discretion standard. See *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 379 (2008) (the awarding of attorney fees and the proportion to be paid are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion).

¶ 47 David argues that the trial court erred in failing to allocate interim attorney fees in the amount of \$18,000, against Amy's ultimate share of the marital estate. Specifically, he contends that because the trial court had denied Amy's October 17, 2011 amended petition for contribution, section 501(c-1)(2) of the Marriage Act required that Amy's interim attorney fees be treated as advanced distributions that must be credited against her share of the marital estate.

¶ 48 Amy counters that the trial court had discretion under section 501(c-1)(2) of the Marriage Act as to whether to treat the interim attorney fees as an advance against the marital property. She contends that David had failed to satisfy his burden of showing that the trial court failed to consider interim attorney fees in its final distribution of the marital estate, where his brief is "devoid of any useful citation to the record which would tend to suggest" that the trial court erred in its distribution. She argues that David failed to establish error because there was no evidence that the trial court did not consider the amount of interim attorney fees at the time it apportioned the marital estate. Amy further asserts that, in dividing the marital estate in her favor, the trial court was allowed to consider David's actions during the litigation, including his noncompliance with court orders.

¶ 49 Section 501(c-1)(2) of the Marriage Act provides in pertinent part that:

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"Unless otherwise ordered by the court at the final hearing between the parties, \*\*\* interim awards, as well as the aggregate of all other payments by each party to counsel and related payments to third parties, shall be deemed to have been advances from the parties' marital estate." 750 ILCS 5/501(c-1)(2) (West 2010).

An "interim award" is statutorily defined as an award of attorney fees and costs "assessed from time to time while a case is pending." 750 ILCS 5/501(c-1) (West 2010).

¶ 50 In the case at bar, during the pendency of the proceedings in 2010, the trial court granted interim attorney fees totaling \$45,000 to Amy and \$27,000 to David from the marital estate. The difference between the parties' total interim awards was an additional \$18,000 (\$45,000 - \$27,000 = \$18,000) given to Amy. On November 16, 2011, the trial court denied Amy's amended petition for contribution of attorney fees and costs that incurred *subsequent* to the interim awards to Amy. However, in its December 28, 2011 judgment, the trial court, pursuant to section 508(b) of the Marriage Act, ordered David to pay Amy \$5,638.75 as contribution to Amy's attorney fees as a result of the court's findings that David was "willful and contemptuous" in failing to comply with previous court orders to pay child-related expenses. The court then ordered each party to be solely responsible for paying his or her own *remaining* attorney fees.

¶ 51 We first reject David's contention that the trial court's denial of Amy's amended petition for contribution was related to the issue of the allocation of interim awards. The amended petition for contribution concerned only attorney fees that had yet to be paid at the time of the filing of the petition, and there was no evidence that the fees requested therein bore any relationship to the

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interim attorney fees that had previously been paid to Amy's counsel. In fact, the amended petition for contribution specified that, "[t]o date, Amy has paid [her attorneys] the sum of \$40,000,"<sup>6</sup> thus, showing that the court's ruling on the amended petition for contribution had no bearing on the court's position regarding the allocation of interim attorney fees. Further, we find that David has failed to show that the trial court did not consider the issue of *interim* attorney fees in making its final distribution of the marital estate. He has pointed to nothing in the record that would guide this court to conclude that the trial court, in apportioning the marital estate, failed to account for the amount of interim attorney fees that Amy received. As noted, the trial court was not required to make specific findings regarding the relevant factors it considered in dividing the marital property. See *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 433 (1993) (court need not make specific findings as to each relevant factor in dividing marital property); see generally *In re Marriage of Nord*, 402 Ill. App. 3d at 293 (the court need not make specific findings as to the reasons for its decisions). Because there was no evidence suggesting error by the trial court, it is presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92. We further find that David's argument fails to take into consideration that the trial court, in dividing the marital estate in favor of Amy (55% share), was permitted to consider all relevant factors, including David's conduct during the pendency of the proceedings that unnecessarily increased the cost of litigation. The record shows that such conduct included his refusal to comply with Amy's discovery requests in a timely manner, his failure to appear at his

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<sup>6</sup>Forty thousand dollars of the interim attorney fees were paid to Amy's second counsel, while \$5,000 in interim attorney fees were paid to Amy's original counsel.

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discovery deposition, his failure to comply with court orders with respect to paying child-related expenses, and that he had then twice been held in indirect civil contempt of court. See *In re Marriage of Haken*, 394 Ill. App. 3d 155, 161 (2009) (undue litigiousness that unnecessarily increased the cost of litigation is a relevant factor in the division of property as well as in allocating attorney fees); *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 74 (1994) (affirming trial court's decision to reduce total attorney fees to be paid by respondent, where petitioner's counsel failed to control the litigiousness of its own client). David asserts in his reply brief that, under section 503(d) of the Marriage Act, the court must divide marital property without regard to "marital misconduct." However, that term applies to conduct during the marriage that predates the divorce proceedings. Thus David's use of the rule is misplaced. It is worth reiterating that the abuse of discretion standard is a high one. Simply because we may have made a different ruling under these facts, does not meet the standard for finding that the trial court abused its discretion. Therefore, we hold that the evidence does not support David's arguments that the trial court abused its discretion with respect to the allocation of attorney fees.

¶ 52 We next determine whether the trial court allocated certain money advances made to Amy and credit card payments made by David during the pendency of the litigation, against Amy's ultimate share of the marital estate.

¶ 53 David argues that the trial court erred in failing to allocate credit card payments and other money advances against Amy's ultimate share of the marital estate. These sums include the \$7,500 in moving expenses granted to Amy, approximately \$10,000 in credit card payments made by David during the pendency of the divorce proceedings, and "over one year" of Amy's income that she

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allegedly did not deposit into the parties' joint account prior to vacating the marital residence. Specifically, he argues that because the trial court did not mention these sums in its judgment, they must not have been credited against Amy's ultimate share of the marital estate. He maintains that, without allocation of these advances and payments, Amy stood to gain an additional \$38,500 in marital assets.

¶ 54 Amy counters that David's argument on this issue, like his arguments pertaining to the allocation of interim attorney fees, rests on the faulty assumption that the trial court did not credit the sums in question against Amy's ultimate share of the marital estate simply because they were not mentioned in the court's judgment. Amy argues that David fails to offer any evidence that suggests that the trial court, in making its final distribution of the marital assets, did not consider the advances Amy received. She further contends that David's allegations were not supported by the record and that he fails to cite to any relevant authority to support his claim.

¶ 55 We find David's arguments to be unpersuasive. Although David asserts that Amy's testimony reveals that she "ceased to deposit her paychecks into the [j]oint checking account in May of 2009 before voluntarily vacating the marital residence in February of 2010," which he claims resulted in Amy retaining \$21,000 of the marital assets, we find that the portion of Amy's testimony to which David cites does not support his claim. Rather, Amy testified that she received tuition reimbursements from her employer in the amount of \$2,500 in 2009 and 2010, and that she "did not deposit the 2010 funds into the parties' joint account but retained them in her own personal account in her own name." There is no mention in Amy's testimony that she retained the income from her paychecks between May 2009 and February 2010. In his reply brief, David attempts to reiterate this

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point by citing to a different part of the record that shows two of Amy's bank account statements. However, the bank statements only reflect banking activities spanning a two-month period between December 18, 2009 and February 18, 2010, and show direct deposits of Amy's paychecks totaling \$5,494.66. Thus, we find that the record does not support David's claim that Amy withheld \$21,000 of her income from the marital estate. Further, the same basis upon which we rejected David's arguments regarding the issue of interim attorney fees also govern resolution of this issue. David has not offered any evidence to suggest that the trial court's failure to specifically outline its reasoning regarding the money advances and credit card payments at issue necessarily meant that the trial court failed to account for these sums. We again point out that the trial court is not required to itemize every single point of consideration in its ruling. Nothing in the record leads this court to conclude that the trial court, in apportioning the marital estate, did not consider these amounts or allocate some or all of these sums against Amy's ultimate share. See *In re Marriage of Benkendorf*, 252 Ill. App. 3d at 433 (court need not make specific findings as to each relevant factor in dividing marital property). Because there was no evidence suggesting error by the trial court, it is presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92. We further find David's cited authority, *In re Marriage of Heroy*, 385 Ill. App. 3d 640, to be inapposite and distinguishable from the case at bar. In *In re Marriage of Heroy*, the reviewing court found that the ex-husband was entitled to a credit of \$25,296 that he advanced to his ex-wife during the pendency of the divorce proceedings in order to allow her to pay her credit card bills, where the ex-wife *did not dispute* the ex-husband's argument on appeal. *In re Marriage of Heroy*, 385 Ill. App. 3d at 668. In this case, Amy has vigorously contested David's

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argument on this point. We hold that the evidence does not support David's arguments that the trial court abused its discretion with respect to the allocation of certain money advances made to Amy and credit card payments made by David during the pendency of the litigation.

¶ 56 We next determine whether the trial court erred in ordering David to refinance the marital residence and in finding him in indirect civil contempt of court for his failure to refinance the home as ordered by the court.

¶ 57 David argues that the trial court exceeded its authority in ordering him to refinance the marital home without providing the alternative option of selling the residence, especially because the court's judgment rendered David with insufficient cash flow to qualify for refinancing by the bank. He contends that the court's order requiring him to refinance the marital home must be deemed void, where it is akin to impermissibly requiring him to "purchase an asset." David further argues that his inability to refinance the marital home, and thus comply with the court's order, was neither willful nor contumacious because it was due to reasons beyond his control. Thus, he argues, the trial court's finding of contempt against him must be vacated.

¶ 58 Amy counters that the trial court did not err in ordering David to refinance the marital residence, a relief which he explicitly sought at trial, and thus, David has waived any right to challenge this issue on appeal. Specifically, she argues that because the home was encumbered by a HELOC, it was reasonable for the trial court to grant David's request by ordering him to refinance the home and pay Amy a percentage share of her interest in the property. Amy further contends that the record is devoid of any evidence that David ever attempted to refinance the home, and thus, the trial court's finding of contempt against David was proper.

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¶ 59 As a preliminary matter, we note that David's brief before this court mentions that "the marital home had since been ordered sold, but the new order is silent regarding the costs associated with the sale." He then references a August 2012 "new order" contained in the appendix of his brief for support, but makes no other arguments relating to this new order. We decline to address any arguments relating to the "new order," where the two notices of appeal filed by David only sought relief from the trial court's December 28, 2011 judgment dissolving the parties' marriage, the court's March 19, 2012 denial of his motion to reconsider, and the court's May 30, 2012 order granting Amy's third petition for civil contempt against him. See *In re D.R.*, 354 Ill. App. 3d 468, 471 (2004) (a notice of appeal is required to specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court). Nor is this referenced "new order" the proper subject for review on appeal as one that could be considered a prior non-final order or ruling which produced the judgment. See *id* ("appeal from a subsequent final judgment draws in question all prior non-final orders and rulings which produced the judgment"). Moreover, we find that the "new order" was not included in the record on appeal, but was only included in the appendix of David's brief, and thus, it is not properly before this court. See *In re O.R.*, 328 Ill. App. 3d 955, 961 (2002) ("[a]ttachments to briefs not otherwise of record are not properly before a reviewing court and cannot be used to supplement the record"). Accordingly, we will not address David's limited references to the "new order."

¶ 60 Turning to David's arguments relating to the trial court's directives to refinance the marital residence and its decision to grant Amy's third petition for indirect civil contempt against him, we find that no error was committed by the trial court. In its December 28, 2011 judgment, the trial



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court allowed David to retain the parties' marital home, ordered David to refinance the debt associated with the residence to remove Amy's name within 60 days of entry of the judgment, and ordered David to pay Amy for her interest in the property at 55% of the equity. We find that the trial court did not err in ordering David to refinance the marital home, where the record reveals that David specifically requested this relief at trial. Our review of David's testimony in the bystander's report reveals that he desired to retain the marital residence and that he wanted "the option to purchase Amy's interest in the marital residence" at the parties' stipulated price of \$322,500. Because David took the position at trial that allowing him to retain the marital home and to purchase Amy's interest in the property was in his own best interest, he cannot now complain on appeal that the trial court's decision to grant his requested relief was in error. See *Sbarboro v. Vollala*, 392 Ill. App. 3d 1040, 1052 (2009) (a party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding; a party cannot complain of error which he induced the court to make or to which he consented). We further reject David's argument that the trial court should have provided him with an option to sell the marital residence. David does not point to any place in the record to show that in requesting to retain the residence and purchase Amy's interest, he qualified his request to the court with a contingency that he also be granted an option to sell the home in lieu of a buyout. Nor does he cite to any legal authority to support his contention that the trial court was required to make available to him the option to sell the marital home along with apportioning a larger share of the marital property to Amy. Likewise, David has referenced no legal authority to support his characterization that in ordering him to refinance the marital residence, the trial court impermissibly ordered him to "purchase an asset." Therefore, we find that David has

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waived any contention of error by the trial court in ordering him to refinance the marital home.

¶ 61 Even if not waived, we find no error in the trial court's directives to refinance the marital residence. David complains that in ordering him to refinance the property, the trial court did not grant the relief he requested. The crux of David's argument is that although he asked the court to allow him to purchase the marital home, the option chosen by the court to accomplish this was an abuse of discretion. Presumably, the abuse of discretion occurred because the court's order required him to "refinance" the home rather than simply allowing him to "purchase" the home. This is a distinction without a difference. The record makes it clear that the trial court was fully aware of the financial resources of the parties. David makes no argument that he would have been able to purchase the marital home and pay Amy her proportionate share without refinancing the property. Thus, the trial court granted David the relief he requested. Accordingly, we will not disturb the trial court's ruling on this issue.

¶ 62 With respect to the trial court's finding of indirect civil contempt against David, we find that the trial court did not commit error. In its May 30, 2012 order, the trial court granted Amy's third petition for indirect civil contempt against David for failing to comply with the court's December 28, 2011 judgment, including, *inter alia*, his failure to pay Amy a 55% share of the marital residence. The trial court's May 30, 2012 order stated that David must pay \$28,000 by June 6, 2012 in order to avoid incarceration, and further ordered David "to bring proof of his efforts to refinance the debt on the marital residence since the judgment." In an order dated June 6, 2012, the trial court again ordered David to "bring proof of any attempts to refinance" the marital residence. David maintains that the court's finding of contempt was erroneous because the bank would not approve his

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application for refinancing; thus, due to reasons beyond his control, he lacked the ability to purge himself of contempt. The record shows that the trial court gave David the opportunity to provide evidence of his efforts to refinance the home as ordered. However, the record is devoid of any evidence that David had tried, but failed, to refinance the marital residence. No evidence exists in the record to show that he complied with the court's May 30, 2012 and June 6, 2012 orders by offering any proof to the court, as ordered, of his attempts to refinance. David cannot meet his burden of showing that his failure to refinance the home was not willful and contumacious. We cannot say, in the absence of evidence of his efforts after being given an opportunity to provide such evidence, that no reasonable person would take the view adopted by the court. See *In re Marriage of Tatham*, 293 Ill. App. 2d 471, 480 (1997) ("the burden rests upon the alleged contemnor to show that noncompliance was not wilful [*sic*] and contumacious and that he or she has a valid excuse for failure to follow the court order"); see also *Foutch*, 99 Ill. 2d at 392 ("[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant"). Therefore, we hold that the trial court did not err in entering a finding of indirect civil contempt against David for his failure to refinance the marital residence.

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 64 Affirmed.