

No. 1-12-3413

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 MARRIAGE OF:	)	
	)	
ROBYN BRASS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
and	)	12 D 4156
	)	
ADAM BRASS,	)	The Honorable
	)	David Haracz,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: (1) The circuit court did not abuse its discretion in entering and refusing to vacate two orders which lifted only portions of previously entered preliminary injunctions to allow the purchase of real estate by the respondent with nonmarital funds and to

liquidate two accounts for placement into a joint account to pay the parties' expenses. (2) The petitioner's appeal of the portion of the second order awarding interim attorney fees was dismissed because there was no jurisdiction to review the interim attorney fees award, and the circuit court did not violate section 12-2006 of the Code of Civil Procedure (735 ILCS 5/12-2006 (West 2012)) because it did not order the liquidation of retirement accounts to pay the interim attorney fees.

¶ 1

## BACKGROUND

¶ 2 Appellant, Robyn Brass, and appellee, Adam Brass, are currently in divorce proceedings in the Domestic Relations Division of the circuit court of Cook County. The parties were married on January 29, 1989. The parties have three children: Sasha, now 21 years old; Joshua, now 20 years old; and Chloe, now 13 years old. Robyn is now 55 years old and Adam is 49 years old. On April 26, 2012, Robyn filed a petition for dissolution of the marriage, and Adam filed his response on June 14, 2012.

¶ 3 On April 26, 2012, Robyn also filed a petition for a temporary restraining order and preliminary injunction, seeking injunctive relief enjoining Adam from transferring any money or making any expenditures in excess of \$5,000 or otherwise reducing the parties' assets. Robyn alleged that Adam, a citizen of the United Kingdom, with financial accounts in the United States, England, Israel, and the off-shore "tax havens" of Switzerland and the Channel Islands, had transferred approximately \$500,000 from the marital estate to a personal account, a limited liability company which Adam controls, and to an unknown corporation. Robyn also alleged that Adam attempted to encumber the marital residence without her permission. Robyn further alleged that Adam has a severe substance abuse problem.

¶ 4 On April 27, 2012, the circuit court found that Robyn met each of the required elements for a temporary injunctive relief and granted her request for a temporary restraining order and

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enjoined Adam as Robyn requested in her petition. The temporary restraining order entered by the court on that date provided as follows:

"The Court Hereby Finds:

1. That Marital property has been put at risk by ADAM without Robyn's consent.
2. That ROBYN has an ascertainable right to the marital assets.
3. That ROBYN is likely to be successful in her Petition for Dissolution of Marriage, which requests that an equitable portion of the marital estate be allocated to her.
4. That ROBYN will be irreparably damaged if ADAM is not enjoined from dissipating and transferring the marital assets of the parties, because ADAM has placed substantial portions of the marital estate at risk.
5. That ROBYN has no adequate remedy at law to protect her interests if ADAM is not restrained from reducing the marital estate, concealing assets, dissipating assets, and depriving ROBYN to her rightful share in them.
6. That a Temporary Restraining Order should issue without further notice to ADAM, inasmuch as it clearly appears from ADAM'S prior actions that further notice will cause ADAM to accelerate the very transactions that will irreparably damage the marital estate before the time for responding has elapsed and before the injunction can issue.
7. That damage to ADAM as a result of this injunction is unlikely, and sufficient marital assets are allocable to ADAM to pay damages, if any, so that no bond is necessary or appropriate.

8. That the entry of a Temporary Restraining Order [] will preserve the status quo during the pendency of these proceedings, and will enable the court to properly adjudicate the property rights of the parties.

**IT IS HEREBY ORDERED:**

1. That an Ex Parte Temporary Restraining Order is hereby issued against the Respondent, ADAM BRASS, without notice and without bond, enjoining and restraining the Respondent, ADAM BRASS, his agents, assigns and those acting at his direction or on his behalf from transferring, assigning, encumbering, concealing, hypothecating, pledging, mortgaging, borrowing against, damaging, destroying, depreciating, selling, withdrawing, dissipating, making gifts of, guarantying debts with, expending, or otherwise dealing with or disposing of any real or personal property or income in any amount in excess of \$5,000 per individual transaction, or \$5,000 cumulatively per month.

2. This Temporary Restraining Order [] is entered on April 27, 2012 at 1:15 a.m. and shall expire on May 7, 2012, at 11:15 a.m. unless extended by the Court or by written agreement of the parties.

3. The hearing on the Preliminary Injunction is set for May 7, 2012 at 10:15 a.m.

\*\*\*."

¶ 5 On May 8, 2012, Robyn filed an emergency motion to extend the temporary restraining order pending a hearing on her request for a preliminary injunction, which was granted by the court that same day.

¶ 6 On May 9, 2012, the court entered an agreed order extending the temporary restraining

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order but lifting it with respect to three bank accounts to permit household expenses to be paid.

¶ 7 On May 17, 2012, Adam filed his verified response to Robyn's petition for a temporary restraining order and preliminary injunction, denying Robyn's entitlement to temporary injunctive relief. On the same day, Robyn withdrew her petition for a temporary restraining order in exchange for the entry of an agreed order giving her injunctive relief and ordering the liquidation of an account containing approximately \$273,000 to pay outstanding marital debts and Sasha and Joshua's unpaid college tuition bills at the University of Michigan and Vanderbilt University and disbursed \$25,000 to each party as an advance from the marital estate. Further, the order required Adam to deposit income from his employment as a financial executive into a joint account to pay family expenses. The order also required Robyn to account for an \$80,000 transfer she made from the parties' joint checking account on February 3, 2012. Both Adam and Robyn agreed that if either of them intends to liquidate, move, or transfer assets in the amount of \$100,000 he or she is required to provide the other party with three days' notice and explain the specifics of any such transfer. The order further required that the transfer of lesser amounts be reported after the fact.

¶ 8 On June 8, 2012, Robyn filed a petition for indirect civil contempt for violation of the May 17, 2012 order, arguing that on June 1, 2012, Adam transferred \$50,000 to an account in the parties' son Joshua's name. Adam filed his response on July 12, 2012 denying Robyn's allegation and counter-petitioned for sanctions against her. On June 25, 2012, Robyn filed a petition for exclusive possession of the marital residence, recounting allegations of Adam's substance-abuse problem, which are irrelevant for purposes of this appeal.

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¶ 9 On June 26, 2012, Robyn filed an emergency petition for indirect civil contempt for violation of the May 17, 2012 order, alleging that Adam refused to provide any financial support to Robyn and their children, that \$110,938.40 in bills remained unpaid, and that Adam refused to transfer the \$25,000 disbursement as stated in the agreed order. Robyn further alleged in this petition for civil contempt that the parties' residences and all the utilities and tax bills are in Adam's name. On June 27, 2012, the court entered an order finding Robyn's petition not to be an emergency set a briefing schedule and set the matter for hearing on July 12, 2012, at 1:45 p.m.

¶ 10 On July 10, 2012, Robyn filed a petition for interim and prospective attorney fees and costs, alleging that she is a homemaker and, without receiving funds from Adam, she lacks the ability to pay her own legal fees. Robyn sought fees in the amount of \$58,813.79 and \$75,000 for interim and prospective attorney fees and costs, and requested that Adam be ordered to make the \$133,813.79 payment within three days.

¶ 11 On July 12, 2012, Robyn filed a petition for temporary support.

¶ 12 Adam filed his response to Robyn's petition for indirect civil contempt on July 12, 2012, denying Robyn's allegations. On July 12, 2012, the court entered a rule to show cause against Adam, returnable instanter, ordering him to take all necessary steps to add Robyn to the utility bills for the marital residence. On August 8, 2012, the court entered three more rules to show cause against Adam. On August 17, 2012, the court entered another order providing that the August 8, 2012 contempt order will remain in effect and ordered Adam to tender a \$25,000 check to Robyn by 5 p.m. and required Adam to appear in court on August 19, 2012 at 9 a.m. Adam failed to appear in court on August 19, 2012, and on August 20, 2012, the court entered a

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body attachment order against Adam. The order was vacated later that day and Adam was released from incarceration after he tendered the required check.

¶ 13 On September 10, 2012, Robyn filed an "Emergency Petition for Temporary Restraining Order and Preliminary Injunction And, in the Alternative, Petition for Appointment of Sequestrator/Receiver" alleging 23 instances of Adam's non-compliance with previous orders regarding the parties' finances. On September 12, 2012, Robyn filed an "Amended [] Emergency Petition for Temporary Restraining Order and Preliminary Injunction And, in the Alternative, Petition for Appointment of Sequestrator/Receiver" regarding the same allegations.

¶ 14 On September 13, 2012, the court entered an agreed order prohibiting Adam from purchasing or renting real estate until the matter could be addressed by the court. On September 21, 2012, the court ordered this restriction to remain in place until further order of court.

¶ 15 Adam thereafter petitioned to dissolve the injunction regarding renting or buying real estate.

¶ 16 On October 24, 2012, Robyn filed an amended petition for interim and prospective attorney fees and costs, seeking past due interim attorney fees of \$182,931.39 and \$75,000 in prospective attorney fees.

¶ 17 On October 26, 2012, the matter was before the court for hearing on Robyn's petition for attorney fees and for setting a budget for use of the assets for the parties' ongoing expenses. On that date, the court entered the following order:

"This matter coming to be heard for hearing on the Court Setting Budget and Use of Assets and Adam's petition to Dissolve Injunction relative to Renting or Buying Real

Estate; and Berger Schatz, Schiller, DuCanto & Fleck LLP and Mammas & Goldberg's updated interim fee petitions, both parties and counsels for the parties and the child appearing; the court being fully advised and after argument from counsel and consideration of the proposed budgets, It is hereby ordered:

1. The injunction prohibiting Adam from purchasing real estate shall remain in full force and effect to the extent that Adam shall not use any marital funds towards the purchase or towards the payment of any mortgage or real estate taxes for any newly acquired property, unless otherwise ordered or agreed in writing.

2. Counsel for the parties shall be provided with [section] 501 interim fees from the following sources set forth below:

a. \$100,000 to Berger Schatz. Adam shall arrange for payment from \$50,000 from the BRI distribution anticipated prior to 12/31/12 and the parties shall cooperate to arrange for \$50,000 from Wells Fargo account ending in 6627, within 7 days.

b. \$183,000 to Schiller DuCanto and Fleck, LLP. Adam shall arrange for payment of \$50,000 from the BRI distribution anticipated by 12/21/12, and the remaining \$133,000 shall come out of the Wells Fargo account ending in 6627, within 7 days.

c. The parties shall cooperate to arrange for \$25,000 to Mammas & Goldberg from the Wells Fargo account ending in 6627, within 7 days.

3. Counsel for the parties are drafting the remaining terms of the Court's Rulings on October 24, 2012. Counsel shall appear on October 26, 2012 at 9:30 a.m. for entry of the Order. Any disputed language shall be decided by the Court at that time."

¶ 18 The court entered another order on November 1, 2012, providing as follows:

"This matter coming to be heard for hearing on the setting budgets for both parties, and Respondent, Adam Brass' ("Adam") Petition to Dissolve Injunction relative to Renting or Buying Real Estate (adjudicated pursuant to October 26, 2012 order), and three petitions for interim attorneys' fees (adjudicated pursuant to October 26, 2012 order); Petitioner, Robyn Brass ("Robyn") appearing in person and through her counsel, Schiller DuCanto & Fleck, Adam appearing in person and through his counsel Berger Schatz, and the minor child appearing through counsel Jerry Goldberg, Esq., each party having submitted proposed budgets to the Court, including proposed liquidation of assets, payment of monthly expenses, and payment of outstanding bills, the Court hearing argument from counsel, and ruling on the proposed budget and being fully advised; it is hereby ordered:

1. The injunctions relative to the Chase CJSRA account ending in 5721 and Wells Fargo account ending in #6627 are dissolved subject to the terms of this Order.
2. The notice requirements as described in the May 18, 2012 Order are hereby lifted for this Order only.
3. The following funds shall be immediately liquidated and deposited into the parties' joint checking account at Chase Bank ending 7728 (the "Chase Account"):
  - a. CJSRA Chase account ending in 5721 in the amount of \$28,920.12;
  - b. Wells Fargo account ending in 6627 in the approximate amount of \$403,000.

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4. In addition to the liquidation of those funds delineated in paragraph 3 above, the following funds shall be deposited into the joint checking account in the Chase Account immediately upon their receipt:

a. Outstanding salary due to Adam from BRI anticipated to be approximately \$100,000 after withholding of taxes, and anticipated to be paid prior to December 1, 2012. Adam shall provide proof of the total outstanding BRI salary upon receipt;

b. Federal and State income tax refunds for the year 2011 anticipated to be approximately \$80,000 in total, and anticipated to be received prior to December 1, 2012;

c. Natwest funds totaling \$75,000.

5. Those funds listed in paragraphs 3 and 4 above total approximately \$686,920 from which approximately \$208,000 shall be paid as interim attorneys' fees within 7 days, as described in paragraph 2 of the order entered on October 26, 2012. Additionally, \$15,000 shall be advanced to Adam to pay down Adam's credit card debt and \$35,000 to be advanced to Adam for payment of furnishings for residence. Adam shall provide a full accounting of use of \$35,000 and \$15,000.

6. The remaining funds of approximately \$353,920 shall remain in the parties' joint checking account. In addition, all future funds from all sources shall be deposited in the Chase Account immediately upon receipt, to be used to pay expenses described in the paragraphs below. Both parties[] are hereby enjoined and restrained from accessing any of those funds held in the Chase Account unless otherwise ordered by the Court or written agreement of the parties.

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7. Colleen Cuff of KNOCC, Inc. is appointed as the designated bookkeeper for the parties. KNOCC fees shall be paid directly from the Chase Account. Robyn and Adam shall take all actions necessary to provide Colleen Cuff with signatory authority of the Chase Account from which she shall write checks and pay expenses as described in the paragraphs below.

8. Commencing on November 1, 2012, and continuing on the first day of the month for each month thereafter, each party shall receive \$10,000 from the Chase Account from which to pay their personal living expenses. In addition to the \$10,000 monthly payment, Robyn shall receive an additional \$1,200 as and for Child support to pay clothing, activities, grooming and entertainment on behalf of the parties' minor child.

9. In addition to paying the parties' monthly funds as described in paragraph 8 above, KNOCC shall timely pay the monthly bills as described on Exhibit A, which is incorporated herein.

10. Invoices shall be tendered to KNOCC upon their receipt, and bills shall be timely paid, with the limits described in Exhibit A being strictly adhered to. Both parties shall be entitled to copies of all bills paid by KNOCC, and shall continue to have access to the online statements of the Chase Account to monitor payments.

11. In addition, KNOCC shall immediately pay those bills described on Exhibit B.

12. The parties have cooperated to apply for a mortgage in the amount of \$750,000. If the parties are approved for the pending application, \$250,000 will be held back for servicing the debt for the first 24 months and for payment of the Sheridan second

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installment of 2011 and first installment of 2012 real estate taxes. If the parties are approved on the pending mortgage application all the parties' retirement accounts (totaling \$749,469 as set forth on Adams 13.3.1 disclosure statement) shall be held as security until further order of court. If the parties are denied on the pending mortgage application, the retirement accounts (less penalties and estimated taxes to be determined by the parties['] account[ant], Chuck Jesser) shall be liquidated and turned over to KNOCC, Inc. for payment of expenses and the 2011 second installment real estate tax bill for Sheridan, once the \$328,920 referenced above is exhausted. The parties are enjoined from accessing the retirement accounts other than for purposes of carrying out the terms of this Paragraph.

13. The parties may incur credit card debt as part of their monthly distribution as set forth in Exhibit A. If either party incurs credit card deb[[]t it must be paid from their monthly distribution. To the extent either of the parties access credit cards or incur other debt outside of this Order it will be deemed their sole obligation.

14. The parties shall coordinate a date within 7 days for Adam to retrieve his watches, ski equipment, copies of electronic family photos and grandfather clock. The issue of characterization of these items and Adam's right to retrieve additional items is reserved.

15. Both parties' non-marital claims with respect to the assets to be liquidated are hereby preserved and reserved without prejudice. Should either party prevail on non-marital claims, they shall have the right to seek reimbursement from the marital estate to be made whole as to those claims.

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16. The parties shall apprise the court of the status of compliance with this Order at the previously scheduled court date of November 16, 2012 at 2:00 p.m."

¶ 19 Two exhibits were attached to this order: (1) Exhibit A, which listed expenses for the parties' minor child Chloe and the parties' real estate in Glencoe, Illinois; and (2) Exhibit B, which listed other expenses.

¶ 20 Robyn subsequently obtained new counsel, and on November 9, 2012, Robyn filed a motion to vacate those orders. Robyn sought to reinstate the injunction in place prior to those orders and objected that the orders were entered without an evidentiary hearing or her consent. Robyn argued that October 26, 2012 order prohibiting Adam from using only marital funds to purchase real estate, and not nonmarital funds as well, invited misconduct from Adam. Robyn also objects to the provisions of the November 1, 2012 order which required her to pay her own expenses from her own account and to the payment of the bookkeeper. Robyn further argued that the November 1, 2012 order took the parties' retirement funds, which are exempt from creditors under section 12-1006 of the Illinois Code of Civil Procedure (735 ILCS 5/12-1006 (West 2012)). Adam filed his response on November 15, 2012.

¶ 21 On November 16, 2011, the court held a hearing on Robyn's motion to vacate the orders of October 26, 2012 and November 1, 2012. The court denied Robyn's motion that same day. On November 19, 2012, Robyn filed a notice of interlocutory appeal. Robyn filed an amended notice of interlocutory appeal on November 19, 2012.

¶ 22

## ANALYSIS

¶ 23

### I. Denial of Motion to Reinstate Injunctions

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¶ 24 The Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/101 *et seq.* (West 2012)) grants trial courts broad equitable powers to enter temporary relief. One of the purposes of the Act is to preserve assets during a dissolution action, and the Act is to be construed liberally to that effect:

"§ 102. Purposes; Rules of Construction. This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

\* \* \*

i. make provision for the preservation and conservation of assets during the litigation." 750 ILCS 5/102 (West 2012).

¶ 25 A. Jurisdiction

¶ 26 We first address our jurisdiction to hear the appeal of the orders of October 26, 2012 and November 1, 2012. "A domestic relations court is authorized to enter preliminary injunctions during dissolution proceedings in order to preserve the status quo of the marital estate." *In re Marriage of Winter*, 387 Ill. App. 3d 21, 27 (2008) (citing 750 ILCS 5/501(a) (West 2006), *In re Marriage of Hartney*, 355 Ill. App. 3d 1088, 1089 (2005)). Where injunctive relief is granted, we have jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(1). Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). Other types of orders granting temporary relief in a dissolution action, however, are not immediately appealable. Temporary relief with respect to property, child support, and attorney fees in divorce actions are not immediately appealable interlocutory orders. See 750 ILCS 5/501(a)(2)(I) (West 2012).

¶ 27 "[T]he language of an order does not determine whether it may be appealed." *In re*

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*Marriage of Molloy*, 407 Ill. App. 3d. 987, 992 (2011) (citing *In re A Minor*, 127 Ill. 2d 247, 260 (1989)). "Not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing." *In re Marriage of Molloy*, 407 Ill. App. 3d at 992 (quoting *In re A Minor*, 127 Ill. 2d at 261-62). "To determine what constitutes an appealable injunctive order under Rule 307(a)(1) we look to the substance of the action, not its form." *In re Marriage of Molloy*, 407 Ill. App. 3d at 992 (quoting *In re A Minor*, 127 Ill. 2d at 260). "An injunction is an equitable remedy that requires the person 'to whom it is directed to do or refrain from doing a particular thing.'" *In re Marriage of Winter*, 387 Ill. App. 3d at 27 (quoting *In re A Minor*, 127 Ill. 2d 247, 261 (1989), quoting Black's Law Dictionary 705 (5th ed. 1983)). Where injunctive relief is granted, modified, refused, or dissolved in an order, we have jurisdiction of an appeal of that interlocutory order pursuant to Illinois Supreme Court Rule 307(a)(1) if the appeal is filed within 30 days. Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)).

¶ 28 Here, the court's orders are injunctive and are thus immediately appealable under Rule 307(a) (Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010)).

¶ 29 The October 26, 2012 order provides:

"The injunction prohibiting Adam from renting real estate is dissolved. However, the injunction prohibiting Adam from purchasing real estate shall remain in full force and effect to the extent that Adam shall not use any marital funds towards the purchase of real estate, or towards the payment of real estate taxes \*\*\* unless otherwise ordered or agreed in writing."

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¶ 30 The November 1, 2012 order dissolved the injunctions entered on October 4, 2012 regarding the Chase CJSRA account ending in 5721 and the Wells Fargo account, and lifted the notice requirements in the May 17, 2012 order. The purpose of this order was to provide for the payment of the parties' expenses.

¶ 31 There is no support for Adam's argument that "[d]espite the use of the term 'injunction' in the provision, the October 26, 2012 order" it is not appealable. The order clearly continued to restrain Adam from doing a particular thing – purchasing real estate – thereby enjoining him and constituting an injunction.

¶ 32 Adam cites to *In re Marriage of Dunseth*, 260 Ill. App. 3d 816 (1994), *In re Marriage of Meyer*, 197 Ill. App. 3d 975 (1990), and *In re Marriage of Kitchen*, 126 Ill. App. 3d 192-194-95 (1984), for the proposition that "orders granting or modifying temporary relief in dissolution proceedings are not injunctive in nature and, therefore, are not appealable under Rule 307(a)." However, Adam's citations are distinguishable because those cases all pertain to other types of temporary relief, such as temporary maintenance, and not injunctions.

¶ 33 In *In re Marriage of Dunseth* the orders at issue awarded temporary maintenance, which the circuit court refused to modify upon the petitioner's request. The court's refusal to modify the orders awarding temporary maintenance was not immediately appealable on an interlocutory basis. Rather, the Fourth District Appellate Court considered the court's refusal to modify the temporary maintenance orders as part of the petitioner's request for review of the court's order finding him in contempt for refusing to abide by the orders. *In re Marriage of Dunseth*, 260 Ill. App. 3d at 828. The Fourth District Appellate Court explained:

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"[A] temporary order is appealable only to the extent it is continued in effect by the court's final order" and that "[o]n appeal [the Court] should consider whether the trial court's final order, its overall resolution of the issues, is erroneous, not whether some part thereof is erroneous." *In re Marriage of Dunseth*, 260 Ill. App. 3d at 827-28. Thus, the orders did not constitute an injunction but, rather were orders for temporary maintenance which would not ordinarily be reviewable except for the fact that they formed the basis of a contempt order.

¶ 34 In *In re Marriage of Meyer*, the order was also not an injunction because it did not order the respondent to do or refrain from doing a particular thing. Rather, this court held that the order was not injunctive because it "merely *permit[ed]* respondent to use marital assets to purchase another marital asset." (Emphasis added.) Adam likens the orders in this case to the order in *In re Marriage of Meyer*. However, in the present case the court's orders were not merely permissive but regarded conditions which prohibited Adam from doing a certain thing – buying property with marital funds and using the funds from certain accounts – and thus they constitute injunctive orders that are reviewable. The order of October 26, 2012, provided for a continuation of the injunction prohibiting purchasing property with marital funds:

"The injunction prohibiting Adam from purchasing real estate shall remain in full force and effect to the extent that Adam shall not use any marital funds towards the purchase or towards the payment of any mortgage or real estate taxes for any newly acquire property, unless otherwise ordered or agreed in writing."

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¶ 35 The order of November 1, 2012 dissolved the injunctions regarding the Chase account ending in 5721 and the Wells Fargo account ending in 6627, subject to the terms of the order setting forth detailed orders about the payment of the parties' expenses:

"The injunctions relative to the Chase CJSRA account ending in 5721 and Wells Fargo account ending in #6627 are dissolved subject to the terms of this Order."

¶ 36 The orders in this case were not merely permissive as in *Meyer* but, rather (1) continued the injunction specifically prohibiting Adam from purchasing property with marital funds; and (2) also dissolved the injunction regarding the above accounts but ordered the payment of expenses as directed by the court.

¶ 37 *In re Marriage of Kitchen* concerned a temporary child custody order and thus an appeal of that order was governed by Supreme Court Rule 306(a)(1)(v) (Ill. S. Ct. R. 306(a)(1)(v) (eff. July 1, 1982)), which is specifically directed to appeals of interlocutory custody orders. Thus, each of Adam's cases have no application to the instant case.

¶ 38 Adam also cites to *In re Marriage of Molloy*, 407 Ill. App. 3d 987 (2011). However, despite the injunctive language order in that case, the actual substance of the order was ministerial, setting a condition on a custody valuation barring the petitioner's attorneys from accompanying the petitioner to the custody valuation interview. We held that we lacked jurisdiction on appeal because "[n]o injunctive relief under Supreme Court Rule 307(a)(1) was granted by the circuit court's order barring the petitioner's attorneys from accompanying the petitioner to his interview with the evaluator under section 604.5 of the Illinois Marriage and

Dissolution Act." *In re Marriage of Molloy*, 407 Ill. App. 3d at 993.

¶ 39 Adam's citations thus all relate to other types of temporary relief and a condition on a custody valuation, and not injunctions. Preliminary injunctions are a separate form of temporary relief. As we noted in *Meyer*, in marital dissolution proceedings there are *three* types of temporary relief: "(1) temporary maintenance or child support; (2) preliminary injunction; or (3) 'other appropriate temporary relief.'" *In re Marriage of Meyer*, 197 Ill. App. 3d at 978 (quoting Ill. Rev. Stat. 1987, ch. 40, par. 501(a)). Thus, a preliminary injunction is a separate kind of temporary relief. Although we noted that "[t]emporary relief afforded under section 501 is often in the form of neither a temporary restraining order nor a preliminary injunction" (*In re Marriage of Meyer*, 197 Ill. App. 3d at 978), temporary relief may be in the form of a preliminary injunction and Rule 307(a) specifically provides for appeal of preliminary injunctions.

¶ 40 Adam further argues that the September 21, 2012 order:

"was simply the continuation of an agreed order entered on September 13, 2012, in which the parties agreed that Adam would not rent or purchase real estate. Thus, an actual injunction was never entered against Adam with respect to his ability to rent or purchase property[;] there was only an extension of a prior agreement for the purposes of allowing the trial court to address other pending financial issues, such as the parties' budget and the payment of family expenses."

¶ 41 However, the agreed order of September 13, 2012, was entered pursuant to a hearing on Robyn's September 10, 2012 emergency petition for a temporary restraining order and

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preliminary injunction. Though it was an agreed order, the relief requested was granted in the form of a preliminary injunction. The fact that the order was an agreed order does not change its character as a preliminary injunction, as a preliminary injunction can be agreed to by a party. See, e.g., *People ex rel. Madigan v. Excavating & Lowboy Services, Inc.*, 388 Ill. App. 3d 554, 556 (2009) (agreed order was entered on the State's motion for preliminary injunction requiring the City and park district not to "cause of allow" dumping at Worthy Park for the duration of the litigation and to post signs indicating the prohibition against dumping at the site); *Weber-Stephen Products, Inc. v. Department of Revenue*, 324 Ill. App. 3d 893, 897-98 (2001) (agreed order granted the plaintiff's motion for a preliminary injunction enjoining the disbursement of funds); *Vole, Inc. v. Georgacopoulos*, 181 Ill. App. 3d 1012, 1016 (1989) (agreed order was entered which granted a permanent injunction in favor of plaintiff as requested in Count I of the complaint).

¶ 42 Adam's arguments against a finding that the orders at issue are injunctions are unavailing. Because we find that the substance of the orders indicates that they are injunctive, we have jurisdiction on appeal pursuant to Supreme Court Rule 307(a).

¶ 43 **B. The Merits**

¶ 44 Having determined that we properly have jurisdiction to review the injunctive orders, we proceed to determine the merits of Robyn's argument that the court abused its discretion in not granting her motion to vacate the orders of October 26, 2012 and November 1, 2012 and to reinstate the injunctions that were in place prior to those orders. Robyn does not specify which injunctions she would like reinstated. The October 26, 2012 order dissolved only that portion of

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the prior injunction that prohibited Adam from renting real estate or buying real estate with non-marital funds. The November 1, 2012 order only dissolved the portion of the injunction entered on October 4, 2012 regarding the Chase CJSRA account ending in 5721 and the Wells Fargo account, and lifted the notice requirements in the May 17, 2012 order, but put in place a very detailed order providing that payment of expenses be made only as directed by the court.

Robyn argues that "the *status quo ante* the trial court's entry of the October 26, 2012 and November 1, 2012 orders was that Adam's ability to transfer or otherwise dispose of marital assets was strictly limited. The vacating of those orders would restore that *status quo*."

¶ 45 In an interlocutory appeal brought pursuant to Supreme Court Rule 307(a), the only question before the reviewing court is whether there was a sufficient showing made to the trial court to sustain its order granting or denying the interlocutory relief sought. *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 168 (2002) (citing *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399 (1993)). "A preliminary injunction is proper where (1) the moving party has a clear and ascertainable right in need of protection, (2) the moving party will suffer irreparable harm without relief, (3) there is no adequate remedy at law, and (4) there is a substantial likelihood the moving party will succeed on the merits of the case." *In re Marriage of Winter*, 387 Ill. App. 3d at 27-28 (citing *Hartney*, 355 Ill. App. 3d at 1089). We will not overturn the trial court's determination regarding a preliminary injunction absent a manifest abuse of discretion. *In re Schmitt*, 321 Ill. App. 3d at 371 (citing *North Pole Corp. v. Village of East Dundee*, 263 Ill. App. 3d 327, 334 (1994)).

¶ 46 Robyn argues that she has established all four elements to support reinstating the

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prohibition against Adam purchasing real estate with nonmarital funds, and the prior injunction regarding the Chase and Wells Fargo accounts. We disagree.

¶ 47 We will assume the first element that Robyn has a clear and ascertainable right in need of protection has been met, since this is a dissolution proceeding involving a long-term marriage with substantial marital assets. We will also assume that the fourth element, that there is a substantial likelihood Robyn will succeed on the merits of the case, has been met since Robyn will likely be awarded marital assets. However, Robyn fails to establish the second and third elements.

¶ 48 First, Robyn has failed to show the second element of irreparable harm. The October 26, 2012 order *continued* the injunction prohibiting Adam from purchasing real estate with marital property. The order explicitly stated that "the Injunction prohibiting Adam from purchasing real estate shall remain in full force and effect to the extent that Adam shall not use any marital funds towards the purchase of real estate or towards the payment of any mortgage or real estate taxes for any newly acquired property, unless otherwise agreed in writing or ordered." Robyn objects to allowing Adam to purchase real estate with his nonmarital funds and speculates that Adam may use marital funds and then claim that the funds were nonmarital. In support, Robyn merely points to Adam's non-compliance with previous court orders and alleges Adam is transferring money abroad, without citation to any evidence in the record that would support this allegation. "Allegations consisting of mere opinion, conclusion, or belief are insufficient to support the issuance of a preliminary injunction." *In re Schmitt*, 321 Ill. App. 3d 360, 372 (2001) (citing *Village of Lake in the Hills v. Laidlaw Waste Systems, Inc.*, 143 Ill. App. 3d 285, 291 (1986)).

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"Rather, a complaint for a preliminary injunction must plead facts that clearly establish a right to injunctive relief." *In re Schmitt*, 321 Ill. App. 3d at 372 (citing *Village of Lake in the Hills*, 143 Ill. App. 3d at 291).

¶ 49 Robyn has also failed to make any showing that she lacks an adequate remedy at law regarding the October 6, 2012 order continuing the preliminary injunction against Adam purchasing real estate only with marital, as opposed to nonmarital, funds. While Robyn may legitimately fear that Adam may use marital assets to purchase property and claim that the assets are nonmarital, she has an adequate remedy at law. The order of October 26, 2012 is clear that Adam is prohibited from using marital funds towards the purchase of real estate. Thus, she still has a preliminary injunction in place protecting the marital estate. Robyn provides no support for enjoining Adam from purchasing real estate with his nonmarital assets. If Adam does in fact use marital funds to purchase property, the Act provides a remedy by specifically providing that the court shall take the dissipation of marital property by a party into consideration in dividing the marital property. See 750 ILCS 5/503(d)(2) (West 2012). The burden would be on Adam to prove by clear and convincing evidence how the funds were spent and if the expenditures are not documented adequately, courts will affirm a finding of dissipation. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 215 (2009). Robyn does not even mention this remedy, much less explain how or why it is inadequate.

¶ 50 Robyn also provides no argument as to how she would suffer irreparable harm or how she lacks an adequate remedy at law regarding the lifting of the injunction regarding use of the Chase and Wells Fargo accounts in the November 1, 2012 order. The November 1, 2012 order set forth

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in detail how the parties' accounts are to be liquidated and deposited into their joint checking account, from which the expenses are to be paid. Robyn had petitioned for support and alleged that bills remained unpaid. The court's order effectively provided her support and ordered the payment of expenses. The prior *status quo* was that the bills were not getting paid. "The purpose of a preliminary injunction is to preserve the *status quo* with the least injury to the parties concerned." *In re Schmitt*, 321 Ill. App. 3d 360, 371 (2001) (citing *Village of Westmont v. Lenihan*, 301 Ill. App. 3d 1050, 1055 (1998)). Here, if the prior preliminary injunction regarding the accounts were to be reinstated, the parties would not be able to pay the expenses, thereby causing *more* injury. Robyn does not explain how lifting the injunction for the purpose of liquidating the accounts and depositing the funds into the parties' joint checking account for the payment of expenses harms her. There is no showing of immediate irreparable harm and, if Adam violates these orders, Robyn has an adequate remedy at law.

¶ 51 We highlight that both orders still impose preliminary injunctions protecting the marital estate. The October 26, 2012 order kept the preliminary injunction in place, except for lifting the injunction to allow Adam to purchase property with nonmarital assets. Although the court's order of November 1, 2012, stated the previous injunctions regarding the Chase and Wells Fargo accounts was "dissolved," this was only to liquidate the accounts for depositing into the parties' joint checking account for the payment of expenses. The November 1, 2012 order enjoined both Robyn and Adam from using these funds for anything other than the payment of expenses as set forth in the order: "Both parties[] are hereby enjoined and restrained from accessing any of those funds held in the Chase Account unless otherwise ordered by the Court or written agreement of

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the parties." Thus, preliminary injunctions are still in place to protect the marital estate.

¶ 52 We therefore hold that the circuit court did not abuse its discretion in entering the October 26, 2012 order terminating the portion of the prior preliminary injunction prohibiting Adam from buying real estate with nonmarital assets, or the order of November 1, 2012 dissolving the previous preliminary injunction regarding the Chase and Wells Fargo accounts to liquidate the accounts for the payment of expenses.

¶ 53 II. Interim Attorney Fee Award

¶ 54 Robyn also challenges the portion of the court's order of November 1, 2012 awarding interim attorney fees, contending that the court ordered disbursement of individual retirement accounts to pay for the attorney fees, in violation of section 12-2006 of the Code of Civil Procedure (735 ILCS 5/12-2006 (West 2012)). Adam argues that the court did not order the payment of attorney fees from the parties' IRAs. Robyn posits that "while the trial court did not *explicitly* order the payment of attorney fees award [sic] from the parties' IRAs, it has *effectively* done so because the parties' illiquid marital estate will ultimately offer no other source from which to satisfy a pre-decree fee award." In her reply brief, Robyn further explains she "is appealing not the interim-fee award; rather, she is appealing the effective ordering of the parties to permanently liquidate retirement accounts which are off-limits and exempt from the satisfaction of interim attorney-fee awards under section 12-2006 of the Code of Civil Procedure (735 ILCS 5/12-2006 (West 2012)) and *In re Marriage of Radzik*, 2011 IL App (2d) 100374 \*\*\* (2011))."

¶ 55 We find that we are without jurisdiction to review the interim attorney fees. There is no

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merit to Robyn's argument that the court violated section 12-2006 because the court did not in fact order the liquidation of retirement accounts to pay interim attorney fees.

¶ 56 An interlocutory interim attorney-fee award is not appealable and we do not have jurisdiction to review such orders. "[A] court order awarding interim attorney fees under section 501(c-1) of the Act is not an appealable interlocutory order." *In re Marriage of Radzik*, 2011 IL App (2d) 100374, 45 (citing *In re Marriage of Tetzlaff*, 304 Ill. App. 3d 1030, 1039 (1999)).

¶ 57 Robyn argues that here the court violated section 12-2006 of the Code of Civil Procedure (735 ILCS 5/12-2006 (West 2012)) because it ordered the liquidation of retirement accounts to pay the interim attorney fees. Robyn's reliance on *Radzik* is not well-grounded in law or fact. Procedurally, in *Radzik*, the order to liquidate the individual retirement accounts was reviewed only because it was the underlying order that was the basis of a contempt order, and contempt orders are immediately appealable. The respondent was ordered to liquidate individual retirement accounts to pay interim attorney fees and he refused, thereby drawing a contempt order against him which was the basis of the appeal. *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 67. Unlike *Radzik*, here there is no contempt order. There is only the interim attorney fee order. As such, we do not have jurisdiction to review the portion of the orders regarding the interim attorney fees award.

¶ 58 Second, the order entered in this case does not fall within the purview of *Radzik's* holding factually, because the court did not in fact order the payment of attorney fees from retirement accounts. The order of October 26, 2012, in pertinent part, provided as follows regarding the

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source of payment of the interim fees:

"2. Counsel for the parties shall be provided with [section] 501 interim fees from the following sources set forth below:

a. \$100,000 to Berger Schatz. Adam shall arrange for payment from \$50,000 from the BRI distribution anticipated prior to 12/31/12 and the parties shall cooperate to arrange for \$50,000 from Wells Fargo account ending in 6627, within 7 days.

b. \$183,000 to Schiller DuCanto and Fleck, LLP. Adam shall arrange for payment of \$50,000 from the BRI distribution anticipated by 12/21/12, and the remaining \$133,000 shall come out of the Wells Fargo account ending in 6627, within 7 days.

c. The parties shall cooperate to arrange for \$25,000 to Mammas & Goldberg from the Wells Fargo account ending in 6627, within 7 days."

¶ 59 The order of November 1, 2012, further provided the following regarding the source of payment of the interim attorney fees:

"3. The following funds shall be immediately liquidated and deposited into the parties' joint checking account at Chase Bank ending 7728 (the "Chase Account");

a. *CJSRA Chase account ending in 5721* in the amount of \$28,920.12;

b. *Wells Fargo account ending in 6627* in the approximate amount of \$403,000.

4. In addition to the liquidation of those funds delineated in paragraph 3 above, the

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following funds shall be deposited into the joint checking account in the Chase Account immediately upon their receipt:

a. *Outstanding salary due to Adam from BRI* anticipated to be approximately \$100,000 after withholding of taxes, and anticipated to be paid prior to December 1, 2012. Adam shall provide proof of the total outstanding BRI salary upon receipt;

b. *Federal and State income tax refunds* for the year 2011 anticipated to be approximately \$80,000 in total, and anticipated to be received prior to December 1, 2012;

c. *Natwest funds* totaling \$75,000.

5. *Those funds listed in paragraphs 3 and 4 above* total approximately \$686,920, from which approximately \$208,000 shall be paid as interim attorneys' fees within 7 days, as described in paragraph 2 of the order entered on October 26, 2012. \*\*\*"

¶ 60 Thus, the court ordered the payment of attorney fees from various accounts, Adam's salary and income tax refunds, and not from retirement accounts as argued by Robyn.

¶ 61 The portion of the order pertaining to the retirement accounts is as follows:

"12. The parties have cooperated to apply for a mortgage in the amount of \$750,000. If the parties are approved for the pending application, \$250,000 will be held back for servicing the debt for the first 24 months and for payment of the Sheridan second installment of 2011 and first installment of 2012 real estate taxes. If the parties are approved on the pending mortgage application all the parties' retirement accounts (totaling \$749,469 as set forth on Adams 13.3.1 disclosure statement) shall be held as security until further order of

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court. *If the parties are denied on the pending mortgage application, the retirement accounts (less penalties and estimated taxes to be determined by the parties['] account[ant], Chuck Jesser) shall be liquidated and turned over to KNOCC, Inc. for payment of expenses and the 2011 second installment real estate tax bill for Sheridan, once the \$328,920 referenced above is exhausted. The parties are enjoined from accessing the retirement accounts other than for purposes of carrying out the terms of this Paragraph."*

(Emphasis added.)

¶ 62 Thus, the order specified that the retirement accounts were to be liquidated only in the event that the parties were not approved for the \$750,000 mortgage they applied for, and, if liquidated, the retirement accounts were only to be used for payment of expenses and the 2011 second installment real estate tax. Retirement accounts are not exempt under section 12-1006 from judgment for support orders. See *In re Marriage of Radzik*, 2011 IL App (2d) 100374,

¶ 58. Robyn raises no argument in this appeal concerning the potential use of retirement funds for the payment of expenses or the real estate taxes.

¶ 63 Thus, *Radzik* has no application to this case for two reasons: (1) procedurally, *Radzik* reviewed a contempt order, which was appealable, and here the order for interim attorney fees is not appealable; and (2) factually, here there was no order to liquidate the retirement accounts for the purpose of paying interim attorney fees.

¶ 64 Finally, Robyn argues that "she did not consent to the court orders of October 26, 2012, and November 1, 2012, and had them foisted upon her without her knowledge until after the

fact." However, Robyn has no grounds for objecting to the orders on this basis either. The court entered the orders pursuant to notice of the hearings and Robyn was represented by counsel. The fact that she disagrees with the court's decision is no different than any other dissatisfied party who is represented by counsel in court. There is no allegation by Robyn that these were *ex parte* orders. Both of the orders explicitly indicated Robyn's counsel was present. In fact, the November 1, 2012 order indicated that Robyn herself was also present. The order stated in the preamble: "Robyn Brass ("Robyn") *appearing in person* and through her counsel, Schiller DuCanto & Fleck." (Emphasis added.) Robyn has not shown any grounds for us to review the interim attorney fees award and we decline to do so. We dismiss this portion of her appeal.

¶ 65

#### CONCLUSION

¶ 66 First, the circuit court did not abuse its discretion in entering and refusing to vacate its orders of October 26, 2012 and November 1, 2012, which lifted only portions of previously entered injunctions regarding certain accounts and the renting and buying of real estate by Adam with nonmarital funds. Robyn has not shown that she lacks an adequate remedy at law. The court's orders adequately protect the marital estate until a final disposition in the divorce proceedings.

¶ 67 Second, we have no jurisdiction to review the attorney fees award which was part of the court's November 1, 2012 order. The court did not order the liquidation of retirement accounts to pay the interim attorney fees as alleged by Robyn. We dismiss this portion of the appeal.

¶ 68 Affirmed in part; dismissed in part.

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