

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
JODIE LYNN POWELL,)	of Kane County.
)	
Petitioner-Appellee,)	
)	
and)	No. 08-D-159
)	
KIRK POWELL,)	Honorable
)	Robert P. Pilmer,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in finding that the redemption of respondent's ownership interest in his former company constituted income for child support; the trial court did not err in finding that the payment of respondent's capital account constituted income; the finding that respondent was in contempt of court for failing to pay child support on the redemption of the ownership interest is reversed but the finding that respondent was in contempt of court for failing to pay child support on the income from the capital account is affirmed; based on the preceding, the award of attorney fees must be vacated and remanded for a redetermination of the extent to which attorney fees should be awarded; affirmed in part and reversed in part, vacated in part, and remanded with directions.

¶ 2 This is an appeal from a postjudgment proceeding in a dissolution action in which the circuit court of Kane County found respondent, Kirk Powell, in indirect civil contempt of court for (1) failing to pay child support on additional income received from his employer, Proven Partners

Manufacturing, LLC (PPM), pursuant to a purchase of his membership interest, and on additional income received from the payment of his capital account from PPM; (2) failing to pay child support earned on other additional income from PPM; and (3) the failure to disclose to petitioner, Jodie Lynn Powell, k/n/a Jodie Elliott, his receipt of the additional income. The trial court assessed attorney fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (IMDA) (705 ILCS 5/508(b) (West 2010)). The question raised by this appeal is whether, based upon the facts presented, a redemption of an ownership interest and the receipt of capital contribution from respondent's former employer, PPM, constitutes income for purposes of child support upon which he is required to remit 28% as child support. Respondent also appeals the award of attorney fees. For the following reasons, we affirm in part, we reverse in part, we vacate in part, and we remand this cause for further proceedings consistent with this order.

¶ 3

FACTS

¶ 4 The parties were married on July 18, 1992, and the trial court entered a judgment dissolving the marriage on May 21, 2008. The judgment incorporated a marital settlement agreement, which provided for, *inter alia*, the distribution of marital assets between the parties as well as the payment of child support for the couple's two minor children.

¶ 5 With respect to child support, the marital settlement agreement provides that respondent is to pay petitioner the sum of \$851 every two weeks for his ordinary child support, representing 28% of petitioner's base net income. At the time, respondent's base net income was \$79,021.42. The agreement further provides that respondent is obligated to pay child support on bonuses and additional income as follows:

¶ 6 “2.2 Bonuses and Additional Income. In addition to the above, [respondent] shall pay to [petitioner] 28% of the net income he receives of any additional income or bonuses he receives. However, in computing the “net income” from such additional income or bonuses, [respondent] shall be entitled to deduct any payments made in repayment of the principal indebtedness and interest accrued thereon incurred by [respondent] for the purpose of financing the payments to [petitioner] under Article VIII of this Agreement. The parties agree that said payments represent ‘reasonable expenditures for the benefit of the minor children and [petitioner]’ under Section 505(3)(h) of the [IMDA]. [Respondent] shall account to [petitioner] on a Quarterly basis for any additional income or bonuses he receives and any deductible payments made from such additional income or bonuses.”

¶ 7 Respondent borrowed \$350,000 from Wayne Sims to pay petitioner her one-half interest in the marital property. The deduction allowed by section 2.2 referred to loan payments respondent incurred to acquire the funds to pay petitioner to equalize the division of marital property between the parties. Section 2.6 of the marital agreement requires respondent to mail to petitioner copies of all wages and other earnings or income statements each year, together with copies of his income tax returns, and documents relative to any payments made toward the indebtedness described in section 2.2.

¶ 8 At the prove up hearing, both parties acknowledged that respondent’s repayment of the loans represented reasonable expenditures for the benefit of the minor children under section 505(h) of the IMDA (705 ILCS 5/505(h) (West 2010)). Respondent further acknowledged that he would owe 28% of any additional net income he receives, and account to petitioner for the additional income and the

payments, but he would be able to deduct his repayment of the loan to Wayne Sims from his computation of net income.

¶ 9 In 2007, before the parties' divorced, petitioner began working for PPM. As part of his employment there, he received a 10% ownership interest (Interest) in the company. Accordingly, at the time the parties divorced, respondent had been working for PPM for approximately one year. In the division of marital property, the trial court awarded respondent the Interest. Section 6.5 of the marital settlement agreement provides that respondent "shall keep any *** interest he may have or ultimately acquire in [PPM]." Neither at the time of the dissolution nor during the hearing on the petition did respondent present evidence as to the value of this Interest, and the trial court never placed a value thereon as of that time.

¶ 10 Although respondent received the Interest in PPM at the time he began employment, it was subject to forfeiture in the event that he no longer worked for PPM, pursuant to the following sliding scale: (1) 100% during the second year of employment; (2) 60% during the third year of employment; (3) 40% during the fourth year of employment; (4) 20% during the fifth year; and (5) 0% thereafter.

¶ 11 On March 31, 2010, just short of his third year at PPM, respondent was terminated from employment at PPM. As part of his termination compensation, respondent received severance in the form of one year's salary. Respondent also received a payment of \$384,786, from his "capital account." Additionally, PPM redeemed respondent's Interest in the company for \$1.08 million, plus \$9,000 in interest. Respondent subsequently obtained new employment with VIM Recycling.

¶ 12 On February 7, 2011, respondent filed a motion to modify child support. In the motion, respondent acknowledged that, in addition to the regular bi-weekly payments, he was to pay 28%

of the net additional income or bonuses he receives for child support. However, he alleged that he was involuntarily terminated from his employment in 2010, and that his new employment paid him less than his former employment. On May 16, 2011, the trial court entered an agreed order resetting respondent's regular child support obligation to \$1,237 per month. The trial court subsequently modified the order to provide for regular child support of \$2,211 per month.

¶ 13 On September 16, 2011, petitioner filed a petition for rule to show cause, alleging that respondent was obligated and failed to pay 28% of the sums he received from PPM for child support, including the sums from his capital account and the \$1.08 million redeemed for his Interest. Petitioner maintained that she learned about this only upon production of documents respondent had previously failed to provide her, in violation of section 2.6 of the settlement agreement. Petitioner sought to hold respondent in contempt for failing to pay the child support on the additional income and for failing to account for his income on a quarterly basis, as required by the settlement agreement.

¶ 14 Respondent denied owing any additional child support. Respondent acknowledged that, as a result of his ownership, PPM distributed "pass-through profits" to him over the course of 2008, 2009, and 2010. Respondent further acknowledged that PPM passed along interest that the company had earned, as well as certain obligations for insurance premiums that had to "pass through" to his wages. PPM also distributed money to respondent for the tax liability that had accrued as a result of this pass-through profit. Respondent argued that "he did not receive this money either," as it went to the Internal Revenue Service and the Illinois Department of Revenue. Further, while respondent did receive some distributions in the nature of bonuses, he argued that this money was used to settle

respondent's debt with Wayne Sims, as he was allowed to do under the terms of the settlement agreement.

¶ 15 The trial court held an evidentiary hearing on the petition for rule to show cause. Kevin Sims, the primary owner of PPM, testified that sometime at the end of March, beginning of April 2007, respondent began working for PPM, and he was given the Interest in the company. Sims stated that respondent did not have to pay any money for his Interest in PPM. Rather, he was expected to work for the company so that the company's value would increase.

¶ 16 Sims testified that PPM would pay respondent in a number of forms. First, the company would pay respondent "guaranteed payments," *i.e.*, direct compensation for his work for the company. Second, aside from the guaranteed payments, PPM could, if the managers chose, pay distributions based on the member's percentage of interest in the company. Members could use that cash distribution in any way they chose. Additionally, PPM earned money that it did not distribute but instead kept within the company. These "retained earnings" were attributed to each member based on his percentage of membership interest and maintained in each member's "capital account." Finally, because under tax law members had to pay income tax on company income even if it were not distributed, PPM would periodically distribute to its members sufficient funds to allow them to pay their income taxes on company income attributable to them. As of the date of the hearing, that number was 40% of the partner's share of income, irrespective of the member's individual tax situation. All of those forms of income are reflected on the K-1 forms that members, including respondent, received each year of their employment with PPM.

¶ 17 Sims further testified about PPM's operating agreement. The agreement provided that certain members, including respondent, would need to remain a member for at least five years, and be

employed by PPM in order to retain all of their membership interests. Sims stated that it was important that all members work for PPM to ensure its growth. If a member no longer participated in the company, he would be deemed to have withdrawn and disassociated from PPM. If respondent disassociated before five years had lapsed, some or all of his Interest would be forfeited, depending on how long he had worked for PPM. In respondent's case, his termination of March 31, 2010, took place just before his three-year anniversary with the company. PPM chose to treat him as a third-year employee, entitling him to the value of 60% of his Interest under the operating agreement.

¶ 18 Sims stated that PPM made a series of resolutions with respect to the termination of and the payments to respondent. PPM first paid respondent about \$380,000, which was the then-current value of the undistributed income held in his capital account that he had earned over the course of his employment with PPM. Next, PPM executed an action in which the Class A members and the manager of PPM agreed that the fair market value of respondent's Interest amounted to \$1.08 million, and it executed a note to pay that purchase price over several years, with interest. Later, PPM decided to pay respondent in full, and modified the agreement. As a result, PPM paid respondent \$1.08 million, plus \$9,000 in interest. PPM also paid respondent severance over and above the amounts that PPM paid to him to redeem his Interest.

¶ 19 Michael R. Guido, the accounting manager for PPM, also testified regarding the company's procedure for payments to members for tax liabilities, guaranteed payments to respondent, respondent's capital account, respondent's cash distributions and expense reimbursements, and respondent's severance package. Guido explained that the K-1 form, which he prepares for each member, is a document showing the amount each member earned with PPM, including both monies earned or paid by PPM and attributable to respondent and the amounts paid to respondent. Guido

testified that, under Federal law, the K-1 form shows PPM's income attributable to each member, which is taxed to the member even if the member does not receive it. Guido stated that PPM made "tax distributions" each year in order to allow the members to cover their tax liabilities on money PPM earned but did not distribute. Accordingly, the ending capital account for each year shown on the K-1 forms stated the income respondent had earned but had not been paid. Guido acknowledged that the capital account would represent "net income" to respondent, if he were ever to receive it, because he already had paid income tax on that amount.

¶ 20 Guido discussed and explained the meaning of respondent's K-1 forms for each of the years he worked for PPM. Respondent's K-1 forms for 2008, 2009, and 2010 were introduced into evidence. Respondent's income tax returns were also admitted into evidence.

¶ 21 Respondent testified that, upon his termination from PPM, he received his earned capital account in the amount of \$384,000, and that this money was deposited into his bank account. Respondent acknowledged that he did not pay petitioner any child support on that income. He also stated that he did not use the funds to invest in a new business. Respondent stated that he bought himself a car and paid Wayne Sims \$144,900 for the final payment on his loan. Respondent testified that he had provided copies of his tax returns to petitioner.

¶ 22 Petitioner testified that respondent had never provided her with any documents concerning his income or the loan payments to Wayne Sims. She also testified about the children's extra-curricular activities, the various expenses incurred on behalf of the children, and the amount of money which she claimed was due from respondent for child support.

¶ 23 The trial court found the following: (1) the 2008 payments to respondent for his tax liability resulted in an overpayment of federal income taxes, which respondent had applied to future tax

liability, which constituted additional income to respondent; (2) in 2009, under similar circumstances, due to overpayment of his tax liability, respondent received a refund of \$14,595, presumably in 2010 after the filing of the 2009 tax return, which is also additional income to respondent; (3) over a period of several years, respondent's capital account increased due to the success of the business, and whether petitioner should have received 28% of each year's increase is a moot point since respondent's capital account was disbursed to him in 2010, and respondent received a total of \$384,000, from which he paid Wayne Sims \$144,900, leaving a net amount of \$239,500; (4) as a result of respondent's separation from PPM, he received \$1.08 million. The court found that, as a result of the payments to respondent, he had substantial tax obligations but ultimately owes additional child support to petitioner in the following amounts:

- a. 2008 \$8,394.67
- b. 2009 \$5,706.56
- c. 2010 \$335,311.85

¶ 24 The court concluded that respondent owes interest on the unpaid amounts in accordance with Illinois law; that the failure to pay the foregoing sums to petitioner was without cause or justification; that respondent had the ability to pay such additional support when he received the additional income; and, that the failure to provide quarterly income reports to petitioner also was without cause or justification. Accordingly, the trial court held respondent in indirect civil contempt of court for his wilful failure to pay the additional child support to petitioner and for his failure to provide petitioner with the information concerning his additional income, as required by the party's marital settlement agreement.

¶ 25 Subsequently, the trial court awarded petitioner attorney fees and costs in the amount of \$31,755. See 750 ILCS 5/508(b) (West 2012). Respondent did not object to the reasonableness and necessity of the charges and the hourly rates, which were set forth in the petition for fees. Additionally, the court awarded petitioner \$57,882 in interest. Respondent timely appeals the trial court's order.

¶ 26 ANALYSIS

¶ 27 Respondent argues that the trial court erred as a matter of law in determining his net income for purposes of child support under the marriage settlement agreement. Specifically, respondent contends that the redemption of his Interest and the distribution of his capital account cannot be classified as "income" for child support. Respondent also appeals the award of attorney fees. However, respondent does not appeal the trial court's ruling that he underpaid his child support for the years 2008 and 2009, plus interest, or the determination that he failed to provide quarterly income reports as required by the settlement agreement.

¶ 28 Generally, the trial court's net income determination and child support award lie within its discretion. *In re Marriage of Deem*, 328 Ill. App. 3d 453, 457 (2002). However, respondent challenges the court's interpretation of what constitutes income pursuant to section 505(a)(3) of the Act. The interpretation of the term "income" under section 505 of the Act (750 ILCS 5/505(a)(3) (West 2010)) is a question of law, over which we exercise *de novo* review. *In re Marriage of McGrath*, 2012 IL 112792, ¶ 10; *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004).

¶ 29 Redemption of Respondent's Interest in PPM

¶ 30 We first examine whether the redemption of respondent's Interest in PPM should be treated as income subject to child support.

¶ 31 Section 505(a)(3) of the Act defines net income as “the total of all income from all sources,” minus several enumerated deductions. The statute does not define “income” for purposes of determining child support. The marital settlement agreement does not define income either. In such cases, courts give undefined words their plain and ordinary meaning. See *SBC Holdings, Inc. v. Travelers Casualty & Surety Co.*, 374 Ill. App. 3d 1, 10 (2007).

¶ 32 In *Rogers*, the supreme court discussed the plain and ordinary meaning of the term “income”:

“As the word itself suggests, ‘income’ is simply ‘something that comes in as an increment or addition ***: a gain or recurrent benefit that is usu[ually] measured in money ***: the value of goods and services received by an individual in a given period of time.’ Webster’s Third New International Dictionary 1143 (1986). It has likewise been defined as ‘the money or other form of payment that one receives, usu[ually] periodically, from employment, business, investments, royalties, gifts and the like.’ Black’s Law Dictionary 778 (8th ed.2004).” *Rogers*, 213 Ill. 2d at 136-37.

Illinois courts have also defined “income” as “ ‘ “a gain or profit” [citation] and is “ordinarily understood to be a return on the investment of labor or capital, thereby increasing the wealth of the recipient” [citations].’ ” *In re Marriage of Worrall*, 334 Ill. App. 3d 550, 553-54 (2002).

¶ 33 Under these definitions, a variety of payments qualify as income under section 505(a)(3). Courts have included individual retirement account (IRA) disbursements representing deferred employment earnings, receipt of company stock from employment stock options, worker’s compensation awards, and the proceeds from pensions as income under the Act. See *In re Marriage of Lindman*, 356 Ill. App. 3d 462 (2005); *In re Marriage of Colangelo*, 355 Ill. App. 3d 383 (2005);

Department of Public Aid ex rel. Jennings v. White, 286 Ill. App. 3d 213 (1997); *In re Marriage of Klomps*, 286 Ill. App. 3d 710 (1997).

¶ 34 However, using the common and ordinary meaning of the term, other courts have determined that withdrawals from self-funded IRAs and proceeds from the sale of residential property do not constitute income under section 505(a)(3). See *In re Marriage of O’Daniel*, 382 Ill. App. 3d 845 (2008); *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39 (2008).

¶ 35 In *McGrath*, the supreme court determined that withdrawals from a savings account did not constitute income for child support purposes. The court explained that “[t]he money in the account already belongs to the account’s owner, and simply withdrawing it does not represent a gain or benefit to the owner. The money is not coming in as an increment or addition and the account owner is not ‘receiving’ the money because it already belongs to him.” *McGrath*, 2012 IL 112792, ¶ 14,

¶ 36 Respondent argues that similar considerations should govern in his case. Respondent points out that the Interest in PPM already belonged to him, as it was awarded to him in the marital settlement agreement, and because he was involuntarily terminated from PPM, the redemption of that Interest was simply giving him something that he already owned. Consequently, respondent contends that the proceeds do not qualify as income for child support.

¶ 37 Respondent asserts that this argument is further bolstered by *In re Marriage of Anderson and Murphy*, 405 Ill. App. 3d 1129 (2010). In *Anderson*, the husband owned a minority interest in a company which implemented a reverse stock split. As a result, the husband was required to involuntarily sell his stock to the company. The Third District Appellate Court held that the proceeds from the reverse stock split of the husband’s shares did not involve a gain or recurring benefit or employment compensation. The court observed that the husband received the proceeds

as a result of an involuntary purchase of stock he owned, which resulted in a capital loss. The court stated: “In reality, the forced sale reduced [the father’s] wealth because he no longer received the yearly dividends the stock generated. While the dividends or earnings the stock produced constituted income under section 505(a)(3), the sale of the stock did not.” Thus, the court concluded that the proceeds did not qualify as income for child support purposes. *Id.* at 1136.

¶ 38 Respondent does not articulate precisely how his involuntary termination from PPM and the reimbursement of his Interest is not a gain and should have been excluded from consideration as income for child support. However, based on *Anderson*, it is apparent that respondent suffered a loss when he was involuntarily terminated from PPM before he was able to realize the full value of his Interest in PPM. The forfeiture from the involuntary termination should be considered a loss for child support purposes for the following reasons.

¶ 39 The evidence submitted during the hearing shows that, in 2007, when respondent began working for PPM, he was given the Interest in the company, which he was awarded in the marital settlement agreement. According to PPM’s operating agreement, if respondent became disassociated from the company within five years, some or all of his Interest would be forfeited depending on how long he worked for PPM. Respondent was involuntarily terminated just short of his third year of employment. PPM chose to treat respondent as a third-year employee. Therefore, according to the operating agreement, respondent forfeited 40% of his Interest in PPM, which amounted to a 6% Interest in PPM.

¶ 40 Ordinarily whether respondent took a loss or a gain is a question of fact reviewed under the manifest weight of the evidence standard. In this case, respondent presented un rebutted evidence sufficient to show a loss. Respondent introduced the agreement of the action taken by PPM upon

respondent's termination, in which the members and the sole manager of PPM agreed that the fair market value of the company as of respondent's effective date of termination was \$18 million and the fair market value of respondent's membership and economic interest in the company as of the effective date of termination was \$1.08 million (redemption price). The agreement of termination arrived at the value of the membership interest, "after multiplying the fair market value of the company by 6%, which was the product of respondent's percentage interest in the company of 10% reduced by 40%."

¶ 41 Petitioner argues that respondent paid nothing for his Interest in PPM and therefore, he had to have realized income from the total \$1.08 million payout upon his termination. This is a faulty premise, as respondent was given the Interest in the company in 2007, and he was awarded this Interest in the marital settlement agreement. This was an asset that respondent already owned at the time of the property distribution. The fact that he realized less than the full 10% in the payout was due to his involuntary termination. When respondent cashed in on the asset that he already owned, the principal would not be income; only the increase in the value of the asset would be considered income as defined by *McGrath* and its progeny. Thus, unless the company's value increased more than 40% while respondent worked for PPM, his Interest was diminished by 40%, and petitioner failed to produce evidence to show otherwise.

¶ 42 This case falls squarely within the holding of *Anderson*, where the husband was involuntarily required to sell his shares in the family-owned company resulting in a loss, not a gain that would be considered income. Because the sale of the stock in *Anderson* did not result in a gain over what was paid to purchase it and actually reduced the husband's wealth, it could not be considered "a gain or

recurring benefit or employment compensation.” *Id.* at 1136. Like in *Anderson*, the sale of respondent’s Interest resulted in a loss over the 10% that he originally owned.

¶ 43 Petitioner also argues that the parties contemplated in their settlement agreement that respondent might receive additional but undetermined “income” or “bonuses” from PPM and other sources, and therefore the parties agreed to include *all* of respondent’s net income, including additional distributions and gains from the buyout.

¶ 44 A marital settlement agreement that is incorporated into a dissolution decree is interpreted in the same manner as other contracts. *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 758 (2000). The construction of a contract is a question of law, which we review *de novo*. *Id.* A court construes the settlement provisions within a dissolution judgment so as to give effect to the parties’ intention. *Id.* at 759. When the terms are unambiguous, the court determines the parties’ intent solely from the plain and obvious language of the instrument. *Id.* It has long been held by Illinois courts that words used in a contract must be given their “plain and ordinary meaning.” *Young v. Allstate Insurance Co.*, 351 Ill. App. 3d 151, 158 (2004) The instrument must be considered as a whole. *Mulry*, 314 Ill. App. 3d at 759. “An agreement is unambiguous when it contains language susceptible to only one reasonable interpretation.” *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547 (2010).

¶ 45 In the present case, the language of the settlement agreement is unambiguous as it is susceptible to only one reasonable interpretation. The settlement agreement relating to child support provides that respondent would pay petitioner the “guaranteed payment” of \$851 every two weeks for respondent’s ordinary child support, which represented 28% of respondent’s base net income at the time of the judgment of dissolution. Section 2.2, which also concerns child support, requires respondent to pay to petitioner 28% of the net income of “any additional income or bonuses he

receives.” In dividing the marital property, the trial court awarded respondent his Interest in PPM, which at the time of judgment was 10%. This is not an agreement that *any* payments respondent received would be income for purposes of child support. Rather, the parties contemplated that only income and bonuses, under its plain and ordinary meaning, and not resultant losses, received by respondent would be considered for child support purposes. Moreover, the rule of law is to ensure that operative provisions of a contract are not rendered superfluous by a particular construction of a contract. *Lukasik v. Riddell, Inc.*, 116 Ill. App. 3d 339, 347 (1983). If the parties intended that *any* payments respondent received would be considered income, then that portion of the agreement awarding the Interest in PPM to respondent would be rendered meaningless. Accordingly, we find that the buyout was not income for child support.

¶ 46 Capital Account

¶ 47 With regard to the capital account, the evidence is unequivocal that the reimbursement of this money was actually earned by and attributable to respondent throughout the course of his employment. When respondent received it in 2010, it was an “increment or addition” that resulted from his labor or investment. The return of the capital account represented a valuable benefit to respondent that enhanced his wealth and facilitated his ability to support his children. See *Rogers*, 213 Ill. 2d at 137. The money contained therein may not have been disbursed until respondent’s separation from PPM, but it was clearly income earned by respondent during his employment. The receipt of that “additional income” triggered the obligation under the settlement agreement for the payment of child support. As income, the capital account was not an asset that was distributed in the marital settlement agreement. We find that the receipt of the capital account constitutes income for child support.

¶ 48

Contempt

¶ 49 The trial court found that the \$1.08 million payout of respondent's Interest and the \$239,500 reimbursement of respondent's capital account was income subject to child support, and the court held respondent in indirect civil contempt for his wilful failure to pay 28% of this amount for child support pursuant to the marital settlement agreement. The trial court held respondent in indirect civil contempt of court for his wilful failure to provide petitioner with the information concerning this additional income. The trial court also held respondent in indirect civil contempt of court for his wilful failure to provide petitioner of income respondent received from 2008 and 2009. Respondent does not contest the trial court's ruling that he underpaid his child support for the years 2008 and 2009, plus interest, or the determination that he failed to provide quarterly income reports as required by the marital settlement agreement.

¶ 50 "The power to enforce an order to pay money through contempt is limited to cases of wilful refusal to obey the court's order." *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984). The failure to make support payments as ordered is *prima facie* evidence of contempt. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006). Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make support payments was not wilful or contumacious and that there exists a valid excuse for his failure to pay. *Sharp*, 369 Ill. App. 3d at 279. "[W]hether a party is guilty of contempt is a question of fact for the trial court, and *** a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Logston*, 103 Ill. 2d at 286-87.

¶ 51 The facts do not support the trial court's finding that respondent was in contempt for his wilful failure to pay 28% of the amount of the buyout of respondent's Interest. Even if the evidence was sufficient to meet petitioner's burden of establishing a *prima facie* case of contempt as to the Interest, the evidence respondent presented rebutted petitioner's proof. At the hearing on the petition, respondent presented evidence that he involuntarily forfeited 40% of his Interest in PPM and that the forfeiture resulted in a loss, not a gain that could be considered income for child support purposes under the terms of the marital settlement agreement. Consequently, this portion of the contempt finding must be reversed.

¶ 52 On the other hand, the trial court's finding that respondent was in contempt for his wilful failure to pay 28% of the reimbursement from the capital account for child support was supported by the evidence. The evidence established that the receipt of the capital account did constitute income for purposes of child support and that respondent did not pay 28% of the amount he received for child support pursuant to the terms of the marital settlement agreement. This evidence was sufficient to meet petitioner's *prima facie* case of contempt. Respondent failed to present evidence to rebut petitioner's proof. Thus, this portion of the contempt finding is affirmed.

¶ 53 Attorney Fees

¶ 54 Because we reverse a portion of the contempt finding, the award of attorney fees based on the contempt finding must be vacated and remanded for a recalculation of attorney fees.

¶ 55 CONCLUSION

¶ 56 For the preceding reasons, the buyout for respondent's Interest in PPM is not income, and thus, the finding of contempt with respect to respondent's failure to pay a portion thereof is reversed. The reimbursement of respondent's capital account is income and therefore, the finding of contempt

with respect to respondent's failure to pay a portion of the reimbursement of his capital account is affirmed. Our partial reversal of the contempt finding with respect to the buyout of respondent's Interest implicates other financial matters, including the award of attorney fees and pre-judgment interest. Accordingly, the award of attorney fees is vacated, and the cause is remanded. On remand, the trial court is free to recalculate the appropriate amounts and consider any other issues that might arise as a result of our order.

¶ 57 The judgment of the circuit court of Kane County is affirmed in part, reversed in part, vacated in part, and remanded for proceedings consistent with this order.

¶ 58 Affirmed in part; reversed in part; vacated in part; remanded with directions.