2015 IL App (1st) 122029-U
Nos. 1-12-2029 & 1-12-3803 Cons.
Order filed March 31, 2015

SIXTH DIVISION

IN THE

APPELLATE COURT OF ILLINIOIS

FIRST DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ANNE K. LEWIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 1998 D 17831
	)	
and	)	
	)	Honorable
SCOT W. LEWIS,	)	Mark Lopez,
	)	Judge Presiding.
Respondent-Appellant.	)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *HELD*: The circuit court's order requiring both parties to pay 50% of the educational expenses of their daughter was not an abuse of discretion. The circuit court's refusal to order the petitioner to document the children's medical expenses and failing to credit the respondent with his own expenditures for their healthcare was not an abuse of discretion. The respondent was not deprived of due process. The circuit court lacked subject matter jurisdiction to rule on a petition for rule to show cause after the notice of appeal was filed.

¶ 2 The respondent, Scot W. Lewis, appeals from orders of the circuit court of Cook County ordering him to pay 50% of his children's educational expenses and finding him in indirect civil contempt. On appeal, Scot contends that: (1) the circuit court failed to enforce the educational provisions of the judgment for dissolution of marriage and failed to comply with section 513(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/513(b) (West 2012) (the Act)) in determining Scot's obligation for educational expenses; (2) the circuit court erred when it refused to require the petitioner, Anne K. Lewis (Anne), to submit documentation for the children's medical expenses and failing to credit Scot with his expenditures for the children's healthcare; (3) the circuit denied him due process; and (6) the circuit court lacked subject matter jurisdiction over the proceedings in the circuit court after Scot filed his notice of appeal.

¶ 3 Initially, we observe that Scot's appellant's brief failed to comply with the requirement of Illinois Supreme Court Rule 341(h)(9)(a) (eff. Feb. 1, 2013), which requires the appellant's brief to contain an appendix as required by Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Rule 342(a) requires that the appendix contain, among other things, the judgment

appealed from, the notice of appeal and a complete table of contents of the record on appeal. Ill. S. Ct. R. 342(a) (eff. Jan. 1. 2005).

¶ 4 The purpose of our rules is to require the parties before the reviewing court to present clear and orderly arguments to enable the court to properly ascertain and properly dispose of the issues on appeal. *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876 (2000). Our supreme court rules are not merely suggestions; they are mandatory, and this court possesses the discretion to impose sanctions for violations. *Pickus Construction & Equipment v. American Overhead Door*, 326 Ill. App. 3d 518, 520 (2001). The record in this case contains 19 volumes, and the lack of a table of contents, in particular, hampered our review. While we choose not to dismiss the appeal for the violations of our rules, where the violations of the rules affect our ability to review an issue, we will not hesitate to summarily affirm or hold the issue forfeited.

¶ 5 BACKGROUND

¶ 6 I. Judgment for Dissolution of Marriage

¶ 7 On March 5, 2002, a judgment for dissolution of marriage was entered dissolving the marriage of Scot and Anne. Their marital settlement agreement (the MSA) was incorporated into the judgment. Amongst the terms in the MSA were provisions for the payment of educational expenses of the parties' two children, Katherine and Benjamin and the children's medical expenses. The educational provision of the MSA states in pertinent part as follows:

> "SCOT and ANNE will be responsible for the cost of a college, university or vocational and graduate school education for the parties' minor children, KATHERINE and BENJAMIN, to the best of their respective abilities pursuant to Section 513 of the [Act]. ****

* * *

> The parties' obligation to pay the educational expenses of the children as set forth in this Article is expressly conditioned upon the following: *** [t]hat the parties have the financial ability to reasonably afford to pay for the educational expenses."

¶ 8 Under the medical expenses and health insurance provision for the children in the MSA, Anne would maintain her private medical insurance coverage for the children's benefit, and Scot would pay Anne one half of the amount she paid for the children's insurance coverage by the 15th of every month. The MSA further provided in pertinent part:

> "The parties will equally share the cost of all health care expenses, including medical, dental, psychiatric, psychological, orthodontia, and optical expenses incurred by the children and not covered by their health insurance coverage. ANNE will provide SCOT on a quarterly basis with documentation of what charges were not covered, and SCOT will tender a check to ANNE for the amount owed within 30 days of receiving the documentation from ANNE."

¶ 9 II. Circuit Court Proceedings

¶ 10 A. Anne's Motion and Petition

¶ 11 On March 9, 2012, Anne filed a motion to set Scot's contribution to the children's educational expenses. In addition, she filed a petition for a rule to show cause against Scot for failing to comply with the children's medical expenses provision in the MSA.

¶ 12 1. *Educational Expenses*

¶ 13 In her motion, Anne alleged that Katherine's first semester of college at Southern Methodist University (SMU) was paid for out of custodial accounts designated for that purpose and the student loans and scholarship funds Katherine had obtained. Following

payments from the custodial accounts, the balance due for Katherine's second semester tuition and related expenses was $9,480.24. Anne requested that Scot pay one half of the balance owed, but he refused to pay any portion of Katherine's second semester expenses, forcing Anne to pay the entire balance owed. Anne sought reimbursement from Scot of one half of the balance owed plus late fees. Anne also requested that the trial court enter an order requiring that Scot pay one half of Katherine's remaining college expenses and Benjamin's college expenses, not covered by scholarships or subsidized loans.

¶ 14 In his response to the motion to set the educational expenses for Katherine and Benjamin, Scot alleged that Anne had the financial ability to pay for Katherine's college expenses. He compared Anne's gross income of $128,138, home equity of $200,000 and $12,800 in consumer debt, with his gross income of $64,445 and $49,500 in consumer debt. Scott further alleged that he made supplemental contributions toward Katherine's educational expenses, that Anne turned down offers of financial aid, and that based on his income, SMU did not raise the expected family contribution rate it used to calculate Katherine's need for financial aid. Scot maintained that the court should not make a determination at this time as to his contribution to Benjamin's education. Scot requested that the court deny Anne's motion and that since he could not afford an attorney or travel expenses from California where he resided, the court allow him to participate in the proceedings by telephone.

¶ 15 In her reply, Anne pointed out that the language in the MSA required the parties to contribute to the children's education "to the best of their respective abilities," rather than their respective incomes. While Scot was employed as a public school teacher, Anne asserted that "Scot's 'abilities' are clear; he had three masters' degrees from prestigious

universities and chooses not to work during the summer or after school hours. To the extent that his income is less than Anne's, that is by choice, not by 'ability.' "

¶ 16 2. *Medical Expenses*

¶ 17 In her petition for a rule to show cause, Anne alleged that in December 2011, she submitted the children's medical expenses for the period between October 1, 2010, through September 30, 2011, to Scot. She further alleged that Scot failed to pay $2,399.51, his one half share of the children's $4,799.02 medical expenses. In addition, Scot refused to pay $379.50, his one half share of Katherine's mandatory medical insurance, which she obtained through the college she attended at a cost of $779 per semester. Anne further alleged that Scot had been held in contempt on five prior occasions, the most recent being February 15, 2011, for failing to pay his share of the children's medical expenses. Anne requested that the trial court enter the rule and order Scot to pay her the unpaid medical expenses.

¶ 18 In his response, Scot acknowledged that Anne submitted the medical expenses to him in December 2011, but alleged that Anne violated the MSA by submitting a year of the children's medical expenses, rather than quarterly as required by the MSA. He further alleged that Anne failed to submit the documentation for the medical expenses, and that he should receive a credit for medical expenses he paid on behalf of the children. Scot requested that the petition for the rule to show cause be denied, that Anne be required to submit medical expenses and insurance plan documentation and that she be admonished to submit the medical expenses quarterly as required by the MSA. Scot further requested that he be allowed to participate in all future court dates by telephone.

¶ 19 B. Scot's Petition to Modify Child Support

¶ 20 On April 25, 2012, Scot filed a petition to modify child support. He alleged that Katherine had reached the age of 18 years and that Benjamin would reach the age of 18 years on April 12, 2013. He alleged that his net monthly income was $3,399 and requested that child support be set at 20% of that figure or $679.80 retroactive to November 10, 2010, when he first sought a reduction in his child support based on extraordinary medical expenses he incurred as the result of a broken leg.

¶ 21 C. Hearing on the Parties' Motions and Petition

¶ 22 On June 14, 2012, the trial court held a hearing on Scot's petition to modify child support, Anne's motion to set the parties' educational contribution, and Anne's petition for a rule to show cause for the unpaid medical expenses.

¶ 23 Anne, who is an attorney, appeared *pro se*. The trial court observed that Scot was not present, though he did arrange for a court reporter to be present. The court then stated as follows:

> "Unfortunately, since Scot is not here to pursue and prosecute his own filings, I'm going to dismiss his underlying motion to modify his child support for want of prosecution.
>
> I have advised Scot on more than one occasion that if he files pleadings seeking affirmative relief from this Court, he needs to be present here to pursue that. And he has made it clear, both in correspondence as well as his response to some of the answers - - pleadings, that he is not coming. And he represents to the Court that he has no money to hire a lawyer or to travel to Chicago. His filings reflect an address in Antioch, California, which I believe is his current address."

¶ 24 After Anne presented evidence on her petition and motion, the circuit court stated that it had reviewed the affidavits submitted by the parties and heard Anne's representations as to the disclosure statements. The court found that Scot had a gross income of $64,445 from his teaching position and that he received $2,430 in additional monthly income from property he owned in Colorado. However, while Scot disclosed that the property had a $394,700 mortgage on it, he had not disclosed the value of the property. The court further found that Anne had no retirement account, but Scot had a retirement account through the California Teachers Union, though he did not provide a valuation for it. The court recognized that payment of the mortgage and related expenses on the Colorado property offset the rental income Scot received. Nonetheless, Scot was increasing his equity in the property. The court then stated as follows:

> "As Ms. Lewis indicates, Mr. Lewis has appeared before this Court many times. I have to agree with her, he is underemployed given his educational level and his expertise in many areas; but he chooses to earn a salary position for nine months a year, basically.
>
> Given those factors, although the documents submitted do reflect an earning greater gross income, the Court does believe given those other factors that a fifty-fifty split of the college expenses is appropriate."

¶ 25 In its June 14, 2012, written order, the trial court found that "Scot had failed to contribute to the minor children's medical expenses as mandated by Article 5 of the parties' dissolution judgment, and that Scot failed to contribute to Katherine's health insurance premium," and that "Scot failed to appear to present any testimony of good cause or justification" for his failure to make his required contribution. The court found Scot in contempt and determined

that he owed a total of $2,683.34 for medical expenses and one half of Katherine's insurance premium.

¶ 26 The court further found that "for reasons stated on the record, the Court finds it appropriate to split all future college expenses evenly between the parties." The court ordered Scot to pay $5,328, one half of Katherine's unpaid college expenses to date, and entered a judgment for that amount in favor of Anne and against Scot.

¶ 27 The June 14, 2012, order provided that, prior to each academic year, Katherine was to make timely applications for available scholarships, grants and work study programs through her school, and that Anne or Scot or both would submit timely the necessary financial information to complete the applications. The order further provided that the provisions of the order applied to Benjamin when he began college. On July 5, 2012, Scot filed a notice of appeal from the June 14, 2012, order.

¶ 28 On September 11, 2012, Anne filed a petition for a rule to show cause against Scot for his failure to pay the educational expenses that had accrued since the June 14, 2012, order. At that time, Katherine was a sophomore at Purdue University, with a different financial aid package. On October 9, 2012, Scot filed a response to Anne's petition and moved to vacate the June 14, 2012, order. On October 17, 2012, the circuit court entered an order stating that Anne appeared before the court, and that Scot had notice of the proceeding but failed to appear. Because Scot failed to appear to prosecute his motion to vacate the June 14, 2012, order, his motion was denied. The court found that there was no good cause or justification for Scot's failure to comply with the June 14, 2012, order and found him in indirect civil contempt. The court entered judgment against Scot and in favor of Anne in the amount of

$11,481.79, the amount due and owing from Scot as of the filing of the petition. The order further provided that the June14, 2012, order remained in full force and effect.

¶ 29 On November 12, 2012, attorneys for Scot filed a motion seeking leave to file an appearance on his behalf and for leave to file a motion to strike Anne's petition for rule to show cause for lack of subject matter jurisdiction. The trial court's order of December 4, 2012, provided that due to his failure to post a bond, Scot withdrew his motion to strike with leave to re-file.

¶ 30 On December 19, 2012, Scot filed a notice of appeal from the October 17, 2012, order. On January 22, 2013, this court granted Scot's motion to consolidate the appeals.

¶ 31 ANALYSIS

¶ 32 I. Allocation of Educational Expenses

¶ 33 Scot contends that the plain and unambiguous terms of the educational provision in the MSA required that he have the ability to pay for Katherine's educational expenses. Scot argues that his disclosure statement of income and expenses demonstrated that he did not have the ability to pay for the educational expenses.

¶ 34 A. Standards of Review

¶ 35 The interpretation of a marital settlement agreement presents a question of law which this court reviews *de novo*. *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18. The circuit court's decision to award educational expenses will not be reversed except for an abuse of discretion. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 627 (2008). "An abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 45.

¶ 36 B. Discussion

¶ 37 Scot contends that the circuit court misinterpreted the educational expenses provision of the parties' MSA. Scot maintains that the proper interpretation of "ability" is the amount he earns from his employment minus his expenses. In construing the terms of a contract, our main objective is to give effect to the purpose and intent of the parties at the time they entered into the agreement. *Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18. The parties' intention is to be ascertained from the language of the agreement. *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344 (2000). "Where the contract language is unambiguous, it should be given its plain and ordinary meaning." *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008). The fact that parties disagree as to its meaning does not render a contract ambiguous. *Hillenbrand v. Meyer Medical Group, S.C.*, 288 Ill. App. 3d 871, 876 (1997).

¶ 38 The parties' MSA does not define "ability." The dictionary defines "ability" as "the quality or state of being able: physical, mental or legal power to perform: competence in doing: SKILL" and "natural talent or acquired proficiency especially "in a particular work or activity." Webster's Third New International Dictionary at 3. The definition of "ability" does not refer to the amount of income a party is receiving but rather the power or skills the party possesses to generate income. By choosing the term "ability" rather than "income," we find as a matter of law that the parties intended that the responsibility for the educational expenses be based on the parties' skills to generate income. Therefore, the circuit court did not misinterpret the educational provision of the parties' MSA.

¶ 39 We now must determine if the circuit court abused its discretion in determining that Scot had the "ability" to pay 50% of Katherine's educational expenses. In addition to the MSA provision regarding educational expenses, Scot relies on section 513 of the Act (750 ILCS

5/513 (West 2012)). Section 513(b) provides that in awarding educational expenses, "the court shall consider all relevant factors that appear reasonable and necessary, including:

"(1) The financial resources of both parents.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

(3) The financial resources of the child.

(4) The child's academic performance."

¶ 40 Scot maintains that he does not have the financial ability to pay based on his disclosure statement which showed a negative monthly income. We disagree.

¶ 41 A provision for the payment of educational expenses is in the nature of child support. *In re Marriage of Spircoff*, 2011 IL App (1st) 103189, ¶ 11. In *In re Marriage of Sweet*, 316 Ill. App. 3d 101 (2000), the reviewing court rejected the contention that a trial court is powerless to set child support based on an amount beyond a party's current income. *Sweet*, 316 Ill. App. 3d at 107. The court found that "if a party is not making a good-faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience." *Sweet*, 316 Ill. App. 3d at 107. " '[C]ourts have the authority to compel parties to pay child support at a level commensurate with their earning potential' " and " 'may impute additional income to a noncustodial parent who is voluntarily underemployed.' " *Deike*, 381 Ill. App. 3d at 631 (quoting *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344 (2004).

¶ 42 The record in this case supports the circuit court's finding that Scot was underemployed. Scot had earned masters' degrees in electrical engineering, business and education. The court's finding is further supported by the fact that prior to becoming unemployed in January

2000, Scot's annual salary was $115,000, and that in August 2000, he was offered a management consulting position with an annual salary of $144,000. In addition, during an earlier contempt proceeding, Scot admitted that he had threatened to return to school to obtain his teaching credentials if Anne would not agree to his settlement offer. See *In re Marriage of Lewis*, No. 1-00-4279 (2002) order at 2-3 (unpublished order pursuant to Supreme Court Rule 23). Moreover, the record reflects that the circuit court considered the section 513(b) factors as well. Finally, Scot presented no evidence that he had attempted to obtain employment in his field or any other basis for failing to obtain employment for which he possessed the skills and the educational background.

¶ 43 We conclude that the circuit court did not abuse its discretion in ordering Scot to pay 50% of Katherine's college expenses.

¶ 44 II. Medical Expenses

¶ 45 Scot contends that the circuit court erred when it failed to require Anne to comply with the MSA provision requiring her to submit documentation for the children's medical expenses on a quarterly basis. Scot maintains Anne's failure to provide him with the documentation on a quarterly basis, denied him the opportunity to participate in his employer's health savings account from which he would have realized tax benefits and caused him difficulty in providing reimbursement for the expenses. In addition, Scot claims that the court erred in denying him credit for providing dental and vision insurance and for out-of-pocket expenses he incurred for the children.

¶ 46 We note that Scot does not deny owing the medical expenses but rather that receipt of the documentation on a quarterly basis was a condition precedent excusing his payment. With regard to the documentation on a quarterly basis requirement, the MSA provided in pertinent

part that "ANNE will provide SCOT on a quarterly basis with documentation of what charges were not covered, and SCOT will tender a check to ANNE for the amount owed within 30 days of receiving the documentation from ANNE."

¶ 47 The record contains Anne's December 11 and 12, 2011, e-mails to Scot to which she attached the required documentation and requested that he reimburse her within 30 days of the receipt. Scot's argument concerns the lack of detail in the documentation. However, the MSA merely states "documentation." Surely, if Scot had questions about the expenses, he could have contacted Anne or the medical personnel furnishing the treatments. Likewise, the MSA did not provide that Anne's failure to submit the medical expenses to Scot on a quarterly basis would relieve him of the responsibility of paying his share of the children's medical expenses. See *In re Marriage of Sawyer*, 264 Ill. App. 3d 839, 846 (1994) (if the parties wish to condition future payments on the happening of an extrinsic event, the condition must be clear and explicit and will not be inferred). While Scot claims the right to a set off for his expenses, medical and otherwise, for the children, he fails to point to any provision in the MSA requiring such a set off.

¶ 48 The cases relied on by Scot do not provide support for his argument. Both *In re Marriage of Belk*, 239 Ill. App. 3d 806 (1992), and *Fleisher v. Lettvin*, 199 Ill. App. 3d 504 (1990), stand for the well settled principle that courts cannot remake the parties' agreement by adding new terms but must enforce them as written. In *In re Marriage of Holderrieth*, 181 Ill. App. 3d 199 (1989), the court held that it would not set aside a marital settlement agreement unless there was clear and convincing evidence that the agreement was entered into as a result of fraud, duress or was contrary to public policy or morals. *Holderrieth*, 181

Ill. App. 3d at 206. In this case, Scot's arguments would require this court to insert conditions into the MSA and are clearly at odds with the cases on which he relies.

¶ 49 We reject Scot's claim that the MSA contained conditions precedent excusing his payment of the medical expenses or that he was entitled to a set off for his own out-of – pocket expenses.

¶ 50 III. Due Process

¶ 51 Scot contends that the circuit court's refusal to allow him to participate in the June 14, 2012, hearing by telephone denied him constitutional right to due process, guaranteed under the United States Constitution and the Illinois Constitution. U.S. Const. amend. XIV; Ill. Const. 1970, art. 1§2. Scot further contends that the court's requirement that he post a bond prior to filing a response to Anne's petition for rule to show cause denied him access to the courts.

¶ 52 A. Standard of Review

¶ 53 Whether a party has been denied due process is a question of law, and our review is *de novo*. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010) (whether a party received proper or adequate notice is a question of law).

¶ 54 B. Discussion

¶ 55 Scot maintains that he could not afford to travel to Illinois for the June 12, 2012, hearing. Therefore, the circuit court's denial of his request to participate in the hearing by telephone was error.

¶ 56 "Fundamental principles of due process require that parties receive procedural due process in the form of notice and an opportunity to be heard." *Stewart*, 401 Ill. App. 3d at

626. "Due process is not denied when a party fails to avail himself of the opportunity to be heard after it is offered to him." *In re E.L.*, 152 Ill. App. 3d 25, 33 (1987).

¶ 57 None of the cases relied on by Scot support his argument that he was denied an opportunity to be heard. In *In re Tiona W.*, 341 Ill. App. 3d 615 (2003), the respondent-father was incarcerated, and the circuit court agreed to allow him to participate in the hearing by telephone. When those arrangements could not be made, the court proceeded with the hearing. *Tiona W.*, 341 Ill. App. 3d at 617; see *In re Carl B.*, 327 Ill. App. 3d 743 (2002) (trial court allowed the incarcerated respondent to testify by telephone). In the two federal cases relied on by Scot, the court allowed counsels to participate by telephone to set up discovery and pretrial schedules (*Rana v. College Admissions Assistance, LLC*, No. 11 C 4280 (N.D. Ill. 2012)) and to participate by telephone in a status conference (*Mappa v. Moine*, No. 96 C 2329 (N.D. Ill. 2000). None of those cases hold that a court must permit a party to participate by telephone in proceedings before the court. That issue was not even raised in those cases.

¶ 58 Scot points out that in *Pryweller v. Pryweller*, 218 Ill. App. 3d 619 (1999), the reviewing court held that a contempt hearing must afford the contemnor a full opportunity to explain his noncompliance with the court's order, and that no one should be imprisoned unless it can be shown that the contemnor had the power to comply with the trial court's order. *Pryweller*, 218 Ill. App. 3d at 631. Unlike the contemnor in *Pryweller*, Scot was not imprisoned or even sanctioned for his failure to pay the children's medical expenses.

¶ 59 Moreover, the transcript from the June 14, 2012, hearing reveals that in ruling on Anne's motion for educational expenses and her petition for a rule to show cause, the circuit court considered the evidence Scot submitted both as to his reasons for not appearing in person for

the hearing, and his responses to the motion for educational expenses and the petition for rule to show cause.

¶ 60 Scot contends that the circuit court erred when it required him to post a bond prior to filing any pleading. The bond requirement was set forth in an agreed order entered on July 6, 2006. An agreed order "is a recordation of the parties' agreement and not a judicial determination of their rights and that, absent fraud, such a consent decree is not appealable unless the rights or interests of the public have been effected." *Grubert v. Cosmopolitan National Bank*, 269 Ill. App. 3d 408, 411 (1995). Scot has not alleged that his agreement was procured by fraud. Therefore, we will do not consider his claim of error.

¶ 61 In the alternative, Scot contends that the trial court erred when it dismissed his petition to modify child support because he failed to appear for the hearing. He maintains that his presence was unnecessary because the trial court should have ruled on the petition as a matter of law based on the information in the documents he presented, *i.e.* his financial disclosure statement, the number of paychecks he receives and his substantial change in circumstances due to his medical problems. Scot cites no authority for this argument, and therefore it is forfeited. Ill. S. Ct. R. 341 (h)(7) (eff. Feb. 6, 2013). Moreover, courts have inherent power to dismiss a lawsuit for want of prosecution, and whether a dismissal is justified is within the trial court's discretion. *Jones v. Sullivan*, 34 Ill. App. 3d 786, 789 (1976). Where a party fails to appear for a hearing and the opposing party is present and insisting on a disposition of the case, the court does not abuse its discretion by dismissing the case. *Jones*, 34 Ill. App. 3d at 790. The trial court noted at the beginning of the June 14, 2012, hearing that Scot had been advised that his appearance was required when he sought affirmative relief from the court. Therefore, there is no merit to Scot's argument.

¶ 62 We conclude that the trial court's order requiring that both parties pay 50% of Katherine's educational expenses was not an abuse of discretion. We further conclude that Scot was not denied due process of law and reject his claims of error by the trial court.

¶ 63 IV. Subject Matter Jurisdiction

¶ 64 Scot contends that the trial court lacked subject matter jurisdiction to rule on Anne's September 11, 2012, petition for a rule to show cause for Scot's failure to comply with the June 14, 2012, order, requiring him to pay 50% of Katherine's educational expenses. He argues that the trial court lost jurisdiction when he filed his July 5, 2012, notice of appeal from the June 14, 2012 order.

¶ 65 Upon the filing of a notice of appeal, the trial court is divested of jurisdiction to enter any orders of substance. *In re Marriage of Steinberg*, 302 Ill. App. 3d 845, 849 (1998). While the trial court retains jurisdiction to decide matters independent of and collateral to a judgment, it is restrained from entering an order which would modify the judgment or its scope. *Steinberg*, 302 Ill. App. 3d at 849. In *Williamsburg Village Owners' Ass'n, Inc. v. Lauder Associates*, 200 Ill. App. 3d 474 (1990), this court held that the notice of appeal did not operate to stay enforcement of the trial court's orders. *Williamsburg Village Owners' Ass'n, Inc*, 200 Ill. App. 3d at 481. The court noted that under Illinois Supreme Court Rule 305(b) (eff. July 1, 2004), a party could apply for a stay of the enforcement of the trial court's order while the order is on appeal. However, until the stay was granted, the trial court was not precluded from exercising its authority to execute its contempt order by imposing fines. *Williamsburg Village Owners' Ass'n, Inc*, 200 Ill. App. 3d at 482.

¶ 66 In *Steinberg*, this court held that, while an appeal was pending, a trial court was without jurisdiction to declare that the order appealed from was null and void. *Steinberg*, 302 Ill.

App. 3d at 849. In *Sawyer*, both parties appealed from a trial court's decision refusing to terminate the respondent's educational support obligation but finding that the respondent was not in contempt. While the appeal was pending, the petitioner filed petitions to have the respondent held in contempt for failing to pay the college-related expenses accruing since the previous petition and failing to provide proof of life insurance and medical insurance benefits as required by the judgment. She further requested that the court set the arrearages owed on the college-expenses. The trial court granted the respondent's motion to strike the petitions. On appeal, this court agreed, finding that the relief sought in the petitions raised issues directly concerning the judgment and addressed on appeal. *Sawyer*, 264 Ill. App. 3d at 850.

¶ 67 Under the particular facts here, we agree with Scot that the circuit court lacked jurisdiction to consider Anne's petition for rule to show cause and therefore to issue the October 17, 2012, order finding him in contempt. Scot was appealing the circuit court's June 14, 2012, order requiring him to pay 50% of Katherine's college expenses but which also required Katherine to seek financial aid. In response to the petition for rule to show cause, Scot sought to vacate the June 14, 2012, order and argued in part that Katherine had not taken advantage of all available financial aid. The court's October 17, 2012, order found him in contempt for failing to comply by paying his share of Katherine's college expenses which had been incurred subsequent to the June 14, 2012, order. Therefore, the October 17, 2012, order directly concerned the issues and the judgment on appeal.

¶ 68 We find Anne's reliance on *In re Marriage of Kuhn*, 221 Ill. App. 3d 1(1991), misplaced. In that case, the trial court ordered each party to pay 50% of the child's educational expenses and order the respondent to reimburse the petitioner for 50% of the past due amount within 10 days of the entry of the order. The respondent's requests for a stay of the order while he

appealed were denied by the trial court and the appellate and supreme courts. While the respondent's request for a stay was pending, the petitioner filed a petition for rule to show cause for the respondent's failure to pay the amount owed within the 10 day period. The trial court granted the petition and held the respondent in contempt. *Kuhn*, 221 Ill. App. 3d at 4. On appeal, the court reversed finding that the contempt was too harsh a penalty where the respondent was pursuing legal remedies to which he may have been entitled. *Kuhn*, 221 Ill. App. 3d at 4. Unlike the present case, in *Kuhn* there was no issue as to the trial court's jurisdiction because the court was enforcing its order that the respondent pay the educational expenses within 10 days. In the present case, Scot's response to Anne's petition for rule to show cause included a motion to vacate the June 14, 2012, order and challenged compliance with the requirement that Katherine seek a financial aid package.

¶ 69 CONCLUSION

¶ 70 We affirm the circuit court's order of June14, 2012. The October 17, 2012, order finding Scot in contempt is reversed.

¶ 71 Affirmed in part and reversed in part.