

Nos. 1-13-2110, 1-13-3903 (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF JIM A. DEVEROS,)	Appeal from the Circuit Court of Cook County.
)	
Petitioner-Appellant,)	
)	
and)	No. 12 D 11823
)	
ELENA M. DEVEROS,)	
)	
Respondent-Appellee.)	Honorable Veronica B. Mathein, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court did not abuse its discretion in determining the amount of required child support and in finding petitioner in contempt of court for failure to pay support as ordered, where the factual findings of the support award were not against the manifest weight of the evidence. We dismiss petitioner’s appeal of his contempt finding with respect to his failure to pay respondent’s interim attorney fees because the trial court’s contempt order lacks a sanction and is therefore not a final and appealable order. We therefore affirm in part and dismiss in part.

¶ 2 Following a temporary support hearing, the trial court ordered petitioner Jim Deveros to pay respondent Elena Deveros \$8,500 per month in unallocated maintenance and child support.

Later, the trial court ordered Jim¹ to pay Elena's interim attorney fees. On appeal, petitioner contends that the trial court abused its discretion in finding him in contempt of court because the factual findings of the underlying orders awarding temporary support and interim attorney fees were against the manifest weight of the evidence. For the following reasons, we affirm in part and dismiss the appeal in part.

¶ 3

BACKGROUND

¶ 4 Jim and Elena were married on June 2, 2002, and had two sons under the age of 10: Evan and Peter. Their marital home, in Mount Prospect, Illinois, was titled in Elena's and her parents' names.

¶ 5 On December 19, 2012, Jim filed his petition for dissolution of marriage. On January 4, 2013, Jim filed an emergency petition to set a temporary parenting schedule and for a return of his personal property. Elena responded on January 14, 2013, and also filed a petition for temporary support. Elena's petition asserted in part that Elena was a homemaker and that Jim had an ownership interest in "two (2) or more" gasoline stations. The next day, the trial court entered an order setting a temporary visitation schedule for Jim, directing him to pay \$75 in child support to Elena per week, and continuing the matter to February 6, 2013, for a hearing on "support [and the] return of property."

¶ 6

The Temporary Support Hearing

¶ 7 At the hearing on Elena's petition for temporary support, Elena's attorney first called Jim to testify as an adverse witness. Jim stated that he worked at FNA Fuels (FNA) in Wilmette, Illinois, as a manager. Jim denied any ownership interest in FNA; rather, he stated that FNA was

¹ To avoid confusion, we will refer to the Deveroses and Flevarises individually by their first names.

owned by Panagiotis Floudas, a long-time friend of the family that Jim considered an uncle. Jim stated that he had been working as a manager since January 2012, or about 14 months, and that his duties involved doing “paperwork,” making bank deposits, and generally “oversee[ing] things.” Jim stated that he earned \$345 weekly and had \$17,000 in income for 2012.

¶ 8 Prior to FNA, Jim stated that he worked for Sun View Markets, which was owned by Elena’s father, from 2002 until 2010, and that he was unemployed from April 2010 until the beginning of 2012. When asked whether he filed an income tax return in 2009, Jim’s attorney advised him not to answer based upon Jim’s Fifth Amendment right not to incriminate himself, but Jim nonetheless stated that he could not recall whether he filed a tax return for 2009 or 2010. He did admit, however, that he did not file a tax return for 2011.

¶ 9 Jim denied either working at, or having an ownership interest in, a gas station in River Grove, Illinois (RNG). Jim said that his sister, Constantina (Dina) Flevaris, owned it, and he denied ever receiving any cash payments from that station. Jim said that he only went to RNG if he was meeting his sister for lunch.

¶ 10 Jim then confirmed that his father-in-law purchased the marital residence for Elena and him in 2002 because Jim did not have “enough good credit” to do so, and the house remained in his father-in-law’s name. Jim denied making any mortgage payments on the home; instead, according to Jim, his father-in-law made those payments in 2011 and then his sister made the payments for the first eight months of 2012. Jim further admitted that his sister also paid all of his legal fees to date.

¶ 11 Jim further testified that there was a safe in the garage of the house that contained 10 or 12 hunting rifles, but he denied that there was \$100,000 in cash in the safe “on a regular basis.” Jim further acknowledged that there were about 18 mounted animal heads from his prior hunting

trips, and although each cost between \$250 - \$300, he explained that they had been done a long time ago and that only two of them had been purchased in the prior three years. Jim said he did not spend “something like 70 days” hunting in 2012, but he conceded that he went on one dove hunting trip to Indiana and a one-day deer-hunting trip to southern Illinois. Jim could not recall whether he went goose hunting in Michigan in October 2012 or November 2012, but he admitted that he was listed as an “endorser” on a sales brochure for Camou Brothers, a company that provides various goods and services for hunters.

¶ 12 Jim also admitted that he was a co-owner of a Chase and a PNC checking account with Elena. When asked (under adverse direct examination by Elena’s attorney) whether he made a series of cash deposits totaling nearly \$53,000 between February 26, 2010, and November 15, 2012, Jim neither confirmed nor denied making the deposits; rather, he stated, “I don’t recall.” Jim denied that his sister made those deposits. When Jim’s attorney subsequently called him to testify on direct examination, Jim then claimed that Elena obtained cash from her father (from the sale of two houses) and would deposit this amount into their checking account. Jim further recalled a conversation with Elena in October 2009 during which Elena alleged told Jim that Elena’s father was giving her money, which she would put in their bank account to pay for the mortgage and other bills in the house.

¶ 13 Elena testified that she had not earned any money since 2009. She agreed that she and her parents jointly held the marital residence, but she stated that Jim made the \$2,500 monthly mortgage payments—in cash—from 2002 until he left the home in November 2012. In addition, according to Elena, Jim paid the \$14,000 in annual property taxes by cash from 2009 through 2012. Elena added that, on August 1, 2012, she spoke with Jim at his office at the FNA station and asked him for money to pay the 2010 property taxes. Jim then gave Elena \$4,000 in cash

from his pocket and took another \$1,026 in cash from a “pile” of money that was on the desk. Elena produced payment receipts indicating that the property taxes were paid in cash.

¶ 14 Elena further testified that, around mid-October 2012, she asked Jim for money for their son Evan’s birthday party, but Jim refused. Elena asked Jim whether he was “cheap or broke,” and Jim responded that he had over \$100,000 in cash in the safe in their garage. On cross-examination, however, Elena admitted that she did not know what was in the safe and claimed she did not have the \$350 to pay for a locksmith to open it.

¶ 15 Elena also disputed Jim’s recollection of his hunting trips. Elena stated that he took eight to ten such trips in 2012, lasting a total of 78 to 80 days. Among the trips Jim took were a nine-day trip to Oklahoma in January, and a six-day trip to Wisconsin in April. Elena added that Jim also took six-day trip to Indiana for dove hunting, leaving in August, “a couple days” prior to the opening of the season on September 1. Elena said that she saved “over 500” text messages establishing the dates of the hunting trips. At one point, she had asked Jim how much these trips cost because there are guides who videotape Jim on the hunts. Jim told her that the trips cost between \$3,000 and \$7,000.

¶ 16 As to the gas stations, Elena testified that, around September 1, 2009, Jim told her that he and his brother-in-law bought RNG, which earned \$20,000 “net” on a monthly basis, and that Jim and the brother-in-law each owned half of RNG. According to Elena, Jim also told her in July 2010 that he purchased FNA. She did not know how much FNA made, but around November 2011 (when Jim purchased RNG), Jim told Elena that FNA did not make as much money as RNG because he still “owes on the purchase,” but that FNA nonetheless makes “a good amount of money.”

¶ 17 Elena agreed that she told her attorney that Jim earned \$20,000 per month. Elena explained that she arrived at her estimate based upon Jim telling her this, and the fact that Jim both earned half of RNG's profits of \$20,000 per month and also received \$6,000 in cash for working there. Elena confirmed that, on "numerous" months, including November 2011 and January 2012, she saw a bundle of \$100 bills held together with a rubber band and with an adding machine tape that had Jim's name, the month, and the amount "\$6,000" written on it. She admitted on cross-examination, however, that after Jim said FNA earned a "good amount" of money, she never asked Jim how much that was, responding, "[Jim]'s a very secretive man."

¶ 18 As to her expenses, Elena testified that, according to her financial affidavit, her monthly expenses were \$10,165.45. She admitted on cross-examination, however, that Jim had paid the children's school tuition for their Greek school, that she had received a debit card from her mother to help pay for bills, and that she had not paid the mortgage despite listing it on her affidavit as an expense.

¶ 19 Concerning the parties' bank accounts, Elena stated that she did not deposit any of her own money into either account between 2009 and 2011, and reiterated that she did not have any income during that time. She explained that Jim typically made the cash deposits, although she conceded that, approximately every four months, Jim would leave her instructions and the cash for her to deposit.

¶ 20 At the conclusion of the hearing, the trial court announced its findings, stating in relevant part as follows:

"Wow. It's interesting that you [Jim] didn't remember anything this morning, but you suddenly remembered a

conversation about cash deposits. So nobody—neither of you made any deposits into the accounts. Somebody did. ***.

All I know is that I'm to assess credibility, and [Jim,] you have none. You know when somebody says 'I don't recall' over and over and over, that's a red flag. *** I think when we're dealing in a cash situation, there is no paper trail."

The trial court further observed that if there were a "sign" in either gas station indicating who the owner was, Jim could have produced it at the hearing. The trial court continued, "So instead of saying [Elena] doesn't have any paperwork, neither do you," although the trial court clarified that it was not stating that it was Jim's burden to show it, only that he "could have brought in something to back up [his] testimony," but he did not.

¶ 21 The trial court then found Elena's testimony that Jim made \$20,000 monthly to be credible. Turning to her financial affidavit, the trial court stated that, although her "\$10,100" in monthly expenses appeared significant at first glance, "[w]hen you look at each entry, it's really not a lot," mostly consisting of the mortgage, real estate taxes, and utilities. The trial court stated that it was removing the amounts for furniture and appliance replacement, but it said the amount for gas was reasonable and implied that it may have been understated because Elena had indicated that she had taken a trip in the previous year and the trial court commented, "I don't know how you were paying for your gas." The trial court stated it was giving her financial affidavit "absolutely no credibility whatsoever," and would be deducting some of the expenses for "clubs, and for gifts, for vacations," because Elena and Jim were getting divorced and the trial court did not consider it appropriate to include those at this time. The trial court then

entered a written order that Jim pay Elena \$8,500 per month for temporary maintenance and child support, retroactive to February 1, 2013, “for the reasons stated in open court.”

¶ 22 The First Contempt Hearing (Regarding Temporary Support)

¶ 23 On February 20, 2013, Elena’s attorney filed a petition for a rule to show cause why Jim should not be held in contempt for his failure to comply with the trial court’s February 6, 2013, order that Jim pay Elena \$8,500 per month in temporary support. Elena’s petition asserted that Jim had only paid her \$75 since the trial court’s order and that he had “made it clear” that he would only pay Elena \$75 per week. The trial court entered an order on February 25, 2013, finding that there was a *prima facie* case of indirect civil contempt based upon Jim’s failure to comply with the February 2013 order, and ordered Jim to appear on March 21, 2013, to respond to the rule to show cause. Jim responded on March 11, 2013, maintaining that he only made \$17,000 per year. Jim also filed a motion to modify the trial court’s February 2013 order, arguing that newly discovered evidence—in the form of tax returns, licenses, and “printouts from the Secretary of State”—established that he had no ownership interest in either gas station.

¶ 24 At the combined hearing on Elena’s petition for a rule to show cause and Jim’s motion to modify,² Jim acknowledged that the trial court ordered him to pay Elena \$8,500 per month beginning February 2013, but stated that he was unable to do so and that he only paid her \$75 weekly and increased that amount by \$50 for the two weeks prior to the hearing date. Jim stated that he only had one checking account, his only source of income was his \$345 weekly salary as an employee of FNA, and he received no money from RNG.

² The testimony at this hearing was memorialized in a stipulated bystander’s report and not a verbatim transcript. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005).

¶ 25 Jim also maintained that he had no ownership interest in FNA or RNG, and denied telling Elena that he owned any part of RNG or FNA. Jim said that his sister Dina, his brother-in-law, and his father own RNG, and that Jim does not spend any time there. Instead, Jim testified that he only arranged for the purchase of the station because he knew the prior owner. He conceded, however, that he is listed on a Costco Business Member Card as an agent for RNG, and that the RNG phone number and his personal cell phone number both end with the digits “0811.”

¶ 26 Although he claimed that his father did not purchase any business for him, when Elena’s attorney asked Jim, “Did your father instruct you not to take any business interest in your name and to hide any such business interest?,” Jim responded, “I don’t know, maybe.”

¶ 27 Jim testified that, on occasion, he goes on hunting trips, and that he has dealt with Camou Brothers, a hunting company, since 2006 and for which he appears as one of the company’s “endorsers” on its brochure. These trips were financed “almost exclusively” by Dina.

¶ 28 Jim claimed that many of his and Elena’s marital expenses, including their mortgage, were paid from money received from Elena’s father. Jim later testified, however, that Dina has paid all of his legal fees incurred in this matter to date (approximately \$18,000) and that she has helped to pay certain marital expenses throughout the marriage, such a number of mortgage payments (\$2,500 per month during the first 10 months of 2013) and certain “other” expenses for the parties’ children, but she stopped doing so when Elena refused to allow Jim to see his children. In addition, his sister paid for Jim’s new 2012 Toyota Corolla in 2012.

¶ 29 Dina then testified that (1) she owns 52% of RNG; (2) her husband, Peter Flevaris, and her father, Angelos³ Deveros, each own 24%; and (3) Jim has never had an ownership interest.

³ Jim’s father’s first name is also spelled “Angelo.” For the sake of clarity, we will use the “Angelos” spelling.

Dina said that the station is open seven days per week and grosses about \$10,000 each day, of which 35-40% is paid in cash. Dina stated that the loan to purchase RNG came from her father and that she is paying off the loan with RNG's profits. Dina reiterated that Jim put no money into RNG and receives no salary from it. Dina conceded, however, that she made Jim and Elena's mortgage payments, and that she also paid for certain of the children's expenses as well as Jim's attorney fees to date. Dina, however, stopped making those payments when Jim filed for divorce and Elena refused to allow Jim to see the children.

¶ 30 Various exhibits were admitted into evidence, including RNG's federal corporate tax returns, showing the ownership percentages as noted above for 2010 and 2011 (the 2009 tax return showed "uncle"/family friend Floudas as the 100% owner). Other exhibits included RNG's business licenses issued by the Village of River Grove (showing Peter as the owner and Dina as the manager), a "Property Owner Form" (showing Peter as the owner and occupant of the property where RNG was located), RNG's "Corporation File Detail Report" from the Secretary of State's Office (showing Dina as the President and Agent), a loan statement from Zions Bank (sent to "Angelo [*sic*] Deveros"), and a ComEd utility bill (sent to Dina).

¶ 31 Peter testified that he owned 24% of RNG (although on cross-examination, he stated it was 24.5%); his wife, Dina, owned 52%; and Dina's father owned the remaining 24%. On cross-examination, Peter admitted that his father-in-law fully financed Peter's purchase of the 24% stake in RNG and that Peter contributed nothing to the purchase price. Peter echoed the other testimony that Jim has no ownership stake in RNG. Peter stated that the "vast majority" of RNG's sales were by credit card and a "minority" of sales were by cash. Peter also said that all of RNG's sales were reported on the company's tax returns.

¶ 32 Floudas also testified that he owned 100% of FNA, Jim did not own any interest in it, and that Jim only earned \$345 per week as an employee. Among the exhibits admitted without objection were FNA's corporate federal tax returns for 2009 through 2011 showing Floudas as the 100% owner. Other exhibits included various utility bills sent only to FNA.

¶ 33 Elena then testified, maintaining that Jim was an owner of both FNA and RNG, having acquired his ownership stake at some point during their marriage. Elena stated that her financial affidavit (indicating monthly expenses of \$10,165.47) was true and accurate with the exception of income in the form of a "link card" providing her with about \$500 monthly. Elena stated that she was unemployed during the marriage and that she was currently unable to work because after the February 2013 hearing, she was diagnosed with breast cancer and underwent surgery, and that she was currently undergoing chemotherapy and radiation. The result of the treatments have left her tired and unable to work. She said that Jim made the mortgage payments during the marriage but stopped when he left in October 2012, and since that time she has been unable to make the mortgage payments or pay the \$16,000 in property taxes. The trial court admitted four bank statements from April, July, August, and October 2012 showing cash deposits totaling \$8,261.61. Elena stated that she could not locate any other statements at that time.

¶ 34 Victoria Mellos, Elena's sister, testified that Elena's parents were living with Elena "because otherwise they would be homeless." Victoria said that, around July 1, 2010, she spoke with Jim, stating that she needed to find baptismal crosses. According to Victoria, Jim said he knew of someone whose location was "near his new gas station," RNG. Victoria met him there with her father, and Jim gave them a tour of what he repeatedly characterized as "his" station.

¶ 35 On July 8, 2013, the trial court issued an order on Elena's petition for a rule to show cause as to Jim's failure to comply with the February 2013 temporary support order and

Jim's petition to modify or reconsider the temporary support order. The trial court denied Jim's petition and found Jim in contempt for his failure to comply with the February 2013 order, sentencing him to Cook County jail effective July 11, 2013.⁴ The trial court's order stated that Jim could purge the contempt finding by paying \$20,000 to Elena immediately, with the remaining \$29,000 arrearage to be paid monthly (with interest) at an amount that would be determined on July 11, 2013. The trial court then continued the matter to July 11, 2013, as to other issues not relevant to this appeal. The next day, Jim filed a notice of appeal from the trial court's order of contempt for his failure to comply with the February 2013 order. This appeal was docketed as number 1-13-2110.

¶ 36 The Second Contempt Hearing (Regarding Attorney Fees)

¶ 37 On August 21, 2013, Elena's attorney filed a supplemental petition for interim attorney fees seeking \$40,000. This petition noted that, since the initial petition on February 15, 2013, which sought \$25,000, Elena's attorney had spent a "substantial" amount of additional time on this matter, and that the total billed as of the date of the supplemental petition was \$30,848.50. On September 18, 2013, the trial court ordered Jim to pay \$30,000 in interim attorney fees to Elena's attorney within 14 days of the date of the order. On October 3, 2013, Elena's attorney filed a petition for a rule to show cause why Jim should not be held in contempt for failure to comply with the trial court's September 2013 order requiring Jim to pay Elena's interim attorney fees. On October 9, 2013, the trial court granted Jim 14 days to respond. He did not do so.

¶ 38 On November 25, 2013, the trial court held a hearing on Elena's petition for a rule to show cause. Jim acknowledged that the trial court had ordered him (on September 18, 2013) to

⁴ On July 10, 2013, this court allowed Jim's emergency motion to stay the contempt sanction.

pay \$30,000 in interim attorney fees to Elena's attorney within 14 days of the date of the September order. Jim testified that his sister, Dina, has paid all of his attorney fees but has refused to lend Jim any money to pay Elena's attorney fees. Jim denied knowing how much his attorneys have been paid. Jim's brother-in-law and uncle also refused to lend Jim any money.

¶ 39 On November 27, 2013, the trial court issued an order on Elena's petition for a rule to show cause as to Jim's failure to pay her interim attorney fees. The trial court recounted Jim's testimony and ordered the following:

- “1. [Dina] shall provide proof of payments of all amounts she has paid on [Jim's] behalf for fees in this matter, and that the same amount shall be paid to [Elena's] attorney;
2. Either [Dina] shall pay unto [Elena's] attorney the same amount she paid [Jim's attorney], or [Jim's attorney] shall pay unto [Elena's attorney] 100% of what he has received from [Dina];
3. The above Order is in lieu of the Court holding [Jim] in contempt of court and sentencing him to jail.”

The trial court also continued the matter to December 2, 2013, for status.

¶ 40 On December 9, 2013, the trial court issued an order stating that it was *sua sponte* reconsidering its prior November 2013 order based upon a finding that Jim did have the ability to pay Elena's attorney fees. The trial court found Jim in contempt for his failure to do so within 14 days of the prior November 2013 order, and it stated that Jim could purge the contempt finding if he paid the attorney fees within 7 days of the date of the December order. The trial court vacated

the second and third paragraphs of the November order and continued the matter to December 18, 2013, for a status hearing.

¶ 41 On December 11, 2013, Jim filed a notice of appeal from the trial court’s order of contempt for his failure to pay Elena’s interim attorney fees. This appeal was docketed as number 1-13-3903. We subsequently granted Jim’s motion to consolidate that appeal into appeal number 1-13-2110.

¶ 42 ANALYSIS

¶ 43 Appeal Number 1-13-2110, the Award of Temporary Support

¶ 44 Jim first contends that the trial court abused its discretion in finding him in contempt for failure to comply with its order that he pay Elena \$8,500 in monthly temporary support. Specifically, Jim argues that the trial court’s award of \$8,500 was based upon Elena’s speculation that Jim earned \$20,000 per month in cash. Jim concludes that reversal is required because the trial court’s finding that Jim was able to pay that amount was against the manifest weight of the evidence.

¶ 45 Although a temporary support order is nonappealable, we nonetheless have jurisdiction over this matter because the trial court’s judgment of contempt, which included a sanction (here, imprisonment), is a final and appealable order. *In re Marriage of Elies*, 248 Ill. App. 3d 1052, 1057 (1993); *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 414-15 (1970).

¶ 46 “An award of temporary maintenance and child support is dependent upon the financial ability and current circumstances of the parties, but the trial court has considerable discretion in determining the amount of the award.” *Elies*, 248 Ill. App. 3d at 1058 (citing *In re Marriage of Rogliano*, 198 Ill. App. 3d 404 (1990)). Notably, in determining a child support award, gifts and “loans” with no repayment schedule may be imputed as income to a parent. *In re Marriage of*

Rogers, 213 Ill. 2d 129, 140 (2003). “In a contempt proceeding brought during a dissolution of marriage action to enforce an order of child support or maintenance, the failure to make court-ordered payments is *prima facie* evidence of contempt.” *Elies*, 248 Ill. App. 3d at 1058.

¶ 47 Once that *prima facie* case has been made, the alleged contemnor then has the burden of proving that his failure to comply was not willful or contumacious and that he has a valid excuse for his failure to pay. *Id.* (citing *In re Marriage of Hilkovitch*, 124 Ill. App. 3d 401 (1984)). It should be noted, however, that the contemnor’s alleged financial inability to comply with an order must be shown by “definite and explicit evidence.” *In re Marriage of Dall*, 212 Ill. App. 3d 85, 98 (1991). Moreover, the defense of “poverty and misfortune” has previously excused nonpayment “only in the most extreme cases,” such as where the contemnor had no money and no way of getting money to meet his support obligations.” *Id.* at 97-98. General testimony, however, does not meet that burden. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 633 (2008). “A payor must, by testimony, present evidence establishing with reasonable certainty money disbursed for expenses other than payments on the support order was disbursed for expenses permitted by law.” *Id.*

¶ 48 Whether the person charged is in willful contempt and whether the sanction is proper are factual matters within the discretion of the trial court. *Id.* Consequently, we will not disturb the finding “unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion.” *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under this highly deferential standard of review, we will not retry the case (*In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004)) and in cases where the evidence clearly favors

neither party, we are compelled to affirm the trial court because the *opposite* conclusion is not clearly evident (*In re Marriage of Pool*, 118 Ill. App. 3d 1035, 1039 (1983)). By contrast, the abuse of discretion standard of review is “the most deferential standard of review—next to no review at all.” *In re D.T.*, 212 Ill. 2d 347, 356 (2004). “A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court.” *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005). The trial court is in the best position to determine the credibility of the witnesses and to either accept or reject their testimony. *Elies*, 248 Ill. App. 3d at 1058. In fact, the trial court may even disregard uncontradicted testimony if it is inherently unreasonable or improbable. *Id.*

¶ 49 In this case, Jim contends that the trial court erroneously found him in contempt and rejected his claim that he was financially unable to comply with the February 2013 order. Jim further argues that the trial court’s underlying finding—namely, that he and his family acted to conceal and greatly understate his income by paying it in cash—was against the manifest weight of the evidence. We disagree.

¶ 50 Here, the evidence was undisputed that Elena did not work during the marriage or during the hearings in this case. Although Jim claimed he was a merely \$345-per-week employee of FNA, that meager salary was sufficient to cover a \$2,500 mortgage, \$14,000 in annual property taxes, the care and support of two children, as well as perhaps several hunting trips. When asked whether he took any hunting trip to Michigan a mere three to four months prior to the hearing, Jim could only muster a response of “I don’t recall,” instead of affirmatively denying having taken any such trip. Jim’s memory was similarly nonresponsive when asked whether he had made over \$50,000 in deposits from February 2010 to October 2012 (four months prior to the hearing), a period of time during which he claimed to have been unemployed until January 2012,

after which point he earned a mere \$17,000 for all of 2012. It would defy all reason to blindly accept that an individual—who had zero income in 2010 and 2011, and \$17,000 in 2012—would have no knowledge *whether* he made deposits that totaled three times his annual salary. Jim further undermined his credibility when, despite his claim that he has no affiliation whatsoever with RNG, he admitted that he is listed as an authorized “agent” for RNG with Costco.

¶ 51 Jim, however, admitted that his sister Dina, the alleged majority owner of RNG, had paid all of his legal fees to date, she had made multiple mortgage payments for him, paid numerous other expenses relating to his children, “almost exclusively” financed his hunting trips, and bought him a new car in 2012. These amounts constituted income that the trial court properly imputed to Jim. See *Rogers*, 213 Ill. 2d at 137. In addition, Elena testified that Jim took numerous hunting trips, he boasted of having over \$100,000 in cash in the safe in their garage, and paid their property taxes in cash (which she supported by producing the receipts).

¶ 52 At best, these facts clearly favor neither party, so we must affirm the trial court because the opposite conclusion is not *clearly* evident, and its finding is thus not against the manifest weight of the evidence. See *Pool*, 118 Ill. App. 3d at 1039. We may not retry the case (*Bates*, 212 Ill. 2d at 515), and we are limited by the cold record before us, unlike the trial court, which was in a far better position to judge the credibility of the witnesses (see *Best*, 223 Ill. 2d at 350). Under the facts of this particular case, we cannot say that the opposite conclusion was clearly apparent, nor does the record disclose that the trial court’s decision was arbitrary, fanciful, or unreasonable, or one in which no reasonable person would take the view adopted by the trial court. Therefore, since the trial court’s findings were not against the manifest weight of the evidence and the record did not disclose an abuse of discretion, we must reject Jim’s claim.

¶ 53 Nonetheless, Jim maintains that the trial court's temporary support order must be reversed because it was solely based upon speculation, rather than evidence, and he relies upon *In re Marriage of Pearson*, 236 Ill. App. 3d 337 (1992), and *In re Marriage of Krupp*, 207 Ill. App. 3d 779 (1990), in support of his assertion. Jim's reliance, however, is misplaced.

¶ 54 In *Pearson*, the wife, who was 46 years old, had worked as a substitute teacher and held a current teaching certificate, but she had not worked full time for 24 years, and had certain medical issues that made her employability questionable. *Pearson*, 236 Ill. App. 3d at 339-40, 345-46. The reviewing court held that the trial court abused its discretion by imposing a 36-month limitation on her rehabilitative maintenance award because the record was "speculative as to her future ability to support herself at the standard of living established during the marriage." *Id.* at 350. In *Krupp*, the respondent (the former husband) petitioned the trial court to modify his maintenance payments to his former wife. *Krupp*, 207 Ill. App. 3d at 782. The trial court reduced the maintenance amount by one-half, but the former husband appealed, seeking total abatement based upon his former wife's increased income. *Id.* We found no abuse of discretion, however, noting that the trial court "could have reasonably concluded that the record was speculative as to the petitioner's future security and economic independence," based upon the fact that (1) she had been employed in a relatively new field of legal marketing; (2) she had earned a substantial income for only about three years; and (3) although the trial court found no insecurity in her position of employment, there was evidence that others in that position were "far younger than she." *Id.* at 798-99.

¶ 55 In this case, however, the trial court's findings were not solely based upon mere speculation. As noted above, the trial court's findings were based upon Jim's own testimony that his sister (1) paid all of his legal fees, (2) made multiple mortgage payments, (3) "almost

exclusively” financed his hunting trips, (4) bought Jim a new car, and (5) paid for various expenses of his children. *Pearson* and *Krupp* are therefore distinguishable from the case before us, and Jim’s reliance upon them is unavailing.

¶ 56 Finally, both *Pearson* and *Krupp* involved proceedings *after* the judgment of dissolution had been entered. *Pearson*, 236 Ill. App. 3d at 338-39; *Krupp*, 207 Ill. App. 3d 779, 785 (1990). Here, by contrast, the appeal concerns an award of *temporary* maintenance. We note that temporary orders “are not binding on the trial court and are terminated and superseded by the provisions of the final decree [citations], and are effective until resolution of the prayers for dissolution [citation].” *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 165 (1991). Rather, the purpose of a temporary order is to “encourage amicable temporary settlements without establishing precedent for later hearings as to need or ability to pay support.” *Id.* Although an “amicable temporary settlement[.]” was plainly absent here, the parties will likely provide considerably more information to the trial court so that it may fashion a final order that more accurately reflects the true nature of the parties’ respective financial positions.

¶ 57 Appeal Number 1-13-3903, the Award of Interim Attorney Fees

¶ 58 Jim also appeals the trial court’s order holding him in contempt for failure to pay Elena’s interim attorney fees totaling \$30,000. Jim reiterates that the trial court’s finding with respect to his income was against the manifest weight of the evidence, and therefore the trial court’s finding that he had the ability to pay was an abuse of discretion.

¶ 59 Although the parties have raised no issue concerning this court’s jurisdiction, a reviewing court has an independent duty to examine its jurisdiction. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). If we lack jurisdiction, we must dismiss the

appeal. *Id.* According to the jurisdictional statement in Jim’s opening brief, Jim appeals from the trial court’s December 2013 order under Supreme Court Rules 303 and 304(b)(5).

¶ 60 Supreme Court Rule 303 does not provide a jurisdictional basis for this appeal; rather, it merely addresses the mechanics of civil appeals, such as the timing, service of notice, form, and contents of a notice of appeal. Ill. S. Ct. R. 303 (eff. Jan. 1, 2015). Supreme Court Rule 304(b)(5) allows interlocutory appeals without the finding of no just reason for delay of contempt orders that impose “a monetary or other penalty.” Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010). It is axiomatic that only contempt judgments that impose a penalty are final and appealable orders. *In re Marriage of Gutman*, 232 Ill. 2d 145, 152-53 (2008) (citing *Lester v. Berkowitz*, 125 Ill. 307, 308 (1888)).

¶ 61 Here, the trial court’s December 2013 order indicated that the trial court *sua sponte* reconsidered its prior November 2013 order based upon its finding that Jim had the ability to pay Elena’s interim attorney fees from “other sources which are being imputed as income.” The trial court then found Jim in indirect civil contempt for his failure to pay Elena’s attorney fees within the 14-day period set in the prior order, and provided that Jim could “purge” this contempt order by paying the attorney fees to Elena’s attorney within 7 days.

¶ 62 Notably absent from the trial court’s December 2013 order, however, was the imposition of any sanctions, financial or otherwise, for Jim’s failure to comply with the prior attorney fee order.⁵ The order did not impose any sanction from which Jim could purge himself by paying the \$30,000 to Elena’s attorney. That payment was itself not a monetary penalty; instead, it merely tracked the trial court’s prior finding as to the amount Jim must pay Elena’s attorney.

⁵ The order also lacks Rule 304(a) language, although we set aside whether the presence of such language would render the December 2013 order final and appealable.

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¶ 63 As noted above, only orders of contempt that impose “a monetary or other penalty” may be appealed under Rule 304(b)(5). Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010); *Gutman*, 232 Ill. 2d at 152-53. Since the December 2013 order forms the basis for the appeal under case number 1-13-3903 but does not impose a sanction, it is not a final and appealable order. See *id.* at 153. We therefore lack jurisdiction over that appeal and must dismiss it. *Secura Insurance Co.*, 232 Ill. 2d at 213.

¶ 64 CONCLUSION

¶ 65 With respect to appeal number 1-13-2110, we hold that the trial court did not abuse its discretion in finding petitioner in contempt, and that its finding with respect to petitioner’s income was not against the manifest weight of the evidence. We therefore affirm the judgment of the trial court. Upon the issuance of our mandate, the stay of that order (entered July 11, 2013, by this court’s motion panel) is dissolved.

¶ 66 As to appeal number 1-13-3903, concerning the trial court’s finding of contempt with respect to Jim’s failure to pay interim attorney fees, we hold that we lack jurisdiction to consider this appeal since the trial court’s contempt order did not impose any sanctions upon Jim. Accordingly, we dismiss appeal number 1-13-3903 for want of jurisdiction.

¶ 67 No. 1-13-2110; Affirmed.

¶ 68 No. 1-13-3903; Dismissed.