SECOND DIVISION
February 10, 2015

Nos. 1-13-2143 and 1-13-3365 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court
GEORGIA XENAKIS BRANIT,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 87 D 9224
v.	)	
	)	
JEFFRY CARL BRANIT,	)	Honorable
	)	Raul Vega,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *HELD*: Where parties' marital settlement agreement, which was incorporated into their dissolution judgment, established an obligation for petitioner and respondent to pay for daughter's college expenses, circuit court did not err by determining the contribution amount owed by each party. The court erred, however, by not using the amount stipulated by the parties as the total amount of college expenses at issue. The court did not abuse its discretion in awarding attorney's fees to petitioner under sections 508(a) and 508(b) of the Illinois Marriage and Dissolution of Marriage Act.

¶ 2 Petitioner, Georgia Xenakis Branit, and respondent, Jeffry Carl Branit, were married on May 18, 1980. Their daughter, Nicole, was born in April 1985. On June 23, 1987, the circuit court entered a judgment of dissolution of marriage that incorporated a marital settlement agreement between the parties. In 2008, after Nicole received her undergraduate degree, Georgia filed a petition for contribution against Jeffry for Nicole's college expenses. The circuit court granted the petition in February 2013 and ordered each party to contribute certain amounts towards these expenses. Jeffry was also ordered to pay the interest on Nicole's student loan until the loan was paid off. The circuit court later ordered Jeffry to pay all of Georgia's attorney's fees and expenses related to her 2008 petition. After Jeffry filed a notice of appeal in this case, the court also ordered him to pay for Georgia's prospective appellate legal fees.

¶ 3 On appeal, Jeffry contends that the circuit court's contribution award against him violated section 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510 (West 2008)) because it retroactively modified his child support obligations under the 1987 dissolution judgment. He contends that the court should have considered the costs of a public college instead of a private school. He argues that the court erred in requiring him to pay the interest on Nicole's student loans. He maintains that the court's contribution order results in a windfall for Georgia and affects "non-parties" over whom the court did not have jurisdiction. Lastly, he claims that the court erred in awarding Georgia legal fees related to her petition and to this appeal under section 508(a). He also contends that the imposition of a fee award against him as a sanction, under 508(b), was unjustified. On our own motion, we ordered supplemental briefing on the question of this court's jurisdiction over the instant appeal. For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 4 BACKGROUND

¶ 5 The 1987 dissolution judgment incorporated the terms of a marital settlement agreement (MSA) entered into by the parties at the time of their divorce. Article VI of the MSA provided for the parties' obligations relating to their daughter's future college expenses, as follows:

"Article VI

Education of Child and Related Matters

1. Husband and wife shall both be responsible for payment of the trade school or college and professional school education expenses of the child, in accordance with the child's aptitude for attending said institution of higher education, as well as the husband's and wife's respective financial capacity to pay for same. The respective obligations with regard to said college education expenses will be determined at the time that Nicole is prepared to attend said school."

¶ 6 As it turned out, neither Georgia nor Jeffry sought a determination from the court regarding the amounts owed under their "respective obligations" for Nicole's college expenses at the time she began her undergraduate studies in 2003, nor did either parent seek a determination during the period she was enrolled in college from 2003 to 2007. It was not until June 2008, after Nicole had graduated, that Georgia filed a petition for rule to show cause to issue for indirect civil contempt because Jeffry refused to pay for Nicole's college expenses. Subsequently, in September 2008, Georgia filed a petition for contribution towards the college expenses. In her contribution petition, Georgia alleged that the total amount of college expenses was $146,738.19, that Nicole had taken out student loans to pay for school, and that Georgia had paid some of the

college expenses prior to the date she filed her petition. According to Georgia, Jeffry had promised to pay the college expenses, but he then ignored or deferred Georgia's requests for contribution. Georgia asked the circuit court enter an order requiring Jeffry to contribute to the college expenses, in compliance with article VI of the MSA and the dissolution judgment.

¶ 7 Jeffry moved to dismiss the petition pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). He asserted that Georgia's petition for contribution was untimely because it was filed after the date on which Nicole started college. Additionally, he asserted that Georgia was essentially seeking an award for expenses incurred prior to the filing of her petition, which was in contravention of section 510 of the Act (750 ILCS 5/510 (West 2008)).

¶ 8 On March 24, 2009, the court entered an order stating that Jeffry's motion to dismiss "is hereby granted pursuant to 735 ILCS 5/2-619(a)(9) with the pronouncement that the Court strikes and dismisses said Petition and will issue its specific findings within 30 days."[1] The court then continued the case to April 27, 2009, "for Court[']s order."

¶ 9 On April 27, 2009, the circuit court continued the case to May 11, 2009, for a "STATUS REPORT regarding rendering of Judge's decision."

¶ 10 On May 11, 2009, the court informed the parties that it had "made a mistake and an error in granting orally the motion to strike and dismiss under 2619." The court stated that it was "correcting its own pronouncements, since [it] never entered a written order denying the Motion to Strike and Dismiss under any grounds, whether it's 2615 or 2619." When Jeffry's counsel pointed out that Georgia had filed a notice of appeal on April 20, 2009, the court pointed out that

[1] Jeffry asserts in his opening brief that the court dismissed the petition "with prejudice on March 24, 2009." We find nothing in the record, however, indicating a dismissal "with prejudice" on that day.

it "didn't enter a written ruling" on the motion to dismiss.[2] Later that day, the court entered an order stating the following:

> "On the Court's own motion, the Court hereby corrects its own pronouncement which granted Respondent['s] motion to strike and dismiss, and, hereby denies said motion on any grounds."

¶ 11 Following discovery, the court held an evidentiary hearing on the petition for contribution and found that Nicole's costs for her undergraduate studies at the University of Iowa—which included tuition, books, room, board and other living expenses—totaled $160,345. The parties acknowledged that Nicole had received $13,033 in scholarships and thus stipulated to $147,312.52 as the total amount eligible for contribution towards Nicole's college expenses.

¶ 12 On February 27, 2013, the court entered a written order requiring each of the parties to contribute certain amounts to Nicole's college expenses. The order set forth the court's specific findings regarding the parties' respective capacities to contribute to the college expenses at issue. With respect to Georgia, the court found that Georgia's current salary was $58,000 and that she had $113,000 in her 401(k) which she could not access yet and $2,000 in a joint savings account with her current husband. The court also found that Georgia had funded a 529 account in the amount of $16,602, the entirety of which was paid toward college expenses. It found that Jeffry's household income was over $118,000 per year and that he had assets in excess of $37,000 in bank accounts, equity in his home of over $58,000.00, and inheritance funds in excess of $480,000.00. Also, the court stated that Jeffry had "no credit debt whatsoever." The court ruled that the child support payments made by Jeffry while Nicole was in college did not constitute college contributions. Additionally, the court stated that it found "Georgia and Niki [Nicole]

[2] Georgia's appeal was dismissed for want of prosecution on November 6, 2009. *In re Marriage of Branit*, No. 1-09-1043 (2009) (dispositional order).

credible" and that "[t]he testimony is clear that Jeffry misled Georgia and Niki in believing that he would make contributions toward the college expenses from before Niki's attendance at the University, throughout her time at the University and after her graduation." The court found that "Jeffry misled both his ex-wife and his daughter as to his intentions on payment of the college expenses *** [and] dragged out the contribution issue to [the] point where Georgia was forced to file the instant petition." Finally, the court allocated the contribution for Nicole's college expenses as follows:

> "A. Jeffry shall contribute to the college tuition and expenses for his daughter the amount of $110,638.00.
>
> B. Due to his refusal to pay any college contribution since 2003, Jeffry shall pay all of the accrued interest on the Sallie Mae loan, including all interest accrued since October 2012 and until he pays that loan in full.[3]
>
> C. Georgia shall pay $49,707.00 as her college contribution.
>
> D. Jeffry shall receive a credit toward his college contribution the amount of $29,072.25 he paid as child support, and $3,000.00 for his June, 2007 contribution for a total of $32,072.25.
>
> E. From his college contribution amount of $110,638.00, Jeffry shall pay Georgia the sum of $1,100.00 for her excess contribution; and he shall pay Nicole $1,677.75.
>
> F. Nicole shall pay the balance due on the Direct Student Loan which was $13,836.00 as of October, 2012."

[3] The court also found, *inter alia*, that Nicole's total student loan debt exceeded $126,395 "without interest from October**,** 2012" and that the accrued unpaid interest on the Sallie Mae loan was in excess of $34,420.00.

¶ 13 Georgia subsequently brought a petition for attorney's fees and expenses pursuant to sections 508(a) and 508(b) of the Act. 750 ILCS 5/508 (West 2008). She asked the court to order Jeffry to pay 70% of the fees and expenses that she had incurred in this litigation under section 508(a). She also asked for the remainder of her fees as a sanctions award under section 508(b). The court held an evidentiary hearing during which Georgia, Jeffry, and Georgia' current husband, Larue Highsmith, testified about their respective financial situations.

¶ 14 On July 1, 2013, the circuit court awarded Georgia 100% of her attorney's fees—which totaled $100,667.73. The court found that, under section 508(a), Jeffry had the ability to pay Georgia's fees and that Georgia was basically "destitute," having had to "borrow" money from her current husband. The court also concluded that, under section 508(b), Jeffry was "responsible" for the instant litigation because he had "ample opportunity to pay something toward his daughter's college education but refused to after years of delay, obstruction, distain & stubbornness" and because he "fail[ed] to live up to his obligations pursuant to the judgment for dissolution of marriage."

¶ 15 Jeffry filed his notice of appeal from the orders of February 27, 2013, and July 1, 2013. Georgia filed a petition in the circuit court for appellate attorney's fees pursuant to section 508(a) of the Act. On September 27, 2013, the court ordered Jeffry to contribute $12,400 towards Georgia's legal fees on appeal. Jeffry subsequently filed his notice of appeal from the September 27 order as well. We consolidated his two appeals.

¶ 16 ANALYSIS

¶ 17 A. Jurisdiction of the Circuit Court

¶ 18 As an initial matter, we must determine whether the circuit court had jurisdiction of the case on May 11, 2009 when it sought to "correct[] its own pronouncement" from its March 24,

2009 order granting Jeffry's motion to strike and dismiss. At our request, the parties have presented their respective arguments in supplemental briefing.

¶ 19 Jeffry contends that the March 24, 2009 order was a final and appealable order and, therefore, the court lacked jurisdiction to vacate or reverse that order after 30 days. He argues that because the court took no action within 30 days of March 24, all orders entered after March 24, which included the orders awarding Georgia contributions for Nicole's college expenses and Georgia's legal fees, were void for lack of jurisdiction and must be vacated.

¶ 20 Georgia responds that the March 24, 2009 order was not a final judgment because it merely "pronounced" the court's dismissal of the petition for contribution. She claims that the order was "at best, confusing." She argues that the court retained jurisdiction to correct its ruling on May 11 and that it properly proceeded to resolve her petition for contribution.

¶ 21 "A final order is one which disposes of the merits of the case, despite the fact that certain incidental matters may be reserved for consideration." *Lincoln Towers Insurance Agency, Inc. v. Boozell*, 291 Ill. App. 3d 965, 968 (1997). "The appealability of an order is determined by its substance rather than its form." *Boonstra v. City of Chicago*, 214 Ill. App. 3d 379, 385 (1991). This court has recognized that "[a] general dismissal with no right to amend and no request for leave to amend is a final appealable order." *Branch v. European Autohaus, Ltd.*, 97 Ill. App. 3d 949, 952 (1981) (citing *Doner v. Phoenix Joint Stock Land Bank*, 381 Ill. 106 (1942)).

¶ 22 Following our review of the orders and the transcript of the hearings, we find that we cannot unequivocally find that the March 24 order contained a final judgment as to the petition for contribution. We recognize that the court declared that Jeffry's motion to dismiss "is hereby granted pursuant to 735 ILCS 5/2-619(a)(9)." However, the court also referred three times to a "continuation" of the matter. First, the court qualified its ruling as a "pronouncement" to strike

and dismiss the petition. Second, the court indicated that it would "issue its specific findings within 30 days." Finally, the court explained that it was continuing the cause to April 27, 2009, for the court's *order*.

¶ 23 What the court meant by a "pronouncement" is not clear from the March 24 order; however, the court's statement that it would issue "specific findings" at a later date is consistent with an intention by the court to continue the matter and reserve final judgment on the motion until it could enter an order simultaneously setting forth the particular grounds or rationale for its decision. See *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 494 (2009) (noting that "[o]rders must be construed in a reasonable manner so as to give effect to the apparent intention of the trial court"). Moreover, there was no evidence that the court entered an order—or intended to enter an order—dismissing the petition *with prejudice*. It is also evident from the April 27 order that a final judgment or order had not been issued because the order of continuance refers to the "*rendering* of Judge's decision on 5/11, 2009 at 11:00"—indicating to us that the court did not deem nor intend the preliminary disposition, or pronouncement, regarding the motion to dismiss on March 24, 2009, as a final judgment. Finally, we do not consider the fact that Georgia filed a notice of appeal on April 20, which was later dismissed for want of prosecution, to be dispositive of whether the March 24 order was a final judgment.

¶ 24 For the foregoing reasons, we conclude that the circuit court had jurisdiction over the case when it entered its order on May 11, 2009 and on the dates when it entered the orders from which Jeffry now appeals. We therefore have jurisdiction to consider the instant appeal.

¶ 25 B. The Contribution Award

¶ 26 With respect to the contribution award entered on February 27, 2013, Jeffry argues that the circuit court: (1) violated section 510 of the Act by retroactively modifying his child support

obligations, in derogation of *In re Marriage of Petersen*, 2011 IL 110984; (2) abused its discretion by requiring him to pay the remaining interest on Nicole's student loans; (3) abused its discretion by determining the contribution award based on the costs of a private college rather than a public college; (4) erred by failing to abide by the amount stipulated by the parties as the total amount of college expenses at issue, which included a deduction for the scholarship money received by Nicole; and (5) improperly imposed obligations on non-parties over whom the court did not have jurisdiction. We address each of these arguments in turn.

¶ 27 1. Retroactive modification of child support

¶ 28 First, Jeffry contends that the contribution award should be vacated because the 1987 dissolution judgment reserved the issue of *whether* he and Georgia would be obligated to pay college expenses, and the amount of any such obligation, until 2003, when Nicole was ready to attend college. He argues that Georgia failed to file her petition for contribution until after Nicole graduated from college, and therefore, Georgia was seeking a retroactive modification of his child support obligations in violation of section 510 of the Act and *Petersen*.

¶ 29 Georgia maintains that the court's contribution award did not retroactively modify Jeffry's child support obligations, but rather, merely enforced Jeffry's existing duty to pay for college expenses, as required by the dissolution judgment. She argues that it is Jeffry who is seeking a modification of the dissolution judgment by arguing that his duty to pay Nicole's college expenses expired upon her graduation from college.

¶ 30 In determining the proper standard of review applicable to Jeffry's challenge to the contribution award, we note that the obligations of the parties for their daughter's college expenses is set forth in Article VI of the MSA, which was incorporated into the 1987 dissolution judgment. The interpretation of a marital settlement agreement is a question of law, which we

review *de novo*. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009); *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017 (2011). "The general rules of contract interpretation apply to marital settlement agreements" (*In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922 (1998)), and the terms of their agreement are binding on the parties and the court (*Blum*, 235 Ill. 2d at 32).

¶ 31 Jeffry argues that the circuit court's contribution award was not simply an enforcement of Article VI of the MSA, but instead, was a modification of his child support obligations. Therefore, he contends, the court's order violates section 510 of the Act, which prohibits retroactive modifications of support obligations set forth in the divorce decree. He further asserts that the facts in this case are analogous to those in *Petersen*, in which the supreme court found that the parties had reserved the issue of any parental obligation for the children's college expenses and ultimately held that section 510 prohibited the mother from seeking contribution from the father for college expenses that predated the filing of her petition.

¶ 32 "Section 510 [of the Act] provides the statutory framework for modifications ***." *In re Marriage of Petersen*, 2011 IL 110984, ¶ 10 (citing 750 ILCS 5/510 (West 2006)). As pertinent here, the statute allows for prospective modifications only, stating: "Except as otherwise provided ***, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2008).

¶ 33 The supreme court interpreted section 510 of the Act in *Petersen*, when it settled the issue of whether the respondent was required to contribute to his children's college expenses under the judgment decree, which stated in relevant part:

> " 'The Court expressly reserves the issue of each party's obligation to contribute to the college or other education expenses of the

> parties' children pursuant to Section 513 of the Illinois Marriage and Marriage Dissolution Act.' " *In re Marriage of Petersen,* 2011 IL 110984, ¶¶ 3-4.

Years after the divorce decree was entered, the wife filed a petition for contribution from her ex-husband for their children's college expenses. *Id.* ¶ 5. The circuit court ordered the husband to pay a certain amount of the expenses, including those that predated the filing of the petition. *Id.* ¶ 6. The appellate court reversed in part, holding that the petition sought to modify the parties' divorce decree and that, under section 510 of the Act, the court could not order the husband to pay college expenses that predated the filing of the petition. *Id.* ¶ 7.

¶ 34 On appeal, the supreme court agreed that "support could not be ordered for expenses which predated the filing of [the wife's] petition." *Id.* ¶ 18. The supreme court interpreted the parties' divorce decree as doing "nothing more than maintain[ing] the status quo between the parties with respect to the issue of college expenses by not making an award at that time" and found that the husband "had no concrete obligation to provide for educational expenses under the decree." *Id.* at ¶¶ 17-18. By bringing the petition for expenses incurred in the past, his wife "sought to change the status quo *** and alter [the husband's] obligations under the decree," thereby bringing her "within the purview of section 510." *Id.* ¶ 18. The supreme court noted that "Illinois decisional law has since 1986 consistently regarded the actions taken pursuant to reservations clauses to be modifications under section 510 subject to the prohibition of retroactive support." *Id.* ¶ 22.

¶ 35 Georgia argues that *Petersen* is only applicable where the parties have reserved the issue of college expenses, not where the dissolution judgment has established a party's affirmative duty to contribute to such expenses. She points out that Article VI of the MSA specifically

imposed a financial obligation on each party for Nicole's college expenses, and the obligation was therefore established in 1987 when the dissolution judgment incorporating the MSA was entered. Under the MSA, each party was required to pay for Nicole's college expenses "in accordance with the child's aptitude *** as well as the husband's and wife's respective financial capacity to pay for same." Georgia contends that the only question reserved in the MSA was the actual amount of their "respective obligations with regard to said college education expenses," not whether each party had an obligation in the first place. Therefore, she contends, this case is distinguishable from *Petersen* and two subsequent cases, *In re Marriage of Spircoff*, 2011 IL App (1st) 103189, and *In re Marriage of Koenig*, 2012 IL App (2d) 110503, are instructive.

¶ 36 In *Spircoff*, a third-party beneficiary brought a breach of contract action to enforce a provision of his parents' marital settlement agreement, which concerned the payment of his college expenses. *In re Marriage of Spircoff*, 2011 IL App (1st) 103189, ¶ 5. The provision stated: " '[e]ach of the parties shall contribute to the trade school or college and professional school education expenses of their child in accordance with Section 513 in the Illinois Marriage and Dissolution of Marriage Act.' " *Id.* ¶ 6. This court found the above provision distinguishable from the one at issue in *Petersen* in that "the obligation of the parties for educational expenses was clearly and affirmatively stated and was not expressly reserved." *Id.* ¶ 17. We therefore found the "holding in *Petersen* to be inapplicable *** as educational expenses were not expressly reserved for future consideration by the trial court." *Id.* ¶ 20.

¶ 37 In *Koenig*, the terms of the husband and wife's settlement agreement, which was incorporated into the dissolution judgment, provided that "[t]he Husband and Wife shall pay for university, college or post-graduate school education for [their daughter] herein based on their respective financial abilities and resources at said time." *In re Marriage of Koenig*, 2012 IL App

(2d) 110503, ¶¶ 4-5. The wife subsequently filed a petition for contribution, seeking reimbursement for educational expenses that she had paid on behalf of her daughter. *Id.* ¶ 6. The trial court granted the husband's motion for summary judgment. *Id.* ¶ 7. This court reversed on appeal. *Id.* ¶ 17. We noted that the case was factually more similar to *Spircoff* and was distinguishable from *Petersen*. *Id.* We found that:

> "the parties' settlement agreement, which was incorporated into the judgment for dissolution, contained neither a reservation clause on the issue of college and postgraduate expenses nor any reference to section 513; rather, it affirmatively assigned responsibility to both parties for [their daughter's] college and postgraduate expenses, and therefore any order entered pursuant to [the wife's] petition would not 'adjust, change or alter' this obligation as set forth in the settlement agreement's plain language. [Citation.] As noted in *Spircoff*, it is inconsequential that the settlement agreement did not set a dollar amount or some basis for determining contributions, since contributions could always be settled by the trial court." *Id.* ¶ 17.

Accordingly, we held that the wife was "not barred from retroactively seeking to *enforce* the provision of the settlement agreement" providing for the parties' obligations for their daughter's college expenses. (Emphasis added.) *Id.*

¶ 38 We agree that the instant case is more factually analogous to *Spircoff* and *Koenig* than to *Petersen*. Here, unlike in *Petersen*, the dissolution judgment imposed an affirmative duty on each of the parties to pay for Nicole's college expenses. There is no language in the dissolution

judgment or MSA indicating a reservation or deferral of a determination of the parties' duties. The dissolution judgment specifically stated: "Husband and wife *shall* both be responsible for payment of the trade school or college and professional school education expenses of the child." (Emphasis added.) The February 27, 2013 order in this case did not adjust, change, or alter the parties' obligation to pay for Nicole's college expenses. See *Id.* ¶ 17. That obligation had already been established in the 1987 dissolution judgment. The February 27 order simply set an amount that each party would be required to contribute towards the college expenses.

¶ 39 We agree with the rationale of *Spircoff* and *Koenig* that "it is inconsequential that the settlement agreement did not set a dollar amount or some basis for determining contributions, since contributions could always be settled by the trial court." *Id.* ¶ 17. Therefore, Georgia was not barred from retroactively seeking to *enforce* the terms of the dissolution judgment requiring the parties' to contribute to Nicole's college expenses. *In re Marriage of Koenig*, 2012 IL App (2d) 110503, ¶ 17; see also *In re Marriage of Spircoff*, 2011 IL App (1st) 103189, ¶ 20.

¶ 40 We reject Jeffry's reliance on *Rimkus v. Rimkus*, 199 Ill. App. 3d 903, 904, 906-07 (1990), a case in which the court " 'specifically reserve[d] the *issue* of child support' "—not merely the determination of the amount itself—in the judgment of dissolution. (Emphasis added.) This is not the case here, where the parties expressly agreed, in 1987, to pay for Nicole's college expenses, subject to Nicole's "aptitude for attending [college]" and each party's "respective financial capacity to pay for same." We also find Jeffry's reliance on *Waggoner v. Waggoner*, 78 Ill. 2d 50, 52-53 (1979), to be misplaced, as that case involved an entirely different factual situation where the wife was seeking to compel her husband to remove liens on a home even though the divorce decree required the wife to take title to the residence "subject to the indebtedness" thereon.

¶ 41 Jeffry argues that the court retroactively modified his child support obligations when it imposed a requirement on him to pay interest on Nicole's student loans. We reject his argument, given that the purpose of student loans is to enable students to attend college. Certainly, a plain reading of the term "educational expenses" would include the interest incurred on such loans.

¶ 42 Jeffry maintains that the court also effected a "modification" when it interpreted the term "college education expenses" in Article VI of the MSA to include living expenses. Jeffry claims that these expenses were already covered under the child support provisions of the MSA. Georgia responds that Jeffry is asserting a new case theory on appeal. However, the record shows that Jeffry raised this issue in his written closing argument to the circuit court, and we will therefore consider it on review.

¶ 43 We ultimately find no merit to Jeffry's claim that the court erroneously interpreted the term "college education expenses" to include Nicole's living expenses while in college. Jeffry contends that Nicole's "living expenses" during college were covered by the child support provision of the MSA. He failed to cite any provision in the MSA, however, that excluded Nicole's living expenses at college from his child support obligations or his obligation for college education expenses. Nothing in the MSA indicates that the parties intended the term "college education expenses" to be limited to only tuition and educational materials or to exclude the costs associated with attending an out-of-state school. Therefore, we affirm the court's ruling that the allocation of contribution for Nicole's college expenses, even after her graduation from college, was permitted under Article VI of the MSA.

¶ 44 2. Obligation for loan interest as a sanction

¶ 45 Next, Jeffry argues that the court erred by ordering him to pay all of the accrued unpaid interest on Nicole's Sallie Mae student loan in an attempt to "sanction" him for refusing to make

any contribution since 2003. He argues that nothing in the MSA or the Act authorizes the court to impose sanctions for not making payments toward college expenses, given the fact that there was no order or agreement as to the amount of his obligation under the dissolution judgment.

¶ 46 The question of whether the interest on the Sallie Mae loan—which totaled $34,420 at the time the court entered its contribution award—was properly allocated to Jeffry is reviewed for an abuse of discretion. See *Slagel v. Wessels*, 314 Ill. App. 3d 330, 332 (2000) (noting that child support awards are reviewed for an abuse of discretion). The court commits an abuse of discretion "when no reasonable person would take its view" (*In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 22), or when it "acts arbitrarily, acts without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores principles of law, resulting in substantial injustice" (*In re Marriage of Pond and Pomrenke*, 379 Ill. App. 3d 982, 987-88 (2008)).

¶ 47 In its contribution order of February 27, 2013, the circuit court found that Georgia had already paid accrued interest on Nicole's student loans in excess of $18,900 for the Sallie Mae loan and over $2,300 for a different student loan. We acknowledge the court's reference to Jeffry's refusal to contribute earlier to the college expenses. However, we do not interpret the court's imposition of the interest obligation as a "sanction" against Jeffry. Instead, we view it as an attempt by the court to apportion the obligation for the student loan interest between the parties. In light of Georgia's prior payment of approximately $21,200 in accrued student loan interest, we conclude that the court had a sound basis for ordering Jeffry to pay the remaining balance of the student loan interest. Therefore, we find no abuse of discretion in the court's order requiring Jeffry to pay the remaining interest on the Sallie Mae loan.

¶ 48 3. Comparison to expenses of a public school

¶ 49 Jeffry next contends that the circuit court abused its discretion in basing its award of contribution on the "full cost" of attending the University of Iowa without considering the lower-cost option of attending a public institution, such as Eastern Illinois University.[4]

¶ 50 He cites *In re Support of Pearson*, 111 Ill. 2d 545 (1986), *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872 (2008), and *In re Marriage of Schmidt*, 292 Ill. App. 3d 229 (1997), in support of his argument that the court was required to consider lower-cost colleges in determining his contribution. We find *Pearson* and *Sussen* to be readily distinguishable from the case at bar. In *Pearson* and *Sussen*, there was no provision in a marital settlement agreement obligating the parties to pay their child's college expenses. The courts thus looked to the applicable factors in section 513 of the Act to determine whether the parties should be required to pay college expenses and how much they should be required to pay. *Pearson*, 111 Ill. 2d at 551; *Sussen*, 382 Ill. App. 3d at 878-79.

¶ 51 Here, in contrast, Article VI of the MSA, which was incorporated into the dissolution judgment, specifically obligated the parties to pay Nicole's college expenses and set forth specific factors for determining the amount each parent would owe. The MSA, rather than section 513, is thus controlling as to any required contribution, which distinguishes this case from *Pearson* and *Sussen*. See *In re Marriage of Holderrieth*, 181 Ill. App. 3d 199, 206 (1989) (finding that settlement agreement, rather than section 513, controlled disposition of case).

¶ 52 Although Jeffry's other cited case, *Schmidt*, is factually more similar to the case at bar, we find it distinguishable as well. In *Schmidt*, the dissolution judgment provided that "in the event that the minor children of the parties shall evidence the aptitude and desire for a college

[4] Georgia again argues that Jeffry is asserting a new case theory on appeal. However, the record shows that this issue was raised in Jeffry's response to the petition for contribution.

education, Respondent shall contribute one-half of such educational expenses.' " *In re Marriage of Schmidt*, 292 Ill. App. 3d at 232. The parties' daughter was accepted at a private school and also at several state universities. *Id.* at 232-33. She chose to attend private school, and the wife filed a "petition to establish educational expenses." *Id.* at 232. The husband testified that he could not afford half of the cost of one year at the private school, but that he had no objection to her attending one of the state schools. *Id.* at 233. The trial court ruled that the daughter did not have "*carte blanche* in her selection of a college" and concluded that the husband was responsible for one-half of the expenses involved in attending a state school. *Id.* at 234. Thereafter, the trial court noted that a price term was missing from the parties' agreement and that a reasonable price term was thus implied. *Id.* On appeal, this court agreed that a reasonable price term was implied in the parties' agreement where it was "silent as to price or another, more specific method of determining price." *Id.* at 237. We also found that the trial court did not err in considering the factors listed in section 513 for the limited purpose of determining what constituted a reasonable price. *Id.* at 239.

¶ 53 Here, unlike in *Schmidt*, the MSA that Georgia and Jeffry agreed upon included a method of determining each party's obligation for college expenses—namely, the parties' "respective financial capacity to pay." Therefore, Georgia's and Jeffry's respective financial capacity to pay was the method for determining a "reasonable price" for Nicole's college. Ultimately, we need not consider the factors of section 513 of the Act, given the parties' express agreement, in their MSA and judgment dissolution, as to how they would determine the amount of each party's obligation for college expenses under Article VI.

¶ 54 We find nothing in the dissolution judgment that requires the court to consider lower-cost options in determining how much money the parties are required to contribute towards Nicole's

college expenses. Therefore, we find that the court did not abuse its discretion by not considering the difference in expenses between a public college and a private college.

¶ 55 4. Stipulated amount of college expenses

¶ 56 Jeffry next contends that the court erred when it determined his financial liability for Nicole's college expenses because it failed to deduct the amount received by Nicole in scholarships. The court's contribution award was based on its determination that the college expenses at issue totaled $160,345. The parties, however, had stipulated to $147,312.52 as the total amount of college expenses for which Georgia sought relief in her petition for contribution. The latter figure reflects a deduction for the scholarship amount received by Nicole.

¶ 57 "Parties are bound by their stipulations unless such stipulations are shown to be unreasonable, the result of fraud or violative of public policy." *Sanborn v. Sanborn*, 78 Ill. App. 3d 146, 149 (1979). In this case, it is undisputed that Jeffry and Georgia stipulated that the amount eligible for contribution was the total cost of Nicole's college education ($160,345.52) minus the scholarship money received by Nicole ($13,033), for a total of $147,312.52. The court nonetheless ordered Jeffry to contribute $110,638.00, and Georgia to contribute $49,707.00, for a total of $160,345. We find no basis for requiring the parties to contribute amounts that were covered by Nicole's scholarships because the amounts that she received effectively reduced the amount of her college expenses by $13,033. The parties should not be responsible for contributing payments toward expenses that were negated by the scholarship funds.

¶ 58 Georgia asserts that had the court allocated the contribution award based on $147,312.52 instead of the higher amount, there would be insufficient funds to retire the balances on the student loans. This argument is unpersuasive. We find no justification in the record for imposing a financial obligation that exceeds the amount stipulated to by the parties. Therefore, we vacate

the circuit court's contribution award and remand this matter so that the court can revise the parties' respective contributions based on the stipulated amount of $147,312.52 (thus taking into consideration the $13,033 scholarship funds that reduced the amount that Nicole incurred for college expenses). See *In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 305-06 (2004) (reversing circuit court's order requiring father to pay college expenses where dissolution judgment showed that parties intended that scholarships or grants would reduce their obligations).[5]

¶ 59 5. Order involving a non-party

¶ 60 Jeffry lastly argues that the contribution order must be vacated because it awarded damages to and imposed obligations on a non-party over whom the court did not have jurisdiction. He specifically takes issue with the portions of the contribution order that: (1) require Nicole to pay the balance on one of her student loans; and (2) require him to pay Nicole a certain amount and to pay off loans owed by Nicole, not Georgia. Georgia does not respond.

¶ 61 "An appellant can only assign as error those rulings prejudicial to him." *Stoller v. Exchange National Bank of Chicago*, 199 Ill. App. 3d 674, 685 (1990) (citing *Gordon v. Gordon*, 6 Ill. 2d 572 (1955)). Here, the only part of the contribution order objected to by Jeffry that could potentially prejudice him is the requirement that he pay money to Nicole and also pay off loans owed by Nicole. Jeffry has not cited any authority establishing that the court cannot order a party to pay a non-party or pay off loans incurred by a non-party. Accordingly, we reject this claim.

¶ 62 C. Legal Fees Related to Petition Proceedings

¶ 63 Jeffry contends that the court erred in awarding legal fees to Georgia. He maintains that the award is improper under section 508(a) because the court never found that Georgia was

[5] Jeffry also contends that the February 27 order for contribution was internally inconsistent in that the court ordered both parties to contribute certain amounts towards Nicole's college expenses, but that the court ordered only him—and not Georgia—to "pay all of the accrued interest on the Sallie Mae loan, including all interest accrued since October 2012 and *until he pays that loan in full*." (Emphasis added.) Since we have already reversed this part of the court's order, we need not address this issue further.

unable to pay, and that he was able to pay, for Georgia's attorney's fees. He also contends that there was no basis for awarding the fees under section 508(b) simply because he attempted to defend himself in the proceedings related to Georgia's petition for contribution.

¶ 64 Georgia argues that the court properly awarded her fees under section 508(a) given her "disparate" ability to pay such fees. She also argues that the court properly awarded her fees under section 508(b) based on its finding that Jeffry used the proceedings for an improper purpose and needlessly increased the cost of litigation.

¶ 65 1. Section 508(a) Award

¶ 66 While attorney's fees are typically the responsibility of the party who incurs them, section 508(a) of the Act allows the court to award attorney's fees to one party "where one party lacks financial resources and the other party has the ability to pay." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005) (citing 750 ILCS 5/508 (West 2000)). The party seeking such fees must establish her inability to pay and the other party's ability to pay. *Id.* "Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *Id.*; see *Kaufman v. Kaufman*, 22 Ill. App. 3d 1045, 1050 (1974) (financial inability does not mean destitution). The allowance of attorney fees and the amount awarded are matters within the sound discretion of the circuit court and will not be reversed on appeal absent an abuse of discretion. *Schneider*, 214 Ill. 2d at 174. Furthermore, "[s]ince the 'trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different decision.' " *In re Marriage of Pratt*, 2014 IL (1st) 3046, ¶ 36 (quoting *In re April C.*, 326 Ill. App. 3d 245, 257 (2001)).

¶ 67 At the time of the fees hearing, Georgia earned about $58,000 and her husband, Larue, earned about $50,000. Georgia testified that she and Larue maintain separate bank accounts and are responsible for their own rent obligations and bills for their separate apartments. She testified that she has paid about $92,000 in legal fees; $10,000 was paid with her own money and the balance was paid from funds that she borrowed from Larue. She also testified that Larue started paying the bills at her apartment so that she could pay down Nicole's student loans. Georgia testified that, under a verbal agreement, she is required to pay her husband back "[o]nce this is all resolved." Larue testified that he has paid about $85,000 for Georgia's legal fees from his personal checking account. He stated that he expects Georgia to repay him for the fees that he paid on her behalf. When asked during cross-examination if he had a repayment deadline, he responded that Georgia is to make repayments as she "is capable."

¶ 68 Jeffry testified that he and his wife have comingled their funds. He testified that in 2012, they had an adjusted gross household income of approximately $122,000. See *In re Marriage of Drysch*, 314 Ill. App. 3d 640, 645-46 (2000) (finding no error in trial court's consideration of income earned by a party's current spouse, where the couple "pooled their income and money to pay their family expenses.") Jeffry also testified that he has about $135,000 in a savings account and $380,000 in a beneficiary IRA, of which $350,000 was inherited. He indicated that he receives a yearly distribution of $7,000 to $11,000 from the IRA account, but that he does not believe he is able to withdraw the principle. He testified that he made a $30,000 down payment on his home and owes about $99,000 on his mortgage. He has paid about $50,000 in fees to one of his attorneys and $2,500 to his other legal counsel.

¶ 69 The circuit court found that Georgia had established her inability to pay her legal fees and Jeffry's ability to pay the fees. In reaching this conclusion, the court pointed out that Georgia has

obligations for "loan payments that she has to make," that "[s]he's borrowed money from her current husband," and that "[s]he's depleted her 401(k)" and her savings. In determining that Jeffry had the ability to pay, the court found that Jeffry lacked credibility when he failed to disclose the fact that he "had over $130,000 in another savings account" and that he was "sitting on half a million dollars of cash."

¶ 70 We note, as Jeffry contends, that there is no evidence that Georgia and her husband memorialized their loan agreement in writing or agreed to repayment with any interest. The circuit court, however, specifically addressed this concern: "[T]he fact that there's no note, there is no written agreement and there's no interest doesn't persuade me that she doesn't have to pay the money back or that the intent wasn't there to pay the money back." It is not our role as the reviewing court to second-guess the findings and conclusions of the circuit court, which has had the benefit of weighing the evidence and assessing the credibility of the witnesses. *In re Marriage of Pratt*, 2014 IL (1st) 3046, ¶ 36. We find that the court did not abuse its discretion by awarding Georgia legal fees under section 508(a).

¶ 71 2. Section 508(b) award

¶ 72 Additionally, the court ordered Jeffry to pay 100% of the remaining balance of Georgia's legal fees and expenses, based on its finding, under Section 508(b), that Jeffry was "responsible" for the majority of the instant litigation. Unlike section 508(a), which is permissive, section 508(b) requires the court to award attorney's fees if it finds that there was a failure to comply with an order or judgment without compelling cause or justification, or where "a hearing under this Act was precipitated or conducted for any improper purpose *** includ[ing], but not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2012)).

¶ 73 Following the fee hearing, the circuit court concluded that Jeffry had "contributed a large portion of the delay and the costs in this litigation" by being "totally obstinate and disdainful for this process involved in paying for his daughter's college contribution." The court explained its specific findings as follows:

> "Did he contribute to the litigation, the delay and the costs of litigating this case? He absolutely did by his total refusal to live up to what was in that Judgment [of dissolution] *** that the husband and the wife shall both be responsible for the payment of the school. ***
>
> And part of what came out during the trial is that he strung Miss Branit along, and he strung his daughter along. At one point, he wanted her to get loans because it would be cheap money for her and that later on, he would pay for that. And then later on, well, he said he would contribute so much. And then later on, he said I'll pay a third and she'll pay a third and mom could pay a third.
>
> * * *
>
> And somewhere along the way, Mr. Branit got some really bad advice which was that, you know, maybe if she had gotten an A average *** he should contribute ***[.] But because she was an average student, he didn't feel that he should contribute.
>
> Again, all examples of delay, obstruction and a total disdain and stubbornness for contributing toward his daughter's – and it was clear in their Judgment what he was responsible for.

> The dollar amount may not have been crystal clear, but the obligation was there.
>
> And then he argued that the child support payments that he made was in lieu of college contribution which, again, there was no basis for that in the parties' Judgment or Settlement Agreement, okay?
>
> So, who contributed the most of the litigation here? Why did you litigate for four years? Why were there so many motions? Why were there so many pleadings? *** Because someone refused to do what they should have done."

¶ 74 Based on the foregoing, the court concluded that a fee award was warranted under section 508(b) because Jeffry's conduct amounted to "harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2008). The record supports this conclusion. During this litigation, Jeffry filed several motions that essentially contained the same arguments. After the court denied his motion to dismiss the petition for contribution, he simply re-titled the same pleading as a motion for reconsideration and filed it with the court. Jeffry then filed a motion for summary judgment, reiterating the same arguments as those in the motion to dismiss. Two weeks after Georgia filed her response to the summary judgment motion, Jeffry filed an amended motion for summary judgment, which required yet another response from Georgia. In addition, the record shows that Jeffry failed to appear at his deposition at the scheduled time, and instead, appeared an hour late, after the court reporter had left. We find the court did not abuse its discretion and, therefore, uphold the award of attorney's fees under section 508(b).

¶ 75 D. Prospective Legal Fees Related to Appeal

¶ 76 Jeffry contends that the court also abused its discretion when it entered the order on September 27, 2013 awarding Georgia attorney's fees to defend the instant appeal. Initially, he argues that the court lacked jurisdiction to award attorney's fees after he filed notice of appeal, citing *Bradshaw v. Pellican*, 152 Ill. App. 3d 253, 259 (1987).

¶ 77 In *Marriage of Talty*, a post-*Bradshaw* decision, our supreme court noted that the legislature subsequently made clear that prospective awards of attorney's fees for the defense of an appeal may be awarded under the Act. *In re Marriage of Talty*, 166 Ill. 2d 232, 242 (1995). In light of this supreme court precedent, we reject Jeffry's jurisdictional argument under *Bradshaw*.

¶ 78 In this case, the court ordered Jeffry to pay $12,400 towards Georgia's attorney's fees on appeal pursuant to section 508(a). For the same reasons discussed above, we find that the court did not abuse its discretion in ordering Jeffry to pay Georgia's legal fees under section 508(a). We therefore affirm the court's orders awarding attorney's fees to Georgia.

¶ 79 CONCLUSION

¶ 80 The judgment of the circuit court of Cook County is affirmed in part and reversed in part, and the cause is remanded for the circuit court to revise the parties' respective contributions based on the stipulated amount of $147,312.52, which takes into consideration the $13,033 in scholarship money received by Nicole.

¶ 81 Affirmed in part; reversed in part; remanded with directions.