



hospitalization. Her current therapy regiment includes horseback riding, dancing, and piano lessons. She also has multiple tutors. On October 2, 2000, Rao and Sasi entered into a settlement agreement that was incorporated into their judgment for dissolution of marriage. The agreement provided that Sasi was to be the sole custodial parent of all three of their children, with Rao having visitation rights. The agreement also provided that Rao would pay \$1,250 per month in child support. Finally, each party would contribute to each child's college expenses "commensurate with his/her respective ability to do so at the time each is ready to attend college." Subsequent to the divorce, Sasi made contributions to a 529 college savings plan for the three children. She contributed enough such that if any child decided to go to an Illinois state school, all college expenses would be paid. The plan would pay the same cost to an out-of-state or private school.

¶ 3 Rao moved to Georgia in 2001 and remarried. Sumala went to visit him after graduating high school in June of 2007. During the visit, she told him that she was considering colleges in Illinois and Ohio. Rao suggested that she consider colleges in Georgia, however Sumala did not respond to this suggestion. She eventually decided to attend Ohio State University, and began classes there in September. Sumala received \$15,000 in grants from Ohio State. Sasi paid for some of the college expenses from the 529 plan, and Sasi's brother helped pay for some of the expenses. Sasi did not tell Rao about Sumala's decision to go to Ohio State until October of 2007, when they discussed the college costs. Rao sent Sasi \$1,500.

¶ 4 On March 6, 2008, Sasi filed a petition for contribution to college expenses. She requested that Rao reimburse her for the money she paid out of pocket, in addition to what her brother and the 529 plan paid. Initially, Sasi claimed that she was obligated to repay her brother, however the court determined that the brother's contribution was a gift and not a loan. At the same time, Sasi filed a petition to modify child support. In her petition, she claimed an increase

in the expenses of the minor children as grounds for modifying the settlement, noting particularly Vidya's special needs.

¶ 5 On June 25, 2009, Rao filed a petition for temporary and permanent custody, removal of the minor child, Vidya, and alternatively, a motion for modification of visitation. Rao argued that Sasi did not keep him informed of the children's health and prevented him from having a meaningful relationship with them. He also alleged that Vidya had an eating disorder and Sasi failed to provide Vidya with appropriate help.

¶ 6 Because Cook County Local Rule 13.3.1(a) requires that parties to a petition for educational expenses or additional child support submit financial disclosure statements, both Rao and Sasi submitted disclosure statements to each other. Rao's submission on May 16, 2008, listed only one piece of real property, his residence and only one bank account. He also listed \$425,000 in personal debts. However, on February 20, 2009, he submitted an amended disclosure statement with assets that he neglected to include in his first disclosure including: land in Georgia and India, retirement accounts, gold bullion and an additional eight bank accounts. He also omitted the \$425,000 in personal debts because the money was not actually owed.

¶ 7 The trial regarding Sasi's petitions began on June 29, 2009. During Rao's cross-examination, Sasi's attorney questioned him about the business deductions he claimed on his tax returns. He could not answer questions regarding the office equipment he claimed he purchased, the contract workers he hired, and his office's monthly rent. The court later noted that it did not find Rao credible based on his testimony.

¶ 8 Sasi testified during cross-examination that her practice, American Cancer Care had bank accounts at Citibank and NorthStar Credit Union. Rao's attorney presented a check from U.S. Bank by American Cancer Care, and she admitted that she had forgotten about that account. Rao filed a motion for discovery sanctions regarding this omission. The court denied this motion and

later determined that Sasi rarely pays bills using that account, but merely receives advances from a line of credit on that account.

¶ 9 On April 22, 2011, the trial court entered judgment on the petition for college expenses and child support. The court set Rao's child support at \$3,000 per month. Rao was also ordered to reimburse Sasi for 65% of Sumala's college expenses.

¶ 10 Rao filed a motion to reconsider. He argued that the court miscalculated his income by failing to deduct his practice's business expenses. He also argued that the court erred in using figures for his 2009 income that Sasi listed in her closing argument because the record contained no evidence of his 2009 income. Further, he contended that he should not be required to pay for Sumala's college expenses because he was not consulted as to her choice of school.

¶ 11 The court granted Rao's motion to reconsider in part, finding that Rao's business expenses should be deducted from the calculation of his income. Specifically, the court stated that "[t]he court shall make a reasonable inference that Rao did incur the cost in purchasing said tangible property and therefore the Court will not add those sums back into the calculation of Rao's net income for purposes of child support." However, when actually calculating Rao's income, the court did add back in Rao's business expenses. After recalculating Rao's income, the court found the statutory guidelines would dictate that Rao pay \$4,224 per month for the period beginning with the filing of Sasi's petition until Vidya was emancipated and \$3,017 from that point forward. But the court found that an upward deviation from the statutory guidelines appropriate, considering the financial resources of both parties and the standard of living the children would have enjoyed had the marriage not been dissolved. Accordingly, the court ordered Rao pay \$5,500 for the period beginning with the filing of Sasi's petition until Vidya was emancipated, and \$3,700 from that point forward.

¶ 12 With respect to the college expenses, the court found Rao at fault for failing to initiate conversation with Sasi regarding college expenses and that Rao's primary interest lay in paying the least amount possible for Sumala's education expenses. The court found Sasi credible in her explanations of how colleges were chosen and what payments had been made. Nevertheless, the court agreed to reduce the percentage of Rao's obligation towards Sumala's education expenses. The court deducted the Ohio State University grants, Sasi's brother's contributions, and the contributions from the 529 plan from Sumala's total education expenses, and ordered Rao to pay 55% of the balance.

¶ 13 Rao withdrew his petition for custody and Sasi filed a motion for sanctions against Rao for filing the petition, arguing it was filed for purposes of harassment. The court initially granted Sasi's motion and granted her leave to file a fee petition for costs incurred in defending the action. However, after Sasi filed a motion to quantify the fees incurred in defending against Rao's petition, the court reconsidered the sanctions against Rao and denied Sasi's motion to quantify fees. The motion to quantify had little detail other than a total sum that Sasi's attorneys requested as fees.

¶ 14 Finally, the court granted Rao's motion for sanctions against Sasi regarding her inclusion of Rao's 2009 income in her closing argument, and granted Rao's attorneys leave to file a fee petition for their costs in bringing this matter before the court. After reviewing the fee petition, supporting affidavits, and time sheets, the court awarded Rao's attorneys \$3,500.

¶ 15 Rao appeals the court's determinations regarding his obligations for child support and his responsibility for Sumala's college expenses. Specifically, he argues that the court improperly calculated his income by failing to deduct his reasonable business expenses. He contends the court also erred in deviating from the statutory guidelines without a specific request by Sasi to do so. Additionally, he argues that he should not have had to pay Sumala's college expenses because

he was not consulted before Sumala started school. Further, Sasi did not provide documentation of Sumala's education expenses. Finally, he appeals the trial court's denial of his motion for sanctions regarding Sasi's omission of her U.S. Bank account from her financial statement.

¶ 16 Sasi cross-appealed, and argues the court erred in finding it lacked jurisdiction to award her reimbursement of college expenses prior to her petition because the marital settlement agreement required Rao to pay for college expenses. She seeks reimbursement from Rao for the college expenses paid out by her brother and by the 529 plan. Additionally, she appeals the court's award of sanctions for her inadvertent inclusion of a reference to Rao's 2009 income, and denial of her motion for sanctions regarding Rao's custody petition.

¶ 17

#### ANALYSIS

¶ 18

#### Income Calculation

¶ 19 Rao first argues that the court erred in determining his income to calculate child support. From 2005 through 2008, he purchased equipment for his professional office. On his federal tax return, he elected to expense the entire cost of the equipment instead of depreciating it. The trial court, in its amended order, stated that it "will not add those sums back into the calculation of Rao's net income for purposes of child support," but an examination of the court's order shows that the court ended up adding back these expenses to its calculation of Rao's income. Rao argues that his business expenses should be deducted from his income before performing the child support calculation. Rao argues these expenses are necessary for his business, and it would be unfair to include them in calculating his income.

¶ 20 Sasi responds that the plain language of the statute provides that only "expenditures for repayment of debts" are allowed to be deducted from income. Thus, the necessity of Rao's business expenses is irrelevant, as they were not "debts." She argues that since the court required

Rao to pay above the guidelines, the actual amount of Rao's income is irrelevant and the error was at worst harmless.

¶ 21 Orders modifying child support payments are within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135 (2004). However, we review issues of law, such as the interpretation of statutes *de novo*. *Id.* at 135-36.

¶ 22 We must first determine whether Rao's alleged expenses qualify as an allowable deduction under section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/505(a)(3) (West 2012). Section 505(a) sets a parent's child support obligations as a percentage of their "net income". *Id.* A determination of what is "income" under the Act is not governed by the Internal Revenue Code. *Rogers*, 213 Ill. 2d at 137. The Act provides that "net income" includes "income from all sources," minus certain deductions including, "[e]xpenditures for repayment of debts that represent reasonable and necessary expenses for the production of income." 750 ILCS 5/505(a)(3) (West 2012).

¶ 23 The court's main objective when interpreting a statute is to establish and give effect to the legislative intent. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184 (2009). The best indication of the intent of the legislature is the plain meaning of the statutory language. *Id.* When a statute's language is unambiguous, the court may not use aids of statutory construction but must apply the statute as written. *Id.* "We may not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express." *Id.* A statute should not be interpreted in such a way that part of it is rendered meaningless. *People v. Jones*, 214 Ill. 2d 187, 193 (2005).

¶ 24 The statute enumerates only certain items that may be deducted from a calculation of net income. The first item enumerated is "[e]xpenditures for repayment of debts \*\*\* for the

production of income." Immediately following are "medical expenditures necessary to preserve life or health," and "reasonable expenditures for the benefit of the child and the other parent." Notably the legislature did not include "for repayment of debts" in either of these items. The legislature could have left out the words "for repayment of debts" when referring to business expenses and merely stated "expenditures that represent reasonable and necessary expenses for the production of income." But the legislature specifically chose those words when referring to business expenses. We must give this term its plain and ordinary meaning. Accordingly, under Section 505(a)(3)(h) of the Act, business expenses must be subject to a strict repayment plan to be deductible.

¶ 25 Rao cites to *Rimkus v. Rimkus*, which dealt with the question of whether a one-time business expense is deducted from income under the Act. 199 Ill. App. 3d 903 (1990). Finding no Illinois case law directly on point, the court in *Rimkus* relied, for its disposition, on *In re Marriage of Dwan*, 108 Ill. App. 3d 808 (1982), which held that a husband could not deduct business expenses that were unreasonable. *Id.* at 909. The *Rimkus* court inferred from *Dwan* that any business expense would be deductible from income if the expenses were reasonable. *Id.*

¶ 26 However, in *Gay v. Dunlap*, a later case, the court held that a business expense must be an actual debt in order to determine net income under the Act. 279 Ill. App. 3d 140 (1996). The court in *Gay* criticized *Rimkus* in its reliance on *Dwan* to reach its decision because *Dwan* dealt with a previous version of the Illinois statute regarding child support. *Id.* at 146. The court in *Gay* interpreted the plain language of the statute to only allow a deduction for reasonably necessary business debts. *Id.* at 147. However, the court noted that even if an expense was not a "debt," it should still be considered in deciding whether to deviate from the statutory child support guidelines. *Id.* at 148.



¶ 27 More recently, this court addressed the question again in *In re Marriage of Baumgartner*, 384 Ill. App.3d 39, 59 (2008). *Baumgartner* agreed with *Rimkus* that one-time business expenses can be considered expenses "for repayment of debts," and therefore deductible under the statute, but also agreed with *Gay* that business expenses are only deductible if they are subject to a strict repayment plan. See *Id.* at 59-60.

¶ 28 We agree with the court's interpretation in *Baumgartner*. One-time business expenses should be deductible under the Marriage Act, so long as they create a "debt" which is subject to a strict repayment plan. However, reasonable and necessary business expenses which are not subject to a repayment plan may not be ignored in determining how much a party is actually able to pay in child support. Such expenses can and should be factored into a determination of whether a deviation from the guidelines is appropriate. As the court stated in *Gay*, even if an item is not deductible from income, it can still be considered under subsection (a)(2)(e), which allows the court to deviate from the guidelines based on "the financial resources and needs of the non-custodial parent." 750 ILCS 5/505(a)(2)(e) (West 2012). 279 Ill. App. 3d at 148.

¶ 29 Here, the trial court determined that Rao's business equipment purchases should be deducted from Rao's income, but nonetheless included the expenses as income. On this record, we are uncertain whether the trial court made any determination regarding those expenses being subject to a repayment plan in order to be a debt deductible under the Act. However, if the expenses were subject to a repayment plan, the trial court improperly added the expenses to Rao's income. Even if the business expenses were not subject to a repayment plan and the amounts were appropriately added to Rao's income, the court should, nonetheless, have considered the expenses when determining whether to deviate from the guidelines.

¶ 30 Sasi argues that any error on the part of the trial court in calculating Rao's income was harmless, since he was forced to pay above the guidelines in any event. However, any decision

to deviate from the guidelines is based in part on the party's financial resources and it appears that the trial court had an inaccurate picture of Rao's finances. The trial court believed that Rao's income calculation did not include the business expenses when it inadvertently added back the amounts.

¶ 31 Thus, we remand this case back to the trial court with instructions to conduct such proceedings as may be necessary to determine whether Rao's business expenditures were subject to a repayment plan. If these expenses were subject to a repayment plan, the court should, as it originally stated, deduct those debt repayments from Rao's income as they become due. If not, those amounts must be included in Rao's income. However, consistent with this opinion, the court may consider the non-deductible expenses in determining what amount, if any, support deviation from the guidelines.

¶ 32 Upward Deviation From the Child Support Guidelines

¶ 33 Next, Rao claims that the trial court erred in ordering that he pay child support above the guidelines when Sasi never specifically requested such a deviation. Moreover, he argues the court's decision to award child support over the guidelines is against the manifest weight of the evidence, given Sasi's high income. He also argues that contrary to the findings of the trial court, the children would not have had a high standard of living, given the family's allegedly modest lifestyle before getting divorce.

¶ 34 Though we have determined that the court must recalculate Rao's income and therefore must make a new determination on whether to deviate from the guidelines, we will address the question of whether the court's deviation was appropriate under the circumstances.

¶ 35 The Act states that a court must determine a parent's child support by calculating a percentage of their income "unless the court finds that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence." 750 ILCS

5/505(a)(2) (West 2012). The relevant factors for a court to consider include the financial resources and needs of the non-custodial parent, the standard of living the child would have enjoyed had the marriage not been dissolved, and the physical, mental, and emotional needs of the child. *Id.*

¶ 36 Rao cites to *In re Marriage of Adams*, 92 Ill. App. 3d 797 (1981) and *Loeb v. Woll*, 235 Ill. App. 3d 25 (1992). In *Adams*, the appellate court found that the trial court erred in ordering that the husband was entitled to exemptions on his tax returns when none of the pleadings requested such relief. *Id.* at 801. Similarly in *Loeb*, the trial court improperly ordered that the defendant must reimburse plaintiff for expenses through April of 1986 when the pleadings only requested relief through October of 1985. *Loeb*, 235 Ill. App. 3d at 29.

¶ 37 Unlike *Adams* and *Loeb*, Sasi requested a modification of Rao's child support obligations in her petition. This necessarily required the court to determine whether a deviation from the guidelines was appropriate. 750 ILCS 5/505(a)(2) (West 2012). Sasi did not need to separately request that the court consider an upward deviation from the guidelines any more than she needed to request that the court calculate Rao's income. Determining whether a deviation is appropriate is simply a necessary part in the process of determining child support obligations.

¶ 38 Here, the trial court reviewed the record and based its decision to deviate from the guidelines on Vidya's tutoring, child care, and therapy needs. Further, the trial court considered the significant income of both parents, and found that the children would likely have enjoyed a high standard of living. We agree with the trial court's findings and do not find that it was an abuse of discretion for the trial court to find an upward deviation from the guidelines.

¶ 39 College Expenses

¶ 40 Rao next argues that the court abused its discretion in requiring that he pay 55% of Sumala's college expenses because Sasi had greater financial resources than did he. He points to

Sasi's investment in a restaurant, money sent to relatives overseas, and various deposits into her professional corporation's bank accounts. He also argues that the children's lifestyle would not have dictated such an expensive college choice.

¶ 41 Sasi responds that Rao clearly has a sizable income and substantial assets. Moreover, Sumala's choice in schooling was a reasonable one. She chose a school which had a quality academic program in the field that she had interest. Further, Rao reacted to Sasi's attempts to contact him about Sumala's education in October with silence or demands for a reduction in child support.

¶ 42 A trial court's decision to award education expenses is reviewed under an abuse of discretion standard. *In re Marriage of Spear*, 244 Ill. App.3d 626, 629 (1993). "An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court." *In re Marriage of Pearson*, 236 Ill. App. 3d 337, 349 (1992).

¶ 43 We initially note the trial court's finding that Rao had \$1.8 million in assets. He purchased a significant amount of gold bullion, and vacant real estate in Georgia. Although the court found that both Sasi and Rao had sizable incomes, after reviewing the evidence, the court found that Rao's assets were more substantial. The court additionally noted that it found Sasi's testimony regarding their assets more credible than Rao's. There is nothing in the record which reveals that the court's findings regarding Rao's financial state were improper and we will not disturb them. We also note that a sizable portion of Sumala's tuition was covered by Sumala's grant from Ohio State and Sasi's brother. Moreover, there is nothing in the record which reveals that Sumala's choice of Ohio State was not reasonable. Accordingly, we find that the court did not abuse its discretion in requiring that Rao pay 55% of the balance.

¶ 44 Rao next argues that he did not consent to Sumala's decision to go to Ohio State, and thus he should not be forced to pay for her education. The obligation to contribute to college expenses is not dependent upon the custodial parent obtaining prior consent from the supporting parent. *In re Marriage of Sreenan*, 81 Ill. App. 3d 1025, 1029 (1980).

¶ 45 Rao cites to *Van Nortwick v. Van Nortwick*, 87 Ill. App. 2d 55 (1967), and *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483 (1987), for the proposition that a parent cannot be required to pay a child's college expenses if that parent had no say in the child's choice of school. However, neither case provides support for his argument. In *Van Nortwick*, the parents had an agreement in place that both parties would agree on a choice of school for their children. *Van Nortwick v. Van Nortwick*, 52 Ill. App. 2d 229, 232 (1964).

¶ 46 *Ingrassia* dealt with a different issue entirely. In *Ingrassia*, the settlement agreement provided that the child's father would pay for a college education. 156 Ill. App. 3d at 494. The dispute centered on whether the parties' agreement that the child's father would pay for schooling could require the father to pay for any school, at any level of education, at any amount, and for however long the child chose. *Id.* at 493. The court construed the father's obligation to be limited to reasonable education expenses. *Id.* at 497. If the child were to transfer schools, the father's obligations would not exceed the total he would have paid had the child remained in her current school. *Id.* at 495. However, the court still required the father to pay for the child's expenses at her current school despite the failure to obtain the father's consent. *Id.* at 493-95.

¶ 47 In *Gibb v. Triezenberg*, the trial court required a father to pay for his son's college expenses despite the lack of relationship with his son, and the fact that he was not consulted regarding the choice of college. 188 Ill. App. 3d 695, 697 (1989). The appellate court upheld the ruling, noting that while the court could have considered the lack of relationship in its order, the father had the ability to pay the expenses and both the mother and son were contributing to the

son's expenses. *Id.* at 701. See also *Imes v. Imes*, 52 Ill. App. 3d 792, 795 (1977) (father's lack of consent to children's choice of schools did not absolve him of the obligation to contribute towards their college expenses.); *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 244 (2007) (allegedly abusive father required to contribute to education expenses despite not even knowing which college his child attends.).

¶ 48 Here, the parties' settlement agreement did not require that both parents consent to their child's choice of school as the parties agreed to in *Van Nortwick*. As for Rao's citation to *Ingrassia*, we do not find anything in the record revealing that Sumala's choice of school was unreasonable. If anything, we find *Ingrassia* provides support for Sasi's position, as the court required the father to pay for the child's college expenses despite the child enrolling in college without previously informing the father. We find no rule which requires a parent to have a say in where his child goes to school in order for the parent to be obligated to contribute to college expenses.

¶ 49 We find this case more similar to *Gibb* where, although the trial court could have considered the lack of discussion between parents regarding the choice of school, it was not reversible error to require the father to contribute to the college expenses. Similar to *Gibb*, Sasi and Sumala, who works at the school cafeteria, both contribute to Sumala's education expenses. Although we would encourage discussion among the parties concerning these issues, the absence of the same does not alter our disposition of the issue. We do not find the court's award to be an abuse of discretion.

¶ 50                   Lack of Sufficient Evidence Regarding Sumala's College Expenses

¶ 51 Rao contends that the court lacked sufficient evidence to order reimbursement of Sumala's college expenses because Sasi provided no documents as proof of the amounts. Rao

cites to *In re Marriage of Zweig*, 343 Ill. App. 3d 590 (2003), *In re Marriage of Hubbs*, 363 Ill. App. 3d 696 (2006), and *In re Marriage of Walters*, 238 Ill. App. 3d 1086 (1992), as support for the proposition that documentation is required to support the reimbursement of expenditures.

¶ 52 We do not find *Zweig* or *Hubbs* applicable to this case. Both *Zweig* and *Hubbs* involve the dissipation of marital assets, and the present case involves college expenses. A spouse charged with dissipating marital funds "has the burden of showing, by clear and specific evidence" that the funds were spent appropriately. *In re Marriage of Teitz*, 238 Ill. App. 3d 965, 983 (1992). No similar burden applies to proof of college expenses. Further, we find nothing in *Walters* requiring documentation in support of a claim for college expense reimbursement. In *Walters*, the appellate court reversed the trial court's finding that a child was emancipated which ended the parent's obligation to pay for the child's college expenses. 238 Ill. App. 3d at 1093. The appellate court remanded the case back to the trial court to determine the amount of the education expenses because the appellate court could not determine the exact expenditures from the "pile of checks and bills submitted." *Id.* at 1094. The appellate court ordered the trial court to review any necessary additional evidence. *Id.* However, the court made no mention that documentary evidence was necessary and that credible testimony regarding the expenses would be insufficient.

¶ 53 The trial court is better positioned to determine matters of credibility, as it can observe a party's demeanor. *In re Marriage of Diehl*, 221 Ill. App. 3d 410 (1991). Here, the court found Sasi's testimony regarding the college expenses credible. Rao presented no evidence to counter Sasi's testimony, despite the publicly available information regarding how much Ohio State University charges for tuition. While it is certainly within the court's discretion to require documentation regarding expenses, we find no rule that documentation is required for a court to award the reimbursement of college expenses.

¶ 54 Trial Court's Denial of Rao's Motion for Sanctions

¶ 55 Rao argues that the court abused its discretion in denying his motion for sanctions regarding Sasi's failure to disclose her U.S. Bank account on her financial disclosure statement. Sasi responds that the non-disclosure was inadvertent and that the account was relatively insignificant.

¶ 56 Illinois Supreme Court Rule 219(c) allows a trial court to sanction a party who unreasonably fails to comply with any of the court's discovery rules or orders. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). The factors considered in determining whether Rule 219 sanctions are appropriate are: (1) surprise to the adverse party; (2) the prejudicial effect of the proffered evidence; (3) the nature of evidence being sought; (4) diligence of the adverse party in seeking discovery; (5) timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the evidence. *Locasto v. City of Chicago*, 2014 IL App (1st) 113576, ¶ 26. Each case presents a unique scenario and no one factor controls our analysis. *Id.* The trial court's decision regarding Rule 219 sanctions is reviewed under an abuse of discretion standard. *Id.*

¶ 57 Here, we have no reason to doubt Rao's diligence in seeking discovery. However, we fail to see the prejudicial effect of Sasi's non-disclosure on Rao. The U.S. Bank account contains a relatively small sum as compared to the rest of her finances and the trial court found that Sasi rarely used the account. Moreover, nothing in the record reveals bad faith on the part of Sasi. Sasi immediately admitted to forgetting to list the bank account when Rao's attorneys showed her the check. Further, Rao failed to request that the non-compliance be enforced until after trial, despite becoming aware of the U.S. Bank account shortly before trial. After weighing the appropriate factors, we find that the court did not abuse its discretion in failing to sanction Sasi.



## ¶ 58 Reimbursement of Pre-Petition College Expenses

¶ 59 Sasi cross-appeals and contends that the court erred in finding that it lacked jurisdiction to award college expenses incurred prior to the filing of the petition. The court found that it lacked jurisdiction, relying on *In re Marriage of Petersen*, 2011 IL 110984. Sasi argues that the instant case is distinguishable from *Petersen* because the Paidis' marital settlement agreement explicitly provided that the parties would pay for the children's college expenses. Rao agrees that the court improperly applied *Petersen*, and that the court in fact had jurisdiction regarding the pre-petition expenses. However, he contends that Sasi lacked documentation regarding those expenses.

¶ 60 Whether the trial court had jurisdiction presents a question of law, which we review *de novo*. *In re Marriage of Rogers*, 213 Ill. 2d at 136. The Act provides that modifications for 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 2012). In *Petersen*, a judgment for dissolution of marriage was entered providing that the court reserved the issue of the parties' respective obligations to contribute towards their children's education expenses. 2011 IL 110984, ¶ 4. Eight years later, the children's mother filed a petition requesting that the child's father contribute toward their children's previous and future college expenses. *Id.* at ¶ 5. The supreme court determined that prior to the petition, the father had no concrete obligation to provide education expenses, and that the petition requested an actual modification of the order. *Id.* at ¶ 18. Pursuant to section 510 of the Act, a court can only order modifications of support to prospective expenses incurred after a petition is filed. *Id.* Thus, the trial court only had jurisdiction to require payment for college expenses incurred after the filing of the petition. *Id.* at ¶ 25.

¶ 61 Sasi argues that the Paidis' settlement agreement is more similar to *In re Marriage of Spircoff*. 2011 IL App (1st) 103189. There, the court distinguished its facts from *Petersen* because the party already had an obligation to contribute towards a child's college expenses. *Id.* at ¶ 17. There, the marital settlement provided that each party would "contribute to the trade school or college or professional school education expenses of their child in accordance with section 513." *Id.* at ¶ 6. The court concluded that this language expressly stated the parties' obligation and was not a reservation by the court to rule on the obligation like in *Petersen*. *Id.* at ¶ 17. Thus, the court had jurisdiction over expenses incurred prior to the filing of the petition. *Id.*

¶ 62 Unlike *Petersen*, the Paidis' settlement agreement was not simply a reservation of rights. Similar to *Spircoff*, the settlement expressly provided that each parent would pay for college expenses "commensurate with his/her respective ability to do so." As such, Rao was already obligated to pay for his children's college expenses. The court's action was only required to settle the dispute as to each party's individual contribution, and the court retained jurisdiction to do so.

¶ 63 The trial court erred in ruling that it lacked jurisdiction over the pre-petition college expenses. We remand back to the trial court with instructions that it determine the amount of college expenses to award Sasi for expenses incurred prior to the filing of the petition. As we have discussed above, we do not find merit to Rao's argument that Sasi must provide documentation regarding college expenses.

¶ 64 Sasi's Share of the College Expenses

¶ 65 Sasi next contends that the court erred in deducting the college expenses her brother paid. Sasi contends that her brother's gift should count towards her share of expenses, as he is Sasi's family member. Sasi also contends that the court erred in failing to require Rao to reimburse her for contributions from the 529 plan.

¶ 66 A gift from a parent's family member towards college expenses is not credited towards a parent's obligations to contribute to college expenses. See *Hupe v. Hupe*, 305 Ill. App. 3d 118, 121 (1999) (paternal grandmother's \$5,000 gift for a car so child could commute to school was not counted towards father's contribution.). Here, the trial court determined that Sasi's brother's contributions towards college expenses were gifts and not loans. Accordingly, the court properly deducted this amount from the total expenses before splitting the costs between the parties.

¶ 67 On the other hand, the amounts paid for by Sasi's 529 plan should be credited towards Sasi's share of the expenses. Sasi was the sole contributor to the plan, and we see no reason why the plan should be treated differently than any other savings account that a parent might use to pay for a child's college. The trial court's rationale is not apparent from the record. Nevertheless, we reverse the portion of the court's order deducting these amounts from the total to be divided between the parents, and remand to the trial court with instructions that Rao reimburse Sasi for an appropriate percentage of the college expenses paid from the 529 plan.

¶ 68 The Court's Decision to Award Rao's Attorney Fees

¶ 69 Sasi's next contention is that the court erred in deciding to award Rao's attorney fees for the time spent on filing a motion to reconsider regarding the issue of Rao's 2009 income. Sasi included a reference to Rao's 2009 tax document in a closing statement without the document being admitted into evidence. Sasi contends that the inclusion of Rao's 2009 income in her closing argument was inadvertent and she should not have been sanctioned.

¶ 70 Supreme Court Rule 137 provides that a party's signature on a document "constitutes a certificate by him that\*\*\* to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact\*\*\*." Ill. S. Ct. R. 137(a) (eff. July 1, 2002). A party who violates this rule may be sanctioned. *Id.* We will not disturb a trial court's ruling on a motion to grant Rule 137 sanctions absent an abuse of discretion. *Mohica v. Cvejin*, 2013 IL

App (1st) 111695, ¶ 47 (2013). A deferential standard is proper because the trial judge is in the best position to determine whether the conduct warranted sanctions. *Id.* at ¶ 50. However, this does not mean a reviewing court cannot independently review the record and find the court abused its discretion. *Id.* at ¶ 47. A party seeking the imposition of sanctions must demonstrate that the opposing party made false allegations without reasonable cause. *Id.*

¶ 71 We first note that it is insufficient for a signing party to honestly believe that something is well grounded in fact, and a court must use an objective standard in determining whether a party performed a reasonable inquiry under Rule 137. *Whitmer v. Muston*, 335 Ill. App. 3d 501 (2002). Even if Sasi's inclusion of Rao's 2009 income was inadvertent, Sasi was still required to perform a reasonable inquiry to ensure her arguments were based on evidence in the record. Sasi's alleged inadvertence is not an absolute defense to sanctions. Here, the court found that Sasi's attorneys included evidence in closing argument that was not admitted into the record. We agree with the trial court's findings.

¶ 72 Additionally, Sasi asserts that the court's award of \$4,250 was unreasonable given how easily Rao's attorneys could have determined that Rao's 2009 income was not in evidence. "The trial court is permitted to use its own knowledge and experience to assess the time required to complete particular activities, and a court of review may not reverse an award of attorney fees merely because it might have reached a different conclusion." *Cretton v. Protestant Memorial Medical Center., Inc.*, 371 Ill. App. 3d 841, 868 (2007). In assessing fees, the court considers a range of factors, such as "the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation." *Id.*

¶ 73 We note that the court ruled that Rao's attorneys would receive fees for not only discovering that the closing argument was improper, but also for bringing the motion to reconsider. The fee award includes reviewing the exhibits, discussing the issue with the client, and drafting the motion to reconsider. Rao's attorneys submitted detailed time sheets and affidavits detailing their work on this issue, which the trial court reviewed. The trial court considered the appropriate factors and found the fees submitted to be reasonable. We do not find that the court abused its discretion.

¶ 74 Sasi's Motion for Sanctions Pursuant to Rao's Petition for Custody

¶ 75 Sasi's final assertion is that the court abused its discretion in failing to award her attorney fees for her costs in defending Rao's petition for custody. The court originally sanctioned Rao and ordered Sasi to provide a fee petition within 28 days. After Sasi submitted her fee petition, the court denied the motion for sanctions. Rao responds that the motion to quantify attorney fees lacked any specificity and failed to provide a basis for the court to award those fees.

¶ 76 To justify a fee, a party must present more than just a number of hours multiplied by an hourly rate. *Kaiser v. MEPC American Properties Inc.*, 164 Ill. App. 3d 978, 984 (1987). The fee petition must "specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged." *Id.*

¶ 77 We find Sasi's fee petition absolutely lacking the type of data upon which the court needs in order to determine their reasonableness. Sasi's petition merely lists a figure of \$10,650 as the amount of attorney fees in defending Rao's custody petition. The petition does not even include the number of total hours or the hourly rate, which would be insufficient in any event. The petition fails to be sufficiently specific in the calculation of those fees. While the trial court did not specify its reasons for denying the fee petition, we may affirm the circuit court's ruling on any basis, regardless of the grounds upon which it relied. *Messenger v. Edgar*, 157 Ill. 2d 162,

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177 (1993). Accordingly, we find Sasi's fee petition insufficient and the court did not abuse its discretion in denying the motion.

¶ 78

#### CONCLUSION

¶ 79 Affirmed in part, reversed in part, and remanded with directions for the reasons stated above.