FOURTH DIVISION
September 30, 2015

No. 1-15-0905

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF,	)	Appeal from the
	)	Circuit Court of
ALBERT W.,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	13 D 5022
	)	
BARBARA W.,	)	Honorable
	)	Andrea M. Schleifer,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion with respect to its orders restricting visitation for respondent, finding respondent in contempt, requiring respondent to pay attorney fees and costs, and the qualified domestic relations orders. The trial court abused its discretion when it imputed petitioner's prior income where the evidence shows petitioner did not take a lower paying job for

> the purpose of avoiding child support and maintenance obligations but rather took a new job for the purpose of receiving additional training and being in a management position which would enable him to make more money in the future.

¶ 2 Respondent Barbara W. and petitioner Albert W. were married on November 3, 2007. After having two children, the couple separated, and a Judgment for the Dissolution of Marriage was entered on October 28, 2014. A Supplemental Dissolution of Marriage was entered on March 4, 2015. Albert now appeals findings and rulings made by the trial court in its October 28, 2014 Dissolution of Marriage order and March 4, 2015 Supplemental Judgment for the Dissolution of Marriage order. For the reasons that follow, we affirm the trial court's rulings with respect to visitation, contempt, attorney fees and costs, qualified domestic relations orders, division of the marital property, and credibility. We reverse the trial court's rulings that imputed petitioner's prior income for purposes of determining the amount of child support and maintenance, and remand for recalculation in accordance with this order.

¶ 3 I. BACKGROUND

¶ 4 This matter was initiated on May 17, 2013 when Barbara filed a *pro se* Petition for an Order of Protection against Albert. In the petition, Barbara alleged that the previous day, after she had asked Albert to stop "being aggressive with both children" three times, he pushed her twice, put his hands on her neck, and began choking her. The petition stated that Albert was under the influence of alcohol at the time, and this was not the first time that Albert had choked her. An emergency order of protection was entered that day.

¶ 5 On June 4, 2013, Barbara, through counsel, filed an Amended Petition for an Order of Protection wherein Barbara further averred that Albert behaves "completely out of control" when he drinks alcohol, had "repeatedly pushed and shoved" her throughout the marriage, and oftentimes verbally abused her in front of their children.

¶ 6 Also on June 4, 2013, Albert filed a Petition for Dissolution of Marriage seeking sole custody of the parties' children. Barbara's Petition for an Order of Protection was then consolidated into the dissolution matter.

¶ 7 On June 25, 2013, the parties entered into an agreed order that provided, in relevant part, that: "The parties shall maintain the financial status quo regarding payment of household and family expenses." In a separate order that was also entered that day, the trial court modified the order of protection to allow Albert to have visitation with the parties' children on "Tuesdays and Thursdays from 5:00 p.m. to 6:30 p.m.; and Sundays from 2:00 p.m. until 6:00 p.m." at the marital residence.

¶ 8 On July 15, 2013, the trial court entered an order further requiring Albert to pay Barbara $160 per week. The court also terminated the order of protection.

¶ 9 On August 29, 2013, Albert filed a Petition for Temporary Relief alleging that he was unable to maintain the financial status quo or pay Barbara $160 per week. Although Albert acknowledged grossing $5,400 per month, the petition stated that he could not comply with the June 25 and July 15 orders because: (1) as of May 30, 2013 he could no longer work overtime, and (2) he was required to pay a minimum of $400 per month to his grandmother, with whom he was residing. Albert filed a Second Petition for Temporary Relief on September 4, 2013, seeking to compel Barbara to obtain full-time employment or, alternatively, to list the marital residence for sale.

¶ 10 On December 6, 2013, following a pretrial conference, the trial court ordered that "[a]ll prior support orders remain in full force and effect."

¶ 11 On May 19, 2014, Barbara filed a Petition for Rule to Show Cause alleging that Albert had failed to comply with the June 25 and July 15 orders by: (1) transferring the gas bill

associated with the marital residence into Barbara's name and ceasing to make payments thereon; (2) shutting off Barbara's cellular phone service; (3) ceasing to make payments on Barbara's automobile; (4) failing to make any mortgage payments on the marital residence in 2014; and (5) failing to make several $160 weekly payments. In response, Albert admitted to not making mortgage payments, denied failing to make payments on Barbara's automobile, did not address the allegations about weekly support, and stated that he could neither admit nor deny the remaining allegations.

¶ 12 On July 25, 2014, Barbara filed a Petition for Contribution to Attorney Fees and Costs pursuant to section 503(j) of the Illinois Marriage and Dissolution Act (the Act), which sought that Albert pay her attorneys $31,737 in fees and costs, plus prospective fees.

¶ 13 The trial commenced on July 28, 2014, and lasted three days, consisting only of testimony from Barbara and Albert. Barbara testified that she resides at 7332 West Conrad Avenue, Niles, Illinois (the Conrad home), which Albert purchased prior to the marriage. Albert had lived there since approximately 2000. Barbara testified that prior to marrying Albert, she worked part-time at Life Source Blood Services earning $10.25 per hour during which time she lived with her parents and her parents paid for her tuition, down payment on a car, and health insurance. Barbara then left college to go to cosmetology school at Pivot Point. She passed the school test, but never took the state test to become licensed, although she could still do this. She then worked at Bloomingdales for five years, working for Estee Lauder, where she earned beyond minimum wage and received commissions, medical and dental insurance, and a 401(k) plan.

¶ 14 Barbara then switched employment to Sephora, her present employer, where she began as a full-time employee. At Sephora, Barbara has a 401(k) plan and insurance as a lead manager

earning $17.50 per hour. She worked full-time at Sephora until six months into her pregnancy. As a part-time employee, Barbara testified that she received bonuses based on store performance and that she would be able to receive health benefits through Sephora. While she currently works about ten hours per week, Sephora has not placed any restrictions on the work she can do outside of the store. She has never made a written inquiry to increase her hours. After the twins were born, Barbara stayed home from work for a few extra months, and then returned to work one day per week, voluntarily. When she does work, her parents or Albert watch the children.

¶ 15 Barbara testified about the emergency Petition for an Order of Protection that she filed and obtained. In the petition, she alleged that Albert choked and hit her and that he was an alcoholic who was seriously endangering the children's lives. After filing the Petition for an Order of Protection, Albert filed for divorce. Barbara then filed her own petition for divorce. As of the trial date, there was no order of protection in place, just a restraining order. Although Albert was not ordered to move out of the Conrad home, he did so voluntarily. Barbara and the children remained in the house. Barbara and Albert would sometimes argue when Albert had visitation with the children, and after a while Albert stopped coming to visitation altogether.

¶ 16 Barbara testified that Albert had voluntarily put the title to the Conrad home in both parties' names, but she did not have paperwork to support that. Only Albert's name was on the mortgage. Albert has made improvements to the Conrad home, and Albert's mother helped pay mortgage payments before and during the marriage. Barbara's parents would help out with buying things around the house. Barbara's parents are also helping her pay her attorneys, and to date they have paid $18,000 in attorney fees and costs.

¶ 17 When Barbara met Albert, he was a union electrician. Albert contributed financially and personally to their efforts to conceive, even when he was unemployed for a portion of time.

Albert refinanced the house as well as Barbara's Cadillac Escalade in order to pay bills during his period of unemployment. Barbara testified that Albert's unemployment was not through any cause of his own. Barbara testified that Albert went to Afghanistan for a year to do electrical work on a military contract between 2011 and 2012, during which time he made approximately $110 per hour. When he returned, he worked at CBRE.

¶ 18 Barbara testified that Albert had spoken with the twins over the phone a few weeks ago, although the twins do not speak of him or ask for him. Barbara would be hesitant to allow Albert to visit the children at Albert's mother's home, and she would want to be present because Albert has never taken care of the children and is "always intoxicated." Barbara stated that Albert has had an issue with alcoholism throughout the entire marriage, and drinks Monday through Saturday. She testified that he would often go to the liquor store close to their home after work, drive home with open containers, and smell of alcohol by the time he got home. Barbara testified that Albert was frequently late for work. Barbara would allow Albert to be alone with the children on Sundays because that was the day he did not drink. As of the trial, Barbara testified that she believes Albert is an alcoholic. She further testified that Albert has two DUIs.

¶ 19 Barbara testified that she has not spoken to Albert since they separated, but that according to his bank statements, he goes to the liquor store sometimes two to three times a day. Barbara called the doctors for Albert and encouraged him to go to rehab. Barbara offered to support him and go to rehab with him, but Albert refused and filed for divorce.

¶ 20 As for current sources of income, Barbara receives the payments from Albert, money from her employer, Sephora, and any money that she makes from Scentsy, a candle company. She sells some of her stuff on Craigslist with the biggest sale so far having been a stroller for $40. Both Barbara and Albert had credit card debt coming into the marriage. Barbara does not

have a savings account and the children do not have savings accounts.

¶ 21 As a part-time worker at Sephora, Barbara contributes to her 401(k) account. She contributed to it before and during the marriage. Barbara testified that her gross income was $4,410 in 2012 and $8,014.99 in 2013. Barbara's current pay stub indicates that her year-to-date gross income, through April 2014, is $3,463. Her pay stub indicates that she makes $17.50 per hour. The pay stub also shows that Barbara made payments to her 401(k) and that Sephora is matching those payments.

¶ 22 Barbara testified that she does not have insurance through her employer. She used to be covered by Albert's employer. In Barbara's disclosures, she disclosed the mortgage, electricity, and cable as expenses that were being paid by Albert. Barbara pays for her own food, insurance payments, as well as license and stickers on the car she is currently borrowing from her parents. She used to make these payments on the Cadillac, but she turned the Cadillac over to Albert when he told her he would stop making payments on it. Barbara also spends approximately $415 per month on clothes, $100 per month on grooming as she gets her hair and nails done usually once a month, $126 per month on medical bills that are not covered by the children's insurance, $163 on dining out, and $208 on gifts for other people. She also indicated that she spends $133 per month on the children's clothing, $100 per month on the children's grooming, $1,100 in tuition fees for each child beginning in the fall, $370 per year to have the children attend Polish school, and they attend swimming school. Barbara testified that, in expenses, she also pays her Citicard, her Nordstrom Visa, her cell phone bill, and the Nicor gas bill.

¶ 23 Albert had always been in charge of all the bills, but he stopped making payments on the mortgage and the Cadillac. Barbara conceded at one point while giving testimony that she believed she and Albert lived beyond their means during the marriage.

¶ 24 Barbara then testified to the commissions that she received from Scentsy in 2013 and 2014, which ranged from zero to $183.59. In total, while working for Scentsy selling candle products, Barbara made approximately $809. She never made more than $600 per year working at Scentsy. As for her sales on Craigslist, she sold about five of her personal items for a total of approximately $400. Other than the money from Sephora, Scentsy, Craigslist and money her family has given her, Barbara testified that she has no other sources of income.

¶ 25 Barbara testified about the incidents leading up to her filing a petition for an order of protection. In June of 2013, Barbara testified that at about 7:30 or 8:00 p.m. Albert came running into the room and began fidgeting with the boys while she was trying to put them to bed. Barbara testified that she asked him to stop and that he pushed her off the bed and onto the floor. She hit her head and then when Albert came over to where she was, he sat on her and began choking her. The children were saying "momma, momma." Barbara was screaming because she could not breathe. When she started to calm down, Albert got off of her. Barbara then got the boys dressed, went to her parents' house, and called the police immediately. Barbara testified that Albert was under the influence of alcohol during this incident.

¶ 26 The police came to her parents' house and asked her questions. Albert was not arrested because Barbara was hoping that he would seek help and try to work on the marriage. The next day, Barbara sought an order of protection, which was granted. Besides the choking incident the night before, Barbara was concerned about Albert's alcohol consumption as he was "always under the influence of alcohol." She could tell he was under the influence of alcohol by his slurring, walking, red eyes, red face, and his swearing. He drank six days a week. He did not drink before work, but drank after work. Barbara would find empty alcohol bottles in Albert's car. Albert would drive home with open containers in his car, and by the time he got home,

Barbara testified he would be feeling good.

¶ 27 Barbara eventually agreed to dismiss the order of protection and instead sought a restraining order. Barbara testified that after a visitation order was entered that allowed Albert visitation on Tuesdays, Thursdays and Sundays, Albert saw the children twice, and the last time he saw them was on July 23, 2013. Barbara testified that Albert has not seen or called the children since July 23, 2013, and he did not contact the children or send them cards or gifts on their birthdays. Barbara testified that she is the sole caregiver for the children and does everything for them—from signing them up for school or activities, to bathing to putting them to bed.

¶ 28 Barbara testified that after Albert was ordered to pay her $160 per week on July 15, he missed seven of these payments, totaling $1,120. Barbara also testified that on June 25, the court entered an order stating that: "The parties shall maintain a financial status quo regarding the payment of household and family expenses." The status quo would be that Albert pays for everything, including the gas, electric, water, cell phone, cable, mortgage, car payments, and medical insurance as he did during the marriage.

¶ 29 Barbara testified that she has been working one day a week at Sephora, but she recently picked up a second day, Mondays and Fridays. Barbara asked her manager if there was an opportunity for her to work full time and there was not. The current balance of her 401(k) is $22,344.94. She began participating in the 401(k) at Sephora before the marriage. Just before the marriage, the balance was $7,639.64. In 2012, the gross income of the household was $111,300. Barbara had a CD opened from TCF bank in May 2006, and the balance on that account is $7,078.61.

¶ 30 Barbara then testified about an E-Trade account that was opened in August 2007 and that

$3,150.62 was deposited into that account when it was opened. She testified that her checking account, as of July 21, 2014, had a balance of $32.25. She testified that she did not have any other savings or checking accounts and had no other liquid assets.

¶ 31 The balance on Barbara's Nordstrom credit card was $3,666.30. She uses that card for everything, food, gas, clothing, etc. as it is her everyday credit card. Barbara's Citibank credit card has a balance of $1,332.78. This balance used to be higher, but her parents helped her pay it down with a loan of approximately $3,800.

¶ 32 Since Barbara filed her petition for rule to show cause, Albert missed payments on the Cadillac, the mortgage, the gas, and child support payments. During the marriage, Barbara never paid the mortgage, car payments, utility expenses, electricity, cell phone bills, water and sewer bills, or heat and fuel bills.

¶ 33 The children will go to preschool in the fall for two and a half hours each day on Mondays, Wednesdays, and Fridays. Barbara will have to take care of the children at all other times. Prior to this fall, the children went to preschool two days a week for two hours. The children are also involved in swimming and Taekwondo. Per year, swimming is $110 per child and Taekwondo is $60 per child. The children will begin going to school full time in 2017, when they begin first grade.

¶ 34 Barbara testified that when Albert was working at CBRE he was making over a hundred thousand dollars, but that when he moved to Rockford and started a new job, he starting making $89,000. Since he moved out, Albert has not helped pay for preschool, swimming lessons, or Taekwondo lessons. When the house is sold, Barbara plans to move into an apartment with the boys, which would be reducing her lifestyle. Her rent for an apartment in Niles will be approximately $1,000 to $1,200. While Barbara was living with Albert, it was her

understanding that he was able to pay for all the bills that they were incurring.

¶ 35 While Barbara and Albert lived together, Albert was working, taking online courses for his associate's degree, and working overtime. It is her opinion that Albert could be making more money now and that he is currently underemployed.

¶ 36 Barbara's highest level of education is high school. Albert has been a lead electrician since before Barbara met him. Barbara is concerned about Albert's mother watching the children because she would often let Albert drink while he was around the children. Barbara testified that the Cadillac was valued at $33,000 at the time she gave the car back to Albert.

¶ 37 Barbara testified about a Kohl's credit card. The account showed that after Albert filed for divorce, Barbara returned a significant amount of merchandise. She said she did this because she realized she was not going to be able to afford all the things she had previously bought, and Kohl's has a great return policy. She frequently would return things before the divorce, especially if she had bought stuff online. Since the divorce, Barbara testified that she has cut back significantly on her spending.

¶ 38 Next, Albert took the stand to testify. Albert testified that he is 38, lives in Rockford, Illinois, and has lived there since March 2014. Albert graduated high school, and then did an apprenticeship program at the age of 25 in order to become an electrician. In 2007, he applied for a City of Chicago supervising electrician's license, which made him a master electrician, or someone who can train apprentices, have employees, bid on jobs, and perform jobs. He was a member of the Local 134 union.

¶ 39 In 2000, his mother purchased the Conrad home; she put $50,000 down on the purchase price of $201,000. Albert lived at the home, and in the beginning his mother paid the mortgage, but then he took over the payments when he was able to afford them. Barbara moved into the

house after she and Albert got engaged. After high school, Albert and his mother purchased two acres of land in Wisconsin; he contributed $10,000 towards the purchase price. Albert testified about his pension, which he began participating in in 2000. He also testified about a quitclaim deed for the Conrad home, stating that at some point during the marriage his mother's name was taken off the deed. During the marriage, he was the sole person on the mortgage. Also during the marriage, he purchased a 2008 Cadillac Escalade in his name for the family for $68,000. In 2009, Albert also bought a pick-up truck. Albert currently drives a Jeep Wrangler, which was also purchased during the marriage for approximately $26,000. His mother gifted him $15,000 towards the Jeep, and he financed the remaining balance.

¶ 40 Albert testified that he worked one year in Afghanistan for the military. He came home twice during that year. When he returned, he took a position as a lead electrician for CBRE where his hourly wage was $38.50, with benefits. His hours were 7 to 3, and he was never late to work and had never been written up for being late to work or for any alcohol related incident. Albert worked for CBRE when he filed for divorce in 2013. Albert testified that CBRE was always understaffed and he never felt secure there.

¶ 41 Before Albert left for Afghanistan, the children were only 6 months old, so he "didn't know them that well." When he returned, he testified that it was hard getting to know the children.

¶ 42 With respect to the incident at issue in the order of protection, Albert testified that he and Barbara had just come home from a ten-day vacation. The vacation was taken in part to celebrate Albert finishing his associate's degree. Albert's mother and Barbara's parents had just left the home. Albert heard the kids jumping on the beds and went in the bedroom to play with them. Barbara became upset that Albert was interfering with her trying to put the children down.

Albert testified that Barbara tried to kick at him and she fell off the mattress. Albert was laughing at this and Barbara and the kids began to get upset. Barbara became angry, told Albert that he does not help with the kids, and that she was leaving. Barbara then took the kids to her parents' house. Albert testified that he helped Barbara and the kids pack, and helped put the kids into the car. After they left, Albert fell asleep on the recliner and was awoken by the police. He spoke with the police briefly before they left. Albert testified that he was not intoxicated that night, but they had all been having drinks together before the incident occurred.

¶ 43 Albert was served with the order of protection a few days after Barbara and the kids had left. They returned home a few days after that, and Albert left the home a few weeks later. During those weeks, Albert testified that things were tense and he felt like Barbara was trying to start arguments, and he just did not feel comfortable in the house. He testified that this was not the first time she had called the police on him. He then filed for divorce.

¶ 44 Albert testified that he is currently attending Illinois Tech part-time taking some classes in person and some online, pursuing a bachelors and masters degree in industrial technology and management as well as industrial technology and operations, respectively.

¶ 45 Albert testified that his first visit with the children pursuant to the visitation order was "weird" because the visits were in his house, even though he no longer lived there, and Barbara was there also interacting with the children. He visited the children twice, and the second time "was worse than the first." Barbara yelled at him for checking his phone during the visitation session, and he left. After that visit, he never went back because it was uncomfortable and he was worried about arguments in front of the children. Albert claims that he sent the children birthday cards, but never "received word back." The last time Albert spoke with the children was when he called Barbara about selling the house, and Barbara put the children on the phone.

Albert would like to see his children.

¶ 46 After filing for divorce, Albert acknowledged that he was ordered to pay $160 per week in support while maintaining the financial status quo. At the time this order was entered, he was working overtime and was able to keep up with these payments. After this, Albert testified that he spoke with Barbara about selling the house and getting rid of the payments on the Cadillac. Even if he sold the Cadillac, it was worth less than what he owed, but he still offered Barbara $1,000 to buy another car if they sold the Cadillac.

¶ 47 Albert testified that there came a point where he could not keep up with all the payments to maintain the status quo. He cashed out a Polish National Alliance (PNA) annuity of about $5,000, but after that he still could not keep up. To date, Albert has paid approximately $8,000 in attorney fees and costs, with an outstanding bill of $38,000. Albert currently pays some tuition, and has about $10,000 in student loans.

¶ 48 Albert changed jobs and began working for UTC Aerospace on March 28, 2014 because it was an opportunity he could not pass up since it was a job as an electrical supervisor where he would be out of harm's way. He testified that not only would this job be less stressful, but the job also gave him more opportunities for advancement and allowed him to take advantage of an employee scholars program as well as a leadership program. At Albert's new job, there are currently no opportunities for overtime. Although his base salary at this new job is higher than it was at CBRE, because there is no opportunity for overtime, his overall income is now less. The job is in Rockford, and his hourly rate is $39.65. Albert relocated to Rockford and lives in an apartment that costs $760 per month plus utilities. As for the cell phone bill and the gas bill, Albert testified that Barbara agreed to take those over.

¶ 49 Albert testified that he stopped paying the mortgage on the house in January. Barbara

gave him back the Cadillac when he told her that he would eventually not be able to keep up with the payments. When he traded in the Cadillac, he owed about $3,000 on it, which his mother paid off. Albert testified that he made all of his support payments on time, but that sometimes he would drop off two checks at once. At some point, he no longer had to drop off checks because the payments came directly out of his pay check. When he changed jobs, he was not aware that there was a period of time when Barbara was not receiving the support money automatically.

¶ 50 Although Albert spoke with Barbara about selling the Conrad home, Barbara did not want to move out. The home is now in foreclosure and is for sale. Albert used to have and currently has health insurance, and Barbara and the children are covered under that, although he has not recently paid for the children's medical bills. Albert also cashed out a E-Trade account of $9,000 in 2013 to try and keep up with payments. Currently, there are no other assets for him to deplete. He does have a pension, but he cannot withdraw from that. He has not taken out any loans to keep up with the status quo order. He also has a 401(k) that was funded while he worked at CBRE. At his new position, he also has a 401(k).

¶ 51 During the marriage, Albert would borrow money from his mother when they would get into financial trouble. Albert is seeking to retrieve his FOID card, as well as some furniture, tools, and equipment from the Conrad home, and he has no objection to paying 28% of his income in child support.

¶ 52 On cross examination, Albert testified that while he was living with his grandmother, he paid her $400 per month in rent; however, he did not begin paying her right away and, instead, his bank account shows that he made multiple months' worth of rent payments to her at a point when he was allegedly having trouble keeping up with the status quo order. He made a payment

of $4,000 on a credit card bill, also at the time he was trying to keep up with the status quo order. Albert testified to numerous charges at liquor stores that appeared on his credit card statements, often on the same date or on back-to-back days, but testified that he only drinks one day a week. On redirect, Albert testified that the liquor stores where he made purchases also sell chips, soda, magazines, cigarettes, etc.

¶ 53 Albert testified that he paid $488 for a course at a Community College during the months that he had stopped paying the mortgage on the Conrad home. While Albert was trying to maintain the status quo, he did not miss any payments on his Jeep. He testified that he chose to make the payments on his Jeep over the Cadillac that Barbara and the children were using.

¶ 54 Albert testified that he comes to visit his grandmother in Niles on the weekends, and he will stop at a liquor store in Niles along the way. He has never tried to see his children on the weekends that he visits his grandmother, even though he acknowledges that he is entitled to visitation on Sundays. Albert testified that during the time he changed jobs he was aware that Barbara was not receiving support, and also during that time, he was making payments out of his account to his attorneys and to his grandmother. Albert testified that when he worked overtime hours at CBRE, his hourly rate was $57.75. In 2013, despite Albert's testimony that he received an email from CBRE stating that overtime hours would be cut, Albert worked almost 521 hours in overtime that year, which amounted to an additional $30,681.48 of pay that year. Albert testified that in 2012, when he returned from Afghanistan, he took $25,000 out of his pension account. He testified that he could only withdraw from the pension that one time, although he had not asked if he could, in fact, withdraw again.

¶ 55 Albert stopped making payments on the mortgage in January 2014 because he could not keep up with them. The aggregate value of Albert's 401(k) from CBRE as of March 31, 2014 is

$10,517.82; he understands this to be a marital account. The vested balance on his pension is $91,658.84. The aggravate value of his new 401(k) at his new job is $609.25. Albert testified about the remaining balances in several additional accounts in his name. The delinquency amount of the mortgage for the Conrad home is $15,245.98.

¶ 56 The parties rested and the trial court judge heard closing arguments. Following closing arguments, the trial court judge found Albert in contempt based on the petition for rule to show cause regarding the status quo order, ordered Albert to contribute to Barbara's attorney fees and costs at an amount to be set at a later date, and ordered Albert to pay 28% of his income in unallocated support without prejudice, at the amount of his prior net income based on his last six months' income prior to taking the new job. The court also ordered that Albert pay no less than $1,500 per month to Barbara and continue to pay all utilities that he was previously paying.

¶ 57 On September 8, 2014, after the hearing on Barbara's Petition for Attorney Fees & Costs, the court entered an order finding that Albert "willfully and without cause or justification" violated the June 25 and July 15 orders. The court further found that Albert's "testimony at trial was not credible" and that Albert had a greater ability to pay attorney fees than Barbara. As a result, the court ordered Albert to pay Barbara's attorneys $49,225 pursuant to section 503(j) and 508(b) of the Act.

¶ 58 On October 6, 2014, the trial court made certain oral findings. The court found that Albert was "less than up front with the Court. He was not completely honest and I believed that his credibility lacks those indicia of truthfulness that I would hope for from a witness." The judge further stated that Albert "was not credible when he talked about being required to pay his grandmother $400 a month and making that a priority over his obligation to his children." The judge stated that while Albert is not "necessarily a threat to the children" there has "not been any

visitation in a long time," which is why supervision during visitation is necessary. The judge commented that Albert changing jobs was not the appropriate thing to do because he had a family to support. As such, the judge used Albert's 2012 income to calculate support. In response to counsel's clarification on the imputation of Albert's income after he changed jobs, the judge stated:

> "The specific findings are that it was for his own purposes in derogation of his obligations to the family. Not necessarily to evade child support specifically, but to evade obligations for the family, period. Again, as I said, with possibly the admirable and ultimate goal of making more money, however, driving back and forth to Rockford as frequently as the records indicate that he was doing, seems like it would erode any additional income that he might earn in the future."

The court went on to acknowledge that the new maintenance guidelines did not apply to this case, but considered them in concluding that it was awarding Barbara $2,568 per month in maintenance for 32 months, splitting the marital property 55% to Barbara and 45% to Albert, and 100% of Barbara's attorney fees, in excess of $49,000, to be paid by Albert.

¶ 59 On October 28, 2014, the court entered a 16-page written Judgment for Dissolution of Marriage (Judgment). The Judgment reiterated the findings made in the September 8, 2014 order, and stated, in relevant part:

> "A judgment was entered on Barbara's Petition for Contribution to Attorneys' Fees in her favor and against Albert in the amount of $49,225, pursuant to 508(b) and 503(j). The judgment is non-

> dischargeable in bankruptcy court; Barbara was credible, Albert was not; Albert voluntarily reduced his income by transferring jobs because he was eligible for overtime at his previous job and not his current job; Albert's income in 2013 was $101,847 and because he voluntarily reduced his income, his 2012 income would be imputed to him; Barbara worked two days per week and earned gross Medicare and social security wages in 2013; Albert suffered from alcohol addiction, and has behaved recklessly and dangerously to Barbara resulting in an injunction limiting his access to the marital residence and visitation; awarding Albert unsupervised visitation would seriously endanger the minor children's physical, mental, moral and emotional health; Albert failed to even attempt to have contact with the boys for more than a year."

After making these findings, the trial court ordered that: (1) Albert could exercise supervised visitation with the children twice a month "until [he] has established a parental relationship with the twins, and he has shown himself to be consistently interested in maintaining a relationship with the boys"; (2) Albert shall pay Barbara $2,530 per month in maintenance from October 1, 2014 to October 1, 2017, reviewable on or after October 1, 2017; (3) Albert shall pay $1,261.28 per month in child support, which represents 28% of his imputed net income; (4) Albert is to pay $147 per month for the children's extracurricular expenses; (5) Albert is to provide Barbara with tax documents so long as he owes support or maintenance; (6) Albert is to maintain health insurance for the children and 50% of all uncovered medical expenses; (7) Barbara is to claim both children as dependants on her tax returns, unless Albert is current on all his obligations, in

which case he may claim one; and (8) Barbara is allowed to stay in the Conrad home until such time as there is a *bona fide* purchaser. The trial court further allocated the parties' non-marital assets and divided their marital assets approximately 50/50.

¶ 60 On November 5, 2014, Albert filed a Motion to Set Aside & Stay Enforcement of Judgment for Dissolution of Marriage and Other Relief Pursuant to 735 ILCS 5/2-1203 (Motion to Reconsider), complaining, in part, that the Judgment was at odds with the trial court's oral statements made on October 6, 2013.

¶ 61 On March 4, 2015, the trial court ruled on Albert's Motion to Reconsider by issuing a Supplemental Judgment for Dissolution of Marriage (Supplemental Judgment). In the Supplemental Judgment, the court once again found that Albert's testimony was contradictory and not credible, and that Albert had voluntarily reduced his income by quitting his job at CBRE. Therefore, the trial court imputed his 2012 income in calculating maintenance and support payments. The court further noted that Albert, who resided in Rockford, returned to Cook County "virtually every weekend, not to visit his children, but to visit his grandmother." After considering the factors enumerated in section 504 of the Act, the court ordered Albert to pay Barbara $2,662 per month in maintenance, reviewable after four years. It further ordered Albert to maintain life insurance of at least $500,000 in which Barbara is the beneficiary for as long as he is obligated to pay Barbara maintenance or child support, and divided the marital estate 60/40 in Barbara's favor.[1]

¶ 62 Albert now appeals the trial court's findings and rulings in the Judgment for Dissolution of Marriage and Supplemental Judgment for Dissolution of Marriage.

¶ 63 II. ANALYSIS

[1] Further specifics of the trial court's order will be discussed later in this order where relevant.

¶ 64 A. Albert's Visitation With the Minor Children

¶ 65 With respect to Albert's visitation rights with his minor children, the trial court judge ordered that Albert shall have supervised parenting time with his children for two hours every other Sunday at Associates in Human Development Counseling, LLC, or any other agreed upon visitation center, at his expense. The court ordered that the visitation be supervised after finding that unsupervised visitation would "seriously endanger the minors' physical, mental, moral and emotional health" where he had not seen the children in over a year, he had problems with alcohol consumption, and where he had choked Barbara in front of the children. The court ordered that Albert's visitation was to remain supervised until "Albert has established a parental relationship with the twins, and he has shown himself to be consistently interested in maintaining a relationship with the boys." Albert argues that these rulings must be reversed because: (1) the trial court's finding that granting Albert unsupervised visitation would "seriously endanger the minors' physical, mental, moral and emotional health" was erroneous because failure to exercise visitation alone is not sufficient to make a finding of "serious endangerment" and there was no medical testimony that Albert had problems with alcohol; (2) the amount of visitation was not reasonable as it will not allow Albert to establish "a parental relationship" with the children; and (3) Albert should not have to pay to see his children at the supervised visitation location when he alleges he is already struggling to keep up with other support obligations.

¶ 66 Section 607(a) of the Act provides that "[a] parent not granted custody of the child is entitled to reasonable visitation rights." 750 ILCS 5/607(a) (West 2012). The "trial court has broad discretion in fashioning the terms of visitation and those terms will not be overturned absent proof that the court has abused its discretion." *In re Marriage of Engelkens,* 354 Ill. App.

3d 790, 792 (2004). "An abuse of discretion exists where no reasonable person would agree with the position of the trial court." *Brax v. Kennedy,* 363 Ill. App. 3d 343, 355 (2005).

¶ 67 The record shows that Albert was absent from his children's lives for over a year, despite having visitation rights with them throughout that entire year. Further, Barbara, who the court found to be credible, testified that Albert: (1) drank on a near daily basis, (2) would stop at the liquor store after work and would be "feeling good" by the time he arrived home, (3) would drive around with open alcohol containers in his car, and (4) choked her in front of the children after consuming alcohol. Despite Albert's testimony that he only drank one day a week, Albert's credit card statements also showed that he made frequent purchases at liquor stores, sometimes multiple purchases on the same day or on back-to-back days. Given this evidence in the record, we cannot say that no reasonable person would have ordered supervised visitation with the children as the trial court judge did here. *Brax,* 363 Ill. App. 3d at 355 ("An abuse of discretion exists where no reasonable person would agree with the position of the trial court.").

¶ 68 We note that Albert's citation to *In re Marriage of Blanchard,* 162 Ill. App. 3d 202 (1987), for the proposition that the failure to exercise visitation alone does not *per se* justify an endangerment finding, is misplaced. First, the trial court's ruling here was not solely based on Albert's failure to exercise his visitation rights. As stated above, it was also based on Albert's issues with drinking alcohol and the incident in which he choked Barbara in front of their minor children. Second, in *Blanchard*, after the trial court found that the mother had failed to make visits with her children, the trial court judge completely terminated the mother's visitation rights. *In re Marriage of Blanchard*, 162 Ill. App. 3d at 206, 208. The appellate court reversed the trial court's complete termination of the mother's visitation rights where the evidence established that the mother's missed visits had occurred when she was sick or when she could not afford the trip

to see her children. *Id*. Here, Albert offered no excuse for failing to contact his children in over a year, except that the visits were "weird," and the trial court did not completely terminate his visitation rights; rather, the trial court simply *limited* Albert's visitation rights with the children *until* he is able to establish a relationship with them. As such, *Blanchard* is not applicable here.

¶ 69 With respect to Albert's arguments that the amount of visitation time is inadequate and that he should not have to pay the visitation center to see his children, we find these arguments to be without merit. First, Albert does not cite to any authority to support his argument that the trial court erred in ordering supervised parenting time with his children for two hours every other Sunday at Associates in Human Development Counseling, LLC, or any other agreed upon visitation center, at his expense. See Ill. S. Ct. R. 341(h) (7) (eff. July 1, 2008) (the failure to cite case law or properly develop a legal argument results in the argument's forfeiture). Further, given that the record shows Albert was absent from his children's lives for over a year, despite having visitation rights, and further shows there was evidence of Albert's excessive alcohol consumption from Barbara's testimony and Albert's credit card statements, as well as Barbara's testimony that Albert choked her in front of the children, we cannot say that no reasonable person would have ordered supervised visitation with the children until a relationship is established with them as the trial court judge did here. *Brax*, 363 Ill. App. 3d at 355 ("An abuse of discretion exists where no reasonable person would agree with the position of the trial court."). Further, the trial court ordered increased visitation after Albert reestablishes his relationship with the children. As such, we affirm the trial court's rulings with respect to Albert's visitation rights.

¶ 70 B. Trial Court's Financial Distributions

¶ 71 Next, Albert argues that the trial court's imputation of his income along with its rulings

on maintenance, child support, and division of the marital property were all erroneous and must be reversed. While we will address each of Albert's arguments separately below, we note at the outset that "[t]he award of maintenance, child support, and attorney fees are within the sound discretion of the circuit court and will not be reversed on appeal unless the awards constitute an abuse of discretion." *Hupe v. Hupe*, 305 Ill. App. 3d 118, 122 (1999). "An abuse of discretion exists where no reasonable person would agree with the position of the trial court." *Brax*, 363 Ill. App. 3d at 355.

¶ 72 i. Imputation of Albert's Income

¶ 73 In the trial court's March 4, 2015 Supplemental Judgment, it found that Albert had "voluntarily reduced his income in 2013" and, based on that finding, attributed Albert's previous year's income to him for purposes of calculating his support obligations. In 2012, Albert's income from CBRE was $111,386.40, and in 2013, after he changed jobs, his income was $101, 847. The trial court made a finding that Albert voluntarily reduced his income and, as a result, used Albert's higher income to calculate his support obligations. Albert argues that the trial court erred by imputing his previous year's income to him in determining his child support and maintenance obligations where he did not voluntarily reduce his income for the purpose of avoiding support obligations. His new position had a higher base pay, more opportunities for education and advancement, and any overtime that he would have been able to take advantage of at CBRE was going to be reduced. For the reasons below, we find that the trial court abused its discretion when it imputed Albert's income.

¶ 74 Illinois appellate courts have developed three primary factors to consider in determining when it is proper to impute income to a noncustodial parent. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). In order to impute income, a court must find that one of the

following factors applies: (1) the payor is voluntarily unemployed; (2) the payor is attempting to evade a support obligation; or (3) the payor has unreasonably failed to take advantage of an employment opportunity. *Id*. If none of these factors are in evidence, the court may not impute income to the noncustodial parent. *Id*. The determination of net income is reviewed under an abuse of discretion standard. *In re Marriage of Minear*, 181 Ill. 2d 552, 560 (1998).

¶ 75 None of the factors listed above are present in this case. First, neither party contests that there is no evidence that Albert was voluntarily unemployed and no evidence that he unreasonably failed to take advantage of an employment opportunity. Accordingly, the trial court's decision to impute income was based on the second factor—that the payor is attempting to evade child support—where it found that Albert was "voluntarily underemployed." However, the trial court judge specifically made findings on the record and in her orders that Albert's decision to take a new job was *not* done to evade child support. At the October 6 hearing, the trial court judge stated:

> "The specific findings are that it was for his own purposes and in derogation of his obligations to the family. Not necessarily to evade child support specifically, but to evade obligations for the family, period. Again, as I said, with possibly the admirable and ultimate goal of making more money, however, driving back and forth to Rockford as frequently as the records indicate that he was doing, seems like it would erode any additional income that he might earn in the future."

In the Supplemental Judgment, the trial court judge further conceded that Albert took the new position so "that he could take classes with the intention of enhancing his earning potential."

Because the trial court's own findings should have precluded it from imputing Albert's income, we find that the trial court abused its discretion in calculating Albert's income. *Brax*, 363 Ill. App. 3d at 355 ("An abuse of discretion exists where no reasonable person would agree with the position of the trial court.").

¶ 76 Barbara cites to *In re Marriage of Sweet*, 316 Ill. App. 3d 101 (2000), for the proposition that whenever a payor becomes "voluntarily underemployed," income is imputed. However, we find that the holding in *Sweet* is not that simple and, even if it were, we find this case to be factually distinguishable from *Sweet*. In *Sweet*, at the time the court entered the judgment for dissolution of marriage, the father was employed and was earning $1,250 per month. *In re Marriage of Sweet*, 316 Ill. App. 3d at 103. The father subsequently quit his job to become a self-employed exterminator, where he claimed an income of $11,000 a year. *Id*. Nevertheless, during the time he was self employed, the father indicated that his income was $3,600 per month on a loan application, and the father also purchased a new truck for $28,000 during that time. *Id*. The trial court found that any "bustout" could earn more than $11,000 a year, making it "abundantly clear that [it] found that respondent was not acting in good faith." *Id*. at 107. The trial court then imputed the father's income based upon its findings that the father (1) "was not acting in good faith" when he became "voluntarily underemployed," and (2) was "capable of making considerably more than he now claims to be earning." *Id.* at 107. In imputing income, the *Sweet* court held that "if a court finds that a party is not making a good-faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience." *Id*. Thus, whereas the *Sweet* court found that the father was not making a good faith effort to earn a sufficient income, here, the trial court never made such a finding. In fact, quite the opposite, the trial court judge here made findings

that Albert's change in employment was not made to evade support obligations but to take a position with greater opportunities for education, advancement, and earning potential. Accordingly, *Sweet* stands for the proposition that whenever a payor becomes "voluntarily underemployed" the court will impute income only if there is also a finding of bad faith. In this case, given the trial court judge's admissions that Albert's change in position was not done in bad faith in an effort to evade support obligation, but to earn more money in the future, this case is distinguishable from *Sweet*.

¶ 77 Furthermore, Albert never petitioned the court for a reduction in the support obligations he was already paying after he switched jobs, which further suggests that his motivation in changing jobs was not to evade or reduce support obligations. As result, Albert was required to pay the same amount of child support from March 2013 when he changed jobs, until the judgment was entered. Based on this fact it is difficult to say that Albert's primary purpose in changing jobs was to reduce his child support or family support obligations. As stated in *Sweet*, "a party seeking to decrease his or her child support obligation based on a voluntary change in employment must demonstrate that the action was taken in good faith and not to evade financial responsibility to his or her children." *In re Marriage of Sweet*, 316 Ill. App. 3d at 106 (citing *In re Marriage of Maczko*, 263 Ill. App. 3d 991, 994 (1992)). "The test for determining if a decision [to voluntarily change jobs] was made in good faith is whether the change was prompted by a desire to evade financial responsibility for supporting the children or to otherwise jeopardize their interests." *In re Marriage of Mitteer*, 241 Ill. App. 3d 217, 224 (1993). Here, not only did Albert not request a decrease in his support payments after changing jobs, but there was no evidence in the record that his decision to change jobs was motivated by a desire to evade financial responsibility for supporting the children or to otherwise jeopardize their interests.

¶ 78 Even if "voluntary underemployment" standing alone was a sufficient basis to impute income, which it is not, we cannot see how the record would support a finding that Albert was "voluntarily underemployed." First, the base pay at UTC Aerospace was higher than the base pay Albert was receiving at CBRE. Second, the record indicates that Albert's new position offered greater opportunities for advancement, education, leadership, and was a less dangerous and less stressful position because it was a supervisor role. And, while his overall income in 2013 was less after taking this new position, it was only $10,000 less that year. That slight reduction would likely be recovered where Albert's potential for future earnings, as admitted by the trial court, was greater at his new position, which would ultimately be better for his children who will be receiving support for the next ten or more years.

¶ 79 While our findings that the trial court abused its discretion when imputing Albert's income necessarily means the trial court's rulings and calculations on child support and maintenance must also be remanded as those calculations are directly impacted by the trial court's findings on income, we address the parties' remaining arguments herein to provide the trial court with additional guidance on remand.

¶ 80 ii. PNA Annuity Liquidation

¶ 81 Albert argues that the trial court erred when it included, as income for child support purposes, the $4,037 that he received when he liquidated his Polish National Alliance (PNA) annuity in June 2013, $663 of which was taxable. Albert's argument is based largely on *In re Marriage of McGrath*, 2012 IL 112792, which he argues stands for the proposition that money withdrawn from assets may not be included in the calculation of net income for child support purposes. In *McGrath,* our supreme court held that funds withdrawn from a bank account is not considered income in calculating support payment. *In re Marriage of McGrath*, 2012 IL

112792, ¶ 14. Barbara, in turn, argues that the Act defines "income" broadly enough to incorporate the liquidation of Albert's PNA annuity, even where that might not be a recurring payment. See *In re Marriage of Rogers*, 213 Ill. 2d at 136-39. We find that there is insufficient evidence in the record to determine whether the PNA annuity should have been included in Albert's income.

¶ 82 Generally, the trial court's net income determination and child support award lie within its discretion. *In re Marriage of Deem*, 328 Ill. App. 3d 453, 457 (2002). However, here, Albert challenges the court's interpretation of what constitutes "income" pursuant to section 505(a)(3) of the Act. The interpretation of the term "income" under section 505(a)(3) of the Act is a question of law, which we review *de novo*. *In re Marriage of McGrath*, 2012 IL 112792, ¶ 10; *In re Marriage of Rogers*, 213 Ill. 2d at 135-36.

¶ 83 Section 505(a)(1) of the Act provides guidelines for the minimum amount of child support. See 750 ILCS 5/505(a)(1) (West 2012). "Net income" in the Act is defined as "the total of all income from all sources" minus certain deductions, including but not limited to, federal and state income taxes, social security, mandatory retirement contributions, union dues, dependent and individual health/hospitalization premiums, prior support or maintenance obligations, and, of significance here, "[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). "[T]he Act does not provide for a deduction of nonrecurring income in calculating net income for purposes of child support." *In re Marriage of Hart*, 194 Ill. App. 3d 839 (1990); *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005). Illinois courts have defined "income" as " 'a gain or profit' [citation] and is 'ordinarily understood to be a return on the investment of labor or capital, thereby increasing the wealth of the recipient' [citations]." *In re*

Marriage of Worrall, 334 Ill. App. 3d 550, 553-54 (2002). The relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made by the court. *In re Marriage of Rogers*, 213 Ill. 2d at 138-39. If a parent has received payments that would otherwise qualify as "income" under the statute, nothing in the law permits those payments to be excluded from consideration merely because like payments might not be forthcoming in the future. *Id*.

¶ 84 In accordance with the above definitions, a variety of payments qualify as income under section 505(a)(3). Courts have included individual retirement account (IRA) disbursements, deferred employment earnings, receipt of company stock from employment stock options, worker's compensation awards, and the proceeds from pensions as income under the Act. See *In re Marriage of Lindman*, 356 Ill. App. 3d at 466; *In re Marriage of Klomps*, 286 Ill. App. 3d 710 (1997). However, using the same statutory definition, other courts have determined that withdrawals from self-funded IRAs and proceeds from the sale of residential property do not constitute income under section 505(a)(3). See *In re Marriage of O'Daniel*, 382 Ill. App. 3d 845, 850 (2008); *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 56-57 (2008).

¶ 85 In *McGrath*, the case relied on by Albert, the Illinois supreme court held that where a father regularly withdrew money from a savings account in order to support himself while he was unemployed, that money was not "net income" for purposes of calculating child support because "the money in the account already belongs to the account's owner, and simply withdrawing it does not represent a gain or benefit to the owner. The money is not coming in as an increment or addition, and the account owner is not 'receiving' the money because it already belongs to him." *In re Marriage of McGrath*, 2012 IL 112792, ¶ 14. We note, though, that the court in *McGrath* expressly declined to consider whether withdrawals from retirement accounts

would constitute income under the Act. *Id*., ¶ 10, n.2.

¶ 86 In *O'Daniel,* the appellate court determined that the father's IRA disbursements did not constitute income because IRA accounts are ordinarily self-funded by the individual account holder. *In re Marriage of O'Daniel*, 382 Ill. App. 3d at 850. The court noted that "[w]hen an individual withdraws money he placed into an IRA, he does not gain anything as the money was already his. Therefore, it is not a gain and not income." *Id*. In reaching its conclusion, the court reasoned that the only portion of the IRA that would constitute a gain for the individual, and therefore income for purposes of child support, would be the interest or appreciation earnings from the IRA. *Id.*; see also *In re Marriage of Anderson*, 405 Ill. App. 3d 1129, 1135 (2010) (proceeds from reverse stock split not income where the cash proceeds took the place of the former shares of stock); *In re Marriage of Marsh*, 2013 IL App (2d) 130423, ¶¶ 13-15 (holding respondent's postdissolution sale of certain shares of stock that he owned prior to the dissolution, from which sale no gain or profit was realized, did not constitute "income" for purposes of child support under section 505(a)(3) of the Act).

¶ 87 It is unclear from the record whether the PNA annuity was self-funded or whether it was an employer-funded account. And, if the PNA annuity was self-funded, it is unclear what amount Albert put into the account and what amount, if any, was gained interest or earnings from the account. Therefore, we find that we do not know enough about the PNA annuity to determine whether it was appropriate for the trial court to include it as income when calculating child support. Given these gaps in the record, it is unclear whether the PNA annuity should have been included as income. On remand, the trial court should more fully develop the record to fill in these gaps and determine whether the annuity was self-funded and therefore not considered income or whether it was employer funded.

¶ 88 iii. Retroactive Application of Maintenance Statute/
Amount and Duration of Maintenance

¶ 89 Next, Albert makes several arguments regarding the trial court's rulings on maintenance. His first argument is that the trial court's award of maintenance must be reversed where the court retroactively applied 750 ILCS 5/504 (eff. Jan. 1, 2015) when calculating maintenance. As noted earlier, the propriety, amount and duration of a maintenance award lie within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485 (1992). An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *Id*.

¶ 90 Here, the trial court judge admittedly considered 750 ILCS 5/504 (eff. Jan. 1, 2015), which was not in effect at the time this case was filed, when calculating maintenance, and ordered that Albert make maintenance payments to Barbara in the amount of $2,662 per month for four years, retroactive through October 28, 2014 and reviewable on October 28, 2018. Albert argues that this was improper because, unless the statute states otherwise, all statutes are to be applied prospectively. *Anderson v. Board of Education*, 390 Ill. 412 (1955). Barbara, on the other hand, argues that the trial court's consideration of the 2015 statute was proper where, prior to the statute's enactment, the trial court had wide discretion to consider any methodology to calculate maintenance obligations and, by considering the 2015 statute here, considered all relevant factors that were to be considered before the 2015 statute was enacted.

¶ 91 Here, while the original Judgment was entered on October 28, 2014, the Supplemental Judgment was entered on March 4, 2015. In the Supplemental Judgment, the trial court judge reconsidered the findings and rulings it made in the October 28, 2014 Judgment and held that, except where modifications were made in the March 4, 2015 Supplemental Judgment, the findings and rulings made in the October 28, 2014 Judgment were to stand. In *In re Marriage of*

Franzetti, 77 Ill. App. 3d 1031 (1979), although a hearing was held prior to its effective date, the court held that the Act was applicable to the action in which the final decree was entered subsequent to its effective date. See *In re Marriage of Franzetti*, 77 Ill. App. 3d at 1031. As such, here, where the Supplemental Judgment was entered on March 4, 2015, after the 2015 maintenance statute became effective, and the Supplemental Judgment ratified the provisions of the October 28, 2014 judgment, we find that any errors that may have occurred in applying the 2015 statute to the original Judgment have been cured and there was no error in the trial court's use of the 2015 maintenance statute.

¶ 92 The trial court ordered Albert pay maintenance in the amount of $2,662 per month for four years. In setting this amount, the trial court explained that, pursuant to the 2015 maintenance statute, "[d]eviation upward in this case is appropriate because the marital estate has been essentially gutted, leaving little to distribute; because the young age of the children; and because of the time that the court anticipates will be required in order to enable Barbara to earn above poverty-line income." See 750 ILCS 5/504(b-2)(2) (West Supp. 2015) ("if the court deviates from otherwise applicable guidelines under paragraph (1) of subsection (b-1), it shall state in its findings the amount of maintenance (if determinable) or duration that would have been required under the guidelines and the reasoning for any variance from the guidelines"). Based on these findings, we cannot say that that no reasonable person would take this view adopted by the trial court and, accordingly, we do not find that the trial court abused its discretion. *In re Marriage of Miller*, 231 Ill. App. 3d at 485.

¶ 93 iv. Petitioning the Court for Increased Child Support When Maintenance Ends

¶ 94 In the trial court's Supplemental Judgment, the trial court judge wrote: "[U]pon the termination of maintenance to Barbara, she may petition the court for an increase in of [*sic*] child

support, as well as a Petition asking for a reallocation of the contribution of each party for health care, extracurricular activities and other expenses of the minor children." Albert argues that this ruling is improper because it "effectively means Barbara is entitled to additional child support and expenses from Albert when he stops paying her maintenance." However, this order in the trial court's Supplemental Judgment does not make such a promise. It simply states that when maintenance ends, Barbara *may* petition the court for additional child support and expenses when she stops receiving maintenance. Trial courts have wide latitude in determining whether a substantial change in circumstances has occurred sufficient to permit a modification of child support. *In re Marriage of Johnson*, 209 Ill. App. 3d 1025, 1029 (1991). As such, we cannot say that the trial court abused its discretion when it indicated that Barbara may request increased child support and expenses when maintenance payments cease in the future because that is a right all parties already have, and it is currently unknown whether any increase would even be granted.

¶ 95 v. Exchange of Financial Information

¶ 96 Next, Albert argues that the trial court judge erred when she ordered Albert, "for so long as he is obligated to pay child support or maintenance to Barbara" provide her with "any personal or corporate W-2 forms, and K-1, or annual statements of income paid upon him upon receipt of such documents each year." Albert does not take issue with the court's order that he turn over these financial documents to Barbara; rather, he argues that the "obligation should be reciprocal." However, because Barbara is not making payments in child support or maintenance to Albert, and because there is currently no argument being made before any court that she should be making such payments to Albert, we see no reason why she should be required to turn over financial documents to Albert. Further, Albert does not cite any authority that stands for the

proposition that a party not obligated to make payments to another party, or even being petitioned to make payments to another party, should nonetheless have to turn financial information over to that party. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the failure to cite case law or properly develop a legal argument results in the argument's forfeiture).

¶ 97 While Albert cites to a case that stands for the proposition that a custodial parent can be ordered to pay child support to a noncustodial parent (see *In re Marriage of Turk*, 2014 IL 116730), his citation to this case only highlights the problem with Albert's argument since Barbara has not been ordered to make any such payments to Albert and there are no pending petitions requesting her to do so. While it is conceivable that Barbara may procure a well-paying job in the future such that her need for maintenance would be reduced, *i.e.* a substantial change in her financial situation has occurred, it seems plausible that Albert could and would petition the court for financial documents in support of that change. However, that is not the situation we have here. If Albert would like to petition the court for support from Barbara in the future, he is free to make such requests. See *In re Marriage of Johnson*, 209 Ill. App. 3d at 1028-29 (modification of child support is warranted only upon a showing of a substantial change in circumstances, and the trial courts have wide latitude in determining whether a substantial change has occurred.) As such, we cannot say that the trial court judge abused her discretion in ordering Albert, and not Barbara, to turn over financial information while he is under the obligations to make support payments to Barbara. See *In re Marriage of Jones*, 187 Ill. App. 3d 206, 222 (1989) (abuse of discretion occurs where the trial court's decision so exceeded the bounds of reason that no reasonable person would take the view adopted by the trial court).

¶ 98 vi. Life Insurance

¶ 99 In its Supplemental Judgment, the trial court ordered Albert to obtain and maintain life insurance "so long as he continues to have any obligation for maintenance, and/or child support or expenses for the children." The court then set a minimum amount of this insurance at $500,000, and credited Albert's existing policies towards this $500,000 amount. Upon termination of maintenance payments to Barbara, Albert was also ordered to "maintain said insurance naming Barbara as trustee for the benefit of the minor children." Albert argues that the trial court erred in making this ruling because the $500,000 amount does not specify how much of this amount is meant to secure maintenance and how much of the amount is meant to secure child support, thus making it impossible to determine if the amounts are reasonable under section 504(f)(2)(ii) (maintenance) and 505(a)(3)(f) (child support) of the Act. Albert also argues that the trial court's order that Barbara may obtain additional insurance policies on Albert's life and that Albert shall cooperate in that process if Barbara chooses to do so is improper because it is "over and above" the $500,000 life insurance that the court has already ordered he maintain, thus allowing Barbara to obtain "any amount of insurance" and, in the process, force Albert to submit to medical examinations and tests.

¶ 100 Our courts have pointed out that the use of life insurance to secure maintenance is not analogous to the use of life insurance to secure child support. As the Third District appellate court noted in *In re Marriage of Ellinger*, 378 Ill. App. 3d 497 (2008):

> "the language in the Act concerning a spouse's obligation to pay maintenance after the obligor's death is different from the language in the Act concerning a parent's obligation to pay child support after the obligor's death. Also, the Act contains language regarding the court's discretion to designate assets as security for child

> support obligations, whereas the Act does not contain language giving the court discretion to designate assets as security for maintenance obligations. We must presume that the legislature intended different results by the different language in the Act concerning child support compared with its language regarding maintenance. [Citation.] Thus, we rule that the trial court erred as a matter of law by stating that the use of life insurance to secure maintenance payments was analogous to the use of life insurance to secure child support payments." *In re Marriage of Ellinger*, 378 Ill. App. 3d at 500-01.

Although Barbara argues that it was clear that the trial court intended the life insurance to secure child support, the order states: "So long as he continues to have any obligation for maintenance, and/or child support or expenses for the children, Albert shall obtain and maintain a life insurance with a minimum of $500,000 naming Barbara as the beneficiary." As pointed out by Albert, section 504(f) of the Act governs maintenance that is secured by life insurance whereas section 505(a)(3)(f) governs child support that is secured by life insurance. See 750 ILCS 5/504(f) (West 2012); see also 750 ILCS 5/505(a)(3)(f) (West 2012). Accordingly, given that there are legally relevant differences in requiring a party to obtain life insurance to secure maintenance versus child support, we remand the issue of life insurance back to the trial court for clarification of this division, if any. It is within the trial court's discretion to determine the amounts of life insurance that should be maintained by a party, and we note that that decision will not be reversed unless it is an abuse of discretion. *In re Marriage of Tieman*, 237 Ill. App. 3d 847, 852 (1992).

¶ 101 Albert also argues that the trial court erred in giving the following order with respect to life insurance: "Should she choose to do so, Barbara may maintain such policies on Albert's life as she may wish to obtain, and Albert shall cooperate, and take such steps as are necessary[.]" The thrust of Albert's argument here is that the amount of additional life insurance that Barbara may take out on Albert's life, if she chooses to do so, could be limitless, despite section 504(f)(2)(ii) of the Act's requirement that "such level [is] not to exceed a reasonable amount in light of the court's award." Because we are remanding the issue of delineating the amount of life insurance that is being ordered to secure maintenance, if any, versus child support, we would also request that the trial court clarify and/or set any limitations upon the additional policies that Barbara may take out on Albert's life in the future.

¶ 102 vii. Distribution of the Marital Property

¶ 103 Albert argues that the trial court erred when it distributed the parties' marital estate 60% to Barbara and 40% to Albert because this distribution was not equitable since Barbara was allowed to live in the marital home rent free with the children after the divorce proceedings were initiated. Included in this argument on the division of marital property is, again, the argument that the trial court improperly imputed Albert's income.

¶ 104 "The touchstone of apportionment of marital property is whether the distribution is equitable [citations], and each case rests on its own facts." *In re Marriage of Jones,* 187 Ill. App. 3d at 222. We will not disturb a trial court's division of marital property unless an abuse of discretion is shown. *Id.* A trial court does not abuse its discretion unless, in view of all of the circumstances, its decision so exceeded the bounds of reason that no reasonable person would take the view adopted by the trial court. *Id.* The Act does not require an equal division of

marital property; rather, as noted, it requires an equitable division, taking into account the factors listed under section 503(d) of the Act. *Id*.

¶ 105 Pursuant to section 503(d) of the Act, the trial court shall divide marital property in just proportions considering all relevant factors, including: the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including the contribution of a spouse as a homemaker or to the family unit; the dissipation by each party of the marital or non-marital property; the value of the property assigned to each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; the custodial provisions for any children; whether the apportionment is in lieu of or in addition to maintenance; and the reasonable opportunity of each spouse for future acquisition of capital assets and income. See 750 ILCS 5/503(d) (West 2012).

¶ 106 Here, the trial court judge considered the 503(d) factors on the record, including but not limited to: the marriage lasted seven years during which they had two children, who are currently quite young and require considerable attention; Albert's income at a well-paying position (over $100,000) far exceeds Barbara's income at a low-paying part-time job (under $10,000); Barbara will have sole custody and therefore will need to care for the young children, who will not begin school full time until fall of 2017; Barbara's future earning capacity is minimal unless she is able to change her field of employment whereas Albert's future earning capacity greatly exceeds Barbara's; Barbara's duties as the sole caretaker cause her to forgo career opportunities, gain full-time employment, or acquire appropriate education or training; Albert's standard of living has not diminished; the parties are relatively young and in good condition; Barbara maintained the home and took care of the children while Albert was able to

advance his career; and Albert's failure to maintain the expenses of the home during the pendency of this case has resulted in the loss of the vehicle that Barbara and the children used and foreclosure of the home that the children lived in. Based on these, and other, factual findings, the trial court concluded that Barbara should receive 60% of the marital property and Albert should receive 40% of the marital property. We recognize that the court imputed Albert's prior income and presumed Albert's income was higher than his actual current income when assessing maintenance and child support. Accordingly, upon remand, the trial court should consider Albert's 2013 income along with the factors listed in 503(d) to determine if the division should be adjusted based on the lower income for Albert.

¶ 107 Also, we note that while Albert argues that it is improper for the trial court to award a larger share of the marital property to Barbara on top of maintenance, he does not cite to any authority that stands for the proposition that a court is barred from making such an award. Rather, as stated above, so long as the trial court properly considers all the relevant factors as laid out in section 503(d), the trial court has broad discretion in applying these factors and is authorized to award either property or maintenance, both property and maintenance, or property in lieu of maintenance. *In re Marriage of Jones,* 187 Ill. App. 3d at 223.

¶ 108 C. Willful Violation of the Financial Status Quo Order

¶ 109 On June 25, 2013, the parties entered into an agreed order regarding various financial matters, agreeing that they would "maintain the financial status quo regarding the payment of household and family expenses." On July 15, 2013, the trial court entered a subsequent order requiring Albert to pay Barbara $160 every week beginning on July 19, 2013. This $160 per week payment was in addition to the June 25 order to maintain the financial status quo.

¶ 110 Following a September 8, 2014 hearing, the trial court judge held that Albert "willfully and without cause or justification failed to abide by the [June 25 and July 15] orders" by failing to pay Barbara temporary support for a period of seven weeks, failing to pay the mortgage on the marital residence, and failing to pay several bills that Barbara was forced to pay.

¶ 111 First, Barbara is correct to note that Albert failed to include a transcript or bystander's report for the September 8, 2014 hearing. While Albert asserts that the trial court's ruling with respect to Albert's willful violation of its orders was solely based on the evidence at trial, we have no way of knowing that. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1981). As there is no transcript of the September 8, 2014 hearing in the record here, we do not have an adequate basis for holding that the trial court abused discretion in finding that Albert willfully violated the June 25 and July 15 orders.

¶ 112 Nevertheless, given that the record shows that Albert was aware of the orders entered on June 25 and July 15, understood the rulings made therein, admitted that he failed to pay Barbara temporary support for a period of seven weeks, failed to pay the mortgage on the marital residence, and failed to pay several bills that Barbara was forced to pay, we cannot say that the trial court abused its discretion in finding that Albert willfully violated the June 25 and July 15 orders. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 633 (2008) (whether a party is guilty of contempt is a question of fact for the trial court and a reviewing court will not disturb such a

finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion); see also *In re Marriage of Hardy*, 191 Ill. App. 3d 685, 689 (1989).

¶ 113 D. Trial Court's Ruling on Attorney Fees and Costs

¶ 114 The trial court ordered Albert pay Barbara $49,225 in attorney fees and costs pursuant to sections 508(b) and 503(j) of the Act. Albert argues that this award of attorney fees and costs was improper because: (1) the trial court did not allocate the amount of fees that were awarded pursuant to section 508(b) versus 503(j); and (2) Albert lacks the ability to pay the attorney fees and expenses. Albert also challenges the trial court's ruling that the fees and costs are non-dischargeable in bankruptcy.

¶ 115 At the outset, the trial court awarded attorney fees and costs in a written order entered on September 8, 2014. The September 8, 2015 order was issued after the trial court heard arguments by both attorneys, and it is clear from the order written by Barbara's attorney that the order was transcribed after the trial court judge gave oral rulings. Nevertheless, the transcript of this hearing is not in the record. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. As there is no transcript of the September 8, 2014 hearing in the record here, there is no basis for holding that the trial court erred by failing to distinguish which attorney fees and costs were awarded pursuant to section 508(b) versus 503(j).

¶ 116 Even if we were to set aside the fact that the record on this issue is inadequate, we would still find that the trial court properly awarded attorney fees and costs. Albert argues that the trial

court's failure to distinguish which fees were awarded pursuant to 508(b) versus 503(j) is reversible error where he has challenged the trial court's substantive ruling that he violated the June 25 and July 15 orders. Section 508(b) of the Act provides that "[i]n every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2012). Albert states that "if this court decides that Albert did not 'willfully' violate the temporary orders, the fee judgment must necessarily be reversed *in toto* in that it contains some unallocated portion of section 508(b) enforcement related fees." However, given that we have already found that the trial court properly found that Albert willfully violated the June 25 and July 15 orders, this argument is moot. *In re Parentage of M.C.B.*, 324 Ill. App. 3d 1 (2001) (when a court determines that a party's failure to comply with a child-support order is without compelling cause or justification, an award of fees and costs under section 508(b) is mandatory).

¶ 117 Albert also argues that the trial court's order that Albert pay 100% of Barbara's attorney fees and costs was inequitable where the court has already awarded Barbara maintenance, child support and a larger share of the marital estate, and where "nothing in the record supports the finding that Albert can pay nearly $50,000 in attorney fees and costs, in addition to his own." Section 503(j)(2) states that "[a]ny award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504." 750 ILCS 5/503(j)(2) (West 2012). The propriety of an award of attorney fees is dependent upon a showing by the party seeking them of an inability to pay and the ability of the other

spouse to do so. *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 995 (2011). Although awarding fees rests largely in the trial court's discretion, such an award will be reversed when the financial circumstances of both parties are substantially similar and the party seeking fees has not shown an inability to pay. *Id.*

¶ 118 Here, the trial court found that Albert's income at a well-paying position (over $100,000) far exceeds Barbara's income at a low-paying part-time job (under $10,000); Barbara will have sole custody and therefore will need to care for the young children, who will not begin school full time until fall of 2017; Barbara's future earning capacity is minimal unless she is able to change her field of employment whereas Albert's future earning capacity greatly exceeds Barbara's; Barbara's duties as the sole caretaker causes her to forgo career opportunities, gain full-time employment, or acquire appropriate education or training; Albert's standard of living has not diminished; the parties are relatively young and in good condition; Barbara maintained the home and took care of the children while Albert was able to advance his career; and Albert's failure to maintain the expenses of the home during the pendency of this case has resulted in the loss of the vehicle that Barbara and the children used and foreclosure of the home that the children lived in. Further, the Supplemental Judgment indicates that Albert's salary was over $100,000, Barbara's was approximately $9,000, and that Barbara was awarded maintenance in the amount of $2,622 per month for four years. Based on these findings, as well as the fact that the financial circumstances of Albert and Barbara are not substantially similar even after factoring in Barbara's maintenance award (*In re Marriage of Schinelli*, 406 Ill. App. 3d at 995 (an award of fees will be reversed when the financial circumstances of both parties are substantially similar and the party seeking fees has not shown an inability to pay)), we cannot say that the trial court's order that Albert pay Barbara's attorney fees and costs amounted to an

abuse of discretion. *In re Marriage of Bussey*, 108 Ill. 2d 286, 299-300 (1985) (“The awarding of attorney fees and the proportion to be paid are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion.").

¶ 119 Last, Albert argues that the trial court erred in making the award of attorney fees nondischargeable in bankruptcy because the trial court judge failed to consider federal law in doing so. However, as stated earlier, because the transcript from the September 8, 2014 hearing on attorney fees and costs is not contained in the record, we cannot determine whether the trial court did consider federal law and, therefore, we have no basis upon which to reverse the trial court's ruling. *Foutch*, 99 Ill. 2d at 391-92. Nevertheless, not only does Albert concede that the trial court had concurrent jurisdiction with the federal courts to find the award nondischargeable in bankruptcy, but where an award of attorney fees and costs was based on one party's ability to pay those fees and costs and the other party's inability to pay, as was the case here, Illinois courts have found that "an award of attorney's fees in a dissolution proceeding is in the nature of alimony, maintenance or support and thus nondischargeable." *In re Marriage of Lytle*, 105 Ill. App. 3d 1095, 1101 (1982); *see In re Marriage of Pedersen*, 77 Ill. App. 3d 716 (1979). Accordingly, we cannot find that the trial court's ruling that the award of attorney fees and costs was nondischargeable in bankruptcy was improper.

¶ 120 E. Qualified Domestic Relations Orders

¶ 121 In its Supplemental Judgment, the trial court ordered that the cost of preparing qualified domestic relations orders (QDROs) "shall be borne in the same proportion as the division of the accounts with Albert being responsible for 60% and Barbara being responsible for 40% of the cost of preparation. Payment for this preparation shall be made by liquidation of each party's share of the assets being awarded to him or her." Albert argues that this ruling was in error

because the trial court judge cannot order a party to liquidate marital retirement accounts. First, the trial court did not order that Albert liquidate his marital retirement account to pay for the preparation of QDROs; rather, the trial court ordered that the preparation of the QDROs be "paid by liquidation of each party's share of the assets being awarded to him or her." Nonetheless, even if the court's language could be interpreted as making such a demand, section 503(i) of the Act gives the trial court broad discretion when ordering a party to pay marital debts. Section 503(i) of the Act states: "The court may make such judgments affecting the marital property as may be just and may enforce such judgments by ordering the sale of marital property, with proceeds therefrom to be applied as determined by the court." 750 ILCS 5/503(i) (West 2012). Further, "[t]he trial court's power to order a party to pay marital debts by borrowing against marital assets is authorized as a judgment affecting the marital property as may be just." (Internal citations omitted.) *In re Marriage of Carter*, 317 Ill. App. 3d 546, 553 (2000). As the trial court here merely ordered that preparation of QDROs be paid by liquidation of each party's share of the assets being awarded to him or her, which trial courts are given discretion to do under Illinois law, we cannot find that the trial court erred in ordering that the preparation of QDROs be paid by liquidation of each party's share of the assets being awarded to him or her.

¶ 122 F. Credibility

¶ 123 Last, while Albert argues that the trial court erred when it determined that Barbara was credible and Albert was not credible, it is well-established that credibility determinations should be left to the trier of fact who is in the position to see the witnesses, observe their demeanor, and assess the relative credibility of witnesses where there is conflicting testimony on issues of fact. *Chandler v. Maxwell Manor Nursing Home, Inc.*, 281 Ill. App. 3d 309, 318-19 (1996); *Fritch v. Fritch*, 224 Ill. App. 3d 29 (1991); *In re Marriage of Malec*, 205 Ill. App. 3d 273 (1990). "The

determination of all issues regarding the credibility of the parties and their witnesses or the weight to give the evidence lies with the trier of fact." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642 (1993). The issue of credibility was a factor only when the court determined whether Albert willfully disobeyed its orders and his motives for voluntarily changing his employment. Based on the trial court's statements on the record and in the judgment it prepared, we find the trial court accepted Albert's testimony that he changed his employment to get into a supervisor role and eventually earn more money in the future. In regard to the issue of whether Albert was credible in regards to his failure to obey the court's orders, the trial court heard three days of testimony from Barbara and Albert, and determined that Barbara was credible while Albert was not. The trial court judge also indicated that Albert's testimony was contradictory and self-serving whereas Barbara's was consistent throughout, and the trial court judge further noted that Albert had willfully and without justification violated two court orders and demonstrated behavior that showed a lack of concern for his wife and children. Based on these observations in the record and the deference that we must give the trial court, we see no reason to disturb the trial court's credibility findings in this case, and Albert does not cite to any case law or compelling reason to convince us otherwise. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11 *as modified* (June 21, 2013) (" '[W]e must accord great deference to the trial court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence.' [Citation.] 'Factual findings or credibility determinations are "against the manifest weight of the evidence only if the opposite conclusion is clearly evident" ' "). We do not find the credibility findings are against the manifest weight of evidence and, accordingly, we accept the trial court's findings on credibility of the witnesses throughout our ruling above.

¶ 124 III. CONCLUSION

¶ 125 We affirm the trial court's rulings with respect to visitation, contempt, attorney fees and costs, qualified domestic relations orders, and credibility; we affirm the trial court's determination that Albert pay child support, maintenance, and the 60/40 division of the marital property, subject to review on remand due to Albert reduced income. We find the trial court abused its discretion when it imputed Albert's 2012 income as his 2013 income and remand for recalculation of his support obligations in accordance with this order.

¶ 126 Affirmed in part, reversed in part and remanded.