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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> THE MARRIAGE OF)	Appeal from the Circuit Court
COREY L. KOCH,)	of McHenry County.
)	
Petitioner-Appellee,)	
)	
and)	No. 11-DV-888
)	
DAMON N. KOCH,)	Honorable
)	James Cowlin,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justice Burke concurred in the judgment.
Presiding Justice Schostok dissented.

ORDER

¶ 1 *Held:* The trial court erred in holding that the marriage settlement agreement required the ex-husband to pay statutory guideline child support when he became re-employed. In addition, the trial court abused its discretion when it awarded the ex-wife statutory guideline child support when the parties shared custody of the children and the effect of awarding the ex-wife statutory child support caused her to have a net monthly income of \$301 more than the ex-husband.

¶ 2 Respondent Damon Koch (Damon), appeals from an order granting a motion filed by petitioner Corey Koch (Corey) to modify the judgment of dissolution of marriage with regard to child support. On appeal, Damon argues that the trial court abused its discretion in modifying

the amount that he was required to pay Corey for child support for their two children. For the following reasons, we reverse the trial court's order and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 The record reflects that the parties were married on September 12, 1999, and divorced on August 10, 2012. Two children were born during the marriage. Kayla was born on April 5, 2006, and Kristin was born on January 7, 2009. According to the marital settlement agreement, which was incorporated into the judgment of dissolution, the parties shared joint physical custody of the children. The children were to be in each party's care, custody and control on alternating weeks, and the parties agreed that they would both reside within the same school district.

¶ 5 At the time the parties divorced Damon was unemployed. The marital settlement agreement indicated that Damon was to pay Corey \$112.84 weekly in child support, which represented 28% of his net income from unemployment. With regard to child support after Damon was re-employed, the agreement stated:

“Husband shall notify the Wife within 24 hours of obtaining employment, either full time and/or part time, providing her with the name and address of his new employment. Husband shall provide the Wife with copies of his new pay stubs once he has obtained employment, so child support can be recalculated. Husband shall also pay 28% of net of any bonus/commission income from his employer. Husband shall remit to Wife 28% of his bonus income within seven days of receipt of same. Husband shall make [sic] of copy of said bonus/commission check and stub, and include a check for 28% net of same, within seven (7) days of receipt.”

¶ 6 Shortly before the parties divorced Corey was self employed as a licensed daycare provider, operating that business out of the marital residence. At the time she earned \$2,200 per month. During the divorce proceedings both parties lived in the marital residence, which was in foreclosure. Around February 1, 2013, Corey moved out of the marital residence and moved into her parent's home. She completed her degree in early childhood education and accepted a job at Kindercare, which paid \$13 per hour.

¶ 7 On March 14, 2013, Corey filed a motion to modify the judgment of dissolution with regard to child support. In support of that motion, Corey stated that a substantial change in circumstances had taken place in that Damon had found employment around January 21, 2013, at Carlson Laboratories in Arlington Heights, Illinois. Corey alleged that upon information and belief, Damon was currently earning \$21 per hour, as opposed to his unemployment wage, which was \$14 per hour. As a result of Damon's new employment Corey requested that the child support be modified to reflect his new income.

¶ 8 On March 28, 2013, Corey filed her financial affidavit. In the affidavit, she listed her total gross monthly income as \$2,180, which included her gross monthly salary and \$100 for food stamps. With an additional \$450 per month for previously ordered child support, her total net monthly income was listed as \$2,117.49. Corey listed her monthly expenses as \$2,528, which gave her a monthly deficit of \$410.51

¶ 9 On April 23, 2013, Damon filed his financial affidavit. In the affidavit he listed his monthly net income as \$2,331 and his net monthly living expenses as \$2,969, with a total monthly deficit of \$638.

¶ 10 On May 1, 2013, Damon filed an answer to Corey's motion to modify child support. In his answer Damon denied Corey's allegation that he was currently earning \$21 per hour as

opposed to his unemployment rate of \$14 per hour. He affirmatively alleged that the parties had equal time with the children, and that a custody arrangement where the parties spend equal amounts of time with the children was a basis for a deviation from the statutory guidelines listed in section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act). See 750 ILCS 5/505 (West 2012). Damon asserted that a deviation was warranted here due to: (1) the financial needs and abilities of each of the parents; and (2) the standard of living the children would have enjoyed had the marriage not been dissolved. Therefore, he requested that Corey's motion to modify child support be denied.

¶ 11 On May 7, 2013, Corey filed a reply to Damon's answer to the motion to modify child support. In her reply, Corey stated that Damon earned \$20 per hour at Carlson Laboratories and that his new income was a significant increase from his income through unemployment compensation. She also alleged that nowhere in the marital settlement agreement did it state that Damon would receive a deviation in his child support obligation due to his extended visitation arrangement. Instead, Corey alleged that based upon the wording of the marital settlement agreement it was clearly the parties' intent when they entered into that agreement that not only would child support be modified to reflect 28% of Damon's new net income once he found employment, but also that it was Damon's intent to pay 28% of any bonuses and commissions that he received from his new employment. Corey affirmatively alleged that it would not be in the children's best interests for the court to deviate from guideline child support in light of the evidence in this case and the relevant factors in section 505 of the Act. 750 ILCS 5/505 (West 2012).

¶ 12 Corey also claimed that the parties did not share equal time with the children since she spent several more hours in the morning and the evening with them than Damon did. She also

noted that she had contact with the youngest child all day since she was employed at the daycare facility where that child was in attendance, and the oldest child would also be in attendance at that facility during the summer months.

¶ 13 With regard to the parties' financial affidavits, Corey affirmatively stated that the true difference between her net income and Damon's net income, without consideration of child support, was \$1,151 a month. Corey also alleged that the financial needs of the children and the financial resources and needs of the custodial parent easily demonstrated that a deviation would not be in the best interests of the children in this case. Specifically, she noted that the children had lost their home in a foreclosure, that she could not find an apartment or house that she could afford to rent, and as a result, she and the children had to live with her mother on a temporary basis. Corey also noted that she was receiving food stamps and the children were on All Kids for their medical insurance. She alleged that she bought the children's clothes at Goodwill, and she was registered at the Lake in the Hills Food Pantry where she was able to get additional food for the children. Corey alleged that she needed guideline support to provide a home, food and clothing as well as medical care for the parties' children.

¶ 14 On May 16, 2013, Corey filed an amended financial affidavit. In the amended affidavit she listed the amount of child support she received as \$490 a month, instead of \$450 per month that she listed in the previous affidavit (to account for a 52-week year).¹ She also changed some of her living expenses. Therefore, her amended financial affidavit reflected a net monthly income (including child support) of \$2,157.49 and net monthly living expenses as \$2,816, for a

¹ We note that $\$112.84 \times 52 \text{ (weeks)} = \$5,867.68$, and $\$490 \times 12 \text{ (months)} = \$5,880$. However, Damon does not argue about this minor discrepancy on appeal.

total deficit of \$658.51 monthly. Her net monthly income before child support was \$1,667.49, which included \$100 in food stamps.

¶ 15 On May 16, 2013, the trial court held a hearing on Corey's motion to modify child support. At the hearing, Corey's counsel first called Damon as an adverse witness. Damon testified that he was currently earning \$3,467 per month, or \$40,000 per year at Carlson Laboratories. At the time of the hearing he had the opportunity to get some overtime, but that was a temporary situation. Damon said that he and Corey had shared parenting time with their children. On the days that the children stayed with him, he took them to school at 6:45 a.m. and picked them up around 6:00 p.m. He lived in an apartment and paid \$925 per month for rent. He had a van, a car, a camper, and a boat trailer. In addition, he drove a motorcycle, but he did not list it on his financial affidavit because it was not his sole property. When his father passed away the motorcycle was given to Damon and his sister.

¶ 16 Damon stated that he paid \$178 per month for medical coverage for himself through a private insurer. He said he looked into a family medical plan but it was an outrageous amount of money. With regard to child care, Damon said that he and Corey both paid \$221 per month, and that amount was very low because Corey had successfully applied for and received federal aid to reduce their child care payments.

¶ 17 Corey testified that she was currently living with her parents but she planned on moving out of their house on June 1 because they were putting the home on the market due to financial troubles. She had found an apartment, but on the day of the hearing she was told that she did not qualify to rent it based upon her income. She had another option for an apartment, however, but that it would cost her about \$150 more per month.

¶ 18 Corey said that her net income per month was \$1,667, which included her salary from her job at Kindercare and \$100 in food stamps. She said she and Damon had a shared parenting agreement but that she was the residential custodian. Corey felt that the parties' parenting time was not split evenly, however, since she was her youngest daughter's preschool teacher at Kindercare and in the summer her older daughter would also be attending the same program at Kindercare.

¶ 19 Corey testified that she was not able to pay her bills and support her children every month. She and her children were on public aid for medical insurance. She believed that her budget was running at a deficit of between \$750 and \$800 per month. Corey said that she needed Damon to pay 28% of his salary as child support because she could not support her children and she did not think the government should be the third parent in this arrangement. Corey wanted her children to have the same quality of life as they would have had if Damon and she stayed together.

¶ 20 On cross-examination, Corey admitted that before she worked at Kindercare she made \$2,200 per month watching children out of her house. She and Damon lived in the marital residence during the divorce proceedings and even after the judgment of dissolution was entered. During that time the parties were not paying any mortgage or rent on the marital residence and the only housing expense they had was utilities. Corey moved out of the marital residence on February 1 and then moved into her parents' house where she paid rent to them.

¶ 21 Corey testified that she made \$13 per hour at Kindercare. She recently graduated with a degree in early childhood education. She enjoyed being a preschool teacher and would like to be a director of a preschool. With regard to her effort to increase her income, she said she applied two weeks ago for a director's position at a church, but she was still waiting to hear back from

them and she did not know how much that position would offer. Although her degree was a four-year one, it did not allow her to teach in public schools. Corey would not consider another occupation at this time. If she were offered a job that paid more money it would have to involve making a difference in children's lives, because that was her passion. She had tried to pick up another job part-time where she could work every other week in addition to her full time job, but no employer was willing to accept the hours that she was available. She and the children had been on public aid for medical insurance since October 2012. Prior to that time they had the same private insurer as Damon, but he took Corey and the girls off that policy and kept himself on it.

¶ 22 On direct examination, Damon testified that he was paying \$925 per month in rent. His boat was worth several hundred dollars, and his motorcycle was worth around \$6,000. His camper was worth around \$600. Even with the amount that he was currently paying for child support he still has a monthly deficit of \$638. Damon said that if the court were to increase his child support payment to 28% of his net income he would be concerned that he would have to move to his grandmother's house where he could live rent free. That would be an unfortunate situation, however, because his grandmother lived outside the geographic location that the parties had agreed to in the marital settlement agreement. At the time he entered into the judgment of dissolution it was not his intention, or Corey's, that when the support was adjusted it would be automatically set at 28% of his net income.

¶ 23 On cross-examination, Damon was asked why he would be surprised to be expected to pay 28% of his net income when he got a job since he was paying that amount from his unemployment check. In response, Damon said that he would be surprised to have to pay such an amount because he and Corey had equal parenting time with their children.

¶ 24 After the court heard closing argument it asked Damon several questions with regard to his employment. Damon said that he became unemployed in April 2012. Prior to that time he earned \$22.60 per hour with occasional overtime. The court then allowed the parties' attorneys to reopen the proofs to ask any questions based upon the court's questions to Damon.

¶ 25 Corey's counsel asked Damon what he earned in 2011 and he said approximately \$41,000. Damon's counsel asked him if he had looked for higher paying employment after he had secured his current job, and he said that he had not but he was not aware of any higher paying jobs.

¶ 26 After taking a recess, the trial court explained its ruling by first noting that the marital settlement agreement called for recalculation of child support when Damon became employed, but it did not state that he should pay 28% of his net income. However, the agreement did require that Damon pay 28% of the unemployment benefits he received. The court said that when it read the section in the marital settlement agreement that pertained to child support in its entirety it found that a fair reading called for guideline support at 28% of Damon's net income once he became employed.

¶ 27 The court then noted that Damon had requested a deviation from guideline support in response to Corey's motion to modify the judgment of dissolution, and the basis for the deviation was the shared custody arrangement between the parties. The court said that it had reviewed the relevant case law and found that the parties had a shared custody arrangement here. Therefore, it held that the factors enumerated in section 505(a)(2) of the Act applied and that it had used those factors in making its decision. See 750 ILCS 5/505(a)(2) (West 2012).

¶ 28 Before addressing the factors enumerated in section 505 of the Act, the court initially found that although Corey may spend more time with the children, that fact was mainly due to

her employment, and that amount of time was not critical in this case. With regard to expenses for the children, the court found that the parties' affidavits showed similar costs, with Corey spending a little more money on the children than Damon.

¶ 29 The court then found that the first factor, the financial resources and needs of the children, favored neither party since the children had no financial resources and all their financial needs had to be met.

¶ 30 With regard to the second factor, the financial resources and needs of the custodial parent, the court found that although this was a shared arrangement, Corey was listed in the agreement as the residential parent for educational purposes. For that reason, it treated Corey as the custodial parent for the application of this factor. The court said that Corey's resources were less and her needs far greater than Damon's. Specifically, it noted that Corey was on public aid and received food stamps. Therefore, the court found that this factor weighed in favor of no deviation from the statutory guideline amount for child support.

¶ 31 The court then turned to the third factor, the standard of living the children would have enjoyed had the marriage not been dissolved. It noted that the evidence presented at the hearing showed that Damon's current income was fairly close to what he was earning before he became unemployed. Therefore, it found that this factor also weighed in favor of no deviation.

¶ 32 The next factor the court considered was the physical and emotional condition of the children and their educational needs, and it found that factor favored neither party. Next, it considered the financial resources and needs of the non-custodial parent. The court said that "as close as it could get," Damon was the non-custodial factor, and that factor favored him.

¶ 33 The court then said that after weighing all the factors and considering the best interests of the children, with Damon earning close to what he earned when he was employed during the

course of the marriage and Corey making a net of \$1,667 per month, Corey's resources and the needs of the children led it to hold that there should be no deviation from the statutory guideline support. Accordingly, the court ordered Damon to pay Corey 28% of his net income as child support for their children.

¶ 34 On May 21, 2013, the trial court entered a written order on Corey's motion to modify the judgment of dissolution of marriage with regard to child support. Specifically, the court listed Damon's current gross income as \$41,600 per year, and his total net income as \$34,248. Based upon those numbers, the trial court ordered Damon to pay Corey \$9,589 yearly in child support, or \$399.50 semi-monthly.

¶ 35

II. ANALYSIS

¶ 36 On appeal, Damon argues that the trial court's award of child support to Corey was an abuse of discretion. Specifically, he argues: (1) the parties spend substantially equal time with the children pursuant to the terms of the marital settlement agreement; (2) after payment of child support as established in the judgment the parties have similar incomes; (3) the court's analysis of the factors in section 505(a)(2) of the Act was flawed. Finally, Damon contends that instead of awarding Corey guideline support the trial court should have left the child support as previously set (28% of the amount he previously received from unemployment), it should have only made a slight upward adjustment to his support obligation, or it should have equalized the parties' respective net monthly incomes.

¶ 37 We initially note that Corey has not filed a brief in this case. However, the lack of an appellate brief does not prevent us from addressing the issues raised, since the record is simple and the claimed errors are such that we can decide them without the assistance of an appellee brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133

(1976). “If the appellant’s brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed.” *Id.*

¶ 38 Pursuant to the Act, a noncustodial parent should pay 28% of his net monthly income for child support for two children. 750 ILCS 5/505(a)(1) (West 2012). When custody is shared, however, the court may apportion the percentage between the parents or disregard the statutory guidelines and instead consider the factors listed in section 505(a)(2) of the Act. *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691, 695 (1998). The factors listed in that section include: (1) the financial resources and needs of the children; (2) the financial resources and needs of the custodial parent; (3) the standard of living the children would have enjoyed had the marriage not been dissolved; (4) the physical and emotional condition of the children and their educational needs; and (5) the financial resources and needs of the noncustodial parent. 750 ILCS 5/505(a)(2) (West 2012). A trial court’s decision with regard to child support in a shared custody arrangement will be reviewed for an abuse of discretion. *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 62. A trial court abuses its discretion when no reasonable person would adopt the view taken by the court. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32.

¶ 39 Before we reach the merits of Damon’s arguments we will first review the trial court’s initial determination that when it read the section in the marital settlement agreement that pertained to child support in its entirety, it found that a fair reading called for guideline support at 28% of Damon’s net income once he became employed.

¶ 40 Interpreting a marriage settlement agreement is a matter of contract construction. *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 269 (2003). If the language of the contract is clear and unambiguous, the intent of the parties is ascertained solely from the words of the contract, and given their plain and ordinary meanings. *Virginia Surety Co. v. Northern Insurance Co. of*

New York, 224 Ill. 2d 550, 556 (2007). Whether a contract is ambiguous is a question of law which is reviewed *de novo*. *Cincinnati Insurance Co. v. Gateway Construction Co.*, 372 Ill. App. 3d 148, 151 (2007).

¶ 41 We have reviewed the marriage settlement agreement and can find no basis upon which to support the trial court's determination. As the trial court acknowledged, the marital settlement agreement called for recalculation of child support when Damon became employed, but it did not state that he should pay 28% of his net income. However, it *did* require that he pay 28% of any bonuses or commissions that he may receive after he became employed. We fail to see how these specific agreements create an *additional* requirement on Damon's part to pay 28% of his future income when no evidence of such an agreement existed.

¶ 42 The dissent finds that although the MSA did not expressly state that Damon's obligation to pay statutory guideline support would continue when he found a job, it did not have to. As support for that finding, the dissent cites to section 510(a) of the Act and notes that a child support obligation continues until it is modified or expires by virtue of an external event. See 750 ILCS 5/510(a) (West 2012); *infra* ¶ 63. We agree with that proposition. However, this case does not involve the discontinuation of child support. Instead, it involves the *recalculation* of child support as specifically agreed to by the parties in the MSA. The dissent states that if the parties intended that a court should modify the percentage of Damon's income to be paid as child support once he found employment, they could have inserted such a provision into the MSA, but they did not. Instead, the dissent finds, the parties "agreed that Damon must notify Corey of his increased income (providing documentation of such) so that she could seek adjustment of the dollar amount of support to reflect the agreed-upon percentage." See *infra* ¶ 63. However, the MSA does *not* provide that Damon was supposed to provide Corey with documentation of his

new salary so that she could seek adjustment of the dollar amount of support to reflect the agreed-upon percentage. Instead, the MSA provided that Damon shall provide Corey with copies of his new pay stubs once he had obtained employment “*so that child support can be recalculated.*” Absent any requirement in the MSA that this recalculation was to be made at the same percentage that he agreed to pay from his unemployment benefits, Damon was not required to pay out child support at the same rate after he was re-employed. Accordingly, the trial court erred in holding that the marriage settlement agreement called for guideline support of 28% of Damon’s net income once he became re-employed.

¶ 43 Here, the record is clear that the trial court acknowledged the parties’ shared custody arrangement and then specifically addressed all the factors in section 505(a)(2) of the Act before reaching its decision. 750 ILCS 5/505(a)(2) (West 2012). Therefore, we will review whether the trial court abused its discretion in ordering Damon to pay statutory guideline support based upon those factors.

¶ 44 The trial court found the first factor, the financial resources and needs of the children, to be a neutral factor since the needs of the children need to be taken care of whether they are with one party or another. Damon does not argue with this finding.

¶ 45 The trial court then found that the next factor, the financial resources and needs of the custodial parent, weighed in favor of no deviation from the statutory guidelines. The court acknowledged the shared custody arrangement between the parties, but for purposes of this factor it assessed Corey’s financial resources and needs since she was named as the residential parent in the marital settlement agreement. The court found that Corey’s income was quite a bit less than Damon’s, and that she was on public aid and receiving food stamps. Since her resources were less and her needs far greater, the court held that that factor weighed in favor of

Corey. Damon contends that the application of this factor to Corey is illogical since there was no custodial parent and the court had previously acknowledged that the parties had a shared custody arrangement.

¶ 46 Although it is true that there is no custodial parent in a shared custody arrangement, the fact that the trial court focused on Corey when analyzing this factor is irrelevant, since section 505(a)(2) of the Act also provides that the court review the financial resources and needs of the noncustodial parent. 750 ILCS 5/505(a)(2)(5) (West 2012); see *Whelan v. County Officers' Electoral Board*, 256 Ill. App. 3d 555, 558 (1994) (interpreting statutory language cannot always be reduced to a mechanical application of the dictionary definition of an individual word, and courts must be careful not to read statutory language in an overly literal manner).

¶ 47 With that said, however, in applying the evidence presented in this case to this factor we find that the trial court erred when it found that this factor favored *no* deviation from statutory child support guidelines. Although it is true that Corey has considerably less net monthly income than Damon (\$1,667 versus \$2,854, based upon the trial court's May 21, 2013 order which listed Damon's total net income as \$34,248), in ordering Damon to pay Corey 28% of his net monthly income as child support, the trial court simply tipped the scales in favor of Corey. Damon is now required to give Corey 28% of his net income, or \$799 monthly, as child support. That leaves him with a net monthly income of \$2,055, while Corey's net income increases to \$2,356 (\$1,557 (net income minus \$100 in food stamps) + \$799).

¶ 48 The next factor the court reviewed was the standard of living the children would have enjoyed had the marriage not been dissolved. The trial court found that the evidence presented at the hearing indicated that Damon was close to the same salary that he was earning before the parties divorced (\$22 per hour to his current salary of \$20 per hour). Therefore, it found that this

factor weighed in favor of no deviation. We are confused as to why the fact that Damon was making a similar salary before the dissolution of marriage is a valid reason for finding no deviation of statutory child support to be available under the circumstances of this case. Such a ruling might help the children while they are residing with Corey, but the fact remains that while they are residing with Damon they will be living on approximately 28% less of his income.

The court then found that the physical and emotional condition of the children favored neither party. Finally, the court found that Damon's financial needs and resources favored him (therefore, we assume, this was a finding that deviation was appropriate under that factor).

¶ 49 Again, an abuse of discretion occurs when no reasonable person would adopt the view taken by the trial court. We believe this to be the case here. Although we agree with the trial court that Corey's resources were far less than Damon's, it is clear that both Corey and Damon live on very tight budgets. We find that no reasonable person would order Damon to pay statutory child support to Corey when the parties shared custody of their children and when the effect of that ruling would be that Corey's net income exceeded Damon's by \$301 a month.

¶ 50 With regard to our finding that the trial court's order was inequitable, the dissent notes that we cannot know why Damon agreed to enter into the MSA requiring him to pay guideline child support, and theorizes that it might have been because Corey agreed to waive maintenance or agreed not to contest the physical custody arrangement, among other reasons. It also notes that at the time the MSA was entered, Damon ended up with about \$1,432 less each month than Corey. Thus, the dissent opines, Damon "is substantially better off under the trial court's current order than he was under the MSA, and the majority is not justified in setting aside that order, especially in light of the deferential abuse-of-discretion standard of review we must apply." See *infra*, ¶ 68.

¶ 51 As we have previously held, a plain reading of the MSA indicates that Damon did not agree to pay 28% of his net income to Corey after he became employed. Therefore, we need not speculate on his motivations when no such agreement was made. In addition, we are not persuaded by the dissent's claim that Damon is substantially better off under the trial court's current order than he was under the MSA, since, according to the dissent, Damon ended up with about \$1,432 less each month than Corey under the terms of the MSA. In reaching that figure, the dissent used Corey's income from her in-home day care business, added to that figure what Damon was paying her monthly from his unemployment benefits, and compared that lump sum to Damon's net income after paying child support from his unemployment benefits. However, it is clear from the MSA that the marital home, where Corey's in-home day care business was located, was in foreclosure. Clearly, then, the parties were aware when they entered into the MSA that Corey's business would terminate when the house was foreclosed upon. In fact, the record reflects that Corey moved out of the marital home and began working at Kindercare within months after the MSA was executed.

¶ 52 More important, however, is that after finding that the trial court erred in interpreting the MSA to require Damon to pay statutory guideline child support after he became re-employed, our review here was whether the trial court abused its discretion in finding that statutory guideline support was warranted under the facts of this case given the incomes of both parties *at the time Corey's motion was filed*. For the reasons previously noted, we find that the trial court's order requiring Damon to pay Corey 28% of his net income, which would result in Corey earning \$301 per month more than Damon when the parties shared custody of the children, was an abuse of discretion.

¶ 53

III. CONCLUSION

¶ 54 The trial court erred in holding that the marriage settlement agreement required Damon to pay statutory guideline support of 28% of his net income once he became re-employed. In addition, the trial court abused its discretion when it found no deviation from statutory guideline child support to be appropriate under the facts of this case. Accordingly, we reverse the order of the trial court granting Corey's motion to modify child support and awarding her 28% of Damon's net monthly income, and we remand this cause for the trial court to either apportion the percentage of child support between the parties, or to reconsider the factors in section 505(a)(2) of the Act and award an alternative figure. 750 ILCS 5/505(a)(2) (West 2012); *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691, 695 (1998).

¶ 55 The judgment of the circuit court of McHenry County is reversed and remanded.

¶ 56 Reversed and remanded.

¶ 57 Presiding Justice Schostok, dissenting:

¶ 58 I respectfully dissent because I believe that the trial court properly interpreted the parties' MSA as requiring Damon to pay 28% of his current and future income for child support. Given that agreement, the trial court did not abuse its discretion in rejecting Damon's request to decrease his obligation once he found employment. Accordingly, I would affirm the trial court's order.

¶ 59 The record reflects that, when the parties divorced in August 2012, Damon was unemployed and Corey was running her home daycare. At that point, Corey's income was higher than Damon's: Corey earned \$2200 per month, and Damon received about \$1,746 per month in unemployment. In their MSA, the parties agreed to share equally the custody of their children, splitting their parenting time evenly.

¶ 60 These facts (equal parenting time and Corey having a slightly higher income) could have justified a judgment for dissolution under which neither parent would pay child support, or child support set below the level of the guidelines set in section 505 of the Act. Instead, in the MSA the parties agreed that Damon would pay 28% (the guidelines percentage) of his then-current income (unemployment) as child support.

¶ 61 The trial court found that the MSA also reflected the parties' intent that Damon would pay 28% of his income in the future. The majority construes the MSA differently, as failing to address the percentage of Damon's future income to be paid. I believe the trial court's interpretation was correct.

¶ 62 The relevant portion of the agreement stated:

“Husband shall pay to Wife \$112.84 weekly, as and for the support and maintenance of the children. Said child support figure represents 28% of Husband's net income of \$403.00 weekly from unemployment. Husband shall notify the Wife within 24 hours of obtaining employment, either full time and/or part time, providing her with the name and address of his new employment. Husband shall provide the Wife with copies of his new pay stubs once he has obtained employment, so child support can be recalculated. Husband shall also pay 28% of net of any bonus/commission income from his employer. ***”

¶ 63 Under this provision of the MSA, Damon agreed to pay 28% (the percentage that would be owed under the guidelines) of his net income as child support. Although the MSA did not expressly state that Damon's 28% obligation would continue when he found a job, it did not have to. Under the scheme established by the Act, a child support obligation continues until it is modified, or expires by virtue of an external event. See 750 ILCS 5/510(a) (West 2012). If the

parties intended that a court should modify the *percentage* of Damon's income to be paid as child support once he found employment, they could have inserted such a provision into the MSA, but they did not do so. Rather, they agreed that Damon must notify Corey of his increased income (providing documentation of such) so that she could seek adjustment of the dollar amount of support to reflect the agreed-upon percentage. Moreover, if Damon's finding employment was intended to trigger a reassessment of the overall percentage of Damon's income that he would pay, the requirement that he also pay 28% of any bonuses and commissions he received would be nonsensical: why specify the percentage of his additional income to be paid if his total obligation is to be completely redetermined by the trial court?

¶ 64 “[A] contract must be construed as a whole, viewing each part in light of the others.” *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). When construing contracts, courts attempt to give effect to every provision, if possible, because it must be assumed that every provision was intended to serve a purpose. See *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 362 (2006). Read as a whole, the MSA assumes that Damon will continue to pay 28% of his net income as child support, specifying only that bonuses and commission will *also* be subject to the 28% obligation.

¶ 65 When Damon found a job, Corey petitioned the trial court to adjust the dollar amount of monthly child support to reflect Damon's higher income. However, she sought no change in the child support formula established under the MSA and the judgment. In response, Damon asked the trial court to modify the judgment to remove or lessen his voluntarily-assumed burden of paying guidelines child support.

¶ 66 Before a trial court may modify a child support obligation, the party seeking the modification must show a substantial change in circumstances since the date of the last order

(here, the judgment of dissolution). 750 ILCS 5/510(a)(1) (West 2012); *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 822 (2004). Here, Corey showed a substantial change in circumstances (Damon's income had gone up by about 30%) since the entry of the judgment. By contrast, Damon provided no reason to re-write the child support formula contained in the MSA and judgment, because there had been no substantial change in the underlying facts he pointed to. Although the parties shared physical custody and parenting time at the time of the petition to modify, the situation was the same at the time Damon entered into the MSA. I would therefore find that the trial court did not abuse its discretion in granting Corey's request for a modification and denying the request by Damon to change the child support formula to which he had agreed.

¶ 67 I recognize that the majority is troubled by the trial court's imposition of guidelines child support of 28% of net income when the parties share equally the custodial obligations for the children. However, this child support formula is based upon the parties' agreement, an agreement that Damon testified he understood and represented his wishes. " 'It is well settled that while a parent may not by contract defeat his legal duties owed to his children, he may contract to do more than the law requires of him.' " *Gaddis v. Gaddis*, 20 Ill. App. 3d 267, 272 (1974). See also *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 760 (2000) (enforcing MSA terms requiring husband to pay college expenses as well as extended child support while children were in college because husband had voluntarily agreed to those terms and circumstances had not changed since the entry of the judgment/MSA). Similarly, in the MSA, Damon voluntarily agreed to do more than the law might have required, given the shared physical custody of the children.

¶ 68 The majority finds the order entered by the trial court inequitable. However, we cannot know why Damon agreed to enter into the MSA requiring him to pay guidelines child support—

it might have been because Corey agreed to waive maintenance, despite her lower earning prospects, or agreed not to contest the shared physical custody arrangement, or for any number of reasons. The fact remains that he did voluntarily enter into that agreement, and he has not shown why he should be relieved of the consequences of his earlier agreement. He is now earning more, not less, and thus his own share of his income has increased along with his child support obligation. Although the majority is concerned by the fact that, after accounting for the child support ordered by the trial court, Damon will have \$301 less income than Corey each month, at the time the MSA was entered, Damon ended up with about \$1,432 less each month than Corey. Thus, he is substantially better off under the trial court's current order than he was under the MSA, and the majority is not justified in setting aside that order, especially in light of the deferential abuse-of-discretion standard of review we must apply. "A court should not set aside a settlement agreement merely because one party has second thoughts." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214 (1994).

¶ 69 For all of these reasons, I respectfully dissent.