2015 IL App (2d) 140797-U
No. 2-14-0797
Order filed August 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARY KATHRYN BERENDT,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellee,	)	
and	)	No. 09-D-361
WILLIAM S. BERENDT,	)	Honorable Rodney W. Equi,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in determining that respondent owed a child support arrearage where respondent had fulfilled his obligation to pay the petitioner $600 per month until further order of the court. The judgment was reversed and remanded with directions to enter a new order for support with respect to college contributions and medical expenses that did not include an arrearage for child support.

¶ 2 Respondent, William Berendt, appeals from three orders: (1) the portion of the June 30, 2014, order denying his motion to dismiss petitioner Mary Berendt's "petition to set retroactive child support and to set child support arrearages"; (2) the portion of the July 21, 2014, order finding that he owed Mary $3,715.96 for retroactive child support; and (3) the portion of the

August 6, 2014, amended order for support reflecting that arrearage. For the reasons that follow, we reverse and remand with directions to enter a new order for support with respect to college contributions and medical expenses that does not include an arrearage for child support.

¶ 3 I. BACKGROUND

¶ 4 Mary and William were married in 1995, and one daughter was born during their marriage. On February 18, 2009, Mary filed a petition for dissolution of marriage. On August 20, 2009, the court entered a judgment dissolving the marriage that incorporated a joint parenting agreement (JPA). The provision of the JPA establishing William's child support obligation stated:

> "The husband agrees to pay the wife 20% of his net income as determined from time to time in accordance with the provisions of the Illinois Marriage and Dissolution of Marriage Act, for the support of their minor child ***. The amount to be paid initially by the husband to the wife and and [*sic*] for child support shall be $600.00 per [*sic*] ~~week / bi-weekly / twice a month /~~ monthly.
>
> The husband shall provide the wife with a copy of all W-2s or 1099s he receives annually on or before April 1, 2010 and for each succeeding year, for purposes of providing the wife with information on which the parties can compute and re-calculate the husband's child support obligation on an annual basis. After such re-calculation is completed, the parties shall enter into an Agreed Order modifying the husband's annual child support obligation.
>
> The husband shall pay the wife child support until the parties [*sic*] child attains the age of 18 or graduates from high school, whichever event last occurs."

¶ 5 On August 20, 2009, the court also entered an order for support that was completed by Mary's attorney. In a portion of the form order reflecting the court's findings, there was an "X" marked in a box next to the statement: "The net income of the obligor on the date of this order is $_____ per week." However, the order did not actually indicate William's weekly income. Below that "finding," the box was not checked next to the statement "[t]he amount of child support cannot be expressed exclusively as a dollar amount because all or a portion of the obligor's net income is uncertain as to source, time of payment, or amount." Furthermore, where the order provided check boxes to indicate whether William was obligated to provide child support, maintenance, unallocated support, or a percentage amount of child support, there was an "X" next to both "child support" and "percentage amount of child support." In the portion of the order containing the payment schedule, William was ordered to pay "child support" in the amount of $138.46 per week[1] until June 15, 2014;[2] there was no writing in the space providing for "% amount of child support."

¶ 6 William did not provide his income tax information to Mary each year. Nor did the parties annually recalculate the child support obligation in accordance with the terms of the JPA. Nevertheless, William apparently was consistent in paying Mary $600 per month for child support until his obligation terminated in June 2014. On March 24, 2014, Mary filed several *pro se* documents, including a motion requesting William's financial information in order to "calculate [*sic*] amount owed through years 2010-2014." On April 3, 2014, the court ordered

[1] William's employer was instructed to withhold $138.46 weekly, $276.92 bi-weekly, $300 semi-monthly, or $600 monthly.

[2] The termination date was subsequently changed to June 6, 2014, the date that the parties' daughter graduated from high school.

William to produce "all tax returns going back to the date of the judgment." The record indicates that William, who was represented by counsel at the time, produced those documents on May 9, 2014. On May 19, 2014, Mary appeared with counsel and was granted leave to file amended petitions.

¶ 7 On May 22, 2014, Mary filed three petitions. Only one is at issue in this appeal: her "petition to set retroactive child support and to set child support arrearages." In that petition, Mary alleged that although the parties' agreement "required William to turnover [*sic*] financial records annually so that the parties could compute and recalculate the husband's child support obligation on an annual basis, William failed and refused to turn over records or recalculate annual child support." Mary asked the court to "set retroactive child support based on William's actual net income since the entry of the parties' Judgment of Dissolution of Marriage." She also requested a child support arrearage "in an amount equal to the difference between the retroactive child support and actual child support paid by William."

¶ 8 On May 30, 2014, William filed a motion to dismiss Mary's petition pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). He sought to dismiss the petition pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) on the basis that Mary could seek to modify his child support obligation only as of March 24, 2014, the date that she filed her original petition. He also argued that the petition was insufficient, because section 510 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510 (West 2014)) required a showing of a substantial change in circumstances, which Mary did not allege. Alternatively, William moved to dismiss the petition pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)). He argued that the JPA did not constitute a percentage income child support order pursuant to section 505(a)(5) of the

Dissolution Act (750 ILCS 5/505(a)(5) (West 2014)). Therefore, he contended, he did not have an affirmative duty "to adjust his child support and pay [Mary] additional support on an ongoing basis without entry of a court order." He insisted that the JPA set his obligation at $600 per month and that such obligation was subject to modification only pursuant to section 510 of the Dissolution Act. Furthermore, he argued, even if the JPA authorized retroactive modification, such terms were not binding on the court, which was required to follow section 510 instead.

¶ 9 On June 10, 2014, Mary filed a response to William's motion to dismiss. She did not address the cases that William had cited but asserted that the cases "speak for themselves" such that "no response [was] required." She denied, without elaboration, any allegations that the petition was legally insufficient. She also asserted, without citation to authority, that due to the specific language of the JPA, section 510 of the Dissolution Act did not apply. Moreover, relying on *In re Marriage of Liss*, 268 Ill. App. 3d 919 (1994), Mary construed the JPA as a percentage income child support order. She noted that the August 20, 2009, order for support indicated that a "percentage amount child support" would be paid, arguing that the "proper child support would have been calculated and paid" had William timely tendered his income records. According to Mary, the JPA "expresses 'initial' child support in a dollar amount, but also provides for automatic increases based on a fixed percentage of William's actual income."

¶ 10 On June 16, 2014, William filed a reply in support of his motion to dismiss. He distinguished *Liss* on the basis that the provision in that case required the father to pay "$100 per week or 20% of his net annual income, whichever is greater." *Liss*, 268 Ill. App. 3d at 920. Unlike in *Liss*, he argued, the JPA did not place an affirmative duty on him to adjust his child support obligation without a court order. Responding to Mary's argument that the "percentage amount of child support" box was marked with an "X" on the order of support, William noted

that the box was *not* marked where it stated: "The amount of child support cannot be expressed exclusively as a dollar amount because all or a portion of the obligor's net income is uncertain as to source, time of payment, or amount." William argued that the proper analysis hinged on the plain language of the JPA rather than on which boxes were checked or not checked in the order for support.

¶ 11 On June 19, 2014, William's attorney filed a motion to withdraw as counsel. The motion asserted that William and his counsel agreed that counsel would withdraw following the court's ruling on pending motions.

¶ 12 On June 30, 2014, the court denied William's motion to dismiss and granted counsel's motion to withdraw. The court found that *Liss*, which was cited by Mary, was "the more appropriate case in this circumstance." Yet, the court explained its reasoning as follows:

> "There are some hints and what my job is is to try to ascertain the intention of the parties from the documents. And this [JPA] starts the husband agrees to pay the wife 20 percent of his net income as determined from time to time in accordance with the provisions of the [Dissolution Act.] Clearly that sentence tells me that it is not an automatic calculation that [William] is supposed to make and pay 20 percent of his net income. It requires a court order to reset the child support to comply with the statute and the 20 percent of [William's] net income.
>
> The manner in which that order is to be entered is set forth in the [JPA] with [William] providing W2s or 1099s. The parties then sitting down and recalculating what the 20 percent should be on an annual basis. And after that recalculation is completed the parties shall enter an agreed order modifying the husband's annual child support obligation. That language must have some meaning. And I cannot take the position that

> by failing to provide the tax documents, making it impossible for [Mary] to recalculate what the child support should be on an annual basis, and coming to court and asking that the order be entered, that there is no remedy for that set of circumstances, and that probably the most serious obligation anybody has, which is child support, can therefore be frustrated."

¶ 13 On July 21, 2014, the court held an evidentiary hearing on all of Mary's pending petitions. Mary was represented by counsel and William appeared *pro se*. At the beginning of the hearing, the court advised Mary's counsel not to "jump to the conclusion" that the court had "concluded that the language of this agreement constitutes a requirement of the payment of excess child support." The court added that it was "a little short of the language that [the court would] be absolutely comfortable with." However, the court noted, had William provided his tax returns as he was required to do, Mary "could have looked at them and determined whether or not she should file a motion to increase child support." Although the court addressed other matters at the hearing, only the child support arrearage is at issue in this appeal, so we limit our recitation of the evidence accordingly.

¶ 14 Mary testified that she did not receive William's W-2s or income tax returns until he gave them to her recently in court, even though she had requested the documents on several occasions. Asked whether she understood that child support would always be $600 per month, she responded "[a]bsolutely not," noting that William needed to provide her with W-2s so that they could recalculate the amount. Mary introduced William's tax returns along with a chart that apparently reflected both William's net income during the relevant time periods and a calculation of what 20% of that net income would have been. Mary's counsel also attempted to establish the

2014 support obligation using William's recent pay stubs. These exhibits are not included in the record on appeal.

¶ 15 William testified that Mary "did have options to go after [his] W2s." Specifically, he believed that when he claimed his daughter as a dependent every other year, Mary could have refused to "sign off on [his] taxes" unless he gave her his tax documents. The court then informed William that the order required him to provide the documents and that there was no trade involved. William responded: "According to what I understood, if we were communicable [*sic*] and she didn't go after me, I didn't worry about it." He also explained his belief that when the parties split their retirement accounts following the dissolution of marriage, Mary had received more than the amount to which she was entitled.

¶ 16 At the conclusion of the evidence, the court ruled that it could not calculate an arrearage for 2014, because the income information for that year was not yet available. However, the court found an arrearage in the amount of $3,715.96 "for all of the other years." Accordingly, the court ordered William to pay $200 per month toward "the child support arrearage that [the court found] existed for his failure to provide the W2s and 1099's." The court did not find William to be in contempt of court. The court's written order provided, in relevant portion: "Respondent owes the sum of $3,715.96 to petitioner, as and for retroactive child support. Said amount shall be paid through an income withholding order on a monthly basis, in the amount of $200 per month. Statutory judgment interest shall attach." On August 6, 2014, the court entered an amended order for support that reflected that arrearage.[3]

[3] On July 21, 2014, the court also ordered William to contribute $400 per month for his daughter's college education expenses and entered judgment against William in the amount of $542.68 relating to certain medical expenses. The August 6, 2014, amended order for support

¶ 17 On August 19, 2014, William filed a notice of appeal from the portion of the June 30, 2014, order denying his motion to dismiss. He also appealed from the portion of the July 21, 2014, order establishing the child support arrearage. Later on August 19, 2014, William filed an amended notice of appeal to include the portion of the August 6, 2014, amended order for support pertaining to the child support arrearage.

¶ 18 II. ANALYSIS

¶ 19 A. Jurisdiction

¶ 20 On May 20, 2015, we dismissed this appeal as premature in a summary order because a petition for indirect civil contempt remained pending in the trial court. William subsequently filed a petition for rehearing and supplemented the record with several documents filed in the trial court that established our jurisdiction. Specifically, on June 2, 2015, William voluntarily dismissed his contempt petition. The trial court's order that day included language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). We requested Mary to file a response to the petition for rehearing, but none was forthcoming. On the record before us, William has established the effectiveness of the present notice of appeal, and we have jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Accordingly, we grant William's petition for rehearing and withdraw the previously filed summary order.

¶ 21 B. Child Support Arrearage

¶ 22 William argues that the trial court erroneously denied his motion to dismiss because: (1) the child support provision in the JPA was not a percentage income obligation, but a specific

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reflected those obligations and included the $542.68 judgment as part of William's arrearage. William does not appeal from the court's orders pertaining to college contributions or medical expenses.

dollar amount modifiable only under section 510 of the Dissolution Act; (2) the JPA did not allow a retroactive increase in child support, and, even if it did, the court was bound to follow section 510 instead; and (3) Mary's petition failed to allege a substantial change in circumstances. He raises several other closely related arguments, including that the court's ruling contravened the policies expressed in section 510 and that Mary may seek an increase in child support only from the date that she filed her original petition upon showing a substantial change in circumstances. Additionally, with respect to the court's rulings on both the motion to dismiss and the ultimate judgment regarding the arrearage, William argues that the court improperly found that it could award retroactive child support as compensatory damages for his failure to tender documents reflecting his income.

¶ 23 Mary did not file an appellee's brief. However, she was represented by counsel in the trial court and her positions on the legal issues involved in this appeal are reflected in the record. Additionally, the record is simple and the claimed errors are such that we can easily decide them without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We hold that by the unambiguous terms of the JPA, William was not in arrears on his child support obligation, so the court erred in ordering him to pay $3,715.96 to Mary.

¶ 24 Although William appeals from multiple trial court orders and advances a number of arguments, the ultimate question presented is whether the JPA required him to automatically pay 20% of his net income as child support or whether he was instead required to pay $600 per month until further court order. Resolving this issue requires us to interpret the language of the JPA, and our review is *de novo*. See *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 305 (2002) (construction of a settlement agreement involves an issue of law that is reviewed *de novo*). We

interpret a settlement agreement incorporated into a dissolution decree as we would other contracts. *Turrell*, 335 Ill. App. 3d at 305. In doing so, "[w]e consider the instrument as a whole and presume that the parties included each provision deliberately and for a purpose." *Turrell*, 335 Ill. App. 3d at 305. Where the terms of the agreement are unambiguous, we must ascertain the parties' intent solely from the language of the agreement. *Turrell*, 335 Ill. App. 3d at 305. We will not construe the agreement in a manner that is different from the plain and obvious meaning of the language. *Turrell*, 335 Ill. App. 3d at 305.

¶ 25 Section 505 of the Dissolution Act establishes certain guidelines for setting child support obligations. Where, as in this case, the parties have one child, the minimum support obligation is 20% of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2014). "Net income" is defined in section 505(a)(3) as "the total of all income from all sources," minus specified deductions. 750 ILCS 5/505(a)(3) (West 2014). The court may deviate from the guidelines if it finds that doing so "is appropriate after considering the best interest of the child in light of the evidence." 750 ILCS 5/505(a)(2) (West 2014). Section 505(a)(5) provides:

> "If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case. The final order in all cases shall state the support level in dollar amounts. However, if the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the payor's net income is uncertain as to source, time of payment, or amount, the court may order a percentage amount of support in addition to a specific dollar amount and enter such other orders as may be necessary to determine and enforce, on a timely basis, the applicable support ordered." 750 ILCS 5/505(a)(5) (West 2014).

When a court establishes a percentage obligation, the party receiving the support is entitled to a specified percentage of the other party's income, and he or she may petition the court to enforce the obligation. See *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 41-42 (2008) (where the court had entered an agreed percentage order pursuant to section 505(a)(5), the mother subsequently filed a petition seeking to hold the father in indirect civil contempt of court for failing to pay the amount due under the specified re-computation formula).

¶ 26 However, when a party seeks "to adjust, change or alter the obligations *** subsequent to entry of the final divorce decree," such petition implicates section 510 of the Dissolution Act, which governs modifications. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 16. Modifying a child support obligation generally requires "a showing of a substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2014). Section 510 states that "[e]xcept as otherwise provided ***, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2014).

¶ 27 With these principles in mind, we turn to an analysis of the relevant language of the parties' JPA. As previously stated, the JPA provides:

> "The husband agrees to pay the wife 20% of his net income as determined from time to time in accordance with the provisions of the Illinois Marriage and Dissolution of Marriage Act, for the support of their minor child ***. The amount to be paid initially by the husband to the wife and and [*sic*] for child support shall be <u>$600.00</u> per [*sic*] ~~week / bi-weekly / twice a month /~~ monthly.
>
> The husband shall provide the wife with a copy of all W-2s or 1099s he receives annually on or before April 1, 2010 and for each succeeding year, for purposes of

> providing the wife with information on which the parties can compute and re-calculate the husband's child support obligation on an annual basis. After such re-calculation is completed, the parties shall enter into an Agreed Order modifying the husband's annual child support obligation."

According to William, we should interpret the first part of the first sentence as "merely a recitation of the [Dissolution Act's] statutory guideline for one child," and the second part of the sentence as "acknowledg[ing] that support may be modified in the future in accordance with" section 510. William proposes that the second sentence sets his support obligation as a specific dollar amount, not as a percentage of his income. Furthermore, although he acknowledges that the third sentence obligated him to provide tax documents to Mary every year, William insists that he was not required to actually pay her the re-calculated child support. Instead, he urges, the last sentence of the provision reflects the parties' intent that child support would only be modified upon the entry of a court order. He suggests that if he were required to pay recalculated child support without a court order, the last sentence of the provision would be superfluous.

¶ 28 Reading the provisions of the JPA pertaining to child support as a whole, we agree that the JPA did not establish a percentage income obligation. Instead, it unambiguously established a dollar amount obligation that was subject to future modification according to prescribed terms, but only upon entry of an agreed court order. The first sentence states that "[t]he husband agrees to pay the wife 20% of his net income as determined from time to time in accordance with the provisions of the Illinois Marriage and Dissolution of Marriage Act, for the support of their minor child ***." The reference to the Dissolution Act here clearly implicates the method of calculating "net income" described in section 505(a)(3). See 750 ILCS 5/505(a)(3) (West 2014).

Accordingly, the first sentence establishes that William's obligation would be "determined from time to time," but it does not indicate how frequently or in what manner that determination should be made. The fact that the obligation would be determined from time to time suggests that he was not automatically required to pay Mary 20% of his net income.

¶ 29 The second sentence provides that "[t]he amount to be paid initially by the husband to the wife and and [*sic*] for child support shall be $600.00 per [*sic*] ~~week / bi-weekly / twice a month /~~ monthly." This comports with section 505(a)(5) of the Dissolution Act, which requires orders to "state the support level in dollar amounts." 750 ILCS 5/505(a)(5) (West 2014). Accordingly, the language plainly indicates that William would initially pay Mary $600 per month, which represented 20% of his net income at the time of the agreement in 2009. However, as noted above, the first sentence of the provision contemplated that William's net income would be determined from time to time, but did not contain language explaining exactly what that entails. The final two sentences of the provision provide that explanation.

¶ 30 The third sentence of the provision states: "The husband shall provide the wife with a copy of all W-2s or 1099s he receives annually on or before April 1, 2010 and for each succeeding year, for purposes of providing the wife with information on which the parties can compute and re-calculate the husband's child support obligation on an annual basis." By using the word "shall," this sentence required William to provide his tax information to Mary on an annual basis; William does not dispute this. See *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 398 (2002) ("Further, as the trial court observed, the settlement agreement states that respondent 'shall' turn over such documents to petitioner. 'Shall' connotes a mandatory obligation."). The purpose of William providing those documents to Mary was to enable the parties to "compute and re-calculate the husband's child support obligation on an annual basis."

This clearly refers back to the first sentence of the provision, which established that William would pay Mary "20% of his net income as determined from time to time." Notably, in contrast to William's mandatory obligation to provide tax information, the agreement states that the parties "can" re-calculate the obligation annually, which indicates that William was *not automatically* required to pay Mary 20% of his net income. Accordingly, reading these provisions together, at this point it is apparent that the parties intended that William's support obligation *could* be recalculated each year to remain at 20% of his net income from the prior year.

¶ 31 The last sentence of the provision makes it clear that William was not automatically required to pay 20% of his net income as child support: "After such re-calculation is completed, the parties shall enter into an Agreed Order modifying the husband's annual child support obligation." This indicates that the parties contemplated that William's support obligation would remain the same unless and until a new court order was entered.

¶ 32 The requirement for judicial action distinguishes the JPA from cases where parties intended percentage obligations. See, *e.g.*, *In re Marriage of Baggett*, 281 Ill. App. 3d 34, 35 (1996) (father ordered to pay 25% of his income as child support); *Liss*, 268 Ill. App. 3d at 920 (child support obligation set at "$100 per week or 20% of [the father's] net annual income, whichever is greater"). In *In re Marriage of Steinberg*, 302 Ill. App. 3d 845 (1998), the parties agreed that the husband would pay $850 per month for child support, but included the following language addressing future increases or decreases in his net income:

> "In the event that the Husband's annual income increases, Husband agrees to increase proportionately his support of the minor child so that his child support payments will never be less than 20% of his net annual income. Conversely, in the event that

> Husband's annual income decreases, Wife agrees to accept a proportionate decrease in his support of the minor child, as long as that decrease never goes below 20% of Husband's net annual income or $600.00, whichever is greater. The increase or decrease shall be determined in accordance with the following procedure: The parties shall submit to each other true and accurate copies of each one's Federal Income Tax Returns and all W–2's and 1099's, within 15 days after each has filed said Return. If there has been any increase or decrease in Husband's income during the previous year, child support for that year shall be proportionately adjusted to reflect such change and said adjusted sum shall thereupon be allocated over the balance of the calendar year. Husband will then continue for that year to pay child support based on the increased or decreased income." *Steinberg*, 302 Ill. App. 3d at 849-50.

Unlike in *Steinberg*, any recalculation of William's net income pursuant to the JPA did not automatically change his support obligation in the absence of a court order.

¶ 33 Nor did the JPA track the language of section 505(a)(5) of the Dissolution Act, which governs percentage income orders. Specifically, the JPA did not indicate that "the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the payor's net income is uncertain as to source, time of payment, or amount." 750 ILCS 5/505(a)(5) (West 2014). Furthermore, the JPA did not provide for "a percentage amount of support *in addition to* a specific dollar amount." (Emphasis added.) 750 ILCS 5/505(a)(5) (West 2014); see also *Baumgartner*, 384 Ill. App. 3d at 46 (where the exact amount of income was uncertain, the trial court had the authority to order the father to pay $762 per month for child support, plus 20% of any additional income not accounted for); *In re Marriage of Colangelo*,

355 Ill. App. 3d 383, 385 (2005) (father ordered to pay $1,656, which was 20% of his net monthly income, plus "20% of net of any bonus/commission/overtime received").

¶ 34 In further support of our conclusion that the JPA did not establish a percentage income obligation, we note that the contemplated agreed court orders would function to "modif[y] the husband's annual child support obligation." This implicates section 510 of the Dissolution Act, which governs modifications of child support obligations. In *Petersen*, 2011 IL 110984, the supreme court explained:

> "The plain and ordinary meaning of the verb 'modify' is to 'make a basic or important change in: ALTER.' Webster's Third New International Dictionary 1452 (1993). Black's Law Dictionary also states the word conveys the notion of 'change' or 'alteration' of a term. Black's Law Dictionary 1095 (9th ed. 2009). Given these commonly understood usages of the word 'modify,' we hold that the legislature intended the verb 'modify' as it is used in section 510 to connote any action taken to adjust, change or alter the obligations of one or more of the parties subsequent to entry of the final divorce decree." *Petersen*, 2011 IL 110984, ¶ 16.

Under the JPA, William was required to initially pay $600 per month to Mary pursuant to the August 20, 2009, order for support. However, he might have been required to pay a different amount had the parties performed annual recalculations and sought to enter a new court order. The requirement to pay a new amount would undoubtedly have been a modification as described by the supreme court—albeit a modification effectuated in accordance with previously agreed terms—because it would "adjust, change or alter [his] obligations *** subsequent to entry of the final divorce decree." *Petersen*, 2011 IL 110984, ¶ 16. According to section 510(a) of the Dissolution Act, any modification of William's support obligation could only be retroactive to

the date that Mary filed her petition. 750 ILCS 5/510(a) (West 2014) ("Except as otherwise provided ***, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification."); see also *Petersen*, 2011 IL 110984, ¶ 18 ("Under the plain language of the statute, a retroactive modification is limited to only those installments that date back to the filing date of the petition for modification.").

¶ 35 Accordingly, we hold that under the plain language of the JPA, William was obligated to pay Mary $600 per month as child support until a new order for support was entered requiring him to pay an updated dollar amount that represented 20% of his net income. That agreement was reflected in the August 20, 2009, order for support, which remained in effect until June 6, 2014, when the parties' daughter graduated from high school. There appears to be no dispute that William complied with that court order. Consequently, there was no child support arrearage, and the trial court erred in finding otherwise. We reverse the portion of the trial court's July 21, 2014, order finding that William owed Mary $3,715.96 for retroactive child support. We also reverse the portion of the August 6, 2014, amended order for support reflecting that arrearage.

¶ 36 We note that the amended order for support included as part of William's arrearage the $542.68 judgment relating to medical expenses, which is not at issue in this appeal. Specifically, the beginning balance of the arrearage was set at $4,258.64 ($3,715.96 plus $542.68), and William was ordered to pay $200 toward that arrearage each month from August 1, 2014, to July 1, 2016. We therefore remand the matter to the trial court with directions to enter a new order for support with respect to college contributions and medical expenses that does not include an arrearage for child support.

¶ 37 We note that the trial court was troubled by William's failure to give Mary his income tax documents. Specifically, in denying William's motion to dismiss, the court explained that it could not "take the position that by failing to provide the tax documents, making it impossible for [Mary] to recalculate what the child support should be on an annual basis, and coming to court and asking that the order be entered, that there is no remedy for that set of circumstances, and that probably the most serious obligation anybody has, which is child support, can therefore be frustrated." The court's concern was certainly understandable. By the terms of the JPA, William should have provided the documents to Mary every year, and we do not condone his failure to do so. Nevertheless, Mary's remedy was to timely file a petition for indirect civil contempt to enforce the agreement. See *Ackerley*, 333 Ill. App. 3d at 397 (trial court properly found the respondent to be in indirect civil contempt for failing to provide tax documents in compliance with the parties' marital settlement agreement). Upon obtaining the documents, Mary could have sought to modify William's obligation under the terms specified in the JPA.

¶ 38 Finally, we note that William argues that "Mary may seek an increase in child support for the period between the date of her *pro se* petitions (March 24, 2014) and the date of termination of child support (June 6, 2014)" upon a showing of a substantial change in circumstances. Agreeing with the trial court, he contends that "whether Mary is entitled to an increase for that period will not be known until William has tendered his 2014 W-2's by April 1, 2015." However, according to the JPA, any modification of William's obligation for the period between the filing of the petition and the termination date should have been determined by looking to William's 2013 tax returns. Those documents were introduced into evidence at the July 21, 2014, hearing but are not included in the record on appeal. Mary did not argue in the trial court that William's obligation for this period could be ascertained from the 2013 tax documents. Nor

did she file a cross-appeal or even file a brief in this court. Consequently, her opportunity to request a modification retroactive to the date that she filed her petition has passed. See *ING Bank, FSB v. Tanev*, 2014 IL App (2d) 131225, ¶ 24 (issues not raised in the trial court are forfeited); *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024 (2009) ("In the absence of a cross-appeal, an appellee will not be permitted to challenge or ask the reviewing court to modify a potion of the trial court's order.").

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we reverse the judgment of the circuit court and remand with directions to enter a new order for support with respect to college contributions and medical expenses that does not include an arrearage for child support.

¶ 41 Reversed and remanded with directions.