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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> THE MARRIAGE OF)	Appeal from the Circuit Court
LISA MARIE SBRAGIA,)	of Lake County.
)	
Petitioner-Appellee,)	
)	
and)	No. 09-D-131
)	
SCOTT A. WILLIAMS,)	Honorable
)	Charles D. Johnson,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly held respondent in contempt for violating an order that he pay interim attorney fees: the court did not deny him the minimal due process required, as it allowed him to submit evidence and argument though it rejected as unnecessary his request to testify; and in the absence of a transcript or a sufficient substitute, we could not say that the court erred in its underlying ruling that respondent was financially able to pay, which ruling, in any event, was supported by the documentary evidence.

¶ 2 Respondent, Scott A. Williams, appeals from an order of the circuit court of Lake County finding him in contempt for failing pay interim attorney fees to petitioner, Lisa Marie Sbragia, as ordered by the trial court. Scott contends that the trial court denied him due process when it

denied him the right to be heard at the contempt hearing. Scott further contends that the trial court erred in finding that Scott had the ability to pay the attorney fees. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 30, 2010, the trial court entered a judgment dissolving the parties' three-year marriage. On June 27, 2013, Lisa filed a petition to modify custody and for other relief. Subsequently, various other petitions and motions were filed related to the custody petition, including Scott's competing petition to modify custody and for other relief.

¶ 5 On October 17, 2013, Scott petitioned for interim and prospective attorney fees and costs. According to his petition, Scott was a teacher earning a yearly salary of \$62,697. He had paid his attorneys \$11,090 since retaining them and currently owed \$9,362.90. He had paid former counsel \$5,250 and currently owed \$7,000. He claimed he lacked funds to pay his counsel. He further alleged that Lisa had refused to agree to a custody evaluation where the cost would be split, enrolled their child in therapy against his wishes, and enrolled their child in extracurricular activities without informing him. He alleged that Lisa refused to settle the issues by agreement and rejected a proposed agreed order. Scott claimed that Lisa's noncompliance with court orders and intent to litigate the matter fully had resulted in additional fees. Scott's financial affidavit established his monthly gross income at \$4,949.98, with a monthly net income of \$1,712.84. Scott claimed to have total monthly living expenses of \$4,528.31, which left him a monthly deficit of \$2,816.47. He further alleged that Lisa was gainfully employed and that her wealthy parents were financially supporting her litigation against Scott.

¶ 6 Lisa filed a response. In her response, Lisa denied the majority of Scott's allegations. Specifically, she denied Scott's allegations that her parents were wealthy and that they were

financially supporting her litigation. She denied that she had access to substantial assets and that she received money from her parents.

¶ 7 On November 12, 2013, Lisa petitioned for interim and prospective attorney fees and costs. According to her petition, she was an eyelash stylist earning \$30,000 per year. She alleged that Scott had voluntarily reduced his hours at work and that prior to doing so he had earned \$82,810 per year. She had paid her attorneys \$26,502 in fees and owed an additional \$7,796. She had paid an expert a \$3,000 retainer fee. She alleged that she had had to defend against Scott's petitions and motions regarding parenting issues that could have been settled in mediation. She claimed that Scott had refused to resolve matters amicably and without litigation. She further alleged that Scott's parents "possess ample wealth and assets" and funded his litigation expenses. Lisa's financial affidavit established her monthly gross income at \$1,221 (plus \$860 in child support) with a monthly net income of \$1,769. Lisa claimed to have total monthly living expenses of \$5,620, plus a monthly car payment of \$280 and a monthly legal-fee payment of \$1,000, which left her a monthly deficit of \$5,131.

¶ 8 Scott filed a response in which he denied that he voluntarily reduced his hours and pay. He did not deny that he worked part-time earning \$62,697, and he did not deny that his previous W2 reflected gross income of \$82,810. Scott also admitted that his parents helped pay his attorney fees.

¶ 9 On February 25, 2014, the trial court conducted a nonevidentiary hearing on the petitions under section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1) (West 2014)). The record does not contain a transcript from the hearing. A bystander's report, which was approved by the trial court, provided:

“The attorneys for each party argued what was contained in their respective interim attorney-fee petitions and responses to one another’s fee petitions. In addition, both parties argued that their respective Local Rule 11.02 Financial Affidavits were correct and accurately reflected their respective financial situations.”

The report further provided that “[t]he Court’s findings and rulings of that day (02/25/14) were then memorialized in the written order entered on that day (and incorporated herein by reference) and the matter was concluded.”

¶ 10 Following the hearing, the trial court denied Scott’s petition and granted Lisa’s petition, ordering Scott to pay \$17,500 in fees within 60 days. The court’s order provided that “Lisa does not have the ability to pay Scott’s attorney and expert fees and *** that Scott does have the ability to pay his own fees.” The court further found that “Scott has the ability to pay Lisa’s interim attorney fees and expert fees and Lisa does not have the ability to pay these fees.”

¶ 11 Scott filed a motion for reconsideration, which the trial court denied, stating:

“The Court considered all of the relevant factors that were presented to it by means of the 11.02 affidavits, the arguments of counsel at the time, and the relevant case law and statutory factors then appertaining, and now still appertaining, and finds that its ruling of February 25th was consistent with the law and the facts. Therefore, the motion to reconsider is denied.”

¶ 12 On July 21, 2014, Lisa petitioned for a rule to show cause, based on Scott’s failure to pay the \$17,500. Scott filed a response, alleging that he lacked the ability to pay.

¶ 13 A hearing took place on August 28, 2014. At the outset of the hearing, Scott’s counsel presented the trial court with Scott’s updated financial statement, Scott’s last two pay stubs, and Scott’s bank statements. Counsel told the court that he wished to have Scott testify to his present

financial condition. The court asked to see the documentary evidence. Counsel explained that the changes to the last financial statement (which had been presented in January) reflected debts that Scott had incurred. Counsel also explained that pre-tax funds were deducted from Scott's paychecks to cover medical expenses for himself and the parties' son. The documents were shared with Lisa's counsel. The court inquired: "Anything else you wish to present to the Court? I don't really need your client's testimony to explain to me what I saw." Counsel responded by arguing that Scott "filed bankruptcy two years ago" and "has an inability to obtain equity lines, credit cards, or any other credit whatsoever." Counsel argued that Scott had not paid him in months and that counsel's bill exceeded \$18,000. Counsel argued that Scott had the parties' son for more time than Lisa, which impacted "his ability to maintain any kind of assets." Counsel argued that Scott "takes no vacations." Counsel also argued that Scott "basically dines out at McDonald's and Burger King" and that the court could see that from Scott's bank statements.

¶ 14 After hearing arguments from counsel and considering the evidence presented, the trial court found Scott in contempt, stating:

"[T]he Court does find [Scott] in contempt and find[s] that there's been enough time to pay more than \$500, if not the entire amount, based on the Court's prior findings.

I'm going to sentence [Scott] to six months in the Lake County Jail work release program. That sentence will be stayed, as is the Court's policy in all such matters, almost all such matters. The purge amount will be set at \$3,500."

¶ 15 Scott timely appealed.

¶ 16 **II. ANALYSIS**

¶ 17 Scott argues that the trial court erred in finding him in indirect civil contempt of court. According to Scott, he was denied due process when he was not given the opportunity to testify

and explain how he was not willfully in noncompliance with the underlying order. He argues further that, if he was afforded minimal due process at the contempt hearing, the trial court abused its discretion in finding that Scott had the ability to pay \$17,500 in fees.

¶ 18 Before addressing the merits of this appeal, we observe that Lisa has not filed a brief in this court. However, because the record is simple and the issues can be decided without the aid of an appellee's brief, we will decide the merits of this case. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 19 A party's failure to pay interim attorney fees as ordered is *prima facie* evidence of contempt. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 332 (2001). Once that *prima facie* case is shown, the respondent has the burden "to prove that the failure to make *** payments was not willful or contumacious and that there exists a valid excuse for his failure to pay." *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 (2008). The contemnor in an indirect-civil-contempt proceeding must be afforded due process of law. *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 664 (2006). However, only minimal due process is required for such proceedings, consisting of notice and an opportunity to be heard. *In re Marriage of Cummings*, 222 Ill. App. 3d 943, 948 (1991). "The power to enforce an order to pay money through contempt is limited to cases of wilful refusal to obey the court's order." *Barile*, 385 Ill. App. 3d at 758 (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984)). We will not reverse the court's finding of contempt absent an abuse of the court's discretion. *Id.* at 759.

¶ 20 We first address Scott's due-process claim. According to Scott, "the trial court *actively* blocked [him] from being heard at a meaningful time and in a meaningful manner by explicitly denying him the right to take the stand, testify and defend himself from the charge that he was in wilful [*sic*] non-compliance with the underlying [order]." (Emphasis in original.) The transcript

does not support this bold assertion. Although the trial court stated that it “[did not] really need [Scott’s] testimony to explain to [it] what [it] saw,” Scott goes too far in asserting that the trial court “*actively* blocked [him]” or “explicitly den[ied] him the right to take the stand.” (Emphasis in original.) In any event, it is clear that Scott was given ample opportunity to be heard. Scott filed a response to the petition, which the court considered. Scott presented documentary evidence, which the court examined. Moreover, Scott advised the court of the matters that he would testify to and raised all of his arguments orally before the court. Given the above, we find that Scott was afforded the requisite due process.

¶ 21 Scott next argues that, if he was afforded minimal due process at the contempt hearing, the trial court’s finding of contempt “had no evidentiary basis.” We disagree. As noted above, a party’s failure to pay interim attorney fees as ordered is *prima facie* evidence of contempt. *Petersen*, 319 Ill. App. 3d at 332. Here, there was evidence that Scott failed to pay as ordered. Once that *prima facie* case was shown, Scott had the burden “to prove that the failure to make *** payments was not willful or contumacious and that there exists a valid excuse for his failure to pay.” *Barile*, 385 Ill. App. 3d at 759. The trial court considered Scott’s evidence and heard counsels’ arguments and thereafter concluded “that there’s been enough time to pay more than \$500, if not the entire amount, *based on the Court’s prior findings.*” (Emphasis added.).

¶ 22 Nevertheless, Scott claims that the trial court’s prior finding, *i.e.* that he had the ability to pay the interim fees, was an abuse of discretion. Although a court order awarding interim attorney fees under section 501(c-1) of the Act is generally not an appealable order, when a party appeals from a contempt sanction imposed for violating such an order, the contempt order is final and appealable and presents to the reviewing court the propriety of the underlying order. *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45.

¶ 23 The trial court granted Lisa's fee petition based on section 501(c-1) of the Act, which permits a trial court, while a case remains pending, to assess attorney fees and costs in favor of the petitioning party's counsel. 750 ILCS 5/501(c-1) (West 2012). Section 501(c-1) permits an interim fee award upon the trial court's findings that the petitioning party lacks sufficient funds to adequately participate in the litigation and that the party from whom fees are requested has sufficient ability to pay reasonable amounts. 750 ILCS 5/501(c-1)(3) (West 2012). Except for good cause shown, proceedings regarding interim fee awards shall be nonevidentiary, summary, and expeditious. *Kaufman, Litwin & Feinstein v. Edgar*, 301 Ill. App. 3d 826, 836 (1998). Section 501(c-1)(1) provides that, in assessing interim fees, the court shall consider:

- “(A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party;
- (B) the needs of each party;
- (C) the realistic earning capacity of each party;
- (D) any impairment to present earning capacity of either party, including age and physical and emotional health;
- (E) the standard of living established during the marriage;
- (F) the degree of complexity of the issues, including custody, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both;
- (G) each party's access to relevant information;
- (H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and

(I) any other factor that the court expressly finds to be just and equitable.” 750

ILCS 5/501(c-1)(1) (West 2012).

We review an award of interim attorney fees for an abuse of discretion. *In re Marriage of Patel*, 2013 IL App (1st) 122882, ¶ 37. “An abuse of discretion occurs only where the trial court’s decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.” *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 24 Scott argues that it was unreasonable for the court to conclude that he had the ability to pay the fees and that Lisa did not. According to Scott, Lisa never challenged Scott’s financial affidavit nor did the trial court find it incredible. He also argues that Lisa’s financial affidavit was “objectively unreliable” as “[c]ommon sense and logic dictates that she could not be able to maintain such expenses without some additional, undisclosed source of income, or without incurring substantial debt.” He maintains that her “allegations at the fee hearing [that she had expended assets received from the parties’ divorce to support herself] were objectively and demonstrably untrue.”

¶ 25 As noted above, Scott did not provide us with a transcript of the hearing on the fee petitions. Thus, we do not know whether any challenges were made to either party’s financial affidavit or whether the court deemed either financial affidavit incredible. We do not know whether the court raised any questions concerning the affidavits or the allegations made in the petitions. We do not know the full extent of counsels’ arguments. Moreover, we do not know the reasoning behind the court’s ruling. We do not know which of the statutory factors the court considered. Although Scott provided us with a bystander’s report, it sheds no light on the court’s reasoning. The court’s order is similarly unhelpful. Scott, as the appellant, had the burden of providing a sufficiently complete record of the proceedings at trial to support his claims of error.

See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). 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 the law and had a sufficient factual basis. *Id.* at 392. Any doubts that arise from the incompleteness of the record will be resolved against the appellant. *Id.* Without the transcript of proceedings, we cannot properly evaluate Scott's claim that the trial court abused its discretion in ordering him to pay interim fees.

¶ 26 In any event, based on the petitions and supporting documentation, we cannot say that no reasonable person would take the view adopted by the trial court. Although the financial affidavits revealed that both parties had monthly expenses that exceeded their monthly incomes, the affidavits also showed that Scott, while working part-time, earned more than twice as much as Lisa. In addition, Scott admitted in his response to Lisa's petition that his parents were assisting him in the funding of his litigation. In contrast, Lisa denied receiving financial assistance. Based on the available evidence (and the absence of a transcript establishing otherwise), we cannot say that the trial court's ruling was an abuse of discretion.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Lake County finding Scott in contempt.

¶ 29 Affirmed.