NOTICE
Decision filed 10/07/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130055-UB

NO. 5-13-0055

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

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JULIE L. SIMMS,	)	Perry County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 08-D-4
	)	
SAMUEL S. SIMMS,	)	Honorable
	)	James W. Campanella,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Schwarm[1] concurred in the judgment.

ORDER

¶ 1 *Held*: The issue of the parties' alleged waiver of child support stemmed from a March 2011 consent order approving a stipulated agreement. That order was a voidable final order. Because the appellant did not file a section 2-1401 petition to vacate, the appellant's 2012 motions attacking the order as void based on violation of Illinois public policy were not properly before the court and could not be decided. The appellant claims that a pleading is invalid for lack of an attorney's signature as required by Supreme Court

[1]Justice Schwarm was substituted on the panel for Justice Wexstten upon the latter's retirement. Justice Schwarm has read the briefs and has listened to the tape of oral argument.

> Rule 137, but the issue is waived because the appellant did not argue the issue in the trial court. The trial court's finding of contempt is not contrary to the manifest weight of the evidence and we affirm.

¶ 2 Julie and Samuel divorced in 2008. The divorce judgment incorporated a marital settlement agreement and a joint parenting agreement. At issue in this appeal is the trial court's refusal to set aside a stipulation that involved a reduction of child support and contained a statement that any child support arrearage was considered current as of the date of the stipulation. In the trial court, Julie argued that the stipulation should be set aside because it constituted a violation of public policy. She contended that there was in fact a child support arrearage at the time of the stipulation and that she did not have the right to waive the past-due support. The trial court held that there was no public policy violation, and denied Julie's request to set aside the court's order. Julie appeals from this public policy ruling and also raises a new argument about the stipulation. She claims that because no attorney signed the stipulation (the stipulation was only signed by Julie and Samuel), the pleading violates Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) and is therefore a void pleading. The trial court also found that Julie was in contempt of court for failing to reimburse Samuel for his one-half share of the equity in the former marital home upon receipt of her awarded share of his pension benefits. Julie was given the ability to purge the contempt by paying $4,000 to Samuel in lieu of spending 30 days in jail. Julie also appeals from this order. We vacate the public policy portion of the trial court's order and affirm the contempt order.

¶ 3 FACTS

¶ 4 We first look at the stipulation and the consent order entered by the trial court in March 2011. Samuel had lost his job and he was no longer able to pay $1,000 per month in child support as originally ordered. While both parties had attorneys when the trial court granted their divorce in 2008, no attorney signed the stipulation filed in the court. However, Samuel and Julie both signed the stipulation and their signatures were notarized. Key provisions in the stipulation are as follows:

> "The parties acknowledge that [Samuel] has a child support arrearage in the above cause. The parties agree and acknowledge that [Julie] shall be entitled to claim all three of the parties' minor children as dependents for Federal and State income tax purposes in the year 2009. Thereafter, the parties shall claim the minor children as dependents for Federal and State income tax purposes as provided in the Judgment of Dissolution of Marriage. The parties further acknowledge and agree that the terms of this Stipulation are entered into as a full and complete satisfaction of [Samuel's] child support arrearage, including any interest on said child support arrearage, and that upon the entry of an Order approving this Stipulation [Samuel] shall be deemed current on his child support obligation as of the date of entry of said Order.
>
> *** The parties agree and acknowledge that [Samuel] has experienced a significant reduction in his income through no fault of his own. *** Accordingly, the parties agree that [Samuel] shall pay to [Julie] as child support the sum of $125.00 per week effective upon the entry of an Order approving this Stipulation."

The consent order further stated that pursuant to the terms of the stipulation that Samuel "is hereby deemed current in his child support obligation." The stipulation and the consent order contain no reference to any specific amount of back child support owed.

¶ 5 On January 9, 2012, about 10 months after the court entered the consent order, Julie filed a petition to modify child custody, visitation, and support. The petition acknowledged that Julie received the stipulation and consent order dated March 2011. Julie claimed that the stipulation was one that the parties had attempted to negotiate in March 2010, but could not come to an agreement. Julie denied appearing before a notary and signing the stipulation in March 2011. The petition asked the trial court to rescind the March 2011 consent order and to reinstate the original child support and all arrearages owed.

¶ 6 In February 2012, Julie filed a motion seeking to amend her petition and attached an affidavit in which she denied signing the stipulation. The court granted the motion to amend.

¶ 7 Samuel filed a petition for rule to show cause on the basis that Julie received $14,484 of his pension benefits and failed to comply with the dissolution judgment requirement that she pay him his one-half share of the equity in the marital home. He asked the court to hold Julie in contempt of court for not complying with the 2008 dissolution judgment.

¶ 8 Samuel also filed a counterpetition to modify child support, alleging a substantial change in circumstances since the court entered the March 2011 consent order. He claimed that his level of income had substantially decreased.

¶ 9 The court held a hearing on all motions. Julie testified that the reduced amount of child support was $500 per month since March 2011, and that Samuel had paid that amount, but was not always timely in his payments. She acknowledged that pursuant to the agreement contained within the consent order, Samuel was current on his child support.

¶ 10 The court entered an order on all pending motions. The trial court denied Samuel's petition to modify his child support amount and ordered him to continue to pay the amount ordered in the consent order–$125 per week. The court also denied Julie's petition to increase child support. The court noted that both parties acknowledged that child support was current as of October 29, 2012. The trial court allowed Julie's request for medical bills in the amount of $340. It granted the rule to show cause, holding Julie in contempt, sentencing her to 30 days' imprisonment with the ability to purge herself from the finding of contempt by paying $4,000 to Samuel within 30 days of the order.

¶ 11 After this order was entered, Julie terminated the services of her attorney and hired a new attorney. Julie filed a motion for reconsideration or alternatively for a setoff. She alleged that Samuel owed in excess of $20,000 in child support as of the date of the order, and that the court's order was factually wrong in that it indicated that Samuel was current on child support. She complained that the trial court held no hearing on her ability to pay $4,000 to Samuel, and that there was no evidence to support the trial court's finding of intentional or contumacious conduct warranting the order of contempt.

¶ 12 Julie filed a petition for rule to show cause asking the trial court to hold Samuel in contempt because of his child support arrearage. Julie also filed a motion to strike and to

set aside the March 2011 stipulation, alleging that she agreed to waive Samuel's arrearage on the advice of her attorney but that doing so violated public policy.

¶ 13 The trial court entered its order in January 2013 resolving all outstanding motions. Upon review of the original stipulation, the court stated the following about the public policy argument:

> "[T]he Court *** finds that the language of the stipulation is not such that public policy was violated. No details of the arrearage, i.e. the time period of the arrearage, the amount of the arrearage, etc. are stated in the stipulation. While it can be argued that the parties agreed to 'cancel' an arrearage in exchange for tax exemptions, there is no clear language to that effect.
>
> *** The corresponding consent order of March 10, 2011, does not refer to any arrearage being set aside or vacated, but simply recites that the respondent 'is hereby deemed current in his child support obligation to petitioner' ***. This Court does not find that such order violates public policy."

With respect to the contempt order, the court stated as follows:

> "Petitioner admitted not following the Court order as to the appraisal, receiving the annuity, and failing to return any portion of it as respondent's equitable share in the real estate. *** The Court found no reason to determine the petitioner's ability to pay given the petitioner's admission that she had received the substantial annuity and had failed to pay the respondent's equitable share. The Court continues to find that no inquiry was needed to determine the petitioner's ability to

> pay as the essence of the matter was an outright admission by the petitioner of a direct and willful violation of a previous Court order."

The court again ordered Julie to pay Samuel $4,000 within 10 days or report to the Perry County jail to serve her 30-day sentence.

¶ 14 Julie filed a motion to reconsider, continuing to argue that the stipulation violated public policy and constituted a nullity. The court denied the motion. Julie appeals.

¶ 15 ISSUES, LAW AND ANALYSIS

¶ 16 Violation of Illinois Public Policy

¶ 17 On January 24, 2013, the trial court held that the stipulation was not in violation of Illinois public policy regarding waiver of child support. On appeal, Julie claims this ruling was erroneous.

¶ 18 When this case was initially before this court, we did not address Julie's claim that the stipulation violated Illinois policy. We filed our order on June 19, 2014. The Illinois Supreme Court exercised its supervisory authority and directed us to amend our judgment to address Julie's public policy argument.

¶ 19 *Procedural Background*

¶ 20 A recitation of the proceedings below is helpful in order to unravel the procedural morass we are faced with on review. The consent order at issue, along with the agreement, was entered on March 10, 2011. Julie's first postjudgment pleading was filed 10 months later, in January 2012, by her then attorney, Mary West. The pleading is titled "Petition to Modify Child Custody, Visitation and Support." In this pleading, Julie's relevant allegations to the issue before us are, that she received the stipulation and

consent order on March 15, 2011; that the documents purportedly signed by her and notarized on March 10, 2011, were drafted one year earlier in March of 2010; and that she did not appear before a notary on March 10, 2011. She further alleges that the terms of the stipulation and consent order are not acceptable to her.

¶ 21 Samuel filed a section 2-615 motion to dismiss the petition as insufficient as a matter of law. 735 ILCS 5/2-615 (West 2010). He argued that despite the pleading's title, "Petition to Modify Child Custody, Visitation and Support," Julie was seeking to vacate the consent order entered March 2011, as Julie had prayed that the consent order be rescinded. That, assuming Julie's intent was to seek relief from judgment under section 2-1401, her petition was totally lacking as she failed to attach any affidavit or provide any appropriate showing of matters not of record. And further, in adherence to Illinois law, she failed to plead (1) the existence of a meritorious claim or defense; (2) due diligence in presenting the claim or defense to the court in the original action; and (3) due diligence in filing the section 2-1401 petition.

¶ 22 Julie filed an amended petition in February 2012, by agreement of counsel. However, this petition really only varied from the original in that it contained an affidavit which included some of the previous allegations. Notably, it did not make mention of section 2-1401 nor did it make mention of a meritorious claim or defense or assert any showing of due diligence. Again, Samuel responded with a section 2-615 motion and a section 2-613 motion to dismiss. In response, Julie voluntarily filed a second amended petition in June 2012. There was basically no change regarding the consent order issue.

¶ 23 Finally, in July 2012, Julie voluntarily filed a third amended petition, which is the last petition filed by attorney West. No hearings were ever held regarding the original or the first two amended petitions. Notably, Julie's third amended petition titled "Petition to Modify Child Custody, Visitation and Support" did not attack the validity of the March 2011 stipulation and consent order. It also did not allege an arrearage in child support payments. Instead, it alleged a substantial change in circumstances form the March 2011 order that warranted a modification–increasing child support and modifying custody and visitation. In response, Samuel filed a "Counter-Petition to Modify Child Support" and a rule to show cause related to monies he alleged Julie owed him pursuant to the 2008 marital settlement agreement. A hearing was held on October 29, 2012, as to all issues, excepting visitation and custody that were set for review on another date. The record reflects that Julie testified *unequivocally* that there was *no child support arrearage* and that *Samuel was current on his support obligation*. The record also reflects that Julie's attorney stated in open court that Samuel was current with his child support payments. Both parties presented testimony in the form of direct and cross-examination–Julie in support of her petition to increase child support and Samuel in support of his petition to decrease child support. The court entered its order on October 30, 2012. The court denied Julie's request to increase child support as well as Samuel's request to reduce child support; ordered Samuel to continue paying support at the rate of $500 per month; ordered Samuel to reimburse Julie $340 for unpaid medical bills; and found Julie in willful contempt for failure to pay $4,000 to Samuel in violation of the 2008 marital

settlement agreement and sentenced her to 30 days in jail with the ability to purge the contempt.

¶ 24 Next, on November 27, 2012, Julie retained new counsel, John Womick, who shortly thereafter filed several pleadings–"Motion for Reconsideration and in the Alternative a Motion for Set-off"; "Motion for Stay"; "Motion to Strike and Set Aside Stipulation"; and "Petition for Rule to Show Cause." The motions generally alleged that the parties entered into a stipulated agreement waiving past-due child support on March 10, 2011; that the waiver of child support was on the advice of counsel; that Samuel was in arrears in child support in excess of $20,000; and that the waiver of child support violated Illinois public policy. Julie prayed that the stipulation be stricken; that Samuel be ordered to pay past-due child support and attorney fees; and that the court stay the enforcement of the contempt order against Julie.

¶ 25 A hearing was held on January 22, 2013. The court entered its order on January 24, 2013, denying all of Julie's motions and, in relevant part, finding that the stipulation and consent order did not violate public policy. This appeal followed.

¶ 26 *Analysis*

¶ 27 Julie has taken the position that the court's consent order was void because the stipulation it was based upon was against public policy. In so arguing, Julie fails to make the distinction between a void and a voidable order. This is a distinction with a difference, as it pertains to jurisdiction and thus affects our ability to review the public policy issue. " '[W]hether a judgment is void or voidable presents a question of jurisdiction.' " *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 532, 759 N.E.2d 509, 520

(2001) (quoting *People v. Davis*, 156 Ill. 2d 149, 155, 619 N.E.2d 750, 754 (1993)). A void order is one where jurisdiction is lacking as to the parties or the subject matter. *Id.* at 530-31, 759 N.E.2d at 519 (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174, 692 N.E.2d 281, 284 (1998)). " 'If jurisdiction is lacking, any subsequent judgment of the court is rendered void ***.' " *Id.* at 531, 759 N.E.2d at 519 (quoting *In re Marriage of Mitchell*, 181 Ill. 2d at 174, 692 N.E.2d at 284 (citing *Davis*, 156 Ill. 2d at 155-56, 619 N.E.2d at 754)). If the record does not show a jurisdictional infirmity, the judgment is voidable, not void. See *In re Marriage of Mitchell*, 181 Ill. 2d at 174, 692 N.E.2d at 284; *Steinbrecher*, 197 Ill. 2d at 530-31, 759 N.E.2d at 519; *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32, 32 N.E.3d 553. We believe there can be no dispute that the circuit court here had jurisdictional authority to enter the consent order. Nor does Julie argue that personal or subject matter jurisdiction was lacking. If the judgment was entered in error as Julie contends–that it was void as against public policy–it still did not divest the court of jurisdiction to enter the consent order. *Steinbrecher*, 197 Ill. 2d at 530, 759 N.E.2d at 519 (citing *Davis*, 156 Ill. 2d at 156, 619 N.E.2d at 756). We find the order voidable, not void.

¶ 28 Judgments under the Illinois Marriage and Dissolution of Marriage Act (Act) are accorded the same degree of finality as judgments in other proceedings. 750 ILCS 5/510(a) (West 2010); *King v. King*, 130 Ill. App. 3d 642, 654-55, 474 N.E.2d 834, 841-42 (1985). Section 505(d) of the Act specifically addresses child support orders: "Any new or existing support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder ***.

Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced." 750 ILCS 5/505(d) (West 2010).

¶ 29 We are constrained in our review by the procedural posture of the issues before us. Julie and Samuel's consent order entered in March 2011 was a final judgment and subject to appeal. *King*, 130 Ill. App. 3d at 654-55, 474 N.E.2d at 841-42. No direct appeal was taken. When Julie's third amended postjudgment petition came before the court in October 2012, it was in the form of a motion to modify and did not attack the March 2011 consent order. The court retained jurisdiction to hear the motion to modify and entered its October 30, 2012, order denying same. 750 ILCS 5/510(a) (West 2010). Importantly, Julie's pleadings filed by new counsel in November and December 2012, despite being partly characterized as motions to reconsider, primarily attacked the stipulation and consent order entered in March 2011, instead of the issues the court decided in its October 2012 order.

¶ 30 While a void judgment can be attacked at any time, as a general rule, a party seeking relief from final orders or judgments after 30 days from entry must proceed under section 2-1401(a) of the Code of Civil Procedure. *In re Marriage of Himmel*, 285 Ill. App. 3d 145, 150-51, 673 N.E.2d 1140, 1144 (1996); *King*, 130 Ill. App. 3d at 655, 474 N.E.2d at 842. A section 2-1401 motion is a statutory procedure by which a court may vacate a judgment after 30 days but not after 2 years from entry. 735 ILCS 5/2-1401 (West 2010). Illinois case law requires that a petitioner plead specific factual allegations showing the existence of a meritorious claim or defense and due diligence in presenting the claim to the circuit court in the original action and in the filing of the section 2-1401

petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21, 499 N.E.2d 1381, 1386 (1986). Most notably, none of the pleadings filed by either of Julie's counsel bears any resemblance in form or substance to a section 2-1401 petition for relief from judgment.

¶ 31 The public policy issues raised in Julie's appeal regarding the forgiveness of child support arrearage are all based on the circuit court's March 2011 order. That judgment was voidable, not void. A voidable order or judgment remains good until proven void in a proper proceeding. *King*, 130 Ill. App. 3d at 655, 474 N.E.2d at 842; see also 2 Gitlin on Divorce: A Guide to Illinois Matrimonial Law, 3d ed. § 16B-9 (2008). Relief from the March 2011 consent order lay in filing a section 2-1401 petition. Because Julie did not file a section 2-1401 petition, her attack on the March 2011 consent order was not properly before the court when seeking relief from the court's October 2012 order.

¶ 32 While Julie's appeal may raise genuine public policy issues, we are precluded from addressing those issues. *LVNV Funding*, 2015 IL 116129, ¶ 40, 32 N.E.3d 553. We make no determination as to the underlying merit of her attacks on the consent order of March 2011, apart from stating that any error that would justify setting aside the March 2011 order under section 2-1401 must also establish the other requirements of section 2-1401, such as due diligence.

¶ 33 Violation of Supreme Court Rule 137

¶ 34 Julie alternatively alleges that the stipulation violated Supreme Court Rule 137 and is therefore void.

¶ 35 Supreme Court Rule 137 mandates that:

> "[e]very pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** If a pleading, motion, or other document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

In making this argument, Julie contends that an attorney represented her when she signed the stipulation that was filed with the court. Her current attorney argues that the matter of who represented Julie and Samuel is a mystery. We find that Julie's argument is somewhat disingenuous. The answer to the "mystery" lies with Julie and Samuel. Julie and Samuel can inform their attorneys how the stipulation came to be signed and filed.

¶ 36 Furthermore, the record does not absolutely support her claim that she had counsel at that time. In pleadings, Julie denied that she ever signed the document. She filed an affidavit claiming that she did not sign the document. She acknowledged that she was aware of the stipulation and that it was created at a time when the parties themselves were attempting to work out the issue of child support after Samuel lost his job. By the time the court held its hearing on all pending motions, Julie stopped claiming that she did not sign the stipulation. She testified that the original child support award was decreased in March 2011, and that she had received all child support since that date pursuant to the lowered amount. Assuming that Julie and Samuel were unrepresented at the time that they signed the stipulation, there was no attorney who could have signed the pleading, and therefore the pleading would not have been in violation of Supreme Court Rule 137.

¶ 37 However, we do not need to make assumptions about whether or not the parties had legal counsel at that time. Julie did not make the Supreme Court Rule 137 argument to the trial court and she cannot now raise the issue on appeal to this court for the first time. Issues that were not presented in the trial court are not properly preserved for review on appeal. *Tippet v. Tippet*, 65 Ill. App. 3d 1018, 1020, 383 N.E.2d 13, 14 (1978); *In re Marriage of Schneider*, 214 Ill. 2d 152, 172, 824 N.E.2d 177, 189 (2005).

¶ 38 In *In re Marriage of Schneider*, the former wife waived spousal maintenance in the trial court and sought a larger percentage of the marital assets. *Id.* 214 Ill. 2d at 172, 824 N.E.2d at 188. On appeal, she asked the court to find that the trial court abused its discretion in not *sua sponte* declaring her waiver of maintenance to be unconscionable. *Id.* The supreme court declined the invitation stating that she could not raise an issue on appeal that she did not previously raise in the trial court. *Id.* (citing *Daniels v. Anderson*, 162 Ill. 2d 47, 58, 642 N.E.2d 128, 133 (1994)). The supreme court explained its decision, stating: "To allow a party to change his or her trial theory on review would weaken the adversarial process and the system of appellate jurisdiction, and could also prejudice the opposing party, who did not have an opportunity to respond to that theory in the trial court." *Id.*

¶ 39 Having failed to raise the Rule 137 issue in the trial court, Julie cannot raise the issue on appeal.

¶ 40 Contempt

¶ 41 Julie next argues that Samuel failed to meet his burden of proof on his petition to hold Julie in contempt, and that therefore the order of contempt must be reversed.

¶ 42 The contempt order in this case was indirect civil contempt. Civil contempt is coercive in nature–to obtain compliance with the court's order. *In re Marriage of Depew*, 246 Ill. App. 3d 960, 966, 616 N.E.2d 672, 677 (1993). Indirect contempt refers to contempt that occurs outside of the courtroom. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107, 855 N.E.2d 953, 961 (2006). Civil contempt is not considered a punishment. *Id.* Civil contempt has two fundamental requirements. First, the contemnor must have the ability to do what the court asked, and second, after complying with the order, the trial court cannot impose any further sanctions. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279, 860 N.E.2d 539, 547 (2006).

¶ 43 The party seeking the contempt order has the burden to prove that there was an obligation pursuant to a court order and that the alleged contemnor did not comply with the court order. *In re Marriage of Hartian*, 222 Ill. App. 3d 566, 570, 584 N.E.2d 245, 248 (1991). After the moving party makes his *prima facie* case, the burden of proof shifts to the alleged contemnor. *Id.* The alleged contemnor must establish that his noncompliance with the trial court's order was not willful–that he has a valid reason for failing to comply with the court's order. *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480, 688 N.E.2d 864, 871 (1997). We will not overturn a trial court's finding of contempt unless that finding is contrary to the manifest weight of the evidence. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108, 855 N.E.2d 953, 961 (2006); *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 628, 579 N.E.2d 432, 439 (1991).

¶ 44 Samuel claimed that he had not received his one-half share of the equity of the home. The marital settlement and joint parenting agreement incorporated into the

judgment of dissolution of marriage contained the following reference to the division of equity in the former marital home:

> "[Julie] shall have the marital home appraised and if there is any equity in the home; the parties agree that [Samuel]'s interest shall be subtracted from the marital portion of the annuity in paragraph F."

At the hearing held on October 29, 2012, Julie testified that she received the full amount of Samuel's retirement benefits to which she was entitled ($14,484). She also admitted that she had never obtained an appraisal on the former marital home, and that she did not subtract any amount from the retirement benefits to represent Samuel's equity share.

¶ 45 Based upon this evidence and testimony, we conclude that Samuel made his *prima facie* showing that Julie had an obligation relative to the judgment, that upon receipt of the $14,484, Julie had funds to pay the equity amount, and that she did not comply with that obligation in the four years since the court ordered her to do so.

¶ 46 Julie made no attempt to justify her failure to obtain an appraisal and to make payment to Samuel for what the court awarded him. Julie did not give any defense to her disregard of the court's order in pleadings or in her testimony at the October 29, 2012, hearing. She advised the court that she believed that she owed nothing because she agreed to take a lower percentage of Samuel's pension than she was entitled to receive. The trial judge did not recognize Julie's claim that she owed Samuel no compensation for his share of the equity. The court cited the marital settlement agreement Julie signed while represented by counsel that clearly required the payment. After hiring a new

attorney, Julie filed a motion asking the court to reconsider its finding of contempt. In this motion, Julie stated that she had no funds with which to pay the $4,000.

¶ 47 There are situations in which poverty or insolvency can constitute a defense to contempt of court. *In re Marriage of Dall*, 212 Ill. App. 3d 85, 97-98, 569 N.E.2d 1131, 1139 (1991) (citing *In re Marriage of Betts*, 155 Ill. App. 3d 85, 100, 507 N.E.2d 912, 922 (1987)). Illinois courts have only recognized poverty or insolvency as a defense in extreme cases. *Id.* (citing *In re Marriage of Betts*, 155 Ill. App. 3d at 100, 507 N.E.2d at 922 (holding that the suspended lawyer's claims that he was destitute and unable to earn income in order to pay child support, without proof or documentation of this status, did not suffice to warrant a defense to his nonpayment)). In addition, the individual claiming the defense must prove financial inability to pay by "definite and explicit" evidence. *Id.* at 98, 569 N.E.2d at 1139 (citing *In re Marriage of Chenoweth*, 134 Ill. App. 3d 1015, 1018-19, 481 N.E.2d 765, 768 (1985) (holding that general testimony that the former husband could not work due to depression was insufficient to establish his inability to pay child support when he voluntarily quit his job and had the ability to sell firearms in order pay the support, but elected not to do so)). Testimony in a general nature about financial difficulties is not "definite and explicit." *In re Marriage of Chenoweth*, 134 Ill. App. 3d at 1018, 481 N.E.2d at 768.

¶ 48 In this case, Julie acknowledged receipt of the pension funds. She admitted that she did not follow the court's dissolution order to obtain an appraisal on the marital home, and that she did not pay Samuel for his equity. Julie was aware that she was in court to defend against Samuel's petition to hold her in contempt. Counsel represented her at this

hearing. Julie did not claim a defense that she had no ability to pay the $4,000 to Samuel. We find that the trial court's order finding Julie in contempt of court is not contrary to the manifest weight of the evidence.

¶ 49 CONCLUSION

¶ 50 For the reasons stated in this order, we vacate the public policy portions of the trial court's January 24, 2013, order. We affirm the trial court's contempt order.

¶ 51 Order vacated in part; affirmed in part.