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2016 IL App (3d) 140119-U

Order filed March 15, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

<i>In re</i> MARRIAGE OF SHARON DOWD,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Petitioner-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-14-0119
	)	Circuit No. 10-D-950
	)	
MICHAEL DOWD,	)	Honorable
	)	Brian E. Barrett,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justice Lytton concurred in the judgment.  
Justice Wright dissented.

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**ORDER**

- ¶ 1 *Held:* Trial court did not err or abuse its discretion in determining that maintenance order previously entered by a different trial judge in a judgment for the dissolution of the parties' marriage awarded the wife percentages of the husband's gross bonuses, rather than his net bonuses.
- ¶ 2 Judge Robert Baron of the circuit court of Will County entered a judgment for dissolution of marriage dissolving the marriage between Michael and Sharon Dowd and requiring Michael

to pay maintenance to Sharon in the form of monthly payments plus a percentage of any bonus that Michael receives. Pursuant to Judge Baron's judgment order, Michael began paying Sharon a percentage of his annual net (*i.e.*, after tax) bonuses. Sharon subsequently filed a "Petition for Rule to Show Cause for Finding of Indirect Civil Contempt and for Other Relief," arguing that Michael had violated Judge Baron's judgment order by paying bonuses to Sharon using net figures rather than gross figures. Sharon also asked the court to order Michael to pay the attorney fees she incurred in filing her petition for rule to show cause.

¶ 3 After conducting a hearing and reviewing Judge Baron's judgment order, Circuit Judge Brian Barrett ruled that Michael was required to pay Sharon a portion of his gross (*i.e.*, pre-tax) bonus income. However, Judge Barrett did not find Michael to be in contempt of Judge Baron's judgment order because he found that Michaels' prior violations of Judge Baron's order were not "willful or contumacious." Accordingly, Judge Barrett denied Sharon's petition for rule to show cause.

¶ 4 Michael filed a motion to reconsider Judge Barrett's ruling, which was denied. This appeal followed.

¶ 5 **FACTS**

¶ 6 Sharon and Michael Dowd were married on September 14, 1990. On May 14, 2010, Sharon filed a petition for dissolution of marriage, citing irreconcilable differences. Sharon subsequently filed a petition for temporary maintenance. On September 3, 2010, Judge Baron set a hearing date for Sharon's petition and entered an order stating that "[a]ny bonuses received by Michael Dowd shall be held until further order of court and Michael Dowd is enjoined from spending, transferring, or disposing of any bonus." On December 7, 2010, Judge Baron ordered

Michael to pay Sharon \$2,200 per month for temporary maintenance and also ordered Michael to pay for certain household and medical expenses. Judge Baron further ordered:

"Any bonus received by either party shall be held until further order of court and subject to accounting and shall be deposited in an interest bearing savings account in names of both parties at Harris Bank where [the] parties bank subject to further order of court or agreement of parties."

¶ 7 The trial began on April 20, 2011. Michael testified that, in addition to his base salary, he was eligible to earn up to \$100,000 in annual bonuses. Michael stated that he was granted approximately \$140,000 in bonuses in 2010 as part of a "long term incentive program" when his employer was selling its business to another company. During cross-examination, Sharon's counsel questioned Michael about a bonus Michael had received in 2011. Specifically, Sharon's counsel asked Michael the amount of the "net" bonus Michael received in 2011 and whether that net bonus was being held in escrow. Michael responded that his "net" 2011 bonus was \$59,000 and that he had deposited \$50,000 of the bonus money into a trust account and the remaining \$9,000 in one of his bank accounts. Sharon's counsel reminded Michael that Judge Baron's December 7, 2010, order provided that any bonus received by either party shall be held and deposited in an interest-bearing savings account at Harris Bank in the names of both parties until further order of the court. He then asked Michael, "[n]ow, you did not deposit your entire bonus— \*\*\* You held \$9,000 out, didn't you?" Michael answered, "[c]orrect." Judge Baron then interrupted the questioning, urged the parties to "move on," and told Sharon's counsel that Sharon was "entitled to her share" of the \$9,000 withheld by Michael. Sharon's counsel then questioned Michael as to how the net bonus he received in 2011 was calculated. Specifically, he

inquired about the total gross amount of the bonus and the amounts of all federal and state taxes and other deductions taken from the gross bonus.

¶ 8 During closing arguments, both parties made arguments as to how Michael's bonuses should be allocated for purposes of maintenance payments. Sharon's counsel argued that the maintenance award should be based either on Michael's "entire income" or on Michael's "regular income, plus 50 percent of the bonus." Michael's counsel argued that the court should award Sharon maintenance based on Michael's base income plus 15 percent of his bonus income.

¶ 9 On August 3, 2011, Judge Baron entered a "Judgement for Dissolution of Marriage" awarding Sharon maintenance of \$6,100.00 per month plus "50% of any bonus [Michael] receives up to \$50,000.00 and 20% of [any] bonus he earns from \$50,001.00 to \$100,000.00."

¶ 10 Eight days later, Sharon filed a motion to reconsider the judgment. In that motion, Sharon argued that she should be awarded 50% of any bonus that Michael received and that Judge Baron erred when he ordered that Sharon would receive only 20% of any bonus Michael earns from \$50,000.01 to \$100,000.00. She also maintained that the court had failed to consider that Michael had "received a bonus of \$59,000.00" in 2011 and wrongfully kept \$9,000.00 of that bonus. Sharon argued that she was entitled to "at least 50%" (or \$4,500.00) of the \$9,000.00 wrongfully kept by Michael. After conducting a hearing on Sharon's motion, Judge Baron stated:

"I thought this case over very seriously. I spent a lot of time on this case. I did what I did for good reason. \*\*\* I didn't give [Sharon] a bigger percentage out of [Michael's] second bonus because in the final analysis, I thought to myself, I know I gotta take care of her for a long time. But I also gotta give him an incentive to keep working. And I couldn't think of a better way to

keep him incentiv[ized] to work hard and \*\*\* to think that at least if he gets a second bonus by working hard, he can share a bit larger share."

On January 23, 2012, Judge Baron entered an order denying Sharon's motion to reconsider as to the bonus-related issues raised by Sharon.

¶ 11 On February 17, 2012, Sharon appealed the dissolution judgment.<sup>1</sup> In her appeal, Sharon argued that Judge Baron had abused his discretion by: (1) awarding Sharon only 20% of Michael's annual bonuses between \$50,000.01 and \$100,000.00; and (2) failing to award Sharon any share of Michael's annual bonuses exceeding \$100,000.00." Sharon also argued that Judge Baron erred by denying Sharon's petition for contribution to attorney fees.

¶ 12 While the appeal was pending, Sharon filed a "Petition for Turnover of Bonus Payments and for Other Relief" in the circuit court. In that petition Sharon argued that Judge Baron had the jurisdiction to enforce his prior maintenance order because that order had not been stayed pending appeal. She asked the court to order Michael to "provide proof of his gross and net bonus" for 2011, which Michael had received in 2012. She also asked that Michael pay Sharon her share of his 2011 bonus immediately. Judge Baron granted Sharon's petition and ordered Michael to turn over "the appropriate percentage of his income per the judgment for maintenance on his bonus" within 14 days.

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<sup>1</sup> On the same day, Michael filed a "Motion for Release of Funds" in which he argued that, under the dissolution judgment, Sharon was entitled to 50% of the first \$50,000.00 Michael was awarded as a bonus in 2011, and 20% of the remaining \$9,669.46 of that bonus prorated for the last 5 months of 2011. Judge Baron stayed Michael's motion because Sharon had filed a notice of appeal.

¶ 13 On August 7, 2012, Sharon's counsel sent a letter to Michael's counsel requesting a copy of the "gross bonus check" from 2011 that Michael had obtained in 2012. In the letter, Sharon's counsel wrote that he was "not suggesting that [Michael] did not pay the amount of fifty percent (50%) of the first \$50,000.00 of that check and twenty percent (20%) of the amount above \$50,000." However, Sharon's counsel noted that Michael's counsel had sent Sharon's counsel a copy of Michael's "net [bonus] check," and he stated that he needed to see Michael's gross bonus check "so that we can determine if [Sharon] got paid all of the money she should have been paid." On September 12, 2012, Sharon filed a petition for rule to show cause for a finding of indirect civil contempt against Michael, arguing that Michael had "failed to provide evidence to [Sharon] of his gross bonus check for 2011." Sharon withdrew her petition approximately three weeks later.

¶ 14 On June 20, 2013, our appellate court issued an opinion affirming Judge Baron's judgment awarding Sharon graduated percentages of Michael's bonuses and denying Sharon's request for contribution to her attorney's fees. *In re Marriage of Sharon Dowd and Michael Dowd*, No. 03-12-0140 (June 20, 2013). Our appellate court held that the trial court did not abuse its discretion by awarding Sharon 20% of Michael's bonuses between \$50,001 and \$100,000 without providing her with any share of Michael's bonuses above \$100,000. *Id.* ¶¶ 20-26. Our appellate court found that "[t]he record demonstrates that Sharon's reasonable needs will be met when considering the standard of living established during the [parties'] marriage." In support of this finding, our appellate court stated that, "[d]ue to the flexibility designed into the court's order, Sharon is eligible to receive up to \$35,000 per year in additional maintenance from Michael's potential bonuses, beyond the fixed monthly amount of \$6,100."

¶ 15 Effective June 21, 2013, Judge Baron retired. Will County Circuit Judge Theodore Jarz was initially assigned to replace Judge Baron in this matter. However, after Michael exercised his right to substitute judges under 735 ILCS 5/2-1001(a)(2) (West 2012), the case was assigned to Will County Circuit Judge Brian Barrett.

¶ 16 On May 21, 2013, Sharon filed another "Petition for Rule to Show Cause for Finding of Indirect Civil Contempt." In that Petition, Sharon argued for the first time that Michael had been violating the judgment for dissolution of marriage by paying bonuses to Sharon "using net figures and not gross figures." She claimed that, as a result, there were maintenance arrearages due and owing to her in the amount of \$11,466.88.

¶ 17 Judge Barrett conducted a hearing on Sharon's Petition on October 24, 2013. During the hearing, Sharon's counsel argued that our appellate court had "already ruled" that Michael should pay Sharon her share of his bonus income based upon his gross bonuses, not his net bonuses, because our June 20, 2013, Opinion affirming the maintenance order stated that "[i]n the event [that Michael] gets a hundred thousand, [Sharon] gets 35." Sharon's counsel further argued that the language of Judge Baron's dissolution judgment order supports Sharon's interpretation. Specifically, Sharon's counsel asserted that the dissolution judgment order simply states that Sharon gets "50 percent of the first \$50,000" and "20 percent of the next," and "[i]t doesn't say that there [are] any type of credits for social security, taxes," or any other deductions.

¶ 18 In response, Michaels' counsel noted that Judge Baron's order refers to the bonuses that Michael "receives," and argued that Sharon's share of Michael's bonus income should therefore be calculated based upon the bonus money that remains after 28 percent is taken out for federal income tax, 5 percent is taken out for state income tax, and other required deductions are made.

¶ 19 After hearing the parties' arguments, Judge Barrett initially stated:

"[Sharon's counsel] supposes that [Michael] is going to make greater than the hundred thousand bonuses every year, and therefore, [Sharon] should benefit from that. I disagree. I think that the maintenance order does require that \*\*\* the tax consequences be considered, that what is received is after tax and after proper deductions."

In response, Sharon's counsel argued that Judge Barrett had just "double taxed" Sharon because "if you knock off his taxes and then she pays taxes on the difference, she's going to end up paying taxes on the \$18,000, so in essence what you've done is then reduced it twice." He further maintained that "Judge Baron's interpretation was you work with maintenance off the gross, [Michael] pays of the gross [and] deducts from the gross." After hearing further argument on the issue from Michael's counsel, Judge Barrett took the matter under advisement.

¶ 20 On October 31, 2014, Judge Barrett issued oral and written rulings on Sharon's petition for rule to show cause. In his oral ruling, Judge Barrett stated that, after reviewing the applicable law, the parties' arguments, and "the intent of" Judge Baron's dissolution judgment order, the court found that "[Sharon's counsel's] argument is correct that the double taxing is not proper in this issue." Accordingly, Judge Baron ruled that "the money on the bonuses will be pre-tax." Judge Barrett's written order ruled that "the maintenance due Sharon Dowd by Michael Dowd on his bonus shall be paid off Michael Dowd's gross income not considering tax consequences of Michael Dowd's tax obligation on his bonus income." However, Judge Barrett's written order also stated that "the court does not find Michael Dowd in contempt as his actions were not willful or contumacious."

¶ 21 Michel filed a motion to reconsider in which he argued that: (1) Judge Baron had "developed a graduated approach to Michael's bonuses as an incentive to encourage Michael to maintain his productivity because he would enjoy a larger share of his bonuses"; (2) Judge Barrett's decision to award Sharon the bonus funds off of Michael's gross, pre-tax income will cause Michael to pay more than 50% of his bonuses to Sharon, which is "contrary to the express terms of the Judgement and Judge Baron's reasoning as well as that of the [appellate court]." After conducting a hearing, Judge Barrett denied Michael's motion to reconsider. This appeal followed.

¶ 22 ANALYSIS

¶ 23 On appeal, Michael argues that Judge Barrett erred by ruling that Sharon should receive maintenance payments based upon Michael's gross bonuses because the Judgment for Dissolution of Marriage (Judgment) requires that maintenance be calculated based upon Michael's net bonuses. Before reaching the merits of Michael's appeal, we must address two preliminary issues. First, the dissent argues that we have no jurisdiction over Michael's appeal because Judge Barrett "found in favor of [Michael] and denied [Sharon's] petition for rule to show cause." *Infra* ¶ 38. The dissent argues that, because Michael prevailed on the contempt issue, he suffered no adverse ruling and therefore may not appeal the trial court's order. *Infra* ¶¶ 38-39. We disagree. Although Judge Barrett found that Michael was not in contempt of Judge Baron's maintenance order, he also ruled that "the maintenance due Sharon \*\*\* by Michael \*\*\* on his bonus shall be paid off Michael[s] gross income." The latter ruling was adverse to Michael, and it is that ruling that Michael has appealed. Moreover, Michael's motion to reconsider sought reversal of that ruling. Thus, contrary to the dissent's argument (see *infra* ¶¶ 40-43), Michael's appeal was timely under Supreme Court Rule 303(a) because it was filed

within 30 days of the trial court's denial of a postjudgment motion "directed against" the trial court's judgment. See Ill. S. Ct. R. 303(a) (eff. June 4, 2008). We therefore have jurisdiction to decide this appeal.

¶ 24 Having determined that we have jurisdiction, we must determine the standard of review that governs our analysis. Michael argues that we should review his challenge to Judge Barrett's order *de novo* because it involves the construction of Judge Baron's Judgment Order, which presents a question of law. See *In re Marriage of Avery*, 251 Ill. App. 3d 648, 652 (1993). Sharon agrees that this appeal requires us to review Judge Barrett's construction of Judge Baron's prior Judgment Order, and she does not dispute that our review is *de novo*. We usually apply the abuse of discretion standard of review when reviewing a trial court's construction of its own order because "[a] court is in the best position to interpret its own orders." *Board of Trustees of Community College District No. 508 v. Rosewell*, 262 Ill. App. 3d 938, 965 (1992); see also *id.* ("Deference to a trial court's interpretation of its own order is warranted even if the order is unclear on review.") In this case, however, the parties ask us to review Judge Barrett's interpretation of a maintenance order that was issued by a different judge (Judge Baron). Judge Barrett was in no better position to interpret Judge Baron's order than we are. Thus, if the sole issue on review is the interpretation of Judge Baron's initial maintenance order (as the parties contend), we would agree that this issue should be reviewed *de novo*.

¶ 25 However, it is not clear that the parties have correctly characterized the issue on appeal. Judge Baron's initial maintenance order does not specify whether the maintenance payments should be based upon Michael's gross bonuses or his net bonuses. That issue was apparently not presented to Judge Baron, and it is unclear whether Judge Baron decided it. Thus, it would be reasonable to conclude that Judge Barrett decided this issue for the first time, *i.e.*, that Judge

Barret issued an entirely new ruling on maintenance and did not merely interpret Judge Baron's prior maintenance order. If so, we would review Judge Barrett's Order for an abuse of discretion. See, e.g., *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390 (2008) (ruling that "[t]he trial court has discretion to determine the propriety, amount, and duration of a maintenance award" and "[a] reviewing court will not reverse the trial court's maintenance determination absent an abuse of discretion").

¶ 26 We do not need to resolve this ambiguity because we would affirm Judge Barrett's Order under either standard of review. As noted, the judgment for dissolution of marriage entered by Judge Baron, which contained Judge Baron's initial maintenance Order, did not specify whether the maintenance payments from Michael's bonuses should be calculated based on gross or net figures. Thus, nothing in the text of Judge Baron's order compelled Judge Barrett to decide the issue one way or the other. Nor does our appellate court's decision in the prior appeal resolve the issue.<sup>2</sup> Further, the parties' conduct under Judge Baron's Order is not dispositive. The parties'

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<sup>2</sup> In the prior appeal, a panel of this court noted in passing that, under Judge Baron's Order, "Sharon is eligible to receive up to \$35,000 per year in additional maintenance from Michael's potential bonuses beyond the fixed monthly amount of \$6,100." *In re Marriage of Dowd*, 2013 Il App (3d) 120140, ¶ 25. For several reasons, this statement does not resolve the issue presented in this appeal. First, the statement is *dicta*. The prior appeal concerned only the reasonableness of the graduated bonus maintenance rates prescribed by Judge Baron, not whether such maintenance should be calculated on a gross or net basis. Our appellate court was not asked to decide, and did not decide, the latter issue. Moreover, the statement quoted above is ambiguous in that it does not specify whether Sharon could earn up to 35% of Michael's *gross* or *net* bonuses. The statement is consistent with either interpretation.

conduct prior to the issuance of Judge Baron's Order (such as Sharon's counsel's cross-examination of Michael at trial) has little relevance, and the parties' conduct after the issuance of Judge Baron's Order is ambiguous. Nothing the parties did after Judge Baron entered his maintenance Order definitively confirms that they had reached some agreed understanding on this issue.

¶ 27 Confronted with this pervasive ambiguity, Justice Barrett resolved the issue by considering the tax consequences of Judge Baron's order under each party's interpretation of the order. Judge Barrett agreed with Sharon's counsel's argument that calculating the maintenance based upon net bonus figures would result in a "double taxing" that would be "improper." That conclusion was reasonable. Maintenance payments are taxable to the recipient as income. 26 U.S.C. § 71(a) (2012); *In re Marriage of Morreale*, 351 Ill. App. 3d 238, 242 (2004). Thus, if Sharon receives a percentage of Michael's net bonus (rather than his gross bonus), the bonus money available for maintenance would be taxed twice: once to Michael as income, and then a second time to Sharon as income. This could result in a reduction of potential maintenance payments to Sharon.<sup>3</sup> It is appropriate, even desirable, for trial courts to consider the tax

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<sup>3</sup> For example, if Michael receives a \$100,000 bonus, and his bonus is taxed as income at a rate of 28%, that would leave \$72,000 available bonus income after taxes. Sharon would receive 50% of the first \$50,000 (*i.e.*, \$25,000) plus 20% of the remaining \$22,000 (*i.e.*, \$4,400), for a total bonus maintenance payment of \$29,400. However, if Sharon's maintenance is taken off Michael's *gross* \$100,000 bonus, then Sharon would receive 50% of the initial \$50,000 (*i.e.*, \$25,000) plus 20% of the remaining \$50,000 (*i.e.*, \$10,000) for a total bonus maintenance payment of \$35,000. If Sharon's income is taxed at a rate lower than Michael's income, this will result in a higher after-tax maintenance payment to Sharon.

consequences of their maintenance orders. See, e.g., *In re Marriage of Murphy*, 117 Ill. App. 3d 649, 655 (1983) ("Trial courts should take into consideration the tax consequences" of maintenance and other awards); *Bellow v. Bellow*, 94 Ill. App. 3d 361, 371 (1981) (stating that the trial court was "required" to consider the tax consequence of its maintenance awards); see also generally *In re Marriage of Belluomini*, 104 Ill. App. 3d 301, 307 (1982) (ruling that a trial court is "allowed, even encouraged" to consider the tax consequences in determining the allocation of an award between maintenance and child support). Thus, Judge Barrett's consideration of the potential tax consequences of Judge Barron's maintenance order, and his attempt to avoid interpreting Judge Baron's order in a way that would result in adverse tax consequences for Sharon, was both reasonable and appropriate.

¶ 28 Moreover, Judge Barrett's ruling is consistent with Judge Baron's maintenance order. During the hearing on Sharon's motion to reconsider that order, Judge Baron noted that one of the purposes of the order was to "take care of [Sharon] for a long time." We must construe a trial court's order reasonably, in light of the record, so as to effectuate the court's apparent intent. *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1069 (2003). Given Judge Baron's expressed intent to "take care of [Sharon] for a long time," it was not unreasonable for Judge Barrett to interpret Judge Baron's maintenance order in a way that avoided adverse tax consequences that would could reduce the value of Sharon's maintenance payments.

¶ 29 Michael argues that the plain language of Judge Baron's order suggests that Judge Baron intended that maintenance be paid off of the net bonus amount, rather than the gross bonus amount. Michael notes that Judge Baron's order awarded Sharon "50% of any bonus [Michael] receives up to \$50,000." (Emphasis added.) Citing a commonly used dictionary, Michael argues that "receive" means "to come into possession of: Acquire." See Webster's New Collegiate

Dictionary, 956 (1981). Michael argues that he only "acquires" or "comes into possession of" his *net* bonus; he never possesses or acquires the *gross* bonus awarded to him because his employer deducts taxes from his gross bonus before it pays any actual bonus money to him. Thus, Michael maintains, Judge Baron's order requires that maintenance be paid off Michael's net bonuses.

¶ 30 We do not find this argument persuasive. Other dictionaries define "receive" in a way that does not explicitly require actual possession. For example, Oxford Online Dictionaries defines "receive" as "[b]e given, presented with, or paid (something)," and it lists as synonyms "be awarded, \*\*\* earn, *gross*, *net*." (emphasis added.) See [www.oxforddictionaries.com/us/definition/american\\_english/receive](http://www.oxforddictionaries.com/us/definition/american_english/receive) (accessed on February 14, 2016). We find that this broader definition comports with common usage, particularly when bonuses are at issue. As Sharon notes, when discussing the amount of a bonus awarded to a professional athlete or other employee, we commonly say that the employee "received" the gross bonus amount awarded, despite the fact that he or she will actually possess some lesser amount after taxes are deducted. Moreover, Judge Baron's order also awards Sharon "20% of any bonus [Michael] *earns* from \$50,001.00 to \$100,000.00." (Emphasis added.) As with a bonus "received," a bonus "earned" can mean either a gross or a net bonus awarded to an employee. See [www.oxforddictionaries.com/us/definition/american\\_english/earn](http://www.oxforddictionaries.com/us/definition/american_english/earn) (accessed Feb. 15, 2015) (defining "earn" as "[to] obtain (money) in return for labor or services," and listing as synonyms both "net" and "gross.") Thus, contrary to Michael's argument, dictionary definitions of the word "receive" do not resolve the issue one way or the other.

¶ 31 Michael also argues that calculating the maintenance award based on Michael's gross bonuses is "squarely at odds with Judge Baron's original intent" to incentivize Michael to keep working hard by awarding him a larger share of his bonuses over \$50,000. We disagree. Judge

Baron's intent will be advanced regardless of whether maintenance is calculated based on gross or net bonuses. In either event, the maintenance award will be graduated, *i.e.*, Michael will keep a larger share of his bonuses the more bonus money he earns. (Specifically, Michael will keep 50% of any bonus up to \$50,000 and 80% of any bonus from \$50,001.00 to \$100,000.00.) Thus, in either event, Michael will have an incentive to earn as large a bonus as possible. The fact that Michael will keep slightly less after-tax income from bonuses of \$50,001 to \$100,000 if Sharon's maintenance award is calculated based on Michael's gross (as opposed to net) bonuses is immaterial. Michael will still collect a larger share as his bonus income increases, and the percentages set forth in Judge Baron's maintenance order will still apply. That is all that Judge Baron expressly intended.

¶ 32 In arguing otherwise, Michael assumes that Judge Baron wanted to maximize Michael's after-tax bonus income and to assign a greater tax burden to Sharon. However, nothing in Judge Baron's Order supports that assumption. Michael effectively begs the question by presupposing that Judge Baron intended that maintenance be calculated based on Michael's net (rather than gross) bonuses, thereby assuming the very matter at issue in this appeal.<sup>4</sup>

¶ 33 In sum, the text of Judge Baron's initial maintenance order did not specify whether the bonus maintenance payments should be calculated based on gross or net bonus amounts. Judge

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<sup>4</sup> For example, Michael argues that, under Judge Barrett's Order, if Michael earns a gross bonus of \$100,000.00, he will keep only 42.6% of his gross bonus after taxes. Thus, according to Michael, he would receive "none of his bonus over \$50,000.00," which would be contrary to Judge Baron's original intent. However, this argument assumes that Judge Baron intended the bonus percentage figures prescribed by his order to apply to Michael's net (after tax) bonus income, rather than to his gross bonus.

Barrett's attempt to resolve this issue by considering the potential tax consequences under each approach was reasonable, appropriate, and consistent with the intent of Judge Baron's order.

¶ 34

#### CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 36 Affirmed.

¶ 37 JUSTICE WRIGHT, dissenting.

¶ 38 I respectfully dissent on procedural grounds alone. In this case, wife, Sharon Dowd, filed a "Petition for Rule to Show Cause for Finding of Indirect Civil Contempt and for Other Relief." Wife's petition requested the court to direct husband, Michael Dowd, to pay a percentage of his annual gross bonus toward maintenance as required by the terms of the August 3, 2011, judgment of dissolution. In addition, wife requested the court to order husband to pay the attorney fees necessitated by her petition for rule to show cause. On October 31, 2013, Judge Barrett found in favor of husband and denied the petition for rule to show cause.

¶ 39 On appeal, husband would like this court to affirm the judgment which found that he was not in contempt of court, but seeks review because he disagrees with the trial court's reasoning for concluding he was not in contempt of court. Our supreme court has clearly held "[i]t is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386 (1983) (quoting *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 414 Ill. 275, 282-83 (1953)). Thus, I conclude this appeal must be dismissed.

¶ 40 Alternatively, and assuming arguendo that the October 31, 2013, judgment qualifies as an adverse ruling against husband, the timeliness of husband's notice of appeal in this case is also

problematic. It is well established that this court has a duty to consider its jurisdiction and to dismiss the appeal when our lack of jurisdiction is evident. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984).

¶ 41 A contempt proceeding is a separate proceeding that results in its own final and appealable judgment. See *Busey Bank v. Salyards*, 304 Ill. App. 3d 214, 218 (1999) (contempt proceedings are "collateral to and independent of" the case from which the contempt arises). Rule 303 provides that the notice of appeal challenging a final judgment must be filed within 30 days of that final judgment or within 30 days after the entry of the order disposing of the postjudgment motion "directed against" that judgment or order. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). The notice of appeal was not filed within 30 days of Judge Barrett's final judgment regarding contempt.

¶ 42 As with this appeal, husband's motion to reconsider in the trial court did not ask for a new hearing or request the trial court to vacate or alter the final judgment that was rendered in his favor. See *Dus v. Provena Saint Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 15 (citing *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138 (2009)). After carefully reviewing the record, I must conclude husband's motion to reconsider was not "directed against" the final judgment finding husband was not in contempt and, thus, did not constitute a posttrial motion for Rule 303 purposes. *Miller v. Penrod*, 326 Ill. App. 3d 594, 596 (2001) (citing *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 755 (1993)).

¶ 43 It is undisputed that the notice of appeal was filed on February 7, 2014, more than 30 days after the October 31, 2013, final judgment regarding contempt. Hence, I conclude the notice of appeal in this case was not timely. As Justice Holdridge recognized in *Dus v. Provena*

*Saint Mary's Hospital*, when a notice of appeal is not timely, this court has no discretion and is required to enter an order dismissing the untimely appeal. *Dus*, 2012 IL App (3d) 091064, ¶ 10.

¶ 44 This does not mean husband could not challenge the trial court's rationale. Similar to challenging a ruling compelling certain conduct, such as the production of documents in discovery, refusal to comply may be the route to challenge the court's reasoning. See *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 922 (1999). ("It is well settled that a party or witness may test a discovery order by refusing to comply, thereby forcing the trial court to find that party or witness in contempt and to assign an appropriate punishment.") If husband wishes to challenge the court's rationale regarding annual bonuses, but missed an opportunity to timely appeal, a friendly but adverse finding of contempt in a future proceeding would give rise to this court's jurisdiction to apply a *de novo* standard of review regarding the proper construction of the language of the 2011 judgment of dissolution concerning annual bonuses.

¶ 45 Nonetheless, in this case, since the notice of appeal is not timely and husband was not subject to an adverse finding of contempt, I would dismiss the appeal without reaching the merits.