FIRST DIVISION
September 29, 2017

No. 15-0293, 15-1942, 15-2449, 15-3294 & 16-0027 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
TAMMY EHLERS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 2010 D 230327
	)	
BARRY EHLERS,	)	
	)	
Respondent-Appellant.	)	Hon. Jeanne Marie Reynolds

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not commit reversible error in making its judgment dissolving a marriage. The trial court likewise did not commit reversible error during postjudgment proceedings, including when it held respondent in contempt of court.

¶ 2 This divorce case is best described as litigatory chaos. During the proceedings below, there were hundreds of filings, and nearly every conceivable issue that could have arisen, did, and so did some inconceivable ones. The petition for dissolution of marriage was filed more than

seven years ago. In those better times, the assets involved in the case were worth millions of dollars. The parties lived in an affluent suburb, had a million dollar vacation home on the coast of South Carolina, and had more than a million dollars of personal property while taking in hundreds of thousands of dollars in household income each year. But the future would have a different look: foreclosure, an insolvent marital estate, and jail.

¶ 3 In the trial court, motions for sanctions and attempts to have the other party held in contempt were commonplace. Between the parties, at least 15 petitions for a rule to show cause were filed. The trial court found respondent to be in contempt on multiple occasions. The record shows that the parties appeared in court every couple of weeks for a five-year period. No matter was too small to generate a battle. One of the times that respondent, an attorney himself, was held in contempt, he ended up spending more than a year in jail.

¶ 4 The appeal has been no less extraordinary. Respondent, *pro se,* filed seven separate appeals. While the case has been pending on appeal, respondent has filed 20 motions: some routine, some peculiar. Respondent raises or discusses something like 50 issues for us to address on appeal. The issues respondent raises cover an expansive range of subjects including the distribution of property and his maintenance obligations, his right to practice law and act as his own lawyer, and, ultimately, the rejection of his motions to modify his support obligations and his attendant incarceration. We affirm.

¶ 5 BACKGROUND

¶ 6 Respondent Barry Ehlers and petitioner Tammy Ehlers married on August 23, 1986. The marriage broke down and the parties separated in 2010, with petitioner filing for divorce on June 21, 2010. The parties had three children during the course of their marriage. The children are now all over the age of 18. Respondent, an attorney, filed a *pro se* appearance in the dissolution

of marriage case. Petitioner was represented by counsel.

¶ 7 Respondent was the primary income earner in the marriage. Petitioner was a homemaker and stay-at-home mother for almost the entirety of the marriage. Respondent worked for several different tax and accounting firms during the first 15 years of the marriage. In 2002, the parties opened their own business, Stone Wallace, LLC, that outsourced tax preparation work for publicly traded companies. Respondent owned 81% of the company while petitioner owned 10% and each of the children owned 3%. The parties had a house in Winnetka worth about $725,000 and a vacation home in Kiawah Island, South Carolina worth about $1,000,000. The parties also had multiple vehicles and respondent had several retirement accounts that were marital property. The parties potentially had claims against the estate of Harold and Peggy Jacobs that would have been a marital asset. But even with all the assets, the residences were subject to significant mortgages and the parties had several other outstanding liabilities.

¶ 8 Respondent testified that at one point, he made more than $1 million a year from Stone Wallace. However, in the years toward the end of the marriage, business was not as good so he began to take on other employment. In 2009, respondent began a relationship with Loretta Granath. She lives in Knoxville, Tennessee. In 2010, respondent took a job with True Partners Consulting, a corporate tax consulting firm for $300,000 per year. While respondent was employed by True Partners, in July 2011, Granath filed articles of organization for Stone Wallace, LLC in Tennessee. Respondent transferred a number of clients from the Stone Wallace company he owned with his wife and kids to the Stone Wallace company owned by Granath. Respondent claims that he did so because his employment agreement with True Partners required that he have no outside professional obligations. Respondent was fired from True Partners in October 2011. He was hired by Pricewaterhouse Coopers as a client relationship executive in

January 2012 where he made $235,385 in 2012. Respondent wants to make it clear: he was not in an exclusive relationship with Granath. In submissions to the court he has made sure to repeatedly advise us that he "has had 5 or 10 non-exclusive sexual relationships" and that he "had 5 to 7 girlfriends."

¶ 9 After several years of motion practice and discovery, the case went to trial in 2014. Three days into the trial, respondent retained Arnold Goldstein as his attorney. Goldstein represented to the court that he would file an appearance in the case and the trial court allowed him to proceed on respondent's behalf. However, Goldstein never actually filed an appearance in the case, but the trial court was never made aware of his failure to do so. The trial went forward with both petitioner and respondent testifying. Goldstein argued objections, signed motions, and otherwise acted as respondent's attorney. At certain points during trial, the trial judge only let Goldstein act on respondent's behalf and did not let respondent act as his own attorney despite that respondent, for example, wanted to cross-examine petitioner himself. After the trial ended and after a flurry of more filings by the parties, the trial court entered an 80-page order allocating the marital property, setting forth the parties' rights and obligations going forward, and, ultimately, dissolving the marriage. Personal property was divided in a subsequent order.

¶ 10 Petitioner was awarded the marital home and 50% of the vacation home. Respondent was awarded full ownership of Stone Wallace and 50% of the vacation home. The trial court awarded 50% of respondent's retirement accounts to each party. Each party was awarded 50% of any claim against the Jacobs Estate, should any such claim ever come to fruition. The trial court held that respondent was required to maintain health insurance for the children, and the parties were each responsible for 50% of their children's college expenses. The trial court also allocated the debt between the parties, with respondent bearing about $600,000 and petitioner bearing about

$400,000. The debt assigned to respondent principally consisted of $540,000 outstanding on a line of credit.

¶ 11 Based on the evidence submitted at trial, the trial court found that respondent's then-current income was $175,000 per year and ordered him to pay 30% of that amount to petitioner for maintenance in monthly installments of $4,375. The trial court noted that respondent reported a gross income of $235,000 in 2012, but it also imputed an additional $75,000 of income to him from money made by Stone Wallace Tennessee that was derived from business originating with Stone Wallace Illinois and not disclosed by respondent as income. The trial court ordered respondent to pay $2,000 per month in child support, but that obligation ended once the children turned 18.

¶ 12 After judgment was entered, respondent filed several postjudgment motions including motions to modify his maintenance and child support obligations, arguing that the obligations were inequitable and that he could not afford them. On the other side, petitioner filed petitions for a rule to show cause on account of respondent's failure to pay child support, maintenance, and his share of the children's college and medical expenses. Respondent's employment with Pricewaterhouse was terminated and his principal income for late 2014 and early 2015 was unemployment compensation. At the same time, however, respondent engaged in several significant financial transactions including that he received notable tax refunds, paid out money to many people other than petitioner, and received tens of thousands of dollars from his family either directed toward respondent personally or toward the vacation home mortgage.

¶ 13 By the time the hearing on petitioner's petition for a rule to show cause was set to begin, respondent's attorney had filed a motion to withdraw from the case. A status hearing was set for respondent to purge the contempt. Respondent's outstanding obligations to petitioner at that

point totaled more than $45,000. When respondent appeared at the status on the purge, he presented a motion that he had filed seeking substitution of the trial judge for cause. That motion was transferred to another judge for resolution. After a hearing, the motion was denied and the case was transferred back to the original trial judge for further post-judgment proceedings.

¶ 14 Following four days of hearing on the status of respondent purging his contempt, the trial court found that respondent had the financial wherewithal to have paid his ex-wife, but that he had purposefully chosen to pay other obligations instead. The court set the purge at $15,000, and made an express finding that respondent had the resources to pay. After more than a year in jail and on electronic home monitoring, the trial court ordered the contempt dismissed or purged in April 2017, while these appeals remained pending.

¶ 15 ANALYSIS

¶ 16 Respondent raises or alludes to somewhere around 50 issues on appeal. It is difficult to ascertain respondent's true claims of error from the arguments because they lack both reasoned development and overall coherence, not to mention proper citations to the record or to authority. Waiver and forfeiture abound. In order to deliver an understandable and accessible judgment, we have drilled down on respondent's seemingly stream-of-consciousness contentions to distill the main points. We have, nonetheless, addressed most of the points raised on the merits, even where our procedural rules would not demand it. During the course of proceedings on appeal, we consolidated respondent's seven appeals. We allowed respondent to file multiple sets of briefs, some directed at the judgment of dissolution and others directed at the postjudgment proceedings. It is clear from his submissions that respondent had more than a fair opportunity to raise cognizable claims.

¶ 17 In his briefs directed at the judgment, respondent's principal claims of error are: (1) that

his right to practice law and right to represent himself were violated; (2) that the property division and obligations to pay maintenance and other expenses were inequitable; (3) that his claim for dissipation was improperly rejected; (4) that the trial court erred when it found impropriety in his Stone Wallace transitioning; (5) that the trial court erred when it awarded attorney fees to petitioner; and (6) that the trial court was biased against him.

¶ 18 In his briefs directed at postjudgment proceedings, respondent's principal claims of error are: (1) that the trial court erred when it denied his motion for a substitution of judge for cause; (2) that he was not afforded sufficient procedural rights before being taken into custody for contempt; (3) that the trial court erred in a dozen other miscellaneous ways; (4) that the trial court erred by awarding attorney fees for the rule to show cause; and (5) that he should not have been held in contempt because he did not have the ability to pay.

¶ 19 I. Arguments Directed At The Judgment

¶ 20 A. The Representation Situation

¶ 21 Respondent argues that the trial court violated Illinois Supreme Court Rule 701(b) when it did not let him act as his own attorney at certain points during the trial. The Supreme Court Rules provide that any person admitted to practice law in Illinois is privileged to practice in every court in the state, and that courts shall not, by rule or by practice, abridge or deny this privilege by requiring the retaining of local counsel or the maintaining of a local office for the service of notices. Ill. S. Ct. R. 701(b) (eff. Feb 6, 2013). To tie in with this argument, respondent argues that the trial court erred because it recognized Arnold Goldstein as respondent's attorney even though Goldstein never filed an appearance in the case.

¶ 22 Supreme Court Rule 701 is not applicable. That Rule covers "Admission and Discipline of Attorneys." This case has nothing to do with whether Barry is entitled to practice law in the

state. Respondent's qualifications to practice were not and are not at issue. In addition, his right to practice law was not denied or abridged by any requirement to retain local counsel or maintain a local office. Respondent chose Goldstein as his attorney and specifically retained Goldstein to represent him in this divorce case. The court did not require respondent to do so. Respondent also never raised the issue of Rule 701 in the trial court so his contentions here are forfeited. *People ex rel. T-Mobile USA, Inc. v. Village of Hawthorn Woods*, 2012 IL App (2d) 110192, ¶ 39 (issues not raised in the trial court are forfeited on appeal).

¶ 23 The trial court accepted Goldstein's representation as an officer of the court that he filed an appearance on behalf of respondent. Although Goldstein never filed his appearance, he appeared on respondent's behalf, argued and signed motions, and otherwise conducted himself as respondent's attorney. The court was never made aware that Goldstein had not filed an appearance. Respondent acquiesced to his representation. In fact, Goldstein represented respondent throughout the trial and beyond. The purpose of the Rule requiring that an attorney file a written appearance is to inform the court and the parties of who is properly representing each party and where that person may be served with notice. *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 120 (1990). The Rule contains no sanction for noncompliance and where, as here, the case proceeds without objection, inconvenience, or confusion about agency and without prejudice to respondent, the attorney can be recognized as a party's representative. *Id*. None of the authority put forth by respondent supports a different result.

¶ 24 In addition, a trial court is entitled to allow a party to proceed both *pro se* and with counsel. *Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 200 (1989). But the court is not required to allow such an arrangement and its decision on the issue is reviewed for an abuse of discretion. *Id*. The trial court also has broad discretion, and indeed a duty, to control the

conduct of trial including the manner and method of cross-examination. Ill. R. Evid. 611 (eff. Oct. 15, 2015); 98 C.J.S. Witnesses § 554 (Sept. 2017 Update).

¶ 25 Here, because respondent acquiesced to being represented by Goldstein and actually retained Goldstein for that purpose, it was not error for the trial court to recognize Goldstein as his attorney. Once the trial court allowed respondent to represent himself and be represented by counsel concurrently, it had to exercise discretion to control the roles of those representations in order to maintain decorum and ensure an efficient and orderly trial. Respondent offers only the conclusory statement that Goldstein did not perform an effective cross-examination of petitioner. The trial court did not abuse its discretion when it declined to let a litigant in a divorce case cross-examine his soon-to-be ex-wife when that litigant was represented by counsel, especially in a case as contentious as this one. There are a whole host of reasons the trial court's decision would be justified under the circumstances, and respondent fails to demonstrate how the trial court abused its discretion when it performed its duty to control the contours and conduct of the trial and the method and manner of cross-examination.

¶ 26 B. Division of Property, Maintenance, And Other Obligations

¶ 27 Respondent argues that the division of the marital property was not in just proportion. He maintains that the court failed to assign values to the couples' largest asset, their personal property in the marital residence and at their vacation home. Respondent also contends that the court did not assign a value to the jewelry it awarded to petitioner. Respondent argues that case law dictates that "the court must establish the value of the parties' assets in order to be able to divide the property in just proportions," and that the court erred "in failing to place a value on the personal property and could not have considered its value in the analysis required[.]" (citing *In re Marriage of Schneider*, 214 Ill. 2d 152 (2005)).

¶ 28 The Illinois Marriage and Dissolution of Marriage Act dictates that courts allocate marital property upon dissolving a marriage in "just proportions." 750 ILCS 5/503(d) (West 2012). The Act lists several factors for the court to consider when dividing property, but demands that the court consider any factor that may be relevant. *Id*. The trial court has broad discretion in determining the equitable apportionment of marital property, and abuse of discretion will be found only when no reasonable person can take view adopted by trial court. *In re Marriage of Adan*, 263 Ill. App. 3d 566, 569 (1994).

¶ 29 In a separate order following the order dissolving the marriage, the trial court addressed the parties' personal property. The trial court discussed individual assets such as jewelry, a doll house collection, and other items respondent believed should be valued and divided. However, the trial court found that the items highlighted by respondent were petitioner's non-marital property. The trial court credited the testimony that respondent had been returned property that he requested such as his clothes, golf clubs, and a number of other items. The trial court awarded all of the other personal property from the marital home to petitioner and then awarded respondent all of the personal property and furnishings at the vacation home.

¶ 30 None of the case law respondent relies upon requires the trial court to assess an actual, specific cash value to each piece of property. And the Marriage and Dissolution of Marriage Act does not even require that the division of property be equal. Respondent submitted an exhibit that he created to detail the personal property that was in the marital residence and the vacation home—down to the $5 VHS player and the $5 worth of hangers in the closet. After noting that much of the property respondent detailed in his exhibit was petitioner's non-marital property, the trial court stated that respondent's list of assets was not supported by any documentation, photographs, receipts, or appraisals and the court found the arbitrarily assigned values submitted

by respondent to be "biased and self-serving." Even on appeal, respondent continues to insist that the value relevant for the property distribution must include property that the trial court clearly classified as petitioner's non-marital property. And respondent continues to fault the trial court for not assigning valuations and balancing the division more in his favor by including petitioner's non-marital property. The Act outright forbids the course of action that respondent claims the trial court should have taken. See 750 ILCS 5/503(a) (West 2012).

¶ 31 The trial court reiterated that it was again considering the factors required for dividing property under the Marriage and Dissolution of Marriage Act, and acknowledged that it was awarding a greater share of the assets to petitioner. Some of those factors are: the relevant economic circumstances of each spouse when the division of property is to become effective; the reasonable opportunity of each spouse for future acquisition of capital assets and income; the occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties; and the custodial provisions for any children. 750 ILCS 5/503(d) (West 2012).

¶ 32 In arriving at its ruling dividing personal property, the trial court expressly remarked about petitioner's lack of employment history, among other things, and noted that she would not be able to produce the income required to pay the mortgage on the marital home that was awarded to her, pay her credit card balances and the costs of litigation, or repay the money loaned to her by her father. The fact that petitioner had not worked in nearly 30 years because of the parties marital arrangement was significant. Meanwhile, the record demonstrates that respondent had the capability of making hundreds of thousands of dollars a year as he had done for the majority of the time that the parties were married. Respondent has not established that no reasonable person could take the view adopted by the trial court in its division of personal

property. *In re Marriage of Adan*, 263 Ill. App. 3d at 569.

¶ 33 Respondent argues that the trial court erred when it awarded the marital home to petitioner. While the marital home was worth about $725,000, the parties had about $40,000 equity. The parties had also begun an extensive renovation that respondent was the general contractor for, but the project was stopped when the parties separated, so the basement has a partial dirt floor and there are unfinished openings on the outside. The trial court also noted that respondent, who was solely in charge of finances during the marriage, did not pay the property taxes on the marital home from 2008 forward. Mortgage payments also stopped as of March 2010. As a result, the bank holding the mortgage instituted foreclosure proceedings. Petitioner testified, and the court credited her testimony, that respondent refused to help against the foreclosure action, and petitioner had to take a $155,000 loan from her father to stave off foreclosure.

¶ 34 Respondent does not address the award of the marital home to petitioner in light of its actual fairly small cash value or in light of the entire division of property. Respondent does not acknowledge the assets he was awarded, such as Stone Wallace which he acknowledged was capable of bringing in major income in good years (he had made more than $1 million a year in the past). And even though the parties ended up with zero equity in the vacation home, respondent does not address the fact that he poured $200,000 in marital assets into the vacation home during the course of the divorce proceedings rather than let the bad asset go into foreclosure. The trial court faulted respondent for waste. Respondent chose to make payments towards the vacation home ahead of making child support and maintenance payments.

¶ 35 The trial court noted that it hoped to maintain the stability of petitioner and their then-minor child that lived in the marital home by allowing them to continue to reside in their home

and their community. Respondent also received a benefit from petitioner taking a loan from her father because the asset would have been further devalued had the foreclosure process continued and if the family lost that house altogether. Respondent was released from liability from that mortgage as a result. Respondent also does not address the fact that he maintained significant earning power in that he is a licensed attorney with 30 years of experience—the same 30 year period that petitioner did not attain any working experience. The trial court found its division of property necessary to "recognize and compensate each party for his or her contribution to the marriage and to place the parties in a position from which they can begin anew, in addition to providing adequate support for the children" and respondent has failed to demonstrate how awarding the marital home to petitioner or the overall division of property itself constituted an abuse of the trial court's discretion.

¶ 36 Respondent argues that the court erred when it granted what he characterizes as excessive maintenance, child support, and other expenses and when it failed to modify those awards when he moved the court to do so.

> "In a proceeding for dissolution of marriage *** the court may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just ***. The court shall first determine whether a maintenance award is appropriate, after consideration of all relevant factors, including:
>
> (1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
>
> (2) the needs of each party;

(3) the realistic present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;

(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or any parental responsibility arrangements and its effect on the party seeking employment;

(7) the standard of living established during the marriage;

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

(11) the tax consequences of the property division upon the respective economic circumstances of the parties;

(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(13) any valid agreement of the parties; and

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

ILCS 5/504(a) (West 2012).

An award of maintenance is within the discretion of the trial court and will not be reversed on appeal unless the award constitutes an abuse of discretion or is against the manifest weight of the evidence. *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). The purpose of maintenance is to enable a spouse who is disadvantaged through marriage to enjoy a standard of living commensurate with that enjoyed during the marriage. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 73.

¶ 37 Respondent begins with the trial court's temporary maintenance award that lasted only until the judgment of dissolution was entered. It appears that respondent did not preserve any objection to the temporary order for review. Nonetheless, respondent's argument is based on the guidelines set forth in the Marriage and Dissolution of Marriage Act which he claims should have led him to pay 44% or 49.6% for maintenance and child support while the trial court had him paying 54%. Respondent argues that the 5.4% to 10% gap made the awards excessive and constituted an abuse of discretion. The guidelines for maintenance and support in the Marriage and Dissolution of Marriage Act are just that—guidelines. And although the baseline presumption is that the guidelines are the proper award, a deviation from the statutory guidelines is not *ipso facto* an abuse of discretion. *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 28. Respondent offers no other basis for finding error in the temporary award of support other than the numbers. Even if the claim of error was preserved, a mere deviation from the guidelines alone does not establish that the trial court abused its discretion.

¶ 38 The trial court ultimately awarded permanent maintenance to petitioner in the amount of 30% of respondent's gross income in accordance with the statutory guideline. See 750 ILCS 5/504(b-1)(1)(A) (West 2012). The court also indicated that it reviewed and considered all of the

statutory factors for awarding maintenance set forth in the Act. See 750 ILCS 5/504(a) (West 2012). Respondent acknowledged that a maintenance award was proper, but suggested that something like 27% would be more appropriate. Respondent fails to explain how a 30% award constitutes an abuse of discretion.

¶ 39 Respondent argues that the trial court failed to consider petitioner's ability to work. However, the trial court addressed the fact that the marriage lasted 26 years and petitioner devoted herself to caring for the family and the home. Petitioner had no income at the time of the judgment. The trial court explained that petitioner had no work history of note, but that she had returned to school in a culinary program to obtain skills to allow her to support herself in some way. The trial court expressly stated that it considered the statutory factors which would include petitioner's ability to work and her earning capacity. See 750 ILCS 5/504(a)(3) (West 2012). After such a long period of not working, the trial court acknowledged that the acquisition of a marketable employment skill was required before petitioner could be gainfully employed. The trial court considered petitioner's ability to earn income and still found a 30% maintenance award to be justified. The finding was not an abuse of the trial court's discretion. That is not to say that when petitioner begins earning money that a modification for a change in circumstances might be justified. In fact, the Act contemplates that maintenance be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income. See 750 ILCS 5/504(b-1)(1)(A) (West 2012). In addition, section 504(b-1), which respondent relies upon, did not become effective until January 1, 2015—after judgment was entered. The trial court cannot have erred for not analyzing a statute that was non-existent at the time.

¶ 40 Respondent contends that the maintenance award fails to take into account that petitioner is currently cohabitating with another man. But respondent does not logically link that fact to his

maintenance obligation in any way.

¶ 41 Respondent maintains that the trial court erred when it awarded child support based on his income rather than his net income. Respondent provides various numbers, percentages, and equations to support his claim, but he does not explain where any of those figures come from. There is no citation to the record. Respondent's child support obligations have now ceased since all of his children are now adults. There are also no citations to authority in this section of respondent's brief. He mentions the "Supremacy Clause of the U.S. Constitution and IRS Rules," but he does not explain how those sources establish that the trial court abused its discretion in setting respondent's child support obligation.

¶ 42 C. Dissipation Of Assets Claim

¶ 43 Respondent argues that the trial court erred when it rejected his claim that petitioner was dissipating marital property when, at different specific times, petitioner and the children's use of the vacation home prevented the premises from being leased. Respondent claimed that petitioner used the house for a week for vacation in August 2009, and that their son lived there for a year while in college from August 2011 to July 2012. Respondent also peppered in a number of other claims of dissipation including that petitioner misused child support payments, used marital property monies to pay for costs associated with the marital home, among about 15 other supposed improprieties. Respondent filed this claim on May 29, 2013.

¶ 44 The trial court rejected respondent's dissipation claim as untimely. The Illinois Marriage and Dissolution of Marriage Act provides that "notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later." 750 ILCS 5/503(d)(2)(i) (West 2012). Respondent's dissipation claim was filed 23 days after the first day of trial. All of the claimed dissipation happened years prior to the trial and respondent

offered no explanation for failing to file his dissipation claim until such a late stage. The Illinois Marriage and Dissolution of Marriage Act provides that "no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation." 750 ILCS 5/503(d)(2)(iv) (West 2012). As the trial court observed, most of the claims made by respondent would have been inexorably barred anyhow.

¶ 45 D. Impropriety With Stone Wallace, LLC

¶ 46 Respondent argues that the trial court erred when it found that respondent fraudulently transferred marital assets to Loretta Granath and Stone Wallace Tennessee. As a result of that finding, the trial court imputed income to respondent because respondent had invariably taken income out of the marriage and transferred it to Granath with whom he admittedly had a relationship.

¶ 47 The record shows that Granath opened a company called Stone Wallace in Tennessee. Respondent and his family owned a company called Stone Wallace in Illinois. Both companies did tax preparation work for publicly traded companies, some of them being former clients of Stone Wallace Illinois. The address of the principal office of Stone Wallace Tennessee was Granath's home address. Respondent and Granath had a relationship. Yet, respondent testified that he did not know about Stone Wallace Tennessee. Although Granath was not a tax consultant and did not have a degree in accounting, respondent recommended that his Stone Wallace Illinois clients transition to Granath's company. Bank records showed that $194,000 was deposited into the Stone Wallace Tennessee bank account from July 2011 to March 2013. The trial court's finding that respondent improperly diverted money from the marital estate for his own or for Granath's benefit was not against the manifest weight of the evidence.

¶ 48 E. Award Of Attorney Fees

¶ 49 Respondent argues that the trial court erred when it awarded attorney fees to petitioner. Respondent claims that petitioner "never asked the court to rule on the request and failed to hold a hearing on the Attorney fees." However, petitioner filed a petition for attorney fees on May 6, 2013. The trial court gave respondent an opportunity to respond to the petition. The trial court was not required to hold a hearing and there was no procedural defect in the filing or presentation of the petition. *Kaufman v. Kaufman*, 22 Ill. App. 3d 1045, 1051-52 (1974).

¶ 50 Respondent also argues that the grant of attorney fees "should be reversed due to bias and prejudice." However, respondent fails to explain how any bias entered into the trial court's decision to grant fees. Instead, the trial judge was the same judge that presided over this case from beginning to end and was intimately familiar with the proceedings and the status of the case and the parties, especially being that the case had been ongoing for three years at that point and the parties appeared in court every couple of weeks. Allowance of attorney fees in a dissolution case and the proportion to be paid by each party are within trial court's discretion and will not be disturbed on appeal absent an abuse of discretion or unless it is against manifest weight of the evidence. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 598 (2001). Respondent does not cite any authority whatsoever in his argument section about the attorney fee award, and he has otherwise failed to demonstrate how the trial court abused its discretion when it awarded attorney fees to petitioner.

¶ 51 F. Trial Court Bias

¶ 52 Respondent argues that, to his grave prejudice, the trial court erred when it declined to reduce his support obligations when he stopped working for Pricewaterhouse. The motions respondent filed in this regard, however, were filed pre-trial. The trial court addressed this

situation in its judgment. As addressed above, respondent has failed to establish that the trial court abused its discretion in setting his support obligations.

¶ 53 Respondent also argues that he was "litigating against [petitioner] and the Judge." Respondent mentions that the judge commonly granted petitioner longer to respond to motions than was granted to him. As the only support for this point, respondent points to the briefing schedules for three motions when there were something like 100 motions filed in the case. His contention does not establish any bias.

¶ 54 Respondent states that the judge openly and commonly criticized his legal abilities, but he does not link those criticisms to unfavorable rulings nor does he establish that any of the criticism was unwarranted. In fact, he admits that he is unfamiliar with litigation and had trouble complying with the procedures.

¶ 55 In a slight offshoot from his bias argument, respondent claims that the trial court erred when it did not adjudicate his petition for an order of protection on an expedited basis. In that petition, respondent alleged that petitioner committed "17 acts of violence." However, respondent did not label his petition as an emergency. Then, respondent filed another petition for an order of protection, this time in domestic violence court and this time alleging that petitioner committed 21 acts of violence. But respondent withdrew the motion. Therefore, respondent has no basis to claim that the trial court erred by not granting his petition or hearing it on an expedited basis. He abandoned his claims.

¶ 56 II. Arguments Directed At Postjudgment Proceedings

¶ 57 A. Motion For Substitution Of Judge

¶ 58 After trial and after judgment was entered, respondent filed a petition for a substitution of judge for cause. In fact, respondent presented the motion on the day the trial court set a status for

respondent to purge his contempt after he had been found to be in contempt of court. The trial court assigned the matter to another judge for adjudication. Respondent contends that the judge presiding over the substitution proceedings erred by dismissing his claims without an adequate hearing. Respondent claims that the trial judge did not entertain opening and closing statements and dismissed individual paragraphs of his petition without hearing argument and evidence. However, the record belies respondent's assertions.

¶ 59 Respondent relies on the statute for substitution of judge along with case law to support his claim that he was afforded inadequate procedure in the resolution of his motion. The Illinois Code of Civil Procedure provides that "[u]pon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition." 735 ILCS 5/2-1001(a)(3)(iii) (West 2012).

¶ 60 In its written order denying respondent's petition for substitution of judge, the trial court eloquently laid out the procedural situation and the reasons that the petition was being denied. The trial court stated that the matter was set before it for a hearing. The trial court then described that at the initial appearance, both parties appeared, it gave petitioner seven days to respond, and that it set the matter for hearing to be held on September 11th and September 17th. The trial court stated that on September 17th, both parties appeared and a hearing on the petition commenced. The matter was set for further hearing on October 14th. The hearing continued and then concluded on that day. At that time the court took the matter under advisement.

¶ 61 The trial court then discussed the evidence taken and that both respondent and petitioner's attorney presented arguments. In fact, the trial court noted that he found respondent to be "thoughtful, articulate and respectful" of both the assigned trial judge and himself as the judge presiding over the motion for substitution. The trial court expressly acknowledged that the

court heard separate argument on each of respondent's 37 paragraphs supporting his petition. Nonetheless, the court's analysis of the applicable law caused it to arrive at the conclusion that respondent was not entitled to the requested relief.

¶ 62 In addition, respondent's concept of the "hearing" to which he was entitled does not square with what the statute or case law provide to one who petitions for substitution of judge. The trial court is not required to take evidence on allegations that are insufficient as a matter of law and, in this case, allegations that did not even survive petitioner's motion to strike. See *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248 (2006); see also *In re Estate of Wilson*, 238 Ill. 2d 519, 557-58 (2010). The trial court's order suggests that it, in fact, considered argument and evidence on each of the claims, even where not necessarily required. Respondent filed his substitution motion well after trial and five years into the case. Respondent was afforded two days for a hearing at which time the trial court gathered everything it needed in order to rule on the motion. The trial court likewise afforded respondent all of the required procedural protections to make a fair and, ultimately, accurate ruling denying the motion for substitution of judge.

¶ 63 The trial court correctly noted that the majority of allegations were legally insufficient just as they were challenged in petitioner's motion to strike. *Hoellen*, 367 Ill. App. 3d at 248. In assessing the paragraphs that did state facts that were putatively supported by evidence, the court found that the matters alleged to be prejudicial to respondent were simple matters of the trial court controlling the conduct of the proceedings, especially in a case made difficult by the parties. One of the ways to make a successful motion for substitution of judge for cause is for the party bringing the motion must establish prejudice against him. *Partipilo v. Partipilo***,** 331 Ill. App. 3d 394, 401 (2002). Proving such prejudice is a heavy burden and the conclusion of prejudice will not be made lightly. *Id*. Respondent actually quotes a page from the same case

under which the trial court analyzed his motion (*In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31) and under which the trial court discussed the prejudice requirement. However, the trial judge assigned to the substitution motion had a different opinion than respondent does about whether the other trial judge was biased against him, and the trial court did not abuse its discretion in finding that respondent had failed to meet his burden to justify substituting the judge.

¶ 64 One ground other than the basic procedural rulings that respondent claims should have led to the granting of his motion for substitution of judge is what he alleges to have been *ex parte* communications between petitioner's counsel and the trial judge. However, the communications respondent refers to were apparently scheduling matters that respondent failed to prove up. The Illinois Code of Judicial Conduct prohibits judges from engaging in improper *ex parte* communications.

> "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
>
> (a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
>
> (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and
>
> (ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond." Ill. S. Ct. R. 63(A)(5) (West 2012).

¶ 65 Here, after considering the transcript of conversation between petitioner's counsel and the trial judge the judge reviewing the substitution motion found the conversation not to be an improper *ex parte* communication because it was about scheduling and did not give either party a tactical advantage. Respondent reiterates the same arguments on appeal and brings up a new matter relating to another date where petitioner's counsel did not appear. Respondent maintains that there must have been something nefarious afoot when petitioner's counsel did not show up for a court appearance where the court was scheduled to make a ruling. But he fails to establish any impropriety. We find no reason to disturb the trial court's ruling as it pertains to the alleged *ex parte* communications or the trial court's ultimate ruling to deny the motion for substitution of judge.

¶ 66 Respondent argues that when the case was reassigned to the original trial judge, the court erred by making rulings too soon. "[O]nce a motion for substitution of judge for cause is brought, that judge loses all power and authority over the case, and any orders entered after a judge's removal or after an improper denial of such motion are of no force or effect." *In re C.M.A.*, 306 Ill. App. 3d 1061, 1067 (1999). Here, respondent brought his emergency motion for substitution of judge on September 1, 2015, and the case was transferred to the presiding judge of the division for reassignment on that day. The next day, the case was assigned to a judge to handle the motion for substitution. The order disposing of the substitution motion was filed on October 26, 2015 and the case was reassigned to the original trial judge that day. The original trial judge filed no orders in the interim.

¶ 67 Nonetheless, respondent argues that the trial court should have waited 30 days after being reassigned the case before entering any orders because the order denying his motion for substitution was not final until that point. Respondent does not provide any authority to support

that assertion. The rule at issue merely prevents the trial judge that the party is trying to substitute from entering orders while the motion for substitution of judge is pending.

¶ 68 B. Protections Afforded Before Respondent's Incarceration

¶ 69 Respondent argues that the trial court embarrassed him and violated his due process and equal protection rights when it ordered him to be sworn in during his contempt proceedings. He claims that, because he is an attorney, the trial court should not have done that. But respondent was acting both as an attorney and as a party—and as an alleged contemnor at that time. Contrary to his assertions, respondent was not held to a higher standard of proof or of conduct than anyone else in his situation would have been. He has not identified any actual prejudice that amounted from being sworn in by the court.

¶ 70 Respondent argues that his constitutional rights were violated when the court ordered him to be taken into custody following the status hearing on the purge on November 17, 2015. He claims that the notice and service were insufficient because the copy served on him was missing some exhibits. Before a party may be sanctioned for indirect civil contempt, the alleged contemnor must be accorded due process of law with respect to the contempt charges—but minimal due process is all that is required. *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 664 (2006). The process that must accorded to an alleged contemnor includes him receiving an adequate description of the facts on which the contempt charge is based and it must inform him of the time and place of an evidentiary hearing on the charge within a reasonable time in advance of the hearing. *Id*. In this case, respondent does not explain what exhibits were missing nor does he identify how he was prejudiced. The petitions for rule to show cause had been filed and were pending against him for months. The record reveals that he had full notice of the proceedings that were to take place and that he had access to all of the information he needed to either timely

meet his obligations or to otherwise defend himself.

¶ 71 Respondent admits that on November 10, 2015—three and a half months after the finding of contempt was entered—"the trial court gave its first and last order giving [him] one week to pay the $47,626 purge." There had been several findings of contempt against respondent before that point and he had full and fair notice that on November 17, 2015 the trial court would be conducting a status hearing on respondent purging his contempt. He made one payment of $321 during that week even though he had been explicitly instructed that his obligations to petitioner were more than $45,000 at the time. Even on appeal, he states that he "knew the outcome and came prepared to go to jail and did." Respondent has failed to establish that his equal protection and due process rights were violated due to lack of notice.

¶ 72 Respondent maintains that the trial court did not give him adequate time to pay the arrearage. Respondent points out that he no longer lived in the marital home, did not have a car, and was spending 30-70 hours of week working on this case so he had little opportunity to earn income to meet his obligations. We discuss the matter of respondent's ability to pay below (see *infra* section E). So the analysis here concerns the amount of time given alone. Respondent provides no citation to authority in this section of his brief, and he has otherwise failed to demonstrate how the trial court erred when it set a date for him to purge his contempt.

¶ 73 Respondent was first found to be in contempt for the violation that actually led to him being taken into custody on July 28, 2015. So he did not have merely a week to meet his obligations. He had actually known about the obligations since judgment was entered in November 2014. When respondent was found in contempt on July 28, 2015, he was again advised of his obligation to pay. Respondent was not taken into custody until November 17, 2015, so he had three and a half months after being found in contempt before he was jailed.

There is nothing in the record to indicate that the trial court, as a matter of fact or law, failed to give respondent enough time to meet his obligations.

¶ 74 C. Miscellaneous Claims Of Error

¶ 75 Respondent filed multiple motions to modify his maintenance and child support obligations before he was found to be in contempt. Principally, respondent was contending that he could not meet the obligations set forth in the judgment because he had lost three jobs in five years and the judgment did not account for that fact. He claims that the trial court created facts in order to keep the obligations where they were set, to violate his due process and equal protection rights, and then to find him in contempt. This is the rapid-fire section of respondent's brief where each claim of error is a few sentences and he addresses 13 errors in 7 pages. Most of the claimed errors are unsupported by authority and are difficult to understand. A few of the arguments have already been addressed in full above so they are not re-analyzed here.

¶ 76 Respondent argues that the trial court erred when it dismissed his filings after 90 days as a result of him not motioning the filings to be presented to the court. The burden of calling for hearing on any motion previously filed is on the party making the motion. Cook Co. Cir. Ct. R. 2.3 (eff. July 1, 1976). If any such motion is not called for hearing within 90 days from the date it is filed, the court may enter an order overruling or denying the motion by reason of the delay. *Id*. Respondent does not argue that he did, in fact, move to present the filings within 90 days, so it is unclear what relief he is claiming an entitlement to. He does mention that the trial court dismissed his filings, but not petitioner's filings, but he has not even indicated what those filings by petitioner were or that they were also filed more than 90 days before presentment. Respondent has not established that any error occurred.

¶ 77 The trial court found in its order dissolving the marriage that the parties agreed that their

son would get title to one of their vehicles—a 2004 Ford Expedition. Respondent argues that there is no such agreement in the record or outside the record. But we have no evidence to confirm or deny his unsupported assertion. We must presume that the trial court ruled correctly. *Moenning v. Union Pacific R. Co.*, 2012 IL App (1st) 101866, ¶ 38. The same result obtains concerning respondent's argument about the other vehicle—a 1997 Volvo. Respondent begins this argument with "[t]here is no mention of the 1997 Volvo in the record at all." We need not say more.

¶ 78 Respondent argues that the trial court erred when it denied his motion to include certain exhibits in the record. He provides no citation to authority or to the record. It is impossible to know what exhibits he is even referring to. He never made any sort of offer of proof.

¶ 79 Respondent argues that he has not been allowed to remove most of his personal property from the vacation home even though he was awarded that property. That is beyond our purview.

¶ 80 Respondent again complains about the fact that the trial court referred to Loretta Granath as his girlfriend because he has many girlfriends. That fact was not the impetus for the trial court's ruling or our affirmance of its finding that respondent had improperly diverted assets from the company respondent owned with his family. There was plenty of other evidence to support a finding that impropriety occurred with that company, independent of respondent's monogamy.

¶ 81 Respondent argues that the trial court erred when it declined to make his children testify about their mother's cohabitation. But, as stated when analyzing the cohabitation issue, even if it is true, respondent has not linked it to his maintenance obligation in any way. The trial court did not abuse its discretion by not ordering the children to testify.

¶ 82 Respondent argues that the trial court improperly used the tax deductions he took for

making payments on the vacation home as support for the fact that he was making payments on the vacation home, but not meeting his support obligations. He claims it is an "extrajudicial fact," but it is listed right on his income tax returns that are record evidence. He claims he could have proved that the interest continued to accrue while the property was in foreclosure in order to explain the disparities, but the evidence he suggests would prove that was never made part of the record. There is no way to know what that evidence would show, it was respondent's burden to produce a record on appeal that would support his arguments.

¶ 83 In an argument titled "property-less executor," respondent makes a claim regarding the property of petitioner's mother's estate of which he is the executor. But he makes no claim for relief therein, so it is unclear what he would have us do regarding the estate.

¶ 84 In conclusion respondent argues that "each of the foregoing shows actual prejudice to [him]." We do not find that respondent has established reversible error from anything he included in this section of his brief.

¶ 85 D. Award Of Attorney Fees For Rule To Show Cause

¶ 86 Respondent argues that the trial court erred when it awarded attorney fees to petitioner for her petitions for rule to show cause. Respondent maintains that the trial court should have held an evidentiary hearing. When a former spouse fails to pay support obligations resulting from a dissolution of marriage case, the other spouse is entitled to attorney fees incurred in prosecuting a rule to show cause petition. *In re Marriage of Admire*, 193 Ill. App. 3d 324, 332-33 (1989). In fact, it is an abuse of discretion not to award those fees. *Id*.; see also *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 38. Petitioner was required to file two petitions for a rule to show cause against respondent and litigate them heavily from December 29, 2014 when they were filed through November 17, 2015 when respondent was taken into custody. The parties

were in court in front of the trial judge for four days of hearings on respondent's opportunity to purge his contempt. Petitioner had to prosecute and defend against respondent's several motions to modify his obligations and other filings. All was in the purview of the trial court. *Kaufman v. Kaufman*, 22 Ill. App. 3d 1045, 1051-52 (1974). The trial court did not abuse its discretion by awarding reasonable attorney fees that petitioner incurred attempting to collect the support granted to her in the judgment of dissolution.

¶ 87 E. Propriety Of Contempt Order—Inability To Pay

¶ 88 Perhaps the most striking part of this case is respondent, an attorney, being held in contempt and remaining in jail for over a year. Surprisingly, respondent does not begin his analysis of this issue until the 42nd page of his brief. While this appeal was pending, respondent filed several motions with just the unsupported request that we order him released from jail. Those requests had to be repeatedly denied, and we even took the unusual step of setting forth the different procedural avenues respondent could take to challenge his contempt rather than the improper one he was pursuing. To no avail. But records from the clerk of the circuit court indicate that respondent's contempt has since been dismissed or purged.

¶ 89 There is not a dispute that respondent was ordered to pay certain sums and that he did not pay. However, respondent has steadfastly argued both here and in the circuit court that he did not have the ability to pay his support obligations. The trial court heard arguments and took evidence from the parties and rejected respondent's argument that his failure to pay was not willful.

¶ 90 A party may be held in civil contempt for willfully failing to comply with a court order. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107-08 (2006). The failure to make support payments as ordered is *prima facie* evidence of contempt. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 758-59 (2008). Once the party bringing the contempt petition establishes a *prima*

facie case of disobedience of a court order, the burden shifts to the alleged contemnor to prove that the failure to make support payments was not willful or contumacious and that there exists a valid excuse for his failure to pay. *Id*. Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court should not disturb the trial court's determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 633 (2008).

¶ 91 At the contempt hearing, the evidence showed that from July 15, 2014 to March 20, 2015, respondent deposited $99,377.84 in his checking account. Those deposits included a federal tax refund of $48,937 and an Illinois tax refund of $7,652. Respondent's brother, a multimillionaire, made payments to respondent directly or to the bank on the vacation home mortgage of more than $30,000 in this period. As of April 29, 2015, respondent received $50,000 from his brother. Respondent had two credit accounts with a combined limit of over $30,000, and respondent's brother established a line of credit for him of up to $300,000. Just weeks before being found in contempt for willful nonpayment, respondent received a second federal tax refund for $31,196 on June 20, 2015 and a second state refund of $4,062 on July 1, 2015.

¶ 92 In the same period of time, respondent paid money to other individuals: $6,000 to his other brother Randy, separate payments of $2,000 and $6,000 to Anna Fabbioli, $6,000 to Christina Faulkner, and $6,889 to his brother John. He also made payments of at least $11,000 on his Wells Fargo credit card, $3,000 on his Bank of America credit card, $1,200 for his cell phone, $5,000 for court reporter fees, and at least $1,000 to his attorney Arnold Goldstein. Substantial payments were also made on the vacation home mortgage during this time in an attempt to stave off foreclosure.

¶ 93 Between the time that respondent lost his job at Pricewaterhouse on July 1, 2014 and the

contempt hearing, respondent had not applied for any jobs or contacted any recruiters. His CPA certification lapsed. Respondent would not consider a prospective job with an income range of $80,000 to $100,000 a year because the income was too low. Although he claims that he was unemployed and was receiving unemployment benefits, respondent testified that was self-employed because he had restarted his law practice. However, he had not set up an IOLTA account nor had he been paid a retainer by any clients. He traveled to Tennessee weekly during this period. He was spending 30-70 hours a week on postjudgment efforts to modify his support obligations.

¶ 94 The trial court issued a lengthy and detailed oral ruling. The court made extensive findings of fact consistent with much of what is set forth above. The trial court found that respondent had the funds to pay the court-ordered support, but chose not to do so and to spend the money on other discretionary expenditures. Respondent never justified why the thousands of dollars he gave to others took priority over his maintenance and child support obligations. For example, he paid $6,000 to Anna Fabbioli and testified it was prepayment for a rent obligation to open his mail. He paid $6,000 to Christine Faulkner, his girlfriend's (or one of his girlfriend's) half-sister, who lives in Knoxville, Tennessee, supposedly for rent but he could not produce any kind of lease agreement. He also maintained throughout that his residence was Chicago, and failed to explain why it was necessary or prudent to be renting a place in Tennessee. These two expenses alone would have nearly been enough for respondent to meet the purge set by the court.

¶ 95 The court also found that respondent's payment of all of his credit cards, cell phone bill, and his reimbursement of his brother out of the money he received from a tax refund just weeks before the hearing was a choice by respondent to evade payment of his court-ordered obligations. Significant funds were also not specifically accounted for.

¶ 96 The trial court also observed that the evidence at the contempt hearing showed that respondent had not paid the required college expenses and medical expenses for his children as provided for in the judgment. Respondent essentially conceded as much, but then argued that he had no such obligations or alternatively that petitioner did not send him the bills. The trial court went through each type of support, specifically stated the deficiency, and found respondent in contempt on each item, stating specifically that respondent "has had significant income available to pay his obligations, and he has chosen not to do so." The trial court gave respondent two weeks to meet his obligations.

¶ 97 Respondent did not meet his obligations and the trial court ordered him taken into custody. Though the outstanding support owed by defendant was $47,000, the trial court set the purge at $15,000. The trial court later reduced the purge amount to $9,800.

¶ 98 Based on all of the evidence offered, we cannot say that the trial court's findings were against the manifest weight of the evidence or that it abused its discretion. There was certainly evidence to support the trial court's conclusion. Respondent received significant funds in the period between the dissolution judgment and the orders of contempt. The trial judge weighed the evidence and found that respondent purposefully prioritized expenses other than those set forth in its judgment. Also, it is not as if respondent was even close to meeting the obligations nor did he demonstrate that he was actually trying. He was in arrears in every type of support he owed and had made very few recent payments. After it was incontrovertibly established that respondent had not met his obligations, the burden shifted to him to prove that the failure to make support payments was not willful or contumacious and that there existed a valid excuse for his failure to pay. *Barile*, 385 Ill. App. 3d at 758-59. He totally failed in that regard. Respondent offered no legally cognizable excuse. See *In re Marriage of Peterson*, 319 Ill. App. 3d 325, 332-

33 (2001) (explaining that an asserted downturn in income followed by discretionary spending supports a finding of contempt where the party "had funds available to pay the court ordered support and fees, but chose not to do so.").

¶ 99 Some of respondent's arguments are slightly less applicable or even moot now that he is out of jail and his contempt has been purged or dismissed. He claims that the trial court denied him access to the courts because it apparently prohibited him from filing certain documents in June 2015. He also argues that the trial court erred by allowing him to stay in jail for over a year. But respondent does not suggest what remedy we could provide to him at this point even if either of those issues constituted error.

¶ 100 Respondent argues that the trial court has impermissibly brought back debtor's prisons in violation of his constitutional rights. It is difficult to understand why respondent would have knowingly put himself in this position when all indications are that it was avoidable. But trying to rationalize what happened in this case is an exercise in futility. For example, even while incarcerated, respondent refused to use approximately $5,000 tendered to him by petitioner as proceeds from renting the vacation home to apply to his purge. If it is true that respondent did not have the ability to pay all along, he remained in jail because he never challenged his incarceration properly. To quote our order from 18 months ago addressing respondent's motion, which again was an unsupported request that we order him released from jail,

> "He can appeal his contempt finding. Ill. Sup. Ct. R. 304(b)(5). He can appeal the underlying orders giving rise to his contempt finding and have them resolved by the normal appellate process. He can comply with the order. He can seek relief from the trial court; arguing, as he mentions here for example, that his failure to obey the court's orders to pay is due to insolvency or other misfortune or that it is

> otherwise not willful. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 829 (1994). He can file a petition for a writ of habeas corpus (provided he asserts a permissible basis for doing so). *People ex rel. Kazubowski v. Ray*, 48 Ill. 2d 413, 418 (1971). There are a number of paths that respondent can take, but he continues to simply ask us to summarily order him out of jail without any legal basis because he thinks the trial court ruled incorrectly." *In re Marriage of Ehlers*, No. 15-0293 (cons.) (March 10, 2016 Order).

The simple fact of the matter is that we had no basis to set aside a valid and binding order of contempt entered by a court with jurisdiction and that complied with due process simply because respondent believed the trial court was wrong. It is undoubtedly an unfortunate situation that a dissolution of marriage case got to this point. But respondent fails to establish any basis for relief.

¶ 101 CONCLUSION

¶ 102 Accordingly, we affirm.

¶ 103 Affirmed.