2018 IL App (2d) 170210-U
No. 2-17-0210
Order filed December 10, 2018
Modified Upon Denial of Rehearing January 29, 2019

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

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
LISA MODERWELL,	)	of Lake County.
	)	
Petitioner-Appellee/Cross-Appellant,	)	
	)	
and	)	No. 14 D 1896
	)	
CHARLES MODERWELL,	)	Honorable
	)	Elizabeth M. Rochford,
Respondent-Appellant/Cross-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in (1) denying respondent's motion to continue the trial, (2) denying the admission of respondent's undisclosed exhibit, (3) ordering respondent to pay 30% of his additional income to petitioner for maintenance and 20% of his additional income for child support, (4) ordering respondent to provide quarterly financial statements to petitioner, and (5) calculating the amount that respondent owed toward petitioner's attorney's fees. However, the trial court miscalculated the statutory amount of monthly child support respondent owed to petitioner. Affirmed as modified.

¶ 2 Respondent, Charles Moderwell (hereinafter Charles), appeals the trial court's judgment for dissolution of marriage from petitioner, Lisa Moderwell (hereinafter Lisa). Charles argues

that the trial court abused its discretion by denying his request to continue the trial to recall the guardian *ad litem*, denying the admission of his exhibit 47 into evidence, miscalculating the amount of his child support payments, and imposing an uncapped obligation on him to pay 30% of any additional income as maintenance and 20% of any additional income as child support. Charles also argues that the trial court did not have the authority to order him to provide quarterly income reports and annual tax returns to Lisa. In turn, Lisa has cross-appealed, arguing that the trial court abused its discretion by ordering Charles to pay only an additional $11,327 toward her attorney's fees. For the reasons set out below, we affirm all contested rulings, except the calculation of child support.

¶ 3 I. BACKGROUND

¶ 4 Lisa and Charles were married on May 1, 1993. In 1997, the parties established a marital home in Lake Forest. Lisa filed a petition for dissolution of marriage on October 14, 2014. The marriage produced four children. The first three, J.A.M., J.C.M., and M.M.M., were emancipated by the time the case went to trial, while the fourth, G.E.M., is still a minor. G.E.M. has been diagnosed with dyspraxia, a motor planning disorder that makes learning and doing repetitious behavior, like consistently tying her shoes correctly, difficult. G.E.M.'s condition requires her to receive special education services and to get assistance from her parents while doing homework.

¶ 5 On March 25, 2015, while the parties were still both living in the marital home, Charles was helping G.E.M. complete a homework assignment and, according to Lisa's testimony, began "berating" G.E.M., accusing her of being "lazy" and asking if she wanted to "cause a divorce." Lisa testified that G.E.M. was scared and crying. After several attempts to de-escalate the situation, Lisa attempted to remove G.E.M. from the room. Charles restricted G.E.M.'s movement and yelled at Lisa to leave. This situation prompted Lisa to file for an emergency

order of protection for both her and G.E.M., which was granted on April 22, 2015. Pursuant to the order, Lisa had temporary custody of both G.E.M. and M.M.M., at the time still a minor. The trial court subsequently appointed Gary Schlesinger as guardian *ad litem* (GAL) for G.E.M. on April 23. A two-year plenary order of protection was entered on September 4, 2015, providing that Charles have no contact with Lisa. The court further found that Charles had abused G.E.M. pursuant to section 103 of the Illinois Domestic Violence Act (750 ILCS 60/103(1), 60/103(7) (West 2014)) and ordered him not to assist G.E.M. with "school homework." From the entry of the temporary order of protection until April 18, 2016, the only time Charles spent with G.E.M. were supervised therapy sessions once a week, despite Lisa's multiple offers for additional parenting time. The April 18 order provided Charles with parenting time two weekdays from after school until 6:30 p.m., and alternating Saturdays from 9:30 a.m. until 5:00 p.m., in addition to the weekly therapy sessions.

¶ 6 Throughout the two years of litigation, Charles retained four different attorneys. However, each counsel withdrew from representing him, with Charles's final attorney being granted leave to withdraw on July 13, 2016, three months before trial. Despite having numerous counsels' aid throughout the pre-trial process, Charles failed to comply with Lisa's discovery requests. On August 17, 2016, the court issued a rule to show cause, finding that he willfully violated the court's March 15, 2016, order compelling Charles to comply with all outstanding discovery requests within 21 days. On September 2, 2016, the court ordered Charles to tender account information for the couple's joint savings account, his personal bank account, his joint accounts with the children, pre-paid credit cards of the couples' children, and information regarding certain shares of stock within seven days. The order also compelled Charles to pay both Lisa's attorney's interim fees and the GAL's fees.

¶ 7 On September 20 Charles, without providing notice to Lisa or the GAL, petitioned the court to continue the trial for him to hire a new attorney. The trial court denied the motion, finding that it was not in the best interests of G.E.M. to delay the proceedings. The court further issued two additional rules to show cause, finding that Charles willfully violated the court's September 2 order compelling him to pay interim attorney's fees and to tender all outstanding discovery requests to Lisa's counsel. On September 23, the trial court entered an order of contempt against Charles for willfully and contumaciously failing to comply with the September 2 order.

¶ 8 On September 26 Lisa filed a motion *in limine* seeking to bar Charles from introducing, evidence not produced by September 20, pursuant to Illinois Supreme Court Rules 214 (eff. July 1, 2014) and 219 (eff. July 1, 2002). A hearing on the motion was briefly heard before trial began. The trial court noted that Charles failed to provide timely witness disclosures, did not timely present any trial exhibits, and that Charles indicated that he was still gathering documents on the day of trial. Although it granted the motion, the trial court was lenient with Charles proceeding *pro se* and admitted several of Charles's exhibits throughout the trial.

¶ 9 The trial began on October 5, 2017, with the trial court addressing Charles's concern of proceeding to trial *pro se*. The court noted that Charles had "four very competent attorneys" who filed appearances on his behalf throughout the litigation. The court also noted that cases involving children must be heard in a "prompt manner," and the case at bar was the second oldest on the docket. Given those factors, the court determined that there was no good cause for delaying the trial. The parties stipulated to the introduction of reports from both the GAL and the court's expert pursuant to section 604 of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/604(b) (West 2014).

¶ 10 Lisa's counsel first called Gary Schlesinger and qualified him as a GAL. He testified that to draft his report he read the pleadings, G.E.M.'s report cards, her individualized educational plan, psychological evaluations, Dr. Finn's report, and the plenary order of protection. He also spoke with several people, including Charles, Lisa, G.E.M., M.M.M., Charles's therapist, G.E.M.'s tutor, and a special education administrator. Given G.E.M.'s acclimation to the marital home, her school, and the community, he recommended that G.E.M. remain in the marital home and continue attending Lake Forest High School. He further testified that, even without a no contact order, the parties would not be able to make any joint decisions regarding G.E.M. due to the "imbalance of power" between them. He stated, "[Charles] spent a great deal of time denigrating Lisa's involvement with G.E.M.," and "is dismissive of [Lisa's] role as a parent and does not value her opinion." He testified that it is in G.E.M.'s best interests for Lisa to have 100% of the decision making responsibility for G.E.M.'s education, medical and health related decisions, and educational extracurricular activities. Finally, he testified that Charles should only have parenting time with G.E.M. for three hours on Tuesday and Thursday evenings, as well as alternating weekends and, pursuant to the court order, not to assist her with homework.

¶ 11 Upon the conclusion of Lisa's direct examination, the following exchange occurred:

> "THE COURT: Mr. Moderwell, do you have any questions for Mr. Schlesinger?
>
> THE RESPONDENT: Not at this time.
>
> THE COURT: Okay. Thank you very much.
>
> MS. RIEWER [LISA'S COUNSEL]: Your [H]onor, for clarification, if Mr. Moderwell is going to question the GAL, he is available now and would not -- and has not been subpoenaed to my knowledge for tomorrow.

THE COURT: Okay. There has been a stipulation to Mr. Schlesinger's report. We have heard his testimony. This is your case in chief. I just want to clarify for you, Mr. Moderwell, are you intending to call Mr. Schlesinger in your case in chief?

THE RESPONDENT: I would like to reserve that right, please.

THE COURT: You are excused. There is no subpoena outstanding. Let me just clarify, Mr. Moderwell, that I would grant you the opportunity to question Mr. Schlesinger now as if it were in your case in chief, even though you have not subpoenaed him, if you would like to.

THE RESPONDENT: I don't have any questions at this point. Thank you."

Upon the conclusion of that exchange, the court briefly shifted its focus to a fee petition for one of Charles's previously retained attorneys. Charles testified that he did not bring any financial documents to court, stating that "[m]y understanding was that the custody issues would be addressed first. So that was my preparation and in the documentation that I brought for today."

¶ 12 Lisa's case in chief continued on October 6. Lisa testified that she is satisfied with the education G.E.M. is receiving and believes that G.E.M. is having a "full high school experience" pointing to G.E.M. attending the school's homecoming dance and managing the J.V. cheerleading squad. She further stated that she helps G.E.M. with her science, math, and English homework for about an hour and a half each school night. Lisa testified that she is employed part-time at a retail store in Lake Forest and earns $31,000 annually. From that employment, she has acquired a retirement account with a little over $600. While Charles cross-examined Lisa, the trial court reminded him on several occasions that his role was to "ask questions" and "not to present statements as if they are facts."

¶ 13 Lisa's case concluded with Charles testifying about parental responsibilities, parenting time and financial issues. Charles testified that during the litigation, he obtained a home equity line of credit (HELOC) on the marital home without Lisa's consent. He also testified that he regularly shifts money between his personal checking account and the joint checking accounts he shares with his children. He classified the money shifted as gifts from this family. Charles testified that he is the beneficiary of a trust from his mother's estate valued at $1 million but that he does not presently have access to the funds. However, when asked about what the trustee of his mother's estate, Charles's brother, testified to during a hearing on attorney's fees, Charles admitted that his brother stated Charles's portion was "a little bit more than $1 million, maybe 1.3 or something like that."

¶ 14 Before breaking for lunch, the trial court explained to Charles that the case will "shift" to him and asked, "Mr. Moderwell, *** are you prepared to proceed with you presenting your case, sir?" To which Charles responded affirmatively. In the afternoon on October 6, Charles began his case in chief. He called Lisa as his first witness, who testified about G.E.M.'s education and home life. Charles was reminded by the trial court to "get to a question." Upon the conclusion of Lisa's testimony, the court asked Charles, "do you have any other witnesses?" Charles answered, "No, just myself." Prompted by the court, Charles began his testimony with issues regarding the parenting issues.

¶ 15 Charles testified that G.E.M. should have equal time with both him and Lisa. Over objection, the trial court admitted Charles's proposed parenting time schedules. He also advocated for joint decision making in regards to education, medical, extracurricular, and religious decisions. He then began to discuss how he made proposals to "buy out" Lisa's share of the marital home. The court prompted him to "just finish with the children's issues" before

moving to the "financial piece." The court then asked, "is there anything else in regard to parenting issues? I think that you covered all the aspects of it – the school, parenting time and the parental responsibility allocation." Charles responded that he would like to "speak a little bit about medical decision making." Charles then presented additional testimony on medical decision making, extracurricular decision making, as well as holiday and vacation time. He was then cross-examined by Lisa's counsel on these matters. The court took a brief recess, instructing the parties that upon reconvening the financial portion of Charles's case will begin.

¶ 16 Because Charles was *pro se*, the trial court suggested that the most efficient way to address the financial issues would be to go through an enumerated list of proposed marital assets entered into evidence by Lisa's counsel earlier to determine if Charles believed any to be non-marital. Charles purported that all items listed in his name, including 4 Fidelity Individual Retirement Accounts (IRA) and a Charles Schwab bank account, are his non-marital property. Lisa stipulated that the $185 in the Charles Schwab account and the inheritance from his mother's estate were Charles's non-marital property but asserted every other asset was marital. The court then asked if Charles was ready to proceed on financial issues.

¶ 17 Charles asked the court if he could instead testify on "custody issues." The following exchange took place:

> "THE COURT: You've addressed the educational issue, medical issue, extracurricular issue, the religious issue, parenting time. What is it that you didn't address?
>
> MR. MODERWELL: I have additional details that I'd like to present regarding educational and medical parental responsibilities.

> THE COURT: Okay. I'm going to give you a brief opportunity. You've have already actually concluded your testimony. You were cross-examined. You would now be limited to the scope of that cross examination. I'll give you a little leeway here, Mr. Moderwell."

Charles then sought to introduce several documents into evidence, including G.E.M.'s report cards from kindergarten through seventh grade, M.M.M.'s final high school report card, and emails from G.E.M.'s teacher and caseworker. After instructing Charles that the point of discovery was to provide the opposing side the opportunity to review items before they were presented at trial, the court allowed for a brief recess to allow Lisa's counsel to examine the documents.

¶ 18 Counsel objected to the admission of the documents for both hearsay and surprise. Charles responded that all the documents were referenced by the GAL in his report. The court asked Charles to point to where the documents were specifically referenced. He did not have the report to reference. The court then asked, "you did not question Mr. Schlessinger [*sic*] when he was here testifying as to anything that he had relied on or as to any of these matters; or you didn't attempt to present these documents at that time, did you?" Charles answered that he did not, and stated "I think I asked to reserve the right to call him as a witness in light of the time and the issues, I prefer not to do that, but if that's the requirement to be able to discuss issues that he presented, then --." The court denied the admission of M.M.M.'s report card for relevance and the emails for hearsay but entered G.E.M.'s report cards into evidence.

¶ 19 After explaining that the term "child custody" was no longer used, the trial court allowed Charles a "very brief opportunity to address whatever it is that [he] felt was under the umbrella of custody that [he] had not previously addressed." Charles went through each of G.E.M.'s report

cards and provided explanations of what he did to help G.E.M. each school year. Upon finishing, the court asked, "Is that it, Mr. Moderwell?" To which Charles responded affirmatively.

¶ 20 The trial was set to continue at 11:00 a.m. on October 7 to allow both parties to appear at 9:00 a.m. in another courtroom for a hearing regarding Charles's alleged violation of the order of protection. Charles was late for court. When instructed to continue presenting his case, the following exchange occurred:

"THE RESPONDENT: Your [H]onor, in terms of the case's progression I did contact Mr. Schlesinger to let him know that I want to call him as a witness. He did write me back to let me know that he is likely not to be able to come in today.

MS. RIEWER: Your [H]onor, there is no subpoena that has been issued to Mr. Schlesinger. You mentioned that if Mr. Moderwell wanted Mr. Schlesinger at trial he would be required to issue a subpoena. The delays that are taking place are extremely costly to my client.

***

THE COURT: Do you want to respond, Mr. Moderwell?

THE RESPONDENT: I do not recall the situation regarding the instructions that a subpoena was necessary. I think the first day that when the question about Mr. Schlesinger's testimony came up, I said I would like to reserve the right to be able to call him, and I just started my testimony yesterday. As you know, Lisa Moderwell and myself testified yesterday. We are still not through with my testimony and so --

THE COURT: Well, no, Mr. Moderwell. You concluded your testimony yesterday in regard to the children's issues.

THE RESPONDENT: Okay.

THE COURT: And no cross examination has been requested so your testimony is concluded.

THE RESPONDENT: Okay.

THE COURT: I want to be clear with you. All right? [*sic*] I'm again very frustrated that there has been no notice to this Court or no notice to Mr. Schlesinger that he was going to be called as a witness. We could have made arrangements for him to be present here, and we would have known what his schedule was so waiting until the final hour when this case is very near its conclusion is extremely frustrating. What did Mr. Schlesinger say in terms of his availability?

THE RESPONDENT: He said that he had a full docket today, and that it would be unlikely that he would be able to be available.

THE COURT: So what arrangements did you make with him in terms of testifying?

THE RESPONDENT: I told him that we had a to-be-determined court time this morning, and I did not make any further --

THE COURT: Oh, no, we did not have a to-be-determined time. We had 11:00 ready to proceed advance the trial court time.

THE RESPONDENT: Okay. I was unaware of that."

¶ 21 Charles then stated that he never appeared in the other courtroom for the hearing on the violation of the order of protection but instead went to the bank for a certified check and came straight to the courtroom for trial. The court explained that the reason for the 11:00 a.m. start time was to allow both parties to attend the hearing on the violation of the order of protection before instructing Charles that there would be no additional delays in the trial.

"THE COURT: It is your case, sir, so you can present it, and we have -- you are calling yourself as a witness in regard to the children's issue. We resolved the children's issue. If you arranged for another witness in regard to the children's issues, call them now or let's move forward.

THE RESPONDENT: Mr. Schlesinger?

THE COURT: He is not available. You haven't made arrangements for him to be available to testify, is that correct?

THE RESPONDENT: Your instruction is to call him right now?

THE COURT: No, I'm not instructing you to call anybody, Mr. Moderwell. This is your case so, I mean, if he is not present to testify, you need to proceed with your case.

THE REPSONDENT: Okay. We are on the financial matters, correct?

THE COURT: Right.

THE RESPONDENT: Okay.

THE COURT: You have no other testimony or evidence with regard to the children's issue, is that correct?

THE RESPONDENT: Mr. Schlesinger's testimony would be the piece --

THE COURT: But you have not made no arrangement for that witness to be present to testify today?

THE RESPONDENT: Again, I have just contacted him asking him for his availability. His response being that it is unlikely that he will be available today.

THE COURT: No other arrangements have been made so it is your case, sir. Please proceed."

Charles then proceeded with the financial portion of his case. To establish the non-marital nature of two vehicles purchased during the marriage, Charles presented checks written from his Charles Schwab account used to purchase the vehicles. Lisa's counsel then qualified the stipulation made the previous day regarding the classification of the Charles Schwab account, providing that Lisa stipulated only to the present value of the account, not that the account itself was non-marital.

¶ 22 Charles informed the trial court that his understanding of the stipulation was that the entirety of Charles Schwab account was non-marital and therefore did not bring documentation to demonstrate its non-marital nature. He continued,

> "THE RESPONDENT: [I]n my haste in trying to get all of these different things done and the pressure of trying to get this check to Ms. Riewer this morning by 9:00 I pulled the wrong file set, and I do not have the documentation I need both for questioning Mr. Schlesinger and for being able to talk about the nonmarital composition of the Fidelity account. Furthermore, I feel sick right now, and I would just ask that you allow me to present what I can here the remaining financial material and continue the trial at whatever is convenient as soon as possible for your schedule for these other matters and allow [him] to present those things in a thorough and fair manner.
>
> MS. RIEWER: Your [H]onor, we continue to agree that the amount of money in the Schwab account is $185 is -- we stipulate that it is nonmarital. As to the Fidelity account which he says he doesn't have the documents to prove it's nonmarital, we had never stipulated to that nor have we done anything, but assert that it was marital. We are here at trial. We are ready for trial, and Mr. Moderwell is in the middle of his testimony

regarding financial matters which I assume will be complete by the end of the day. We would object to any delay further in completing this matter.

THE COURT: Okay. Well, first of all, we are going to proceed. In regard to the -- I do note that there was only in regard to the Charles Schwab account a stipulation yesterday that that was [marital].

***

THE COURT: Was [the Schwab account] established during the course of the marriage?

THE RESPONDENT: No, it predates the marriage as does the Fidelity account. Both of them had activity going back to the 1980s thereabouts.

THE COURT: I will acknowledge that there was a stipulation as to the [Charles Schwab account], which has now been qualified, so I would be willing to keep the proofs open for that specific purpose only, but everything else was very specifically represented that it was the position of the Petitioner that each and every asset that was listed on this schedule was a material [*sic*] asset so we will proceed and conclude today. Now, as far as Mr. Schlesinger, I'm also not keeping it open for some future date. If Mr. Schlesinger is here this afternoon for you to question him, that's up to you. But only because there was this stipulation, which has now been qualified, I will for that specific and limited purpose allow the proofs to remain open, but otherwise we will proceed ahead this afternoon. Are you ready to proceed?

THE RESPONDENT: Yes. Just for clarification, I have made every effort to be able to contact Mr. Schlesinger and be able to schedule or get his availability. I have

spoken directly with his secretary, and I have not heard a definitive response from him on his availability.

THE COURT: We will be here a little while longer so we will see what happens. You can proceed with the rest of your presentation of your financial case."

¶ 23 Charles continued, testifying that he earns $70,000 annually as a computer consultant and that, until 2015, he had a part time position as a consultant and earned an additional $22,500 annually. Charles advocated that he pay Lisa an annual amount of $9103 for maintenance. He had no position on what he should pay for child support. Charles then presented several documents that he believed traced the funds shifted between his and the children's bank accounts. Over objection, the trial court admitted a demonstrative exhibit tracing the funds and copies of checks used to support of the demonstrative exhibit. Upon the conclusion of his testimony, Charles asked to testify about his former attorney's fee petition, which the court denied. The court then asked if Charles had anything else regarding financial issues. Charles inquired about the Charles Schwab and Fidelity IRA accounts. The court stated, "[t]he only thing that has been reserved for additional proofs is the one specific issue of the Charles Schwab account as only to its marital or nonmarital status."

¶ 24 On October 17, the trial continued for the additional proofs for the Charles Schwab account. However, after having reviewed the account information, Lisa stipulated to the non-marital status of the entirety of the Charles Schwab account. The trial court asked if there was "anything else." Charles then submitted several additional documents to the court, including his most recent pay stubs, which demonstrated that Charles actually earns $79,456 annually. His pay stubs were admitted into evidence. Charles also averred that he brought documentation proving the non-marital status of the 4 Fidelity IRAs. He presented the court with respondent's exhibit

47, which contained 4 year-end tax statements from Fidelity IRAs from 1992 through 1995 titled in Charles's name. Lisa's counsel objected to the documents being admitted because they went beyond the scope of the court's order leaving proofs open and for a lack of foundation.

¶ 25 After hearing Charles's testimony about the documents, the trial court explained that it was not allowing exhibit 47 into evidence. The court first addressed section 503 of the Act and the burden it placed on Charles to demonstrate that the Fidelity IRA accounts were non-marital. 750 ILCS 5/503(a) (West 2016). Next, the court noted that Charles did not produce the documents during discovery or in his case-in-chief, nor did he lay proper foundation to admit the documents. Finally, the court commented that the trial was extended solely to hear testimony about the Charles Schwab account. However, because Charles was proceeding *pro se*, the court wanted to afford him "every opportunity to make sure that any relevant evidence is not excluded." The court stated it was "troubled" by the documents because only one of them, the 1992 year-end tax statement, pre-dated the marriage. The court further noted that the account number on the 1992 statement did not match the present Fidelity IRA account numbers, and that Charles did not present anything to establish the source of the funds nor any documentation demonstrating that the account numbers were changed or when such change occurred. The court subsequently denied the admission of respondent's exhibit 47.

¶ 26 The parties then gave closing arguments. Lisa's counsel argued that she should have sole decision making authority for G.E.M.'s education, medical and health issues, and school-related extracurricular activities. Counsel argued that the majority of parenting time should be with Lisa during the school year due to the order of protection prohibiting Charles from assisting G.E.M. with homework. Counsel argued that Charles's testimony regarding his finances was elusive and not credible and asked the court to impute an additional $79,000 in gifts from his family as well

as the $22,500 from his previous employment to Charles's income. Finally, counsel argued that the HELOC should be a non-marital debt assigned to Charles. Charles argued that the parties should have joint decision making responsibilities for G.E.M.'s education, medical and health issues, and school-related extracurricular activities. He advocated for a joint parenting time throughout the week and that his income should only include his present employment and neither the gifts from his family nor his previous employment.

¶ 27 Upon the conclusion of the closing arguments, the trial court ordered that Charles present his admitted exhibits to the court within 14 days to incorporate it into the record. Charles failed to do so. Lisa subsequently filed a petition for contribution to attorney's fees and a hearing was held on December 2, 2016. At the hearing on the petition, Lisa's counsel also argued that because Charles failed to produce any of the exhibits, the court should exclude them from the record. The court denied Lisa's motion to exclude Charles's exhibits.

¶ 28 The trial court announced its judgment for dissolution on January 27, 2017, and entered its 33-page written judgment on February 9, 2017. Relevant to this appeal, the court found that a cooperative joint parenting for G.E.M. was impossible due to the imbalance of power between Charles and Lisa. After discussing reports from both the court's 604(b) expert and the GAL, the court noted that it had a "unique" opportunity to witness and assess the interaction of the parties throughout litigation, in particular when Charles cross-examined Lisa. It found that Lisa's tension with Charles is "real" and that her "fear and discomfort with Charles is genuine and palpable." The court subsequently awarded sole parental responsibility to Lisa for "education, religion, medical, and extracurricular activities," save for activities that occur solely during Charles's parenting time. Further, the court awarded Lisa all parenting time, subject to Charles's two nights a week and alternating weekends.

¶ 29 Regarding finances, the trial court found Lisa's testimony to be credible and Charles's testimony to be "evasive, self-serving, and generally not credible." The court declined to impute the gifts from Charles's family or his income from his previous employment and determined Charles's annual income to be $79,000 and Lisa's to be $31,000. The court found the statutory guidelines for both maintenance and child support were appropriate under the circumstances and awarded Lisa permanent maintenance of 30% of Charles's income, calculated at $1100 per month, and 20% of Charles's income for child support at $921 a month until G.E.M. graduates from high school. Additionally, the court ordered that Charles shall pay 30% of any additional gross income as maintenance and 20% of any additional income as child support. Charles was also ordered to provide Lisa a quarterly sworn disclosure of all sources of income including his present employment, any future part-time work, and any gifts or loans.

¶ 30 Because of the difference between Charles and Lisa's incomes and non-marital assets, the trial court awarded 65% of the marital property to Lisa and 35% to Charles. In dividing the estate, the court found that all of the parties' retirement accounts were marital property. The court determined that the first home mortgage and the HELOC were both marital debts. The court ordered Lisa to pay the marital home's mortgage and Charles to pay the HELOC. Lisa is to remain in possession of the marital home until G.E.M. graduates from high school, at which point the profits from the home's sale will be divided pursuant to the division of marital property.

¶ 31 In ruling on Lisa's petition for attorney's fees, the trial court found that the fees, totaling $188,900, were reasonable and that Charles has the ability to pay the fees, given his retirement assets, proceeds from the marital home, and his $1.2 million inheritance. Charles was ordered to pay 75% of Lisa's attorney's fees, $141,675, and was given credit for the $130,348 he already

paid, including the $23,000 that he pulled from the HELOC. Thus, he was ordered to pay an additional $11,327 to fulfill his obligation.

¶ 32 On its own motion, trial court modified its written judgment on February 24, 2017, to reflect that Charles is responsible for 100% of uncovered medical expenses and that any extracurricular activity expenses for G.E.M. would be split 60% for Charles and 40% for Lisa. Charles filed his notice of appeal on March 13. Lisa timely filed her notice of cross-appeal on March 27, 2017.

¶ 33 II. ANALYSIS

¶ 34 Charles contends that the trial court erred with respect to its evidentiary rulings and many of its findings in the judgment for dissolution. He argues that the trial court abused its discretion by not allowing him more time to recall the GAL and for not admitting his exhibit 47 into evidence. Charles also argues that the court erred by requiring him to provide quarterly sworn income reports to Lisa, imposing an uncapped obligation to pay 30% of any additional income as maintenance and 20% of any additional income as child support, and failing to deduct the maintenance payment to Lisa before calculating child support. In her cross-appeal, Lisa argues that the court abused its discretion by miscalculating the amount of money Charles should pay towards her attorney's fees.

¶ 35 We begin our analysis by focusing on Charles's arguments regarding the trial court's evidentiary rulings. The parties agree that we review a trial court's evidentiary rulings, such as recalling a witness, by an abuse of discretion standard. See *Messick v. Johnson*, 141 Ill. App 3d 195, 207 (1986). A trial court abuses its discretion if it acts arbitrarily, without conscientious judgment, or if it exceeds the bounds of reason and ignores recognized principles of law. *In re Marriage of Daebel*, 404 Ill. App. 3d 473, 486 (2010).

¶ 36 Charles first argues that the court abused its discretion in not allowing him more than a half a day to secure the GAL's attendance for cross-examination. Charles asserts that if he had cross-examined the GAL, then he would have been able to introduce e-mails referenced in the report and question the GAL's recommendations, which may have affected the outcome of parenting time and decision making. Lisa responds that the court did not abuse its discretion in deciding to not further delay the trial to allow Charles to present evidence that could have been presented at an earlier time. We agree with Lisa.

¶ 37 Charles argues that the parties in a divorce proceeding have an unqualified right to cross-examine a GAL. Section 506 of the Act does provide that the GAL "shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. *** The [GAL] *may* be called as a witness for purposes of cross-examination regarding the [GAL's] report or recommendations." 750 ILCS 5/506(a)(2) (West 2016). Charles also points to *In re Marriage of Bates*, 212 Ill. 2d 489(2004), in which our supreme court considered a prior version of 506 that precluded a child's representative from being called as a witness regarding his or her recommendation on a child's best interests. See 750 ILCS 5/506(a)(2) (West 2002). After noting that the right of cross-examination is "perhaps the most effective means" of challenging an adverse child custody recommendation, the court ruled that the statute in question was unconstitutional on due-process grounds. *Bates*, 212 Ill. 2d at 514.

¶ 38 Here, unlike the parent in *Bates*, Charles was presented with the opportunity to cross-examine the GAL. On October 5, upon the conclusion of Lisa's direct examination, the trial court provided Charles the opportunity to question the GAL out of turn—as if it were his case in chief—noting that "there is no subpoena outstanding." Charles declined the opportunity, despite

later noting that he was only prepared to discuss "custody issues" for that particular day. Two days later, on October 7, Charles told the trial court that he had contacted the GAL about returning to testify but the GAL was unavailable that day. When Lisa's counsel noted that the GAL had still not been subpoenaed, Charles claimed that he was unaware that a subpoena was necessary.

¶ 39 We note that *pro se* litigants are not entitled to more lenient treatment. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standard as licensed attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Accordingly, Charles was presumed to have full knowledge of applicable court rules and procedures and his compliance was required as though he was represented by counsel. See *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). Here, contrary to Charles's argument, he was not denied the opportunity to cross-examine the GAL. Even excusing his apparent lack of preparation by having no questions for the GAL on October 5, he could have secured the GAL's availability on October 7 by issuing a subpoena, as was suggested by both the trial court and Lisa's counsel. We find no abuse of discretion in the trial court's denial of his motion to continue the trial.

¶ 40 Moreover, we note that a party is not entitled to a reversal based upon a trial court's evidentiary rulings unless there was an error that substantially prejudiced the aggrieved party and affected the outcome of the case. *Kovera v. Envirite of Illinois, Inc.*, 2015 IL App (1st) 133049, ¶ 55. Here, Charles argues that he was deprived of an opportunity to cross-examine the GAL on topics relating exclusively to parenting time and responsibility. This argument defies reason given Charles's own testimony on October 5, after declining the opportunity to question the

GAL about his recommendations, he explained that he was only prepared for issues relating to child custody.

¶ 41 Next, Charles argues that the court abused its discretion by not admitting his exhibit 47, 4 year-end tax statements from Fidelity IRAs, into evidence. Charles asserts that, if admitted, exhibit 47 and his corresponding testimony would have provided sufficient evidence for the court to find that the Fidelity IRA accounts were his non-marital property. Much of Charles's argument is centered on the sufficiency of the documents in demonstrating the IRA accounts' non-marital nature. However, we need not address that portion of his argument, as we agree with Lisa that the trial court did not err in denying the entry of exhibit 47.

¶ 42 As we previously noted, evidentiary issues, such as the decision to admit or exclude evidence, are matters within the trial court's discretion and we will not overturn the decision absent an abuse of that discretion. *Daebel*, 404 Ill. App. 3d at 492. The trial court has broad authority to bar evidence from introduction at trial if the party sponsoring the evidence has failed to disclose its existence in a proper or timely manner. See *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill. App. 3d 65, 72 (2010) (holding trial court did not abuse its discretion in barring defendant from introducing evidence in her defense after defendant's lawyer ignored discovery requests).

¶ 43 Here, based on Charles's own inconsistent testimony, the trial court did not abuse its discretion in barring exhibit 47. Charles testified that he produced "extensive statements, hundreds of pages, [a] complete set of statements going back to 1992 to opposing Counsel in discovery." However, he also testified that he was not issued any account statements from Fidelity before 1995, stating "1995 was the first year that I got the statements, that is the reason that it is included in there." Lisa's counsel consistently informed the court that Charles did not

produce any of the documents in exhibit 47 during discovery, and the court found Charles's testimony regarding finances was "generally not credible." Under these circumstances, it was reasonable for the trial court to conclude that not only were the documents not presented during Charles's case in chief, but the documents were also not "produced timely in discovery" and to deny the exhibit's admission.

¶ 44 Even if the documents were presented to Lisa in discovery, the trial court found, through both Charles's testimony and its own review of the documents, that there was no authentication and a lack of foundation to admit the exhibit. In order to admit a document into evidence, the moving party must provide adequate foundation by identifying and authenticating the document. *In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 76. The requirements of identification and authentication are "satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims." Illinois Rule of Evidence 901(a) (eff. Jan. 1, 2011).

¶ 45 Here, Charles testified that the tax documents he produced were for the same IRA accounts that Lisa listed on her marital asset exhibit. However, Charles also admitted that the account numbers on the documents do not match the current Fidelity IRA account numbers. He asserted that the account numbers changed, but failed to provide any documentation in support of his claim, merely stating "a change in an account number is not an unheard of thing in the banking or financial world." The trial court noted that only one of the documents pre-dates the marriage, a tax statement dated December 31, 1992, and that the account number on that document did not match any of the present IRA account numbers. Because the court found that Charles's testimony regarding financial matters to be "evasive, self-serving, and generally not credible," it found that his testimony alone was insufficient to authenticate the documents in exhibit 47. Despite granting Lisa's motion *in limine* to bar all unproduced documents, the court

provided Charles with several opportunities to present documents to ensure that it had the "relevant evidence" needed to make proper findings. However, the court was not responsible for ensuring that Charles properly lay the foundation for their admission. We therefore cannot state that the trial court acted arbitrarily or unreasonably in denying the exhibit's admission.

¶ 46 We now turn to the three issues raised by Charles regarding the trial court's findings on maintenance and child support in the court's judgment. First, Charles argues that the court's requirement that he provide Lisa with sworn quarterly income reports is not within the court's statutory authority pursuant to the Act. Lisa, without citing any authority, responds that the court properly required Charles to disclose the statements based on his failure to comply with the court's pre-trial discovery orders.

¶ 47 Charles contends that the Act does not provide the trial court with the authority to order him to provide financial statements to Lisa, asserting that the only time a trial court can order a party to provide financial statements to an ex-spouse is when that party is self-employed and has previously been found in contempt. See 750 ILCS 5/505(b). He cites *In re Marriage of Anderson & Murphy* for the proposition that "the dissolution of marriage is entirely statutory in origin and nature," and that trial courts in dissolution cases must exercise their powers within the limits of the Act and urges us to vacate that portion of the judgment. *Anderson*, 405 Ill. App. 3d 1129, 1138 (2010). Although he is correct in asserting that trial courts receive their power to dissolve marriages through the Act, Charles is incorrect in asserting that that trial courts do not have the discretion to order one party to provide financial statements to another. See, *e.g.*, *Anderson*, 405 Ill. App. 3d at 1138 (finding that no substantial change in circumstances occurred and reinstating the trial court's order directing ex-husband to provide tax returns, supporting schedules, W-2 forms, and 1099 forms to ex-wife); and *In re Marriage of Marriott*, 264 Ill. App. 3d 23 (1994)

(affirming trial court's order for ex-husband to report his annual income and gifts of $1,000 or more to ex-wife). Thus, we will review the trial court's order for abuse of discretion.

¶ 48 Although the trial court did not specify its reasoning for requiring Charles to provide quarterly sworn income reports, the record clearly establishes that Charles was not forthcoming with financial information and was non-compliant with the court's orders and directions. Charles was consistently late throughout the trial process and had to be prompted several times to follow the courtroom procedure during the trial. The court entered the order of contempt against Charles because he failed to produce discovery related to his finances. Finally, and perhaps most telling, the court found Charles's testimony regarding his finances to be "evasive, self-serving, and generally not credible." Specifically, the court noted that Charles denied that he had any access to his inheritance from his mother's estate and persisted that his inheritance was "smaller in value" than the executor of the estate had represented. Under these circumstances, it was reasonable for the trial court to ensure Charles's compliance with its judgment for dissolution by ordering him to provide quarterly sworn income statements.

¶ 49 Next, Charles argues that the trial court abused its discretion in ordering him to pay Lisa 30% of any additional income as maintenance and 20% of any additional income as child support. He asserts that such an uncapped mandate would provide a "windfall" for Lisa. Lisa responds that Charles did not make this argument in the trial court, and therefore he has forfeited this argument on appeal. Charles makes no effort to address Lisa's argument in his reply brief, making arguments only in response to Lisa's cross-appeal.

¶ 50 Issues that are not raised in the trial court are deemed forfeited and cannot be argued for the first time on appeal. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 40. Similarly, when an appellant fails to respond to an opposing party's forfeiture argument, those arguments

are also forfeited. See *Central Management Services/Department of State Police v. Illinois Labor Relations Board*, 2012 IL App (4th) 110356, ¶26 (holding that by not responding to the appellee's brief, appellant forfeited its argument). As noted above, *pro se* litigants are not entitled to more lenient treatment than attorneys. *Pellico*, 394 Ill. App. 3d at 1067. Here, Charles had several opportunities in the trial court to request a cap on his maintenance and child support payments, but the record reflects that he never once raised the issue. Further, he had another opportunity to address the issue and Lisa's forfeiture argument by replying to her brief. Instead of doing so, he chose to stand on the arguments in his initial brief, thus forfeiting the argument on appeal.

¶ 51 Finally, Charles argues that although the trial court properly found that no extenuating circumstances existed for it to depart from the statutory guidelines regarding child support calculation, it incorrectly applied the statute in making the calculation. Lisa responds that the trial court did not abuse its discretion in awarding her $921 per month in child support, and any error in the precise calculation of support is harmless. Here, we agree with Charles.

¶ 52 "The question of whether the trial court complied with statutory requirements presents a question of law, which we review *de novo*." *In re Marriage of Padilla and Kowalski*, 2017 IL App (1st) 170215, ¶ 23. When the language of a statute is clear and unambiguous, we must give effect to the plain and ordinary meaning of the language. *In re Marriage of Bates*, 212 Ill. 2d 489, 512 (2004). Pursuant to section 801 of the Act, "the law in effect at the time of the order *** governs the appeal, the new trial, and any subsequent trial or appeal." 750 ILCS 5/801(d) (West 2016). Thus, we look to the Act as it was written during the trial. See *In re Marriage of Smith*, 162 Ill. App. 3d 792, 795-797 (1987) (discussing that section 801(d) of the Act applies to both the Act and the amendments to the Act).

¶ 53 At the time of the trial, section 505 of the Act provided that the court shall determine the minimum amount of child support for one child at 20% of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2016). A court may deviate from those guidelines only if it is "appropriate after considering the best interest of the child in light of the evidence" of certain factors, including the financial, educational, physical, mental, and emotional needs of the child. 750 ILCS 5/505(a)(2) (West 2016). "Obligations pursuant to a court order for maintenance in the pending proceeding actually paid or payable under Section 504 to the same party to whom child support is to be payable" are to be deducted from the supporting party's net income when calculating child support. 750 ILCS 5/505(a)(3)(g-5) (West 2016).

¶ 54 Neither Charles nor Lisa assert that the trial court was incorrect in adhering to the 20% of the supporting party's net income guidelines provided in section 505 of the Act, and we agree that the facts in their totality do not support a deviation from the statutory guidelines. The court was therefore required to comply with the guidelines the Act provided. We note that the form that the court used in determining child support, Court's Exhibit B, does not include a line for maintenance paid to Lisa under "required deductions." Thus, in calculating 20% of Charles's net income for child support, the court did not deduct the $1,100 monthly maintenance payment. See 750 ILCS 5/505(a)(3)(g-5) (West 2016). When calculated with the reduction of maintenance Charles should be required to pay only $701 a month in child support. Accordingly, we vacate the trial court's award of $921 per month in child support and hereby order Charles to pay $701 a month in child support retroactive to the date of judgment.

¶ 55 Lisa's cross-appeal deals exclusively with the trial court's order requiring Charles to contribute to her attorney's fees. Lisa argues that the trial court abused its discretion by giving Charles credit for the amount of money he previously paid for Lisa's interim attorney's fees that

derived from the HELOC. Charles responds that the court did not abuse its discretion as it was aware of the source of the funds he used when giving him credit for the amounts he previously paid. We agree with Charles.

¶ 56 While each party is generally responsible for its own attorney's fees, section 508(a) of the Act provides that at the conclusion of a case, "contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503." 750 ILCS 5/508(a) (West 2016). A contribution award may be either in the form of a set dollar amount or a percentage. 750 ILCS 5/503(j)(5) (West 2016). Interim attorney's fees are to be treated as advances from the marital estate unless otherwise ordered by the court. 750 ILCS 5/501(c-1)(2) (West 2016); see also *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 324 (2001) (noting that section 501(c-1)(2) creates a presumption that interim fees will be treated as advances unless the court orders otherwise). Whether one spouse should pay the attorney fees of the other is a decision that lies within the sound discretion of the trial court and that decision will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 479 (1999).

¶ 57 The trial court detailed in its findings that Lisa's attorney's fees, totaling $188,900, were reasonable and that Lisa has no other assets to pay them than those awarded to her in the judgment. Charles had the ability to pay Lisa's attorney's fees due to his higher income and substantial non-marital estate. It noted that, pursuant to its orders, Charles had already paid $130,348 toward Lisa's fees, "at least $23,000 of which came from the HELOC." The court then ordered Lisa's attorneys fees to be split "75% to Charles, or $141,675, with credits for amounts actually paid," for an additional total of $11,327, and the remainder to Lisa.

¶ 58 Lisa asserts that the trial court's calculation of $11,327 for Charles's contribution to her attorney's fees does not reflect the "true intention" of the trial court. However, the court was clearly aware that Charles used a portion of the HELOC in making the interim payments toward Lisa's attorney's fees. In fact, the court ordered that Charles be given credit for those interim payments, rather than treating them as advances from the marital estate. The court did not articulate any "true intention" in determining the amount of contribution Charles would be responsible for, but the record is clear that the court gave Charles credit for the amount of money he paid in interim fees, including the $23,000 from the HELOC. We cannot say that the trial court's order was arbitrary, fanciful, or exceeded the bounds of reason, and therefore will not disturb the court's determination of contribution Charles is to make on review.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm each of the disputed evidentiary rulings and findings except the amount of child support Charles is to pay Lisa monthly. The trial court's award of $921 per month in child support is vacated. The properly calculated award of child support Charles is to pay Lisa is $701 a month and shall be retroactive to the date of judgment.

¶ 61 Affirmed as modified.