2019 IL App (1st) 180788-U

FIRST DISTRICT,
SECOND DIVISION
June 28, 2019

Nos. 1-18-0788, 1-18-1494, and 1-18-2076 (cons.)

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
FIRST JUDICIAL DISTRICT

In re Marriage of:	)	Appeal from the
	)	Circuit Court of
JACQUELINE M. GOLDIN,	)	Cook County, Illinois.
	)	
Petitioner-Appellee,	)	No. 10 D 7010
v.	)	
	)	Honorable
NEIL M. MORGANSTEIN,	)	Mary S. Trew and
	)	Karen J. Bowes,
Respondent-Appellant.	)	Judges Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: (i) In postdissolution proceedings, trial court did not err in denying ex-husband's petition to modify the judgment to remove his obligation to pay his son's health insurance premiums. (ii) When ex-husband failed to pay premiums, trial court did not err in finding ex-husband in contempt and in ordering him to pay ex-wife's attorney fees.

¶ 2 In 2013, petitioner Jacqueline Goldin and respondent Neil Morganstein obtained a judgment of dissolution of marriage providing that Neil would pay for their son's health insurance coverage. Neil now brings three consolidated appeals from orders of the trial court

relating to that provision. Specifically, Neil appeals from: (i) the trial court's December 8, 2017 denial of Neil's petition to modify support; (ii) the trial court's June 19, 2018 order finding Neil in indirect contempt of court for failing to pay his son's health insurance premiums; and (iii) the trial court's September 5, 2018 judgment ordering Neil to pay Jacqueline $6,837.50, representing the attorney fees she incurred in the contempt proceeding. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Jacqueline and Neil were married in 2008. Their only child, JM, was born in 2009. In 2010, Jacqueline filed for dissolution of the marriage.

¶ 5 On April 26, 2013, the trial court entered a judgment of dissolution of marriage and a custody judgment awarding sole custody of JM to Jacqueline. Section 5.1 of the judgment provided, in relevant part: "Neil shall maintain at his sole expense hospitalization, major medical, dental and optical insurance coverage for the benefit of [JM]." Neil appealed both the judgment of dissolution and the custody determination, raising numerous contentions of error, and we affirmed. *In re Marriage of Goldin*, 2014 IL App (1st) 131674-U (Jan. 22, 2014) (*Goldin IA*); *In re Marriage of Goldin*, 2014 IL App (1st) 131674-U (Mar. 26, 2014) (*Goldin IB*).

¶ 6 Denial of Neil's Petition to Modify Child Support (1-18-0788)

¶ 7 At all relevant times since the judgment, Neil has been on Medicaid. Prior to 2016, Neil obtained medical insurance for JM through Blue Cross Blue Shield, subsidized via the Health Insurance Marketplace. Effective January 1, 2016, Blue Cross Blue Shield removed JM's pediatrician from its network. Neil tried to change JM's insurance provider, but the State informed him that the switch would not take effect until the State determined whether JM was

eligible for All Kids, a State-run insurance program for children whose families cannot afford private health insurance.

¶ 8 On January 26, 2016, Jacqueline filed an emergency motion asking the court to modify the judgment of dissolution to provide that Jacqueline was responsible for obtaining JM's medical and dental insurance, while Neil was responsible for paying the monthly premiums. On January 27, 2016, the trial court, per Judge Arce, granted Jacqueline's petition and entered the following order (the 2016 Arce order):

> "[Section 5.1] is modified to provide [Jacqueline] shall obtain hospitalization, major medical, dental, and optical insurance for [JM] at Neil's expense until further determination by the court on 3/3/2016 regarding contribution which shall be retroactive to 1/1/2016. *** Neil shall continue to maintain his current Blue Cross policy for the benefit of [JM] until new insurance takes effect."

¶ 9 The hearing on contribution was continued through the next year. Before the trial court ruled on the issue, Neil filed a petition to modify the judgment on August 23, 2017, arguing that his obligation to pay for JM's health insurance should be reduced or eliminated. First, he argued that modification was proper under section 510(a)(2)(B) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), which provides that a child support order may be modified without showing a substantial change of circumstances "upon a showing of a need to provide for the health care needs of the child under the order through health insurance or other means." [1] 750 ILCS 5/510(a)(2)(B) (West 2016). Second, he argued that a July 1, 2017 amendment to the IMDMA relieved him of any duty to pay for JM's insurance because Neil was on Medicaid and

[1] In the alternative, Neil argued that he underwent a substantial change in circumstances because his income was reduced. The trial court rejected this assertion and Neil does not raise it on appeal.

JM qualified for coverage as well. 750 ILCS 5/505(a)(4)(G) (West Supp. 2017) ("Parents *** whose child is covered by Medicaid based on that parent's income may not be ordered to contribute toward or provide private coverage"). Additionally, Neil asked the court to allocate contribution to JM's medical insurance premiums, per the 2016 Arce order.

¶ 10 On November 17, 2017, the trial court held a hearing on Neil's petition. No transcript of that hearing is in the record. On December 8, 2017, the court entered a written order denying Neil's petition to modify the judgment, finding that Neil's support obligations were "predicated upon the reasonable needs of the minor child and therefore there is no change in circumstances." The court also stated:

> "The Judgment for Dissolution of Marriage required Neil to maintain comprehensive health insurance on behalf of the minor child at his sole cost and expense. In January 2016 the Judgment was modified to provide Jacqueline solely responsible for selecting the appropriate health insurance policy for the minor child. The January modification also provided that the issue of contribution to said insurance shall be determined retroactive to 3/1/16."

Despite mentioning the issue of contribution, the court did not rule on or continue the issue.

¶ 11 On December 12, 2017, Neil filed a "Petition to Clarify Prior Order and Further Relief" in which he raised two claims of error regarding the December 8 order. First, he stated that, per the 2016 Arce order, the issue of contribution should be determined retroactive to January 1, 2016, not March 1, 2016. Second, he alleged that at the November 17 hearing, the court verbally ruled that the contribution should be split "50/50" among the parties. The task of typing up the court's order went to Jacqueline's counsel, who, according to Neil, improperly omitted the 50/50

provision. Thus, Neil requested that the court "clarify" its order to provide that contribution to JM's insurance would be split equally between the parties retroactive to January 1, 2016.

¶ 12 Jacqueline filed a response on January 5, 2018, in which she denied that the trial court decreed a 50/50 split or that her attorney omitted anything from the typewritten order. She further stated that the December 8 order required no clarification but inadvertently failed to continue the issue of contribution toward JM's health insurance to the next court date.

¶ 13 Also on January 5, 2018, Neil filed a motion to reconsider the December 8 order, in which he largely reiterated his contentions from his earlier petitions to modify and to clarify.

¶ 14 While these matters were still pending, on January 10, 2018, Jacqueline filed an amended petition for a rule to show cause against Neil (her 16th such petition), asserting that Neil should be held in indirect contempt of court for his failure to pay various child-related obligations. In relevant part, she alleged that Neil owed her $205.29 for JM's December health insurance premium and $509.94 for his January premium. In an order entered the same day, the court issued a rule to show cause against Neil.

¶ 15 On March 20, 2018, the trial court ruled on Neil's motion to reconsider. The court modified its December 8 order to provide that contribution would be determined retroactive to January 1, 2016, but it denied Neil's motion in all other aspects. The court also continued the issue of contribution to May 15, 2018. The court did not address the rule to show cause against Neil, apparently because the issue of contribution was still pending.

¶ 16 On April 18, 2018, Neil filed his first notice of appeal from the trial court's December 8, 2017 order denying his petition to modify support and its March 20, 2018 order denying his motion to reconsider.

¶ 17 Indirect Civil Contempt (1-18-1494)

¶ 18 Meanwhile, on April 2, 2018, Jacqueline filed an "emergency" petition for another rule to show cause against Neil. She alleged that Neil failed to pay JM's insurance premiums from December 2017 through April 2018, for a total of $1,423.89, and Neil should therefore be held in indirect civil contempt. In response, Neil pointed out there was no "emergency," since the trial court had already set a hearing on contribution for May 15.

¶ 19 In an order entered April 18, 2018, the trial court continued the hearing on the return of the rule to show cause against Neil to June 19. (This was presumably in reference to Jacqueline's 16th petition for rule to show cause, although the court did not specify.) The court also ordered Neil to comply with Jacqueline's outstanding discovery within 21 days "or hearing on the issue of contribution shall not proceed."

¶ 20 On June 19, 2018, the trial court found Neil in contempt for failing to pay JM's insurance premiums from December 2017 to June 2018 in violation of the judgment "and subsequent court orders." The court ordered Neil to pay Jacqueline $2,033.19 in back insurance premiums by August 9 to avoid incarceration. The court also ordered Neil to pay $304.65 per month in insurance premiums starting July 1, 2018, and it scheduled a hearing for August 9 on contribution "if any" to the premiums. Finally, the court granted Jacqueline's counsel, David Frumm, leave to file a petition for attorney fees incurred as a result of the contempt finding. See 750 ILCS 5/508(b) (West 2016) (if the trial court finds a party's failure to comply with an order was without compelling cause or justification, the court shall award attorney fees to the other party).

¶ 21 Neil filed his second notice of appeal on July 13, 2018, appealing the trial court's June 19 order.

¶ 22 Award of Attorney Fees (1-18-2076)

¶ 23 From this point onward, the record is fragmentary and many documents are missing, most notably Frumm's fee petition.

¶ 24 Prior to the August 9 hearing on contribution, Jacqueline filed a motion *in limine* representing that Neil had failed to tender his financial affidavit or 2017 personal tax return, as mandated by local court rules 13.3.1(b) and 13.3.2. Jacqueline requested that the court sanction Neil by barring him from testifying as to his income, expenses, or inability to pay for JM's health insurance premiums. She also requested that the court bar Neil from arguing that the 2017 amendment to the IMDMA precluded him from having to pay such premiums.

¶ 25 On August 9, 2018, the trial court ordered that the issue of contribution to JM's insurance premiums "is dismissed with prejudice pursuant to the motion in limine as neither party complied with local court rule 13.3.1(b)."

¶ 26 On September 5, 2018, the trial court granted Frumm's fee petition, finding that Frumm's fees were fair and reasonable in light of his education and experience. It entered judgment against Neil in the amount of $6,837.50 to be paid in monthly installments of $500.

¶ 27 On September 10, 2018, Neil moved to reconsider the court's August 9 ruling on contribution. There the record ends. Neil's third notice of appeal is not in the record, but we take judicial notice of our own records reflecting that it was filed in the trial court on September 26, 2018, and in this court on September 27, 2018. Additionally, though the record does not reflect any proceedings or ruling on Neil's motion to reconsider, we take judicial notice of the circuit court's docket, which reflects that the court denied the motion on January 28, 2019.

¶ 28 ANALYSIS

¶ 29 Initially, we observe that both parties' briefs fail to comply with Supreme Court Rule 341 (eff. Nov. 1, 2017). Under Rule 341(h)(7) and Rule 341(i), a reviewing court is entitled to have

the issues clearly defined and cohesive arguments presented (*Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010)); this court is not a repository into which the parties may dump the burden of argument and research. *New v. Pace Suburban Bus Service*, 398 Ill. App. 3d 371, 384 (2010). Notwithstanding these well-established principles, Jacqueline's brief is a disorganized, barely-coherent jumble of arguments, interspersed with facts at seemingly random intervals. Neil's *pro se* briefs are not as deficient as Jacqueline's brief but nevertheless fail to conform to the requirements of Rule 341(h)(7). Although we recognize Neil is proceeding without benefit of counsel, that does not relieve him of the obligation to follow the rules of this court (*Velocity Investments*, 397 Ill. App. 3d at 297), and, of course, Jacqueline's counsel lacks even that excuse. Moreover, we note that we have previously admonished Neil regarding his lack of compliance with Rule 341. See *Goldin IA*, 2014 IL App (1st) 131674-U, ¶ 4 (Jan. 22, 2014) ("Although, given the nature of this case, we denied a motion to strike Neil's brief, it would have been entirely appropriate to do so"); *Goldin IB*, 2014 IL App (1st) 131674-U, ¶ 27 (Mar. 26, 2014) (observing that Neil's brief "intersperses arguments with facts and intermingles issues" in violation of Rule 341).

¶ 30 The procedural rules concerning appellate briefs are not mere suggestions, and briefs that lack substantial conformity to those rules may be stricken. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶¶ 7, 15 (striking appellant's brief and dismissing appeal due to numerous rule violations). Although we choose not to strike the parties' briefs in this appeal, we strongly caution both parties that if they fail to articulate their arguments in a cohesive fashion and prepare their briefs in accordance with the rules, they will forfeit review in the future.

¶ 31 Neil raises four main arguments before this court. First, he argues that the trial court erred in dismissing his petition to modify support. As a result, Neil argues that the contempt

finding premised on his failure to pay JM's premiums must be reversed, as must the award of attorney fees incurred in the contempt finding. Alternately, Neil argues that his noncompliance with the court's orders should not be considered willful because Jacqueline's income far exceeds his. Finally, Neil asserts that we should sanction Jacqueline's counsel for various alleged acts of fraud on the court. Jacqueline, for her part, asserts that we should sanction Neil for filing a frivolous appeal.

¶ 32 Before we reach the substance of the parties' arguments, Jacqueline raises two threshold procedural matters: first, she argues that we must dismiss Neil's appeals because of his allegedly contumacious conduct, and second, she argues that we lack jurisdiction over his appeals. We consider these contentions in turn.

¶ 33 Jacqueline's Motion to Dismiss Appeals

¶ 34 Initially, Jacqueline argues that Neil forfeited his right to appeal by failing to make his February 2019 fee payment in a timely fashion, relying on *Garrett v. Garrett*, 341 Ill. 232 (1930), and *In re Marriage of Timke*, 219 Ill. App. 3d 423 (1991). We are not persuaded.

¶ 35 As noted, the court ordered Neil to pay Frumm's fees in monthly installments of $500. Neil allegedly sent Frumm a check for his February 2019 payment. On February 12, 2019, Frumm allegedly emailed Neil, stating that "[n]obody in my office can decipher the amount of your check" and threatening to file a petition for rule to show cause unless Neil "immediately" sent a check "for the correct amount." Three days later, on February 15, Jacqueline filed her eighteenth petition for a rule to show cause against Neil for failing to make his February fee payment. On February 19, apparently before the trial court ruled on her petition, Jacqueline filed in this court a "Dispositive Motion to Dismiss Appeal," which we took with the case.

¶ 36 Both *Garrett* and *Timke* are readily distinguishable on their facts. In *Garrett*, the trial court entered a dissolution decree that required the respondent to pay maintenance, attorney fees, and costs. *Garrett*, 341 Ill. at 233. Respondent refused to pay, was found in contempt, and was incarcerated. Upon being released by mistake, he fled Illinois. Under these circumstances, *Garrett* dismissed respondent's appeal of the dissolution decree, stating that "the absence of [respondent] in the present case hinders and embarrasses the due course of procedure by preventing the court from enforcing its decree." *Id.* at 234.

¶ 37 Similarly, in *Timke*, respondent refused to comply with petitioner's discovery requests or appear in court; instead, he fled to the Cayman Islands, stating that "no judge would tell him what to do with his money." *Timke*, 219 Ill. App. 3d at 425. The court defaulted him and entered a judgment of dissolution of marriage. Respondent appealed. *Timke* affirmed, stating that "one who purposefully places himself beyond the trial court's writ while seeking at the same time to attack the decree that he defies, is not entitled to appellate relief." *Id.* at 427-28.

¶ 38 Here, Neil has not fled the jurisdiction, as did respondents in *Garrett* and *Timke*. Nor does the record reflect that he has been adjudged in contempt of the court's order of September 5, 2018. We therefore deny Jacqueline's motion to dismiss Neil's appeals based on her filing a petition for rule to show cause.

¶ 39 Jurisdiction

¶ 40 Jacqueline next argues that we lack jurisdiction over Neil's first two appeals. (Although she broadly references all three appeals, the substance of her arguments only pertains to the first two.)

¶ 41 Regarding his first appeal, Neil asserts in his jurisdictional statement that we have jurisdiction under Supreme Court Rule 301, which provides that "[e]very final judgment of a

circuit court in a civil case is appealable as of right," and Rule 303 (eff. July 1, 2017), which governs the time for filing a notice of appeal. But at the time Neil filed his first notice of appeal, the court had not yet entered final judgment on his petition to modify the judgment, because it had not yet ruled on all of Neil's claims for relief.

¶ 42 The record reflects that on August 23, 2017, Neil filed his petition to modify the judgment, asking, in relevant part, that the trial court (i) reduce his support obligations and (ii) rule on the issue of contribution. On December 8, 2017, the trial court denied Neil's request to reduce his support obligations but made no ruling on the issue of contribution and did not issue a finding pursuant to Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason for delaying enforcement or appeal. On March 20, 2018, the trial court granted in part and denied in part Neil's motion to reconsider, but again did not rule on contribution. Thus, the issue of contribution was still pending when Neil filed his first notice of appeal on April 18, 2018, contesting the trial court's December 8 and March 20 orders.

¶ 43 On August 9, 2018, the trial court dismissed the issue of contribution with prejudice based upon both parties' failure to make financial disclosures in accordance with local court rules. Neil moved to reconsider that ruling on September 10, 2018. Our record ends with Neil's motion to reconsider, but we take judicial notice of the fact that the trial court denied his motion on January 28, 2019.

¶ 44 On these facts, it is apparent that Neil's first appeal was premature. Under Rule 304(a), an order disposing of fewer than all of the claims in a post-dissolution matter is not appealable until all of the claims have been resolved, unless the trial court enters a written finding that there is no just reason for delaying enforcement or appeal or both. *In re Marriage of Gutman*, 232 Ill. 2d 145, 156 (2008). Here, Neil raised multiple claims in his August 23, 2017 petition. Because

the trial court's December 8, 2017 order disposed of fewer than all of those claims and did not contain a Rule 304(a) finding, it was not immediately appealable.

¶ 45 Nevertheless, Rule 303(a)(2) provides:

> "When a timely postjudgment motion has been filed by any party, *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

As explained in the committee comments, this section "protects the rights of an appellant who has filed a 'premature' notice of appeal by making the notice of appeal effective when the order denying a postjudgment motion or resolving a still-pending separate claim is entered." Ill. S. Ct. R. 303, Committee Comments (rev. Mar. 16, 2017).

¶ 46 Under Rule 303(a)(2), Neil's first notice of appeal became effective on January 28, 2019, when the trial court finally resolved his still-pending separate claim for contribution. Accordingly, we have jurisdiction over his appeal, even though it was premature when originally filed. See *Hollywood Boulevard Cinema, LLC v. FPC Funding II, LLC*, 2014 IL App (2d) 131165, ¶ 28 ("[Appellant]'s premature notice of appeal filed on November 4, 2013, became effective once the court disposed of his postjudgment motion on February 10, 2014, and it confers jurisdiction on this court to review the undisturbed portion of the October 4, 2013, judgment.").

¶ 47 We next consider Neil's second appeal from the trial court's June 19, 2018 order holding him in contempt of court. Neil asserts that we have jurisdiction under Rule 304(b)(5) (eff. Mar. 8, 2016), which allows immediate appeal from "[a]n order finding a person or entity in contempt

of court which imposes a monetary or other penalty." See *Gutman*, 232 Ill. 2d at 153 ("It is clear from the language of the rule that only contempt judgments that impose a penalty are final, appealable orders."). Jacqueline argues that we lack jurisdiction because the June 19 order did not impose any penalty on Neil.

¶ 48 The June 19 order found Neil in indirect civil contempt for his willful failure to pay JM's health insurance premiums from December 2017 to June 2018. It also provided, in relevant part:

> "1) Neil shall pay Jacqueline the sum of $2033.19 for the minor child's health insurance premium for the months of Dec 2017 through June 2018 as his purge for his failure to pay same. Said payment shall be made by 8/19/18 to avoid remand to the Cook County Sheriff for incarceration.
>
> 2) Neil shall continue to pay the child's health insurance premium on the 1st day of each month in the amount of $304.65 until modified by court order commencing July 1 2018."

The order additionally granted Frumm leave to submit a petition for attorney fees.

¶ 49 Neil asserts that this order imposes a monetary penalty, thus making it immediately appealable under Rule 304(b)(5). We disagree. Per the 2016 Arce order, Neil was already required to pay for JM's health insurance premiums. The contempt order merely implemented the 2016 order by directing Neil to pay his arrearage plus JM's premiums on a going-forward basis. Because it did not place any new or additional obligations on Neil, as a matter of law it did not impose a penalty. See *In re Marriage of Buchmiller*, 135 Ill. App. 3d 182, 185 (1985) (contempt order "call[ing] for no liability to the respondent beyond that already occasioned by earlier orders of the court entered prior to the finding of contempt" did not "punish" the respondent and thus was not appealable). Moreover, although the order granted Frumm leave to

submit a petition for attorney fees, it was not yet determined whether the court would grant any fees, and, if so, in what amount. *Pedigo v. Youngblood*, 2015 IL App (4th) 140222, ¶¶ 16-18 (contempt order granting "reasonable attorney fees" in an amount to be determined was not final and therefore not reviewable, since "[s]uch a review would require us to speculate as to whether a sanction, monetary or otherwise, was later imposed"). Thus, we lack jurisdiction over Neil's second appeal.

¶ 50 Nevertheless, we observe that the trial court *did* impose a penalty on Neil in its September 5, 2018 order that granted Frumm's fee petition "pursuant to finding [Neil] in indirect civil contempt" and entered judgment against Neil in the amount of $6,837.50—*i.e.*, the order that is the subject of Neil's third appeal. Thus, we have jurisdiction over Neil's third appeal under Rule 304(b)(5). Moreover, in reviewing the order of September 5, 2018, we may also review the propriety of the underlying contempt order. See *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 968 (2004) (where respondent was found in contempt for failing to pay maintenance to petitioner, appellate court had jurisdiction to review underlying maintenance order); *Schmidt v. Joseph*, 315 Ill. App. 3d 77, 80 (2000) (appellate court may review all orders that are steps in the procedural progression to the order appealed from). Thus, although we lack jurisdiction over Neil's second appeal, we may still properly consider the issues he raises therein.

¶ 51 Modification of Child Support

¶ 52 Neil argues that the trial court erred in denying his petition to modify child support. As noted, per the 2016 Arce order, Jacqueline is required to obtain private health insurance for JM and Neil is required to reimburse her for the cost of the monthly premiums. On August 23, 2017, Neil filed his petition to modify, arguing, in relevant part, that he should not be required to pay the premiums. The trial court denied the petition based upon its finding that Neil's support

obligations were "predicated upon the reasonable needs of the minor child and therefore there is no change in circumstances."

¶ 53 Ordinarily, we review the trial court's decision to deny a petition to modify child support for an abuse of discretion (*In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1166 (2005)), which occurs "only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41. But to the extent that Neil raises issues of law, we review those issues *de novo*. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13 (interpretation of IMDMA is a legal question that is reviewed *de novo*); *In re Marriage of Pettifer and Mathias*, 304 Ill. App. 3d 326, 327 (1999) (in child support modification case, reviewing *de novo* whether the trial court erred as a matter of law in retroactively applying section 510(a) of the IMDMA).

¶ 54 Neil raises four main contentions of error. First, he argues that the trial court's dismissal of his petition is erroneous as a matter of law because, under section 510(a)(2)(B) of the IMDMA, he is not required to show a substantial change in circumstances to obtain modification of the support decree. 750 ILCS 5/510(a)(2)(B) (West 2016) (a child support order may be modified without a substantial change of circumstances "upon a showing of a need to provide for the health care needs of the child under the order through health insurance or other means"). Second, he argues that, under the July 1, 2017 amendment to section 505 of the IMDMA (750 ILCS 5/505(a)(4)(G) (West Supp. 2017)), he cannot be required to pay for JM's insurance. Third, in the alternative to his second argument, Neil argues that we should give effect to the trial court's alleged oral pronouncement that the cost of JM's insurance premiums should be split equally between the parties. Finally, Neil argues that requiring him to pay for his son's health

insurance is "absurd" and "unjust" because Jacqueline has significantly higher income than he does.

¶ 55 As to Neil's first contention of error, Jacqueline does not dispute, and therefore concedes, Neil's argument that he was not required to show a substantial change in circumstances to obtain modification of the support order. Ill. S. Ct. R. 341(i) (eff. Nov. 1, 2017); see *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 (when a party fails to raise an issue, it forfeits consideration of that issue).

¶ 56 We therefore turn to Neil's second contention, namely, that section 505, as amended, precludes him from having to pay for private health insurance coverage for JM. Jacqueline argues that the 2017 IMDMA amendment does not apply to Neil's petition for modification. We disagree.

¶ 57 The applicability of amendments to the IMDMA is governed by section 801, which provides:

> "(a) This Act applies to all proceedings commenced on or after its effective date.
>
> (b) This Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. ***
>
> (c) This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act." 750 ILCS 5/801 (West 2016).

This court has held that section 801(c) applies to modification proceedings filed after January 1, 2016, the effective date of this section. *In re Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 29 (citing *In re Marriage of Benink*, 2018 IL App (2d) 170175, ¶ 27). For all such proceedings, an amendment to the IMDMA will apply to modification sought after the

amendment's effective date. For instance, in *Carstens*, an IMDMA amendment that went into effect on January 1, 2016, applied to a petition to terminate or reduce maintenance filed on February 24, 2016 (*Carstens*, 2018 IL App (2d) 170183, ¶ 29); but in *Benink*, a 2016 IMDMA amendment did not apply to a petition to modify child support filed in 2013 (*Benink*, 2018 IL App (2d) 170175, ¶ 29).

¶ 58 The IMDMA amendment cited by Neil went into effect on July 1, 2017. Neil filed his petition to modify the judgment on August 23, 2017, after the effective date of that amendment. Thus, under *Carstens*, *Benink*, and the plain language of section 801(c), it is clear that the amended version applies to the proceedings on Neil's petition.

¶ 59 *In re Marriage of Harms and Parker*, 2018 IL App (5th) 160472, cited by Jacqueline on this point, is distinguishable. In 2007, Harms and Parker obtained a judgment of dissolution of marriage requiring Harms to pay maintenance. *Id.* ¶ 2. In 2014, both parties filed petitions to modify maintenance. While their petitions were pending, in 2015, the IMDMA was amended to include new statutory guidelines for maintenance. 750 ILCS 5/504(b-1) (West 2016). In 2016, the trial court granted Parker's petition and ordered Harms to pay an increase in maintenance. Harms appealed, arguing that the trial court misapplied the 2015 statutory guidelines. We held that the 2015 guidelines were not applicable because they only applied to *initial* maintenance orders, not petitions to modify maintenance; in particular, section 510, which governs petitions to modify maintenance, does not direct the court to consider the guidelines contained in section 504(b-1). *Harms and Parker*, 2018 IL App (5th) 160472, ¶ 30 (citing 750 ILCS 5/510(a-5) (West 2016)). But this holding was premised on the specific interaction between sections 510(a-5) and 504(b-1) as they relate to spousal maintenance. *Harms* does not purport to contradict *Carstens* and *Benink* regarding the application of section 801(c) to modification proceedings.

Accordingly, we will give effect to the July 1, 2017 amendment to section 505 as it applies to Neil's petition to modify the judgment.

¶ 60 As amended, section 505 provides that, in its discretion, the court may order either or both parents to provide health insurance coverage for their child. 750 ILCS 5/505(a)(4)(A) (West Supp. 2017). The section further provides:

> "A reasonable cost for providing health insurance coverage for the child may not exceed 5% of the providing parent's gross income. Parents with a net income below 133% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines or whose child is covered by Medicaid based on that parent's income may not be ordered to contribute toward or provide private coverage, unless private coverage is obtainable without any financial contribution by that parent." 750 ILCS 5/505(a)(4)(G) (West Supp. 2017).

Neil argues that, under this section, he cannot be required to pay for JM's health insurance premiums because (i) their cost exceeds 5% of his gross income; (ii) his net income is below 133% of the federal poverty guidelines; and (iii) JM is covered by Medicaid based on Neil's income.

¶ 61 We find Neil's first two contentions regarding his income to be without merit. In calculating Neil's support obligations, the trial court imputed income to him based on his earnings potential and reported expenses, which we found "entirely appropriate" for reasons discussed in detail in our earlier decision. *Goldin IB*, 2014 IL App (1st) 131674-U, ¶¶ 20-22 (Mar. 26, 2014). Given this proper imputation of income, it was not an abuse of discretion to reject Neil's income-based claims in conjunction with his petition to modify his child support obligations.

¶ 62 Regarding Neil's contention that JM is covered by Medicaid based on Neil's income, Neil's sole record support is a "Notice of Decision" that he attached as an exhibit to his response to Frumm's petition for attorney fees. Although the decision is apparently six pages long, only "Page 2 of 6" is attached. It states that Neil and JM are both eligible for ongoing medical benefits (Neil through FamilyCare, JM through All Kids Assist) starting March 1, 2018, and have also been approved for retroactive coverage from October 1, 2017 to February 28, 2018.

¶ 63 Jacqueline asserts that (i) JM would only be eligible for Medicaid if Neil were the custodial parent, which he is not, and (ii) Neil falsely reported to the State that he was the custodial parent in order to obtain the foregoing finding that JM is Medicaid-eligible. Although she provides no citation to the record or any authority whatsoever, we take judicial notice that the website of the Illinois Department of Healthcare and Family Services states the following regarding eligibility for All Kids insurance coverage: "The custodial parent must be the person filing the All Kids application. We take into account the size and family income of the custodial parent." Illinois Department of Healthcare and Family Services, *About All Kids*, https://www.illinois.gov/hfs/MedicalPrograms/AllKids/Pages/about.aspx (last visited June 17, 2019). Based on this language, it appears that JM cannot qualify for Medicaid *based on Neil's income*, as is required for application of section 505(a)(4)(G).

¶ 64 Moreover, even if we did not consider the plain language of the IDPH website, Neil still has not shown that section 505(a)(4)(G) applies, because the record does not establish on what basis JM was found to be eligible for All Kids medical benefits. As noted, five pages of the Notice of Decision are missing from the record, and the only extant page does not contain the reason for the decision. It is well established that it is the appellant's duty to present this court with a complete record on appeal, so that we have an adequate basis for reviewing the decision

below. *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 445 (2007). When there is a gap in the record that could materially impact the outcome of the case, we will resolve any doubts against the appellant and presume that the missing evidence supports the judgment of the trial court. *Id.* at 445-46 (citing *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Accordingly, we must presume that the missing pages of the Notice of Decision support the trial court's decision to deny Neil's petition to modify the judgment.

¶ 65 Neil's third contention is that even if we do not entirely relieve him of his obligation to pay for JM's health insurance premiums, we should order that the cost be split equally between the parties. He bases this on his allegation that at the hearing on November 17, 2017, the court verbally ruled that the contribution should be split "50/50." The task of typing up the court's order went to Jacqueline's counsel, who, according to Neil, intentionally omitted the 50/50 provision. Jacqueline denies that the court ordered a 50/50 split or that her attorney omitted anything from the order signed by the trial court.

¶ 66 Because the record does not contain a transcript of the November 17 hearing, we have no way of knowing what the trial court did or did not say at that hearing. Thus, we must construe this gap in the record against Neil and in favor of the trial court's judgment. *Cambridge Engineering*, 378 Ill. App. 3d at 445-46; *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392. Additionally, we observe that the trial court is in the best position to know what it said during that hearing. Not only did the trial court sign the written order not incorporating a 50/50 provision, but it rejected Neil's later assertion that the written order was inconsistent with the court's oral ruling.

¶ 67 Neil nevertheless argues that Jacqueline, on multiple occasions, admitted that the trial court decreed a 50/50 split. First, he alleges that on November 20, 2017, Jacqueline's counsel sent him a copy of the typewritten order that included a 50/50 provision. But the trial court apparently did not credit this version of events, and, more importantly, it rejected Neil's allegation that it decreed such a thing in the first place. As discussed, without a transcript of the November 17 hearing, we have no grounds on which to gainsay the trial court's own recollection of the proceedings.

¶ 68 Second, Neil argues that, in Jacqueline's response to his motion to reconsider the trial court's December 8, 2017 order, she admitted the issue of contribution had been ruled on. We find no such admission in her response. On the contrary, Jacqueline unequivocally stated: "Furthermore, (contrary to NEIL'S representations), to date there has **never** been a hearing or ruling by this Court on contribution to the child's health insurance premium, as other financial matters were adjudicated via the December 8th order." (Emphasis in original.) Accordingly, we reject Neil's contention that we should decree that the cost of JM's health insurance premiums be split evenly among the parties.

¶ 69 Finally, Neil cites *People v. Christopherson*, 231 Ill. 2d 449, 454 (2008), for the proposition that "[t]he primary objective in construing a statute is to give effect to the legislature's intent, presuming the legislature did not intend to create absurd, inconvenient or unjust results." He argues that requiring him to pay his son's health insurance premiums is absurd, inconvenient, and unjust, given that Jacqueline's income is higher than his. But *Christopherson* goes on to state: "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. [Citation.] When the statutory language is clear and unambiguous, it must be given effect without resort to other tools of interpretation." *Id.* at

454-55. Thus, *Christopherson* does not stand for the proposition that we may ignore the plain and ordinary meaning of a statute simply because a litigant disagrees with the results it produces.

¶ 70 Additionally, we note that the disparity between the parties' income is not as dramatic as Neil suggests in his briefs. Neil points out that, according to Jacqueline's 2016 financial disclosure statement, she owns $2.43 million in investment accounts and securities, and her gross income that year was $144,045, consisting entirely of interest and dividends. As for Neil's income, the trial court found that it was "difficult, if not impossible, to determine," since in 2012 he reported an annual income of $12,984, but also reported that his annual living expenses totaled $55,560 and that he was able to meet those expenses without incurring any debt. The court also found that Neil was voluntarily underemployed given his education and background.

¶ 71 Neil asserts that he has "no savings whatsoever," but his record citations do not support that conclusion. He first cites records from Lakeside Bank showing that in 2012, he transferred around $34,000 from his certificate of deposit account to his checking account and then closed his certificate of deposit account. He additionally cites bank records indicating that in 2017, he withdrew $10,000 from his IRA (a "premature partial distribution") and deposited that sum in a Lakeside Bank account. Neither of these records demonstrates that Neil lacks savings; rather, Neil is simply moving money between his own accounts.

¶ 72 We therefore affirm the trial court's December 8, 2017 order denying Neil's petition to modify support and its March 20, 2018 order granting in part and denying in part his motion to reconsider.

¶ 73 Contempt

¶ 74 Neil next seeks reversal of the trial court's September 5, 2018 order finding him in indirect civil contempt and ordering him to pay attorney fees to Jacqueline's counsel.

¶ 75 The purpose of a civil contempt order is to force the contemnor to comply with the court's order. *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1029 (2005). The contemnor bears the burden of proving that his failure to comply with the court's order was not willful. *Id.* To prove that a failure to pay was not willful, the contemnor must show that he lacked the resources to pay and did not wrongfully dispose of money by which he could have made payment. *Id.* Whether a party is guilty of indirect civil contempt is a question of fact, and we will not disturb the trial court's decision unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108 (2006).

¶ 76 Neil argues that the trial court's order was an abuse of discretion because, under section 505 of the IMDMA, he cannot be required to pay for JM's health insurance. Alternatively, he argues that he should have to pay no more than 50% of the premiums, pursuant to the court's alleged oral ruling on November 17, 2017. Neil's arguments in this regard are identical to the ones he makes regarding his petition to modify support, and we reject them for the reasons stated above.

¶ 77 Neil next argues that his noncompliance with the court's orders should not be considered willful because Jacqueline's income exceeds his. But this is not the standard for demonstrating a lack of willfulness; rather, as noted, Neil had the burden of showing that he lacked the resources to pay for the insurance premiums and did not wrongfully dispose of that money. *Hayden*, 361 Ill. App. 3d at 1028. For reasons already discussed, Neil's record citations do not bear out this conclusion. Thus, we do not find the trial court abused its discretion in finding his failure to pay was willful.

¶ 78 Neil finally cites *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶ 30, for the proposition that "[i]t is appropriate to vacate a contempt finding on appeal where the refusal to

comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent." (Internal quotation marks omitted.) But Neil does not assert that he refused to pay for his son's health insurance premiums to obtain an interpretation of a legal issue without precedent, nor do we find any record support for such an assertion. Accordingly, we affirm the trial court's finding of contempt against Neil.

¶ 79 Award of Attorney Fees

¶ 80 Section 508(b) of the IMDMA provides that if the trial court finds a party's failure to comply with an order was without compelling cause or justification, the court shall award attorney fees to the other party. 750 ILCS 5/508(b) (West 2016). Pursuant to this section and in conjunction with the contempt proceedings, the trial court awarded $6,837.50 to Jacqueline's counsel Frumm.

¶ 81 Neil's contention of error regarding the court's award of attorney fees relies exclusively on his argument that the trial court erred in denying his petition to modify support, which we have already rejected for reasons extensively discussed. Neil raises no argument as to the reasonableness of Frumm's claimed fees, and any such argument is therefore forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017); *CE Design*, 2015 IL App (1st) 132572, ¶ 18. In any event, Frumm's fee petition is absent from the record, as is any transcript of the proceedings on that petition. Accordingly, we must assume that these gaps in the record support the trial court's judgment. *Cambridge Engineering*, 378 Ill. App. 3d at 445-46; *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392. We therefore affirm the trial court's award of attorney fees to Frumm under section 508(b).

¶ 82 Sanctions

¶ 83 Finally, Neil argues that we should sanction Frumm under Supreme Court Rule 137 (eff. July 1, 2013) for various alleged acts of fraud upon the trial court. Jacqueline, for her part, argues that that we should sanction Neil because his appeal is frivolous and his appellate brief does not conform to Rule 341.

¶ 84 Neil identifies three alleged acts of fraud committed by Frumm. First, he reiterates his argument that Frumm intentionally omitted the trial court's 50/50 decree from the typewritten order signed by the court on December 8, 2017. For all the reasons stated above, particularly the trial court's own rejection of this allegation, we do not find that Frumm acted fraudulently in this regard.

¶ 85 Neil's other fraud allegations both concern the interpretation of the 2016 Arce order. As noted, the Arce order plainly states that "contribution *** shall be retroactive to 1/1/2016." But in the December 8 order, Frumm wrote that contribution "shall be determined retroactive to 3/1/16." This was apparently not a typographical error. Rather, in his response to Neil's motion to reconsider the December 8 order, Frumm argued that March 1, 2016 was the proper retroactivity date because Jacqueline's new insurance policy for JM did not take effect until that date.

¶ 86 Neil alleges that Frumm unilaterally changed the retroactivity date and thereby committed an act of fraud on the court. Frumm, for his part, alleges that the trial court agreed to change the date during the November 17, 2017 hearing. Because no transcript of that hearing is contained in the record on appeal, we have no way of determining who is telling the truth; we therefore do not have a sufficient factual basis to impose sanctions. Moreover, we observe that Frumm's actions were ultimately harmless, since the trial court, on Neil's motion for reconsideration, changed the retroactivity date back to January 1, 2016.

¶ 87 Neil's final allegation of fraud concerns the scope of contribution under the Arce order. In his January 5, 2018 motion to reconsider, Neil argued that Judge Arce intended for "contribution" to encompass the entire cost of JM's medical premiums. In response, Frumm argued that "contribution" was only intended to cover the *increased* cost caused by Jacqueline's purchase of private insurance for JM. Neil asserts that this is a blatant (and fraudulent) misrepresentation of the Arce order. We find the Arce order ambiguous on this issue, since it does not specify precisely the expenses for which contribution would be determined. Moreover, we do not have any transcript of the proceedings before Judge Arce on Jacqueline's January 26, 2016 emergency motion, as would enable us to resolve this ambiguity. Accordingly, we cannot determine whether Neil or Frumm is correct as to the scope of the order. In any event, we observe that the intended scope of the order is immaterial, since the trial court dismissed with prejudice the issue of contribution due to the parties' failure to comply with financial disclosure requirements. For these reasons, we decline to impose sanctions upon Frumm.

¶ 88 Jacqueline, meanwhile, argues that we should sanction Neil under Supreme Court Rule 375, which provides that we may sanction any party or attorney for willful noncompliance with appellate rules (Ill. Sup. Ct. R. 375(a) (eff. Feb. 1, 1994)) or for filing a frivolous or bad-faith appeal (Ill. Sup. Ct. R. 375(b) (eff. Feb. 1, 1994)). See *First Federal Savings Bank of Proviso Township v. Drovers National Bank of Chicago*, 237 Ill. App. 3d 340, 344-48 (1992) (issuing rule to show cause against defendants for filing frivolous appeal where the relevant facts were not in dispute and the defendants' legal arguments were clearly incorrect under unanimous Supreme Court precedent). Although we ultimately disagree with Neil's preferred outcome, we do not find his appeals frivolous. The primary legal basis for his arguments is the 2017 IMDMA

amendment, which we have found does properly apply to this case, and many of the underlying facts are fairly disputed by the parties.

¶ 89 Finally, we reiterate our observation that *both* parties' briefs fail to present clear and cohesive arguments as required by Rule 341, and Jacqueline certainly is in no position to be throwing stones on this issue, particularly since her brief was prepared with benefit of counsel while Neil's was not. Accordingly, we deny Jacqueline's request for Rule 375 sanctions against Neil.

¶ 90 CONCLUSION

¶ 91 For the foregoing reasons, (i) we affirm the trial court's denial of Neil's motion to modify the judgment to remove his obligation to pay for his son's health insurance premiums, and (ii) we affirm the trial court's finding of contempt against Neil and its award of attorney fees to Jacqueline's counsel under section 508(a) of the IMDMA.

¶ 92 Affirmed.