

No. 1-19-0367

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

IVAN COFRE,)	Appeal from the Circuit Court of
)	Cook County
Petitioner-Appellant,)	
)	
v.)	No. 15 D 230018
)	
PAMELA COFRE,)	
)	Honorable Jeanne M. Reynolds
Respondent-Appellee.)	Judge Presiding

PRESIDING JUSTICE GRIFFIN delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred when it found petitioner in contempt. Petitioner should not have been made to pay respondent's attorney fees for her prosecution of a rule to show cause. The trial court did not commit reversible error when it denied petitioner's motion to modify his maintenance obligation. The trial court lacked authority to sanction plaintiff's attorney under the circumstances and it failed to provide any cognizable basis for the sanction.

¶ 2 Petitioner Ivan Cofre and respondent Pamela Cofre divorced in 2016. Part of the judgment dissolving the marriage was that Ivan would pay maintenance to Pamela. In 2018, Ivan failed to make several maintenance payments in accordance with the judgment of dissolution.

Pamela petitioned the court to order Ivan to show cause for his failure to abide by the terms of the judgment. At the hearing on Pamela's petition for a rule to show cause, the trial court simultaneously issued a rule to show cause and found Ivan in contempt. Thereafter, Ivan paid the amount he owed in back maintenance and the trial court vacated its contempt finding.

¶ 3 Ivan then moved the court to modify or terminate his maintenance obligation because, like he asserted before he was held in contempt, he had lost his job. He averred that he could no longer afford the payments as a result of his new employment situation. Pamela countered that Ivan himself had been the cause of his inability to make maintenance payments so he should not get the requested relief, and she also petitioned for the attorney fees she incurred while bringing her petition for a rule to show cause. The trial court denied Ivan's motion to modify or terminate his maintenance obligation, and it granted Pamela's petition for fees. The trial court also fined Ivan's attorney \$250 for his conduct in the case. Ivan appeals the adverse rulings. We affirm in part and reverse in part.

¶ 4 I. BACKGROUND

¶ 5 On January 22, 2015 petitioner Ivan Cofre filed a petition to dissolve his marriage to respondent Pamela Cofre. The dissolution of marriage proceedings terminated with a settlement in September 2016, and a judgment dissolving the marriage was entered. In accordance with the settlement, the court ordered Ivan to pay Pamela \$1,640 each month in maintenance.

¶ 6 A year and a half after the judgment dissolving the marriage was entered, Pamela filed a petition for a rule to show cause against Ivan. In that petition, Pamela alleged that Ivan failed to make the required maintenance payments for five months. In response, Ivan argued that he had not acted willfully, but instead maintained that he had been unable to make the required maintenance payments because he had been laid off from his job. The trial court found Ivan to be

in contempt for failing to make the required maintenance payments. The trial court set a purge amount of \$5,000 and set a court date for a month later for a status on the purge.

¶ 7 In the month between the trial court finding Ivan to be in contempt and the status date, the parties worked to settle the matter of the outstanding maintenance payments. Ivan paid his outstanding maintenance obligation, and, on July 18, 2018, the trial court entered an order vacating its contempt finding.

¶ 8 On July 27, 2018, Ivan, now having the contempt finding against him vacated, filed a motion to terminate or modify his maintenance obligation. In his motion, Ivan argued that because he had lost his job through no fault of his own and because his salary had decreased dramatically, he should pay less maintenance or none at all. Pamela filed a response brief and argued that Ivan's maintenance obligation should continue, and that Ivan's maintenance payments had again become past due. Pamela acknowledged that Ivan had made his maintenance payments current on July 6, 2018, but alleged that he had failed to make the required payments in the time since he had purged his contempt.

¶ 9 On the same day that Pamela filed her response to Ivan's motion to modify maintenance, Pamela filed a motion seeking the attorney fees she incurred in prosecuting the petition for a rule to show cause under which Ivan was held in contempt. Pamela invoked section 508(b) of the Illinois Marriage and Dissolution of Marriage Act which provides for fees to be awarded to the prevailing party when that party has to initiate a proceeding based on the other party's failure to comply with a court order without justification. See 750 ILCS 5/508 (West 2018).

¶ 10 Ivan did not appear in court the day that the motions were set for hearing. The trial court denied Ivan's motion to terminate or modify maintenance and granted Pamela's petition for the fees associated with her petition for a rule to show cause. The trial court also sanctioned Ivan's

attorney \$250. Ivan filed a motion to reconsider, which the trial court denied. Ivan now appeals: (1) the initial order finding him to be in contempt; (2) the order awarding Pamela attorney fees associated with the rule to show cause; (3) the order denying his motion to modify or terminate maintenance; and (4) the \$250 sanction against his attorney.

¶ 11

II. ANALYSIS

¶ 12

A. Contempt Finding and Associated Fees

¶ 13 Pamela filed a petition for a rule to show cause in which she alleged that Ivan had the ability to pay maintenance in accordance with the judgment, but that he failed to make the required payments. Ivan countered that his failure to make the required payments was not willful and that he had failed to make the maintenance payments because he lost his job. No evidentiary hearing was held. In its order disposing of the petition, on April 9, 2018, the trial court found that Ivan's "failure to pay maintenance *** is willful." The trial court's order further states that "Rule has issued and [Ivan] is found in contempt." The trial court went on to set a purge amount, set a status on the purge, and it ordered Ivan to keep a job diary.

¶ 14 When the parties appeared before the court on April 9, 2018, the case was set for a hearing on the petition for a rule to show cause. The trial court simultaneously issued the rule to show cause and found Ivan to be in contempt. That was improper. Moreover, the trial court found petitioner to be in contempt without an evidentiary hearing.

¶ 15 At issue here is indirect civil contempt. Indirect civil contempt must be established by the presentation of evidence as it relies on the existence of a court order and willful disobedience of that order. *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 36. Because judges in indirect contempt proceedings do not have personal knowledge of the allegedly contumacious conduct, the contemnor cannot be punished summarily. *Id.* at ¶ 37. Rather, due process requires that the

contemnor receive: (1) an evidentiary hearing; and (2) adequate notice of the time and place of such hearing. *Id.* Ivan received neither here.

¶ 16 The petition for rule to show cause and the rule to show cause itself work in concert to notify the alleged contemnor of the charges against him and the time and place of an evidentiary hearing. *Id.* at ¶ 39. A party's petition for a rule to show cause typically *initiates* civil contempt proceedings, but the court must also issue a rule to show cause to satisfy notice requirements. *Id.* The rule to show cause is the method by which the court brings the parties before it for a hearing; it is not itself a contempt finding. *Id.* When a court fails to issue a rule to show cause and serve it on the alleged contemnor prior to holding him in indirect civil contempt, the court deprives him of due process because he lacks proper notice of the contempt proceeding. *Id.* at ¶40.

¶ 17 Here, the trial court simultaneously issued the rule to show cause and found Ivan to be in contempt. Ivan should have been afforded the opportunity to “show cause” as to why he should not be held in contempt. He was entitled to an evidentiary hearing to determine whether his conduct was willful before he was found in contempt. It is unclear how the trial court here could have possibly found Ivan to be willfully refusing to pay Pamela where she averred that Ivan had the ability to pay and he averred that he did not. The trial court apparently found Pamela to be credible and Ivan to not be credible—answering questions of fact based on the competing affidavits alone.

¶ 18 To parrot *Milton*, although Pamela's petition for rule to show cause initiated the contempt proceedings and likely informed Ivan of the facts upon which the charge was based the hearing could have permissibly only concerned whether the court should issue a rule to show cause, not whether Ivan should be held in indirect civil contempt. *Id.* at ¶ 41. When the court simultaneously entered a rule to show cause and found Ivan in contempt, it confused two distinct

procedures: issuing a rule to show cause and finding a party in contempt. *Id.* Accordingly, the trial court's adjudication that Ivan was in contempt was in error and must be reversed. See *id.* at ¶¶ 41-42.

¶ 19 Pamela argues that we lack jurisdiction to review the trial court's contempt finding. Pamela contends that Ivan was required to, and did not, appeal the trial court's contempt finding within 30 days of it being entered. As previously explained, the trial court's order purporting to find Ivan in contempt was improper. In any event, the reversal of the trial court's contempt adjudication at this point does not do much to change the nature of the case. The trial court's contempt finding was vacated when Ivan paid the back maintenance and Ivan was not made to pay anything more than he admittedly owed nor was he faced with imprisonment. The one sanction that Ivan did endure as a result of being found in contempt was that the trial court held that Ivan was required to pay Pamela's attorney fees as a result of her bringing a successful petition for a rule to show cause. Being that her success on the petition for a rule to show cause was granted impermissibly, her award of attorney fees was likewise based on an inappropriate notion that she was a prevailing party under the Marriage and Dissolution of Marriage Act. See *Milton*, 2018 IL App (1st) 171392, ¶ 42.

¶ 20 The Illinois Marriage and Dissolution of Marriage Act provides that "in every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2018). The trial court ruled that, because it had already found willfulness to exist when it found Ivan to be in contempt for

not paying maintenance, the lack of justification under section 5/508(b) had already been established.

¶ 21 The trial court's finding in this case that Ivan's conduct was willful was defective. The trial court made that factual finding without hearing witnesses or otherwise having a forum to weigh the evidence. Ivan submitted an affidavit to the court averring that his noncompliance was through no fault of his own—he was laid off from his job and his financial situation had declined. The trial court could not have found from the competing evidence the parties submitted that, as a matter of law, Ivan had no good cause for failing to meet his maintenance obligation. Thus, the subsequent ruling that relied on the earlier, improper ruling likewise cannot stand.

¶ 22 In addition, Ivan timely appealed the order awarding Pamela fees—the first order in which he was penalized for being held in contempt. So even if we accepted Pamela's argument that Ivan could not appeal the actual contempt finding, there is no issue regarding the timeliness of his challenge to the fee award. Since the fee award was based upon an earlier improper finding and because the trial court could not have appropriately made a finding of willfulness at the stage that it made such a finding, the fee award was not warranted.

¶ 23 B. Motion to Modify or Terminate Maintenance

¶ 24 Ivan filed a motion to modify or terminate his maintenance obligation based on a substantial change in circumstances—namely, that he lost his job. The court set the motion for a hearing on November 16, 2018. On the date of the hearing, Ivan did not appear in court. Pamela, meanwhile, had taken time off from work to be present in court. Ivan and his attorney gave conflicting reasons about why Ivan was not present. The judge explained to Ivan's counsel that Ivan could only succeed on his motion by testifying. Being that Ivan was not present, he could not meet his evidentiary burden, so the trial court denied his motion.

¶ 25 The party that is seeking a modification of maintenance has the burden of establishing that a substantial change in circumstances exists that justifies the modification. *Shen v. Shen*, 2015 IL App (1st) 130733, ¶ 132. A trial court's ruling on a petition for modification of maintenance will not be reversed absent an abuse of discretion. *Id.* at ¶ 135. Here, at the scheduled hearing on Ivan's own motion, he failed to appear. Being that he was not present to provide any evidence to support his motion, he did not meet his evidentiary burden of demonstrating that a modification of his maintenance obligation was proper. We find no reversible error in the trial court's ruling on Ivan's motion.

¶ 26 C. Monetary Sanction Against Counsel

¶ 27 The trial court sanctioned Ivan's counsel, fining him \$250. Pamela petitioned the court to sanction Ivan's counsel under Illinois Supreme Court Rule 137 for the attorney's conduct in the case. In her motion, Pamela alleges that Ivan's counsel improperly tried to introduce evidence of settlement negotiations, that he made filings with the court for the purposes of harassment, and that he should be sanctioned for threatening to report Pamela's counsel to the ARDC, among other putatively improper conduct. The trial court granted Pamela's motion for sanctions and ruled that "sanctions are awarded to [Pamela's counsel] and against [Ivan's counsel] in the amount of \$250.00."

¶ 28 To the extent Pamela argues that the sanction was justified under Rule 137, there is no basis in the record for a Rule 137 sanction. Pamela's motion included a litany of allegations that she believed constituted improper behavior by an attorney, much of which does not fall under the ambit of Rule 137. The trial court made no written finding that Ivan's counsel made any statement in a paper filed with the court that was not well-grounded in fact or was interposed for an improper purpose, nor did it make any specific finding that Ivan's counsel was in violation of

Rule 137. Rule 137 explicitly provides that “[w]here a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.” Ill. S. Ct. R. 137(d) (eff. Jan. 1, 2018).

No written order explaining the basis for the sanction exists.

¶ 29 Moreover, most of the allegations Pamela made against Ivan’s counsel are simply that he acted unprofessionally and indicates her belief that Ivan’s counsel should be punished for his bad behavior. But outside of its contempt power, the circuit court has no general authority to discipline attorneys for unprofessional conduct. The inherent power of a circuit court to control its courtroom and maintain proper decorum extends no further than its ability to find someone in contempt. *In re General Order of March 15, 1993*, 258 Ill. App. 3d 13, 17 (1994). The sanction against Ivan’s attorney was improperly imposed and cannot stand.

¶ 30 III. CONCLUSION

¶ 31 Accordingly, we affirm the trial court’s ruling pertaining to petitioner’s motion to modify his maintenance obligation. We reverse the trial court’s rulings holding petitioner in contempt, awarding respondent fees, and sanctioning petitioner’s attorney.

¶ 32 Affirmed in part, reversed in part.