

2014 IL App (2d) 130163-U
No. 2-13-0163
Order filed March 31, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re MARRIAGE OF THOMAS S. BLOOM,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellee,)	
)	
and)	No. 06-D-2265
)	
MICHELLE M. BLOOM,)	Honorable
)	Robert A. Miller,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion or otherwise err in denying respondent's various requests for a rule to show cause against petitioner because respondent failed to show: petitioner lacked good cause to remove respondent from credit card set up to pay for the parties' children's tennis expenses; respondent failed to establish that petitioner's duty to educate and support children was still in effect; respondent failed to establish that petitioner's obligation to provide her with proof he was maintaining life insurance for the benefit of the parties' children was not moot; respondent did not establish that she was entitled to half of a loss carry forward for federal tax purposes; and several other arguments were undeveloped and forfeited.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Michelle M. Bloom, appeals a series of denials by the trial court of four separate petitions for rules to show cause raising six discrete issues. All stem from the

enforcement of the judgment for the dissolution of the marriage between the parties, which incorporated their marital settlement agreement. For the reasons that follow, we affirm.

¶ 4 We previously granted a motion by respondent to consolidate this appeal with appeal No. 2-13-0642. We granted that motion for the purposes of decision only, and the two appeals were briefed separately. We now sever them and will address them separately.

¶ 5 II. RULES TO SHOW CAUSE

¶ 6 On appeal, respondent complains that the trial court: (1) failed to find petitioner in contempt for removing respondent as an authorized user of a credit card that was intended to be used for the parties' children's tennis expenses; (2) failed to hold petitioner in contempt for failing to provide respondent with medical insurance cards for the parties' two children; (3) failed to hold petitioner in contempt for failing to provide documents pertinent to petitioner's finances as purportedly required by the marital settlement agreement; (4) vacated a contempt finding against petitioner for failing to provide respondent proof that he was maintaining a \$2,000,000 insurance policy for the benefit of the parties' children; (5) failed to hold petitioner in contempt for failing to transfer the children's life insurance policies to the children; and (6) failed to hold petitioner in contempt for failing to divide a tax loss of \$1,640,070 between the parties. We find none of these contentions persuasive. We will address them, *seriatim*, discussing relevant facts as they pertain to respondent's arguments.

¶ 7 Determining whether a party is guilty of contempt is primarily a matter of fact for the trial court, so we will not disturb the trial court's findings on this issue unless they are against the manifest weight of the evidence or the record reveals an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984). A finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent (*Prignano v. Prignano*, 405 Ill. App. 3d 801,

810 (2010)), and an abuse of discretion occurs only where no reasonable person could agree with the trial court (*Shaw v. St. John's Hospital*, 2012 IL App (5th) 110088, ¶ 18).

¶ 8 Indirect civil contempt is contempt that occurs outside of the presence of the trial court. *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480 (1997). It involves, “failing to do something ordered by a court, and the result is the loss of a benefit or advantage to the opposing party, with the dignity of the court being only incidentally involved.” *Id.* at 479 (citing *People v. City of East St. Louis*, 206 Ill. App. 3d 626, 634 (1990)). Essential to any such contempt finding is a court order and willful disobedience of that order. *Id.* at 480. The burden is on the contemnor to show that any noncompliance with the order was not willful and contumacious. *Id.*

¶ 9 However, on appeal, the burden is on the appellant—respondent in this case—to affirmatively establish that the lower court erred. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008) (“Defendant[-appellee]'s failure to file a brief does not require automatic reversal, and plaintiff[-appellant] continues to bear the burden of establishing error.” (Emphasis added.)). Moreover, we review the result the trial court arrived at, rather than its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). Furthermore, we may affirm on any basis apparent in the record. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004). In this appeal, then, the burden is on respondent to show that the trial court’s factual findings are such that an opposite conclusion is clearly apparent or that the trial court’s conclusions were such that no reasonable person could agree with them. Finally, a marital settlement agreement is a contract and is to be interpreted as such. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26. Our primary goal is to ascertain the intent of the parties from the plain language of the agreement. *In re Marriage of Frain*, 258 Ill. App. 3d 475, 478 (1994). With these standards in mind, we now turn to respondent’s arguments.

¶ 10

A. Credit Card For Tennis Expenses

¶ 11 Pursuant to the marital settlement agreement and an agreed order modifying that agreement, petitioner was to establish a credit card to be used for the children's tennis expenses. Respondent was to be named an authorized card holder on the account. Petitioner removed respondent's name from the card on January 2, 2011. The trial court issued a rule to show cause as to why he should not be held in contempt for doing so.

¶ 12 An evidentiary hearing was held on the issue. Respondent, who was proceeding *pro se*, testified that she flew to Arizona in late 2010 in order to attend her sons' tennis tournament. She paid for the trip with the credit card. Her sons were not traveling with her. Respondent would not clarify and then claimed not to remember when asked if she took a taxi or a limousine to the airport, despite initially stating it was a taxi. When asked whether she charged her hotel room to the credit card, respondent stated, "In order to—it was a tennis [sic] and tennis related expense." When asked to answer yes or no, she again stated that this was a tennis related expense. The trial court then interjected that respondent was not asked whether the expense was tennis related. Respondent objected, citing relevancy. The trial court overruled this objection. Respondent then stated, "And, your Honor, I'm assuming that you wanted me to tell the truth and the truth is both my sons were at the tennis * * * court." The court stated:

"Ma'am, if you do this again, I don't know how many times I've had to warn you. You don't get to just tell me to shut up by talking over things that I say, and that's clearly the intent of you speaking over me. [Petitioner's counsel] is allowed to ask you questions. If you don't like the questions, then you can make a legal objection. But if it's just that you don't like the question, too bad. You have to answer it. And then, when he's through, then you can give your side, and then you can explain those answers that

you gave to [petitioner's counsel]. He doesn't just get to ask you questions and then you have to get off the stand. When he's through, you have an opportunity to explain all the answers."

Respondent then continued to avoid, for the most part, answering directly a series of yes-or-no questions. When asked whether her sons ate with her, respondent stated: "They were not allowed. They were removed from the state immediately." The trial court directed respondent, "[w]hen the answer is no, then you give the answer no." Respondent replied, "I am giving the answer no, because they were removed." The trial court struck everything besides "no" and told respondent that this was her last warning. When asked four times in succession whether she attended any of her sons' matches, she declined to answer directly and stated that she could not because they were removed from the tournament. The trial court then closed proofs and denied respondent's petition. It clarified that it was finding that good cause was shown for petitioner's decision to cancel the credit card.

¶ 13 Without citation to authority or the record, respondent complains that the trial court denied the petition "even though [respondent] attempted to answer the questions but the trial court obviously does not like [her]. Initially, we see nothing in the record indicating that the trial court "does not like [respondent]." Rather, the trial judge repeatedly explained to respondent that she was to answer a yes-or-no question by stating "yes" or "no." Nevertheless, respondent continued to disregard the trial court's directions and interject nonresponsive material into her answers to such questions. Since respondent refused to comply with the basic rules regarding how a hearing is conducted, the trial court closed proofs. This course was within the trial court's discretion.

¶ 14 The trial court possesses broad discretion to control the conduct of the proceedings before it (*People v. Shaw*, 98 Ill. 2d 682, 688 (1981); *People v. Velez*, 72 Ill. App. 2d 324, 336 (1966)), and it has the inherent authority to sanction a party that refuses to abide by valid court orders (*Circle Management, LLC v. Oliver*, 378 Ill. App. 3d 601, 613 (2007)). This discretion includes the imposition of sanctions against litigants for misconduct during proceedings. See also *Workman v. St. Therese Medical Center*, 266 Ill. App. 3d 286, 293 (1994). In appropriate circumstances, sanctions may include dismissing a claim with prejudice. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 67 (1995). *A fortiori*, if a claim may be dismissed outright, a trial court surely possesses the authority to terminate the taking of evidence regarding a claim. In this case, respondent's persistent disregard of the trial court's repeated admonishments about her testimony provided a sufficient basis for the trial court to exercise its discretion and close proofs.

¶ 15 Respondent also complains of a finding the trial court made that petitioner's obligation to provide her with the credit card was independent of a change in respondent's maintenance. She points out that the marital settlement agreement provided that upon her son's graduation from high school, "the difference between the previously reviewable maintenance in the amount of \$34,150.00 per month and the amount of \$30,650.00 *i.e.* the difference of \$3,500.00 shall be reviewed based upon a change in tennis expenses and tennis related expenses." The point of respondent's argument seems to be that her maintenance should have been increased when petitioner removed her name from the credit card.

¶ 16 A marital settlement agreement is a contract and must be interpreted as such. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26. We, of course, may not read into the agreement any conditions, limitations, or exceptions that do not appear in the agreement's plain language. *Divane v. Smith*, 332 Ill. App. 3d 548, 553 (2002). Nothing in the language set forth

by respondent suggests that any self-executing change in respondent's maintenance was to occur if her name was removed from the credit card. This passage simply states that maintenance "shall be reviewed" if tennis expenses change. We further note that respondent does not argue that these expenses have, in fact, changed, which would be the condition precedent prompting review. In short, this contention has little bearing on petitioner's removal of respondent from the credit card.

¶ 17 Finally, we note that the trial court found that "there was good cause shown for [petitioner] cancelling the card." Respondent makes no attempt to attack this finding and establish that it was against the manifest weight of the evidence. She states that petitioner "did not prove that he did not cancel the card." That, however, is implicit in the trial court's finding that he had good cause for doing so. She then complains of the early termination of the hearing (which we addressed above). Having failed to address the trial court's central finding on this issue, respondent provides us with no basis to disturb its judgment.

¶ 18 **B. The Children's Medical Cards**

¶ 19 Respondent next asserts that the trial court erred in not finding petitioner in contempt for failing to provide her with medical insurance cards for the parties' children. On this subject, the marital settlement agreement provides as follows:

"THOMAS shall provide MICHELLE with an identification card from the medical, dental and vision insurance carrier, expense reimbursement plan, or health maintenance organization disclosing the existence of current coverage for the benefit of each child and shall also provide MICHELLE with any literature available to him regarding coverage and benefits under the policy. This paragraph is a condition

precedent to MICHELLE’S obligation to comply with the existing insurance coverage when seeking a course of treatment for each child.”

The marital settlement agreement also provides that petitioner is obligated to provide medical insurance until the children reach the age of 23 or the duty to support and educate them is no longer in effect (whichever comes first). The agreement also provides, “Both parties recognize a moral obligation and by this Agreement create a legal agreement to help support and maintain [the children’s] pursuit of a post-high school education.”

¶ 20 The trial court concluded that petitioner’s obligation to provide medical insurance had expired because the children were emancipated. Respondent points out that pursuant to the language set forth in the previous paragraph, the parties assumed a contractual duty to support the children. While it is true that the parties assumed this obligation, it is also true that the marital settlement agreement contemplates this duty terminating at some point. While respondent criticizes the trial court’s rationale for concluding the duty had terminated, respondent attempts nowhere in her argument to establish that the duty remains in effect. We reiterate that we review the result to which the trial court came, not its reasoning. *Ackerley*, 333 Ill. App. 3d at 392. Respondent simply asserts that petitioner’s “duty to educate had clearly not terminated.” Respondent does not explain under what circumstances the duty is to continue or whether those circumstances exist. As such, respondent has not provided us with a basis to disturb the trial court’s decision.

¶ 21 We further note that, while it is undisputed that petitioner did not provide medical cards to respondent, petitioner states, in his brief, that it is also undisputed that he provided insurance for the children, gave them medical cards, and paid all their medical expenses as required under

the marital settlement agreement. Respondent does not dispute this statement in her reply brief. Thus, any violation was *de minimis* and did not prejudice the children.

¶ 22 Finally, we note that the agreement itself specified what was to happen if petitioner did not provide respondent with medical cards for the children. It provides, “This paragraph is a condition precedent to MICHELLE’S obligation to comply with the existing insurance coverage when seeking a course of treatment for each child.” Thus, the agreement contemplated that petitioner might not supply the medical cards to respondent and included a self-executing remedy. Respondent does not explain why this remedy, to which she agreed, is now insufficient.

¶ 23 In sum, respondent has not carried her burden, as the appellant (*TSP-Hope, Inc.*, 382 Ill. App. 3d at 1173), of establishing that the outcome of the trial court’s decision on this matter is erroneous.

¶ 24 C. Tax Returns

¶ 25 Respondent next complains that petitioner did not provide her with all of the documents related to the parties’ income taxes, as purportedly required by the marital settlement agreement. Respondent first asserts that petitioner did not provide her with information pertaining to certain stock transactions. Then, in the space of four sentences, respondent contends that (1) petitioner was not entitled to unilaterally modify the marital settlement agreement; (2) the trial court erred by closing proofs after respondent failed to answer the trial court’s questions as directed; (3) the trial court misconstrued an earlier order as modifying the marital settlement agreement; and (4) documents submitted to the Internal Revenue service are not privileged (the latter being the only assertion supported by citation to legal authority). These arguments are wholly undeveloped.

¶ 26 It has often been explained that a court of review is entitled to have issues presented to it that are clearly defined and that the court is not a repository into which an appellant may foist the

burden of research and argument. *In re Gregory C.*, 396 Ill. App. 3d 923, 928 (2009). Here, for example, respondent does not explain the significance of the fact that such documents are not privileged. The absence of such a privilege would say little regarding whether petitioner had a duty to turn them over. In short, respondent has forfeited this issue (see *People v. Jacobs*, 405 Ill. App. 3d 210, 218 (2010)), and we will not consider it any further.

¶ 27

D. Proof of Insurance

¶ 28 Respondent next argues that the trial court should have found petitioner in contempt for failing to provide respondent with proof that he was maintaining a \$2,000,000 life insurance policy for the benefit of the parties' children. The trial court initially issued a rule to show cause. Petitioner subsequently tendered to the court documents showing a \$2,000,000 policy on his life; however, it did not name the parties' children as irrevocable beneficiaries. Rather, the beneficiary was a life insurance trust. Petitioner did not have the trust documents identifying the beneficiaries of the trust. The trial court found petitioner was in contempt, and set a date for a purge. On that date, petitioner tendered to the trial court the trust documents. The trial court found that the documents were insufficient to purge the contempt finding. However, the trial court also determined that the time period during which petitioner was to maintain the insurance had passed, so it could no longer order effective relief. In other words, the issue is moot. See *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007). The trial court also found that petitioner did, in fact, maintain such a policy during the specified period.

¶ 29 Respondent contends that this issue was not moot, as the duty to educate still existed. However, she simply references her earlier argument on this issue, which we already have rejected, as explained above. We find it no more persuasive in this context. She then points out that petitioner had actually been held in contempt and he never purged that contempt. While

true, this says nothing as to whether an effective purge remains available, or, in turn, whether the issue is moot. Respondent provides us with no reason to conclude that the trial court erred in so finding. As such, this issue is, in fact, moot. See *Felzak*, 226 Ill. 2d at 391.

¶ 30 E. Transfer of Life Insurance

¶ 31 In a very brief argument (four sentences), respondent contests the trial court's failure to hold petitioner in contempt for failing to transfer certain life insurance policies to the children. It is true, as respondent points out, that the policies had not been transferred. The trial court, however, found that petitioner's failure to do so was not willful. It noted that petitioner had taken all steps necessary to transfer the policies and that petitioner's attorney had sent a correspondence to the insurer requesting the transfer. Petitioner had no way of knowing that the transfer did not occur. Respondent's attacks on these findings are conclusory. She contends only that there was no basis for the trial court to find that she was in a better position than petitioner to know the transfer had not occurred and that "[i]f [petitioner] did not follow up to ensure compliance with his obligation, that is his failing, not [respondent's]." The former assertion, even if true, does not undermine the trial court's finding that petitioner made reasonable efforts to transfer the policy in the first instance. Regarding the latter assertion, respondent cites no authority that would support the proposition that the failure to follow up after initially making reasonable efforts is unreasonable or would impose such a duty on petitioner. In short, we find respondent's brief contentions on this issue unpersuasive.

¶ 32 F. Capital Tax Loss Carry Forward

¶ 33 Respondent next argues that she was entitled to half of the benefit of a tax loss carry forward in the amount of \$1,640,070 on her federal tax returns. Petitioner applied the entire

amount for his benefit on his own taxes. The marital settlement agreement provides, in relevant part:

“The parties acknowledge that there currently exists a capital loss carry forward in the amount of \$1,640,070.00 as of December 31, 2006. The parties agree that *to the extent permitted by the Internal Revenue Code and regulations*, that each party shall be entitled to one-half of the capital loss carry forward, or the amount of \$820,035.00, for the purpose of calculating each parties’ federal and state income tax liability for the years 2007 and any year thereafter.” (Emphasis added.)

The trial court determined that the parties had contracted to be bound by federal tax law regarding how this asset could be divided, if it could be divided at all. The trial court acknowledged foreign case law presented by respondent that holds that such an asset may be distributed as marital property. However, the trial court concluded, that did not establish how the Internal Revenue Service would treat the asset. As such, the trial court found that respondent had not shown that petitioner was in violation of the marital settlement agreement.

¶ 34 Respondent contends that this asset was divisible. In support, she cites *Magee v. Garry-Magee*, 833 N.E.2d 1083 (Ind. Ct. App. 2005) (we remind respondent’s counsel that pinpoint citation would be helpful). However, while that case holds that a loss carry forward is marital property, it does not hold that such an asset may be divided and applied on two separate parties’ tax returns. *Id.* at 1091-93. Actually, *Magee* provides support of the trial court’s decision. In that case, the parties contracted to file a joint return if it would have reduced their aggregate tax liability. *Id.* at 1093. This would have resulted in a disproportionate portion of the loss accruing to the benefit of the husband as “all of Wife’s tax loss carryover would have been consumed to offset gains reported by Husband.” *Id.* The court nevertheless enforced the agreement. *Id.*

Similarly, in this case, the parties agreed to be bound by federal tax law. Even if this portion of the marital settlement agreement turned out to be more beneficial to one party, it provides no reason to rewrite the agreement.

¶ 35 In *Mills v. Mills*, 663 S.W.2d 369, 372 (Mo. App. 1983), a Missouri court held such an asset was marital property where it arose from losses from the sale of stock that was purchased during the marriage by the husband. The court held that awarding the wife one-half of the loss carry forward did not violate Treasury Regulation § 1.1212—1(c) (26 C.F.R. § 1.1212–1 (1980)). *Id.* That section makes the loss carry forward “on the basis of their *individual net capital loss* which gave rise to such capital loss carryover.” (Emphasis added.) 26 C.F.R. § 1.1212–1 (1980). Respondent points to nothing to establish that half of this asset arose from her individual net capital loss. She asserts that the parties “2004 joint tax return showed a joint Schwab account with a capital loss carry forward of \$235,000.” Respondent does not explain how this \$235,000 loss establishes that she is somehow entitled to half of the \$1,640,070 loss carry forward. Thus, it is not apparent to us that the conditions that made the asset divisible in *Mills* are present here. *Smith v. Smith*, 235 S.W. 3d 1, 16 (2006), which respondent also cites, is similarly distinguishable.

¶ 36 *Finkelstein v. Finkelstein*, 701 N.Y.S. 2d 52, 54 (2000), holds that a capital loss carry forward is a marital asset subject to *distribution*; however, it says nothing as to whether it is *divisible*. As such, *Finkelstein* provides little guidance here. *Silverstein v. Silverstein*, 943 S.W.2d 300, 303 (Mo. App. 1997), it is true, states that “there was passive loss carry-forward generated during the marriage and as such it is a marital asset which the trial court must divide.” In context, it appears to us that the *Finkelstein* court was stating the the loss carry forward was marital property and should be included in the division of the parties assets, for it subsequently

stated, “Based on our conclusions as to the imputation of income and the passive loss carry-forward *and their impact on the child support, maintenance and property distribution*, we must affirm in part and reverse and remand in part for proceedings in accordance with this opinion.” (Emphasis added.) *Id.* Clearly, the court was speaking on the effect of the loss carry forward on the property division generally rather than stating that the asset itself was divisible

¶ 37 In sum, none of the cases cited by respondent establish that she was entitled to half the loss carry forward based on the facts and circumstances of this case. Respondent has not carried her burden of establishing that the trial court’s ruling was erroneous.

¶ 38 IV. CONCLUSION

¶ 39 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 40 Affirmed.