

No. 1-09-2997

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF)
) Appeal from the
) Circuit Court of
MARY ANN ABRAMSON,)
) Cook County
)
)
) Petitioner-Appellee,) No. 03 D 330566
)
)
v.)
) Honorable
) Veronica B. Mathein,
MARC ABRAMSON,)
) Judge Presiding.
)
)
) Respondent-Appellant.)
)
)
)

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not abuse its discretion nor was its finding of indirect civil contempt against the manifest weight of the evidence where the finding was based on the failure to pay the health insurance premiums. The circuit court's finding was not a direct contradiction of its earlier rulings where the previous rulings were based on the failure to make maintenance payments. Moreover, the circuit court's admission into evidence of a tax assessment did not constitute reversible error where its ruling on the motion to modify maintenance was based on factors other than the assessment.

¶ 2 Following a ruling in January 2008 by the circuit court on respondent-appellant Marc

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Abramson's petition to terminate or modify maintenance, both parties filed numerous petitions and motions. On May 18, 2009, the circuit court ruled on another petition to modify maintenance, reducing the maintenance payments temporarily but continuing the health insurance payments. On October 8, 2009, the circuit court entered a ruling on petitioner-appellee Mary Ann Abramson's emergency petition for rule to show cause and adjudication of indirect civil contempt, finding Marc in indirect civil contempt for failure to pay Mary's health insurance premiums and directing him to pay \$1,774 by noon of the following day. On October 13, 2009, when Marc failed to appear in court and did not pay the \$1,774, the circuit court issued an order for a body attachment with a \$1,774 cash bond. On October 22, 2009, when Marc again failed to appear in court, the circuit court issued a new order for a body attachment, increasing the cash bond to \$4,435 and directing the Sheriff of Cook County to take Marc into custody until the amount was paid. Marc appeals the three October 2009 orders, contending that the orders are against the manifest weight of the evidence and arguing that he sufficiently demonstrated his inability to pay the amounts of the judgments. Marc further contends that the circuit court erred in admitting a tax assessment into evidence during the May 18, 2009 hearing on his motion to modify maintenance. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Marc and Mary were married on January 16, 1977. On April 26, 2005, a judgment of dissolution of marriage was entered, incorporating a marital settlement agreement (MSA) which provided that Marc would pay Mary \$2,000 per month for maintenance in two installments of \$1,000 each, commencing May 5, 2005 and continuing until May 5, 2011. The MSA also

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provided that Marc would provide and maintain a health insurance policy for Mary for the same 6 year period. These obligations were based upon Marc's income of \$55,000 per year in 2004 and benefits of \$9,000 per year, and also upon Mary's earnings of \$400 per month.

¶ 5 At the time the judgment of dissolution was entered, Marc was self-employed at a company which he owned, Cable X-Perts. During the marriage, Marc and Mary each drew a salary from Cable X-Perts in equal parts and the total household income was approximately \$100,000 during the last three years of marriage. Cable X-Perts also paid the premiums for health insurance coverage for both parties. As part of the MSA, Mary was required to relinquish her 49% interest in Cable X-Perts within 30 days of the entry of judgment of dissolution. In December 2006, Marc sold Cable X-Perts for \$425,000. Marc continued working as a consultant for Cable X-Perts from December 2006 through February 2007.

¶ 6 In April 2007, Marc relocated to Houston, Texas. Marc submitted an asset disclosure statement in April 2007, listing Houston Wire and Cable as his employer and a monthly gross income of \$6,666. He listed his gross income through February 16, 2007 as \$8,076 and his annual income for 2006 as \$80,586. The disclosure statement listed the following assets: a \$5,000 savings account, a \$500 checking account, a \$30,000 certificate of deposit, \$350 cash, a residence with a mortgage of \$194,000, a 2006 Toyota Matrix, a term life insurance policy, and two investment accounts with balances of \$19,500 and \$20,000 respectively. The disclosure statement did not contain any information related to the sale of Cable X-Perts.

¶ 7 On May 15, 2007, Marc filed a petition to terminate or modify maintenance, alleging a substantial change in circumstances. The petition alleged that in early 2006, Cable X-Perts

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experienced a deterioration in business, resulting in a staff reduction of 50% or 4 employees.

Marc was unable to continue operating the business so he contacted an agency to assist with the sale of Cable X-Perts. The petition further alleged that sometime in 2006, Marc was unable to pay his mortgage so he sold his home and began living with his mother. The petition stated that Marc was employed by Houston Wire and Cable and was earning a salary of \$80,000 per year.

¶ 8 On May 29, 2007, an amended petition was filed, stating that Marc's employment with Houston Wire and Cable was terminated after one month and that he was currently unemployed. The petition stated that the current premium for Mary's health insurance was \$835.71, and that Marc would be unable to continue to provide health insurance because he would no longer be able to get insurance through either Cable X-Perts or Houston Wire and Cable, and he would be unable to obtain other insurance because of Mary's health issues.

¶ 9 On both June 8 and June 25, 2007, Mary filed emergency petitions for rule to show cause because Marc did not make any maintenance payments in June. Marc tendered a check to Mary for \$2,000 on June 18, 2007, but the check was returned for non-sufficient funds. After the circuit court entered an order on June 25, 2007 issuing a rule against Marc for contempt, Marc tendered a valid \$2,000 check. Mary filed emergency petitions for rule to show cause again in September and October of 2007.

¶ 10 An evidentiary hearing on Marc's amended petition to terminate or modify maintenance was held on January 22, 2008. The circuit court denied the petition in its entirety, noting that Marc realized \$425,000 before taxes from the sale of Cable X-Perts in December 2006 and that the proceeds were deposited into a certificate of deposit. The court further noted that Mary's

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insurance coverage was terminated in December 2007 and she had an application pending for insurance coverage through the State of Illinois Comprehensive Health Insurance Plan (CHIP). The court ordered Marc to pay Mary's CHIP premium once her application was processed.

¶ 11 After Mary filed another petition for rule to show cause in April 2008, the circuit court entered an order on June 3, 2008 denying the petition but ordering Marc to make maintenance payments of \$1,000 on the 1st and 15th of each month. Mary again filed a petition for rule to show cause in February 2009. On March 4, 2009, Marc filed a motion to modify the maintenance and insurance payments, and filed an amended motion on April 20, 2009. The motion alleged that on February 27, 2009, Marc's employment with Country Financial was terminated and that in the six months he worked for Country Financial, his net income was \$12,844. The motion further alleged that Marc, who is diabetic, currently had no health insurance for himself and had no ability to pay maintenance or health insurance premiums for Mary. Marc stated that Mary currently worked 20 hours per week and could work up to 40 hours per week, and that she was earning more at the present time than at the time the judgment of dissolution was entered. In Mary's response, she stated that Marc had funds from the sale of his business with which he could continue to pay maintenance and health insurance, and that Marc owned a townhouse in Houston which he rented to his son. Mary filed another petition for rule to show cause in April 2009 after Marc missed several maintenance payments.

¶ 12 On May 18, 2009, an evidentiary hearing was held on Marc's motion to modify the maintenance and insurance payments and Mary's petition for rule to show cause. Marc testified at the hearing that he was employed by City Electric Company from September 2007 through

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March 2008. He earned just over \$16,000 in 2007 from City Electric. He worked for Country Financial Insurance from July 2008 through February 2009. His total earnings for 2008 from City Electric and Country Financial combined were \$33,000. At the time of the hearing, Marc was employed by Farmers Insurance on a commission only basis, but had not earned any commissions. Marc testified that he was currently receiving unemployment benefits of \$410 per week. He said that he paid \$749 per month for Mary's health insurance coverage, and that the amount would increase to \$849 in June 2009.

¶ 13 Marc testified that he used the proceeds from the sale of Cable X-Perts to pay creditors, suppliers, taxes and attorney fees. He purchased the townhouse in Houston for \$244,000 and put \$50,000 down, using the proceeds from the Cable X-Perts sale. Marc testified that at the time of the hearing, there were no proceeds remaining from the sale of the business. He stated that he currently shared an apartment with someone and the monthly rental was \$500. The mortgage on the residence in Houston was \$1,159 per month. His son was currently living in the home and paying the mortgage and the utilities. Marc testified that the taxes on the property were \$4,900 per year and that he paid the taxes in 2007 and 2008. He stated that when he lost his job with Houston Wire and Cable, he was not able to sell the house in Houston. He estimated the current market value of the home at \$200,000.

¶ 14 Mary testified that she was hospitalized in April 2009 for bipolar disorder. She was currently scheduled to attend an outpatient program at Alexian Brothers for her disorder, but she had not been able to attend because she did not have gas money. The program was five days a week from 9 a.m. to 3 p.m. Mary testified that she had been making \$220 per week in

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employment as a companion, but that she was no longer employed after her hospitalization. Mary stated that her rent the previous year had been \$700 per month but that she currently was living with a friend who was paying the rent and utilities. At the time of the hearing, Mary was receiving \$25 per week from her sister for food. She still owed attorney fees from previous hearings that were originally on a credit card, but the payments were being handled through a consolidation program. The monthly consolidation payment was \$417 and the consolidation company told her that if she could not make the current month's payment, she would no longer be in the program.

¶ 15 The circuit court stated that it was not going to hold Marc in contempt because he had been paying health insurance and had paid the maintenance up through March 2009, even in times when he was unemployed. The court observed that Marc bought a home in Houston because he had a job there, but noted that it was not clear why he purchased a home there when he only had the job for two months. The court also observed that his son was employed in the energy industry and was living in the Houston residence and paying the mortgage, but Marc continued to pay the taxes on a home he did not live in. The court noted that an exhibit entered into evidence showed that the residence had been appraised at \$251,200, which was more than what Marc paid for it, and because he also put \$50,000 down, he had equity in the home. Finally, the court observed that the judgment, which incorporated the MSA, awarded Cable X-Perts to Marc and it appeared that Mary had relinquished her interest in the company in exchange for the maintenance payments. However, the court agreed to temporarily reduce the maintenance payments to \$1,200 per month while Marc was on unemployment. The reduction

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would be for three months only, at the end of which Marc would have to provide proof of his income. The court ordered Marc to pay \$1,200 arrearage within seven days and the balance of the arrearage, namely \$2,245, within 30 days.

¶ 16 Marc filed a motion to vacate the order on June 5, 2009. Mary filed a petition for rule to show cause on June 18, 2009, because Marc did not pay the \$2,245 arrearage and did not make the reduced maintenance payments for June. An evidentiary hearing was held on July 15, 2009 and the circuit court denied Marc's motion to vacate the May 18 order. The court continued the petition for rule to show cause until August, and ordered Marc to comply with the May 18 order.

Mary filed another petition for rule to show cause on July 27, 2009, and a hearing was held on July 29. Marc testified that he had not paid the arrearage or the reduced maintenance because he did not have any money. Although he was still an independent insurance agent for Farmer's Insurance, Marc stated that he had received no commissions or other compensation from Farmer's. Marc testified that the only reason he became an independent insurance agent is because he was unable to find employment in the electrical supply industry, the area in which he had training and experience. The circuit court found both parties to be credible and stated that Marc's failure to pay the maintenance in a timely manner was not contemptuous. The court stated that Marc had shown good faith by bringing a check for \$2,000 that he borrowed from a friend, so the court denied the petition for rule to show cause and ordered the check to be signed over to Mary.

¶ 17 On October 8, 2009, Mary filed an emergency petition for rule to show cause and for adjudication of indirect civil contempt to compel Marc to pay Mary's health insurance premiums

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by October 22 to avoid cancellation of the policy. At the hearing on the petition, Mary testified that she had been notified by CHIP that Marc had stopped payment on the automatic withdrawals coming from his account to pay the insurance premiums. She was told that if she did not present a cashier's check in the amount of just over \$1,700, the policy would be canceled and she would not be able to reapply for 12 months. Mary was told that in addition to paying the past due amount, if the electronic withdrawal was not resumed, she would have to pay three months in advance.

¶ 18 After a full evidentiary hearing on October 8, the circuit court found Marc in indirect civil contempt because of his failure to pay the health insurance premiums. He was ordered to pay the amount due on the insurance policy, \$1,774, by noon on October 9. He was ordered to appear in court on October 13, with proof of payment, and the court stated that if he failed to appear and failed to reinstate the insurance, a body attachment would issue for his arrest. On October 13, 2009, after Marc failed to appear and failed to pay the \$1,774 to CHIP, the court entered an order for a body attachment and a cash bond was set at \$1,774.

¶ 19 On October 22, 2009, Marc again failed to appear in court and the insurance premiums still had not been paid. The court entered an order vacating the October 13 attachment order. The court issued a new order for a body attachment and a cash bond was set at \$4,435 to reflect the three month prepayment of the health insurance premiums that was necessary because the automatic withdrawal had not been reinstated. Marc timely filed this appeal.

¶ 20 ANALYSIS

¶ 21 In general, civil contempt occurs when a party fails to do something that was ordered by

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the circuit court, resulting in the loss of a benefit or advantage to the opposing party. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2006). If the contempt occurs outside of the presence of the circuit court, it is classified as indirect contempt. *Id.* A finding of indirect civil contempt is a question of fact for the circuit court, and the finding will not be disturbed on review unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984).¹ An abuse of discretion occurs only where “ ‘the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court’ [Citation.]” *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). A decision is against the manifest weight of the evidence if the opposite conclusion is apparent or the findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 826 (2004).

¶ 22 Any finding of indirect civil contempt requires both the existence of a court order and proof of willful disobedience of that order. *Charous*, 368 Ill. App. 3d at 107. The petitioner must show by a preponderance of the evidence that the court order has been violated, and the burden then shifts to the alleged contemnor to show that noncompliance with the order was not

¹See *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 n.3 (2008) for a discussion of the different standards of review that have been applied by the appellate court. As noted in *Barile*, the supreme court has never expressly abandoned the *Logston* standard in the context of reviewing orders on contempt petitions, even though it has cautioned against the use of the abuse of discretion standard for findings of fact in other contexts.

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willful and that he had a valid excuse for failing to comply with the order. *Id.* Noncompliance with an order to pay maintenance constitutes *prima facie* evidence of contempt. *Logston*, 103 Ill. 2d at 285. In order for the contemnor to prove that he is unable to pay, he must show that he neither has money now with which he can pay, nor has disposed wrongfully of money or assets with which he might have paid. *Id.*

¶ 23 Marc first argues that the evidence presented at the hearings is sufficient to demonstrate his inability to pay maintenance and health insurance premiums. Next, Marc argues that the circuit court erred in taking judicial notice of a tax assessment that placed the value of Marc's home in Houston at \$251,000. Finally, Marc contends that the finding of indirect civil contempt directly contradicts the circuit court's earlier findings that Marc's testimony regarding his financial situation was credible, and thus, the contempt finding must be reversed.

¶ 24 We first address Marc's final argument. Our review of the record clearly demonstrates that the circuit court entered the finding of indirect civil contempt on the basis of Marc's failure to pay Mary's health insurance premiums. In the court's earlier rulings, the issue was solely the maintenance payments. The record demonstrates that time and again, the court denied the petitions for rule to show cause when they were based on the maintenance payments alone, and even temporarily reduced the maintenance payments when Marc was receiving unemployment benefits. The court never relieved Marc of his obligation to pay Mary's health insurance premiums, and it was not until Marc failed to pay the premiums that the circuit court finally entered a finding of indirect civil contempt. Thus, there is no merit to Marc's argument that the court's earlier rulings were inconsistent with the indirect civil contempt finding.

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¶ 25 We now turn to the issue of whether the finding of civil contempt was against the manifest weight of the evidence. Marc contends that because he testified on numerous occasions regarding his current income and inability to find a job in his field, and because he testified that he had no money remaining from the sale of Cable X-Perts, the circuit court erred in entering a finding of contempt.

¶ 26 The defense of poverty and misfortune as a valid excuse for nonpayment has only been found in the most extreme cases where the alleged contemnor had no money and no way of obtaining the money to meet his obligations. *In re Marriage of Betts*, 155 Ill. App. 3d 85, 100 (1987). Financial inability to comply with a court order must be shown by definite and explicit evidence, and testimony of a general nature with regard to financial status is insufficient to meet this burden. *In re Marriage of Dall*, 212 Ill. App. 3d 85, 98 (1991).

¶ 27 Based on our review of the record, we cannot say that the circuit court's finding of indirect civil contempt was either against the manifest weight of the evidence or an abuse of discretion. The evidence Marc relies on consists primarily of his own testimony at hearings regarding his current financial status. Marc has been arguing for a reduction in his obligations based on a change in circumstances since 2007, just months after he sold his business, purchased a residence and disclosed certain financial assets. As the circuit court observed, Marc purchased a home in Houston for a job that he held for only a very short time. The record reveals that he put \$50,000 down and spent an additional \$25,000 to furnish the home. He also testified that he could not sell the home, just two months after he bought it when he lost his job with Houston Wire & Cable, and could only rent it to his son. However, his son, who is employed, is unable to

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pay the taxes on the property so Marc, who testified that he has been employed for only 13 months out of 29 since the sale of Cable X-Perts, continued to pay taxes on the property. The circuit court ordered Marc to produce a disclosure statement under Cook County Circuit Court Rule 13.3.1(b), but there is no evidence in the record that this statement was, in fact, produced. Marc's testimony alone regarding his inability to pay is insufficient to meet his burden. Thus, the circuit court's finding of indirect civil contempt was not against the manifest weight of the evidence.

¶ 28 Finally, we turn to Marc's argument that the circuit court erred in taking judicial notice of an official tax assessment to determine the current value of the Houston residence. The circuit court admitted into evidence a 2008 tax assessment that was obtained from the internet website of the Harris County Appraisal District that showed the current value of the Houston property as \$251, 214. Marc relies on *222 East Chestnut Street Corp. v. The Board of Appeals of the City of Chicago*, 14 Ill. 2d 190, 193-195 (1958), for the proposition that a court will not take judicial notice of the value of a particular piece of real estate.

¶ 29 In *222 East Chestnut Street*, the supreme court stated that it found "the well-defined rule to be that courts will not take judicial notice of the value of specific realty and improvements, inasmuch as innumerable factors affect their value." *Id.* at 194. The issue the supreme court was addressing was whether the court should take judicial notice that a building would depreciate in sale and rental value on the basis of testimony from the present tenants that the addition of a parking lot would render their apartments less desirable. *Id.* The court further noted that there was a complete absence of proof relating to the value of the property and of the effect the

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parking lot would have on that value. *Id.*

¶ 30 "Courts may take judicial notice of matters which are commonly known [citation] or of facts which, while not generally known, are readily verifiable from sources of indisputable accuracy [citation]." *Murdy v. Edgar*, 103 Ill. 2d 384, 394 (1984). The court in *222 East Chestnut Street* was addressing judicial notice in the context of facts which are commonly known, *i.e.*, the fact that motor vehicles produce noise and fumes and the potential impact that would have on property values. *222 East Chestnut Street*, 14 Ill. 2d at 193. However, a court may also take judicial notice of documents in the public record. *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 399 (1990). In other contexts, judicial notice may be taken of factual evidence where the facts are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy. *People v. Davis*, 65 Ill. 2d 157 (1976).

¶ 31 In the case at bar, the issue is not whether the court may take judicial notice of something that is commonly known, but whether the court may take judicial notice of the publicly available government assessed value of a piece of real estate for property tax purposes. Marc has not cited, nor have we found, any authority that expressly states that an assessed value for property tax purposes may not be admitted as evidence relating to the current value of a particular piece of real estate. Although this court has cited the general rule set forth in *222 East Chestnut Street* in more recent decisions, it has always been in the context of taking judicial notice based on individual testimony regarding the appreciation or depreciation of real estate. See, *e.g.*, *Sanborn v. Sanborn*, 78 Ill. App. 3d 146, 150 (1979) (holding that it was reasonable for the trial court to

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accept an earlier appraisal as indicative of the value of the marital property despite the respondent's argument that the court should take judicial notice that inflation had caused the residence to appreciate in value); *In re Marriage of Holder*, 137 Ill. App. 3d 596, 602 (1985) (holding that it would not be proper to take judicial notice of the amounts received by the insurance proceeds and sales agreement and presume those amounts represented the accurate fair market value of the property); *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 152 (2005) (holding that the trial court did not err in failing to take notice of testimony that property had increased in value by \$8,000 in the eight months since the appraisal where no credible evidence was presented of appreciation between the time of appraisal and trial).

¶ 32 We cannot conclude that a publicly available government assessed value of real estate for property tax purposes is in the same category of evidence as mere speculative testimony regarding the current market value with no concrete evidence to support the testimony. In fact, Marc's arguments apply more to his own testimony, presented with no supporting evidence, that the current market value of the Houston residence is \$200,000, than to an official assessment by the county for tax purposes. We do not believe the circuit court erred in admitting the tax assessment document, a publicly available document that can be easily verified with the assessor's office, into evidence.

¶ 33 However, we do agree with Marc that it was not proper to consider that value alone as evidence of the current market value of the property. No evidence was presented at the hearing regarding the date of the most recent assessment, or whether the assessed value in 2008 reflected recent sales of similar properties in the area. There is also no indication in the record that the

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property had been appraised recently, apart from the tax assessment. Thus, we conclude that the circuit court erred to the extent that it appeared, at one point in the proceedings, to equate the assessed value with the current market value of the Houston residence.

¶ 34 Marc argues that because the court used this assessment in determining whether to grant his motion for modification on May 18, 2009, this constitutes reversible error. The court made various comments during the hearing indicating that at times it considered, and then did not consider the tax assessment to determine the current value of the Houston residence. However, when ruling on Marc's motion to vacate the May 18 order, the circuit court stated that the assessed value "had nothing to do with [its] order." Our review of the record also discloses that in its ruling, the circuit court noted that Marc had equity in the Houston residence on the basis of both the assessed value and his downpayment of \$50,000. However, this was not the only factor that the court considered. The court observed that it was not clear why Marc even purchased the home when he only had a job in Houston for a very short time, and that it was not clear why Marc paid \$4,900 per year in property taxes when he did not currently live in the home. The most significant observation made by the court in its ruling was that Mary had relinquished her share in the company in exchange for the maintenance and insurance payments, and Marc had sold the company for \$425,000. However, even in light of all this, the circuit court still agreed to grant the motion and temporarily reduce the maintenance payments by \$800 per month. Thus, based on the totality of the record, we conclude that the tax assessment was not a determinative factor in the circuit court's decision to reduce the maintenance payments and the admission of the tax assessment does not constitute reversible error.

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¶ 35 Marc also contends that the circuit court erred in stating that Mary's rental expense was \$700, when testimony at the May 18 hearing established that Mary was currently living with a friend and not paying rent. This argument lacks merit. Mary was living with a friend because she could not afford to continue to pay the rent in her previous apartment, which was \$700, due to Mark's failure to remit the maintenance payments in accordance with the court's order. Thus, the circuit court did not err in considering a rental expense for Mary of \$700 per month.

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 37 Affirmed.