FIRST DIVISION
June 18, 2012

No. 1-11-1868

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF SEAN FORREST,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant and Cross-Appellee,	)	Cook County
	)	
and	)	No. 05 D3 30620
	)	
EILEEN FORREST,	)	Honorable
	)	Raul Vega
Respondent-Appellee and Cross-Appellant.	)	Judge Presiding.

O R D E R

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

¶ 1 ***Held***: Trial court's rulings on various post-decree issues arising after the dissolution of the parties' marriage affirmed, where trial court: (1) properly interpreted a provision of the parties' marital settlement agreement involving the distribution of husband's net bonus income; and (2) did not permanently bar any future claim wife might have on husband's non-cash compensation. Additionally, that portion of wife's cross-appeal involving attorney fees is dismissed, where wife failed to serve her prior counsel with notice of her cross-appeal.

¶ 2 Petitioner-appellant and cross-appellee, Sean Forrest (Sean), appeals from the trial court's final ruling on his postjudgment petitions for modification and reimbursement of unallocated family support and maintenance, contending that the trial court improperly interpreted a provision of the

parties' marital settlement agreement involving the distribution of Sean's bonus income. Respondent-appellee and cross-appellant, Eileen Forrest (Eileen), has filed a cross-appeal in which she asserts that the trial court incorrectly: (1) found that certain restricted stock and stock options Sean received from his new employer were not "bonus income" subject to division under the parties' agreement; and (2) refused to permit her to resolve a fee dispute with one of her prior attorneys through alternative dispute resolution (ADR), pursuant to section 508(c)(4) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA). 750 ILCS 5/508(c)(4) (West 2010). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Sean and Eileen were married in 1985, and they had four children together during the course of their marriage. On June 22, 2005, Sean filed a petition for dissolution of marriage, and a judgment for dissolution of marriage was subsequently entered on April 17, 2006. Incorporated into the judgment was a marital settlement agreement (MSA) drafted by the parties. Pursuant to the MSA, Sean and Eileen had joint custody of the parties' children, with the children's primary residence to be Eileen's home. The MSA also contained specific provisions requiring Sean to pay Eileen $5,196 every two weeks for "unallocated family support and maintenance" until May 16, 2016, or the first of several "termination events." Included in the list of events that could terminate Sean's support obligation under this provision was "a review of the payments as set forth herein below."

¶ 5 With respect to this unallocated support, Article 2.2 of the MSA further provided, in relevant part:

"b. Review: The parties agree that the said unallocated support payments shall

terminate on May 15, 2016. The amount of the support will be adjusted if and when SEAN's salary is adjusted to an amount equal to 50% of the amount of SEAN's base salary net of social security and Medicare deductions.[1] ***

c. Said amount being paid to Eileen represents fifty percent (50%) of the gross income available to SEAN from his base income of $275,000.00 and taking into account the taxes to be paid by the parties under the current unallocated support scenario. The parties acknowledge that they will agree to payment structures in the future that will maximize the parties' collective after tax income and that any and all of each parties' incomes will be considered with respect to tax issues.

d. Bonus Income: The parties acknowledge that SEAN receives bonus income from his employment, which fluctuates. Any and all bonus income received by SEAN, while he has a support obligation, shall be allocated as follows: SEAN to retain one half (½) of the net bonus; EILEEN to receive one half (½) of the net bonus as unallocated family support; for any bonus up to the amount of $125,000.00. If the bonus exceeds $125,000.00, then any net bonus amounts exceeding $125,000.00 shall be contributed into the children's college accounts up to a maximum of $50,000.00 in total for all the children. For example, [a] $250,000 bonus would be split 50/50 on the first $125,000 ($62,500 each), the next $50,000 would go to college accounts, and the remaining $75,000 will be split 50/50 between the parties ($37,500 each). Within seven (7) days of SEAN receiving any such bonus, he shall

[1] The following additional clause was contained in a handwritten addendum inserted at this point: "It is the parties' intention that SEAN's support will always equal 50% of his gross salary less social security and Medicare deductions. Bonuses are treated as otherwise herein."

send a copy of the bonus check to EILEEN with her share of the net bonus, as well as a copy of the bonus pay statement."

Finally, Article 2.2(g) of the MSA generally provided that it was the parties' intention that the unallocated support payments would be included in Eileen's gross taxable income, but would be tax deductible by Sean.

¶ 6 Following the entry of the dissolution order, the parties continued to engage in a significant amount of post-decree litigation. This litigation involved, *inter alia*, issues of support, responsibility for payment of educational and medical expenses for the parties' children, alleged violations of the joint parenting provisions of the MSA, attorney fees, and various petitions for rule to show cause. Only some of these post-decree proceedings are relevant here.

¶ 7 In April of 2008, Sean filed a "Petition to Modify Unallocated Support and Other Relief." In that petition, Sean contended that his unallocated support obligation should be reduced, pursuant to the "Review" provisions of the MSA, because: (1) he was now employed in a new position at The PrivateBank and Trust Company (The PrivateBank), earning a lower base salary of $210,000 per year; and (2) the parties' eldest child would soon turn 18 years old and become emancipated. After Sean filed this petition, Eileen issued a subpoena for records from Sean's new employer. She subsequently filed a response to the petition in which she asked that Sean's request to reduce his support payments be denied.

¶ 8 Specifically, Eileen asserted that the fact that the parties' eldest child would soon be emancipated was irrelevant because that was not one of the specific termination events requiring a recalculation of Sean's unallocated support obligation under the MSA. She further argued that Sean could and should continue to pay her regular unallocated support at the original level provided for

in the MSA ($5,196 every two weeks), as no substantial change in circumstances had occurred in light of the fact that: (1) Sean had received millions of dollars from the sale of his prior company and was earning interest income on that payout; (2) while Sean's base salary at his new position was $210,000, Sean's employment agreement with his new employer entitled him to annual bonuses of up to 70% of that base salary; and (3) Sean's $210,000 annual base salary also did not account for the 15,000 shares of restricted stock and 50,000 stock options that Sean received from The PrivateBank as an inducement for him to accept his new position in 2008.

¶ 9 Additionally, in October of 2008, Sean filed a "Petition for Indirect Civil Contempt or Alternatively for Reimbursement." In that petition, Sean asserted that in December of 2006, he had received a $137,500 bonus from his previous employer, HSM Electronic Protection Services (HSM). In accordance with the parties' MSA, Sean immediately paid Eileen $62,500 for her 50% share of that bonus income.[2] However, Sean contended that he subsequently realized the MSA only called for him to pay Eileen 50% of the "net" bonus. Sean attached a copy of the bonus pay statement he received from HSM to his petition which showed that, after subtracting Medicare taxes and both federal and state income taxes, the net bonus he actually received was only $97,006.25. Sean also attached documentation showing that he had previously asked Eileen to reimburse him for his $13,997 overpayment, and his petition alleged Eileen had refused to do so. Sean's petition, thus, asked the trial court to issue a rule to show cause as to why Eileen should not be held in contempt and/or order her to reimburse him for the $13,997 overpayment.

[2] It appears from the record that the balance of $12,500, representing that portion of the bonus above $125,000, was placed in college funds for the parties' children in accordance with the MSA.

¶ 10 Eileen filed a written response to Sean's contempt petition. In that response, she argued that Sean had correctly paid her 50% of the gross $137,500 bonus pursuant to the terms of the MSA. She further contended that she had then paid income taxes on the full amount she received, which she again contended was in conformity with the intention of the parties as reflected in the MSA. Finally, she noted that if Sean was allowed to deduct income taxes on his bonus income before paying 50% of the remaining amount to Eileen, she would still have to pay income tax on the amount she received, and her portion of any bonus income would, therefore, be subject to double taxation. Again, Eileen contended that such an arrangement would contravene the intent of the parties in drafting the MSA.

¶ 11 A hearing on Sean's two petitions, as well as other unrelated matters, was held on February 13, 2009. The trial court accepted into evidence a number of financial documents and heard testimony from Sean and Eileen. At the conclusion of the hearing, the trial court found that it would enforce the parties' MSA and, under that agreement, the emancipation of the parties' eldest child was not a proper factor to consider with respect to Sean's petition to modify the level of support he paid. The trial court did find, however, that due to the $65,000 reduction in Sean's base annual salary, his regularly scheduled unallocated support obligation should be reduced to $8,333 per month. This amount represented–pursuant to the MSA–50% of Sean's monthly gross salary, subtracting only Medicare and social security taxes. The trial court also ordered Eileen to reimburse Sean for the amount he had, thus, been overpaying her since the time he filed the petition to modify the support level.

¶ 12 The trial court also refused to find Eileen in contempt for her failure to reimburse Sean for his overpayment on the 2006 bonus. However, the trial court did find that Sean had, in fact,

overpaid Eileen for that bonus because she was only entitled to 50% of the "net" bonus. Eileen was, therefore, ordered to reimburse Sean $13,997 for that overpayment.

¶ 13 Finally, the trial court rejected Eileen's argument that the restricted stock and stock options Sean received from his new employer were relevant to the calculation of the unallocated support he owed her under the provisions of the MSA concerning Sean's base salary. Specifically, the trial court quoted a dictionary definition of "salary" as being " '[f]ixed compensation for services on a regular basis,' " and further found that:

> "The stock options and the restricted stock don't qualify for that. *** The problem, here, is that the parties decided to say that unallocated would be paid off at 50 percent of Mr. Forrest's gross net income, defined as true gross minus Social Security and Medicare. And the stock options and the restricted stocks that he has are really not relevant at this time, because he hasn't exercised them, and they haven't become income to him even yet. And I understand, income is a broader definition, including salary, but he hasn't realized them yet.
>
> *** Whether or not he does so in the future, I'm sure that you're going to file something and then argue that at that point they become part of his salary. But I don't know how you're going to cross that hurdle when they've defined salary to be his gross minus his Social Security and Medicare.
>
> I'm enforcing the parties' agreement. The parties agreement is clear in my mind, under Article II of the settlement agreement."

In response to a request by Eileen's attorney to clarify its findings, the trial court further stated:

> "[Sean's] gross salary, for unallocated support purposes, is base salary minus Social Security and Medicare, and that's it. His salary does not include his stock options; it doesn't include

> his stock, the restricted or performance stock; and it doesn't include his bonus. The parties agreed to that. The bonus is taken care of through another provision on the settlement agreement, which is, 50 percent of the net bonus up to $125,000. *** But you are not arguing to show that [the] discretionary bonus is part of the salary. You can't argue that these stocks, these options, are part of the salary."

A written order reflecting the trial court's findings was subsequently entered on March 9, 2008.

¶ 14 Eileen filed a motion to reconsider or modify the trial court's March 9, 2008, order, as well as a supplement to that motion. In her motion, Eileen contended that the court miscalculated the amount Sean should now be paying on his salary, as the actual amount he owed after deducting only Medicare and social security taxes was $8,347.22 per month. She also asserted that the trial court incorrectly allowed Sean to deduct income taxes from the 2006 bonus he received from HSM before calculating the "net bonus" amount subject to distribution under the MSA.

¶ 15 Furthermore, Eileen also generally asked the trial court to reconsider its findings in light of some newly discovered evidence. Specifically, documents attached to Eileen's motion from Sean's current employer–received only after the initial hearing and in part pursuant to her subpoena on The PrivateBank–revealed that Sean had also received a "performance bonus" of 3,000 shares of restricted stock in 2008 and a $95,000 cash bonus for 2008, which was actually paid in 2009 after the initial hearing. Eileen asserted that Sean's ability to pay support, and his entitlement to a reduction in his unallocated support payments, should have been determined in light of all of Sean's various sources of income–including his stock grants and stock options. She, thus, requested that the trial court review all of her arguments and this new evidence, and asked the court to redetermine the amount due to her as to both Sean's prior payments and his payments going forward, with respect

to both his regular support obligation on his salary and his obligation to share a portion of any bonus income he might receive.

¶ 16 After Sean filed a written response and the trial court solicited the parties' proposed orders, the trial court entered a written order on Eileen's petitions on August 17, 2009. In that order, the trial court agreed with Eileen's contentions regarding the monthly amount Sean should pay Eileen for unallocated support on the basis of his base salary, finding that this amount should actually be $8,347.22 per month going forward. The trial court also ordered Sean to pay Eileen a small amount to account for his underpayment of this amount in the prior six months.

¶ 17 With respect to the issue of Sean's bonus income, the trial court clarified:

> "Notwithstanding the language of the March 9, 2009 Order, it was the Court's intent to treat the formulas in the same manner for determining the amount of unallocated support on both Sean's base salary under Article 2.2(b) of the parties [MSA] and Sean's Bonus Income under Article 2.2(d). Specifically, the Court['s] use of the term "net gross" was and is intended to be defined as: Sean's gross base salary (as well as his gross bonus income), less only properly calculated Social Security taxes and Medicare taxes."

The trial court went on to state that such "net gross" did "not include a deduction for federal or state income tax withheld from Sean's gross salary or gross bonus income, or any other deduction or withholding ***."

¶ 18 In light of these findings, the trial court recalculated the amounts due to Eileen on the 2006 and the additional 2008 (paid in 2009) cash bonuses, reflecting only those Medicare and social security deductions the trial court found properly deductible. The trial court further provided that any bonus income Sean received in future years, should be treated similarly. The court otherwise

denied Eileen's motion, and did not specifically address her contentions regarding Sean's "performance bonus" of 3,000 shares of restricted stock in 2008.

¶ 19 Sean, thereafter, filed a "Motion to Reconsider and or Modify the Order of August 17, 2009." In that motion, Sean argued that the trial court was incorrect to treat his support obligations as to his salary and his bonus income in a similar fashion, arguing that "the formulas are completely different relative to paragraphs 2.2(b) [unallocated support based upon salary] and 2.2(d) bonus income." He further contended that the trial court did not have the authority to rewrite the parties' MSA, that the terms of the MSA were unambiguous, and that the phrase "net gross"–used in the trial court's March order–did not appear in the MSA. Thus, Sean asked the trial court to reconsider the findings contained in the August order as they pertained to his bonus income.

¶ 20 The trial court denied Sean's motion in a written order entered on September 25, 2009, and refused Sean's request to include language allowing an immediate appeal pursuant to Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. January 1, 2006). Sean, nevertheless, filed a notice of appeal the same day, and Eileen, subsequently, filed a notice of cross-appeal. Before this court, Eileen filed a motion to dismiss Sean's appeal (No. 1-09-2463) for lack of jurisdiction. In her motion, Eileen argued that this court lacked jurisdiction over Sean's appeal because the trial court's September 25, 2009, order did not contain Rule 304(a) language and–at the time the order was entered–a number of other post-decree matters were still pending in the trial court. These included petitions for a rule to show cause, filed by both parties, based upon alleged violations of the MSA as well as a motion filed by Eileen asking Sean to pay for certain college expenses. On March 10, 2010, this court granted Eileen's motion and dismissed Sean's appeal. This court also dismissed Eileen's cross-appeal on April 6, 2010.

¶ 21 Thereafter, the parties resolved most of the other pending post-decree matters in an order entered on June 23, 2010, with the exception of a petition for a rule to show cause filed by Sean, alleging that Eileen had violated certain joint parenting provisions of the MSA. Eileen's attorneys, the law firm of Beermann Swerdlove LLP (Beermann), were given leave to withdraw on July 30, 2010, and on August 27, 2010, Beermann filed a petition to set final fees and costs pursuant to section 508(c) of the IMDMA. 750 ILCS 5/508(c) (West 2010).

¶ 22 In response, Eileen's new attorneys removed the matter to federal court in an effort to challenge the constitutionality of section 508(c) of the IMDMA. Pursuant to a motion filed by Beermann, the federal court refused to consider the merits of Eileen's claims and remanded the matter back to the circuit court on November 29, 2010. The trial court set a hearing on both Sean's petition for rule to show cause and Beerman's fee petition for March 17, 2011. These petitions were subsequently rescheduled for a hearing to be held on May 12, 2011.

¶ 23 Around the same time, Eileen made several attempts to further delay the hearing on Beermann's fee petition by invoking a mandatory ADR provision contained in section 508(c)(4) of the IMDMA. 750 ILCS 5/508(c)(4) (West 2010). Specifically, Eileen contended section 508(c)(4) of the IMDMA required such fee disputes to be arbitrated before a final hearing was held on the matter, unless both parties opted out of any ADR proceeding. The trial court rebuffed Eileen's efforts, finding her prior actions had indicated she had indeed opted out and that her current arguments were merely an attempt to delay proceedings on Beerman's petition.

¶ 24 Finally, the record reflects that on May 12, 2011, two orders were entered by the trial court. First, the trial court entered an order indicating that Sean's petition for a rule to show cause was voluntarily withdrawn. Second, the trial court entered an "AGREED ORDER" with respect to

Beermann's fee petition. That order reflected that all parties were present in court and that a pre-hearing conference among the parties appeared to have taken place. It further provided that Eileen had paid Beermann $60,000 in open court and that, therefore, "[it] is Hereby Ordered by Agreement that the Fee Petition be dismissed with prejudice ***." These two orders concluded all of the pending post-decree matters. Sean, thereafter, filed a notice of appeal, and Eileen subsequently filed a notice of cross-appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, Sean challenges those orders of the trial court that interpreted the parties' MSA to preclude him from deducting income taxes from his bonus income before paying Eileen her share of the resulting "net bonus" income. In her cross-appeal, Eileen first asserts that the trial court incorrectly and permanently precluded her from ever making a claim that the restricted stock, performance stock, and stock options Sean received from his new employer were "bonus income" subject to distribution under the MSA. She further contends that the trial court improperly refused to allow Beermann's fee petition to be resolved through ADR before proceeding to a final hearing on the matter. We address each issue in turn.

¶ 27 A. Sean's Bonus Income

¶ 28 We first address Sean's arguments concerning the trial court's interpretation of the parties' MSA, made in the context of its rulings on his petition to modify his support obligation and his petition for a rule to show cause regarding the purported overpayment of Eileen's portion of his bonus income. Sean contends that the trial court erred in finding that he could not deduct income taxes from his bonus income before calculating the amount he owed Eileen pursuant to the MSA.

¶ 29 Section 502 of the IMDMA provides that to "promote amicable settlement of disputes

between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children." 750 ILCS 5/502(a) (West 2010). It further provides that the "terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable." 750 ILCS 5/502(b) (West 2010).

¶ 30 Moreover, as this court recently recognized:

> "The terms of a marital settlement agreement are interpreted in the same manner as a contract. [Citations.] The main objective of the court's analysis is to give effect to the purpose and intent of the parties at the time they entered into the agreement. [Citation.] Like a contract, the marital settlement agreement should be given a fair and reasonable interpretation based upon all of its language and provisions. [Citation.] The interpretation of a marital settlement agreement is reviewed *de novo* as a question of law. [Citation.] *De novo* consideration means we perform the same analysis that a trial judge would perform and give no deference to the judge's conclusions or specific rationale. [Citation.]" *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18.

¶ 31 It is certainly the case that the provisions of Article II of the MSA that dealt with Sean's regular unallocated support obligation and those provisions that address his unallocated support obligation with respect to any irregular bonus income he may receive, contained somewhat different language. Specifically, those provisions discussing Sean's regularly scheduled obligation clearly

indicate that his regular unallocated support obligation is comprised of "an amount equal to 50% of the amount of SEAN's base salary net of social security and Medicare deductions" and, that it was "the parties' intention that SEAN's support will always equal 50% of his gross salary less social security and Medicare deductions." However, those provisions also indicate that "Bonuses are treated as otherwise herein."

¶ 32 The specific bonus provisions then outline how any bonus income is to be divided between Sean, Eileen, and the college funds of the parties' children, but they only generally refer to Sean's obligation to divide his "net bonus." These provisions do not provide a similar explicit definition of just what is to be subtracted from Sean's total bonus income to arrive at such a "net" amount. As discussed above, Sean has taken the position that he should arrive at a "net bonus" amount only after subtracting Medicare, social security, *and* income taxes. Eileen contends that the various support provisions should be read together and Sean should not subtract any income taxes before dividing his total bonus income, but should only deduct Sean's applicable Medicare and social security taxes.

¶ 33 Below, the trial court rejected Sean's assertions that he should be able to deduct income taxes before calculating how he should divide his bonus income. The trial court, thus, ultimately concluded that the parties' MSA required Sean to pay Eileen the required portion of any bonus income he might earn, "less only properly calculated Social Security taxes and Medicare taxes." Our review of the entirety of the parties' MSA indicates that this conclusion was correct.

¶ 34 First, *both* Sean's regular support obligation and his obligation to pay Eileen a portion of his irregular bonus income are defined as "unallocated family support" under the MSA. The MSA also specifically provided that it "is contemplated and understood by the parties that the unallocated support payments provided to be paid by SEAN to EILEEN pursuant to paragraph 2.2 herein [would

be] *** includ[ed] in EILEEN'S gross income *** and will be deductible by SEAN *** in determining their respective taxable incomes." The reasoning behind this arrangement is clear. By not classifying Sean's support obligation into separate obligations for maintenance and child support, Sean is able to deduct the *full* amount of his "unallocated" support payments from his income. *In re Marriage of Murphy*, 117 Ill. App. 3d 649, 655 (1983). Indeed, Illinois courts have previously recognized that, pursuant to federal tax laws, such maintenance support payments "are generally income to the recipient (26 U.S.C. § 71(a) (2000)) and deductible by the payer (26 U.S.C. § 215 (2000))." *In re Marriage of Morreale*, 351 Ill. App. 3d 238, 242 (2004). Such tax consequences are a proper consideration in determining the amount–and type–of any support award. *In re Marriage of Murphy*, 117 Ill. App. 3d at 655.

¶ 35 The provisions of the MSA regarding Sean's payment of 50% of his gross *salary* to Eileen, less only social security and Medicare deductions, clearly reflect the parties' intention to conform to this tax treatment of Sean's regular support payments. Specifically, by not first deducting any *income* taxes prior to distributing 50% of his resulting "net" regular salary to Eileen, Sean is ultimately allowed to deduct the full amount of the unallocated support payments from his salary and need pay no income tax on that amount *at all*. Obviously the amount he pays to Eileen is taxable as income to *her*, but that is in full conformity with the law and the parties' MSA. At the end of a given year, it is quite simple for Sean to determine what his relevant income tax deduction is (the amount he actually paid Eileen from his salary), and Eileen can easily determine the relevant income upon which she will owe income tax (the amount of Sean's salary actually paid to her). In addition, the parties' actual individual *income* tax burden with respect to these amounts need only be considered once, when all of their other income and deductions are also accounted for in filing

their respective annual tax returns.

¶ 36 This discussion obviously pertains to Sean's regular support obligation on his base *salary*, which neither party disputes. We must note, however, that the same tax consequences and ease of calculation would result if Sean's required distribution of his "net bonus" income–which, again, is also considered "unallocated support payments provided to be paid by SEAN to EILEEN pursuant to paragraph 2.2"–were also treated in a similar fashion.

¶ 37 In contrast, Sean's recommended interpretation of "net bonus" could lead to unnecessary complications and consequences. First, if Sean were to deduct his anticipated income tax from his gross bonus income before paying Eileen her share of such a resulting "net bonus," or if he was to simply rely on the income tax payments automatically made by his employer when any such bonus income is paid, there is no guaranty that such an accounting would actually reflect either Sean's ultimate tax liability on such bonus income, or his actual "net" bonus. This is because, pursuant to the MSA provisions and federal tax law discussed above, Sean would ultimately be entitled to deduct from his income that portion of any bonus income he actually paid to Eileen as unallocated support.

¶ 38 An example of this is contained in the record. Sean contends that the amount he actually owed Eileen for the 2006 HSM bonus payment should be based upon the $97,006.25 he actually received from HSM, calculated after HSM subtracted Medicare taxes, social security taxes, *and* both federal and state income taxes. However, Sean has never contended that the amount of income taxes paid by HSM on this bonus income actually represented his ultimate tax liability, or that it accounted for the income tax deduction he would ultimately receive upon paying Eileen her portion of that bonus income as unallocated maintenance. Nor is there any other evidence in the record to support

such an assertion.

¶ 39 Indeed, at the initial hearing on his petition for reimbursement, Sean testified that income taxes were first withheld from his bonus check by HSM, but that he then took an income tax deduction for the amount of his bonus income he paid to Eileen. Thus, the final amount of income tax Sean actually paid on this bonus and, thus, his actual "net" bonus becomes more complicated to calculate under Sean's interpretation of the MSA. See e.g. *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 732-33 (1996) (in the context of determining child support level, the court noted that the "proper method of computing net income is to calculate the amount of Federal and State income tax which a person actually pays by taking into consideration the disparity that may exist between the amount of tax withheld, as reflected on a W-2 form, and the tax eventually paid.").

¶ 40 We do not find that such an unwieldy arrangement is either reflected in the parties' MSA or represents a reasonable interpretation of their intent, especially when a much simpler arrangement is clearly reflected in the MSA provisions regarding Sean's base salary and no other arrangement is specifically called for in the provisions involving bonus income. *Smith v. West Suburban Medical Center*, 397 Ill. App. 3d 995, 1001 (2010) ("Courts will construe a contract reasonably to avoid absurd results."); *Salce v. Saracco*, 409 Ill. App. 3d 977, 982 (2011) (noting that courts will interpret phrases in a contract to give a common sense meaning to the *whole contract*).

¶ 41 Furthermore, we also note that the bonus provisions of the MSA also provide that: "Within seven (7) days of receiving any such bonus, [Sean] shall send a copy of the bonus check to EILEEN with her share of the net bonus, as well as a copy of the bonus pay statement." Such a schedule will be much easier to meet if Sean need not calculate his ultimate income tax liability so as to determine his actual "net bonus," and need only account for his fixed Medicare and social security taxes and

distribute this "net" amount appropriately.

¶ 42 In summary, after considering the entirety of the parties' MSA and the consequences of the two proposed interpretations of the phrase "net bonus" contained in the relevant bonus provisions, we affirm the trial court's determination that any gross bonus income Sean might earn was to be divided pursuant to the terms of the MSA, "less only properly calculated Social Security taxes and Medicare taxes." Such an interpretation harmonizes all of the MSA provisions addressing Sean's unallocated support obligations–both with respect to salary income and bonus income–and, thus, represents a "fair and reasonable interpretation based upon all of [the MSA's] language and provisions." *In re Marriage of Kehoe*, 2012 IL App (1st) 110644, ¶ 18.[3]

¶ 43 B. Sean's Stock Grants and Stock Options

¶ 44 We now turn to the issues raised in Eileen's cross-appeal. Eileen first takes issue with the analysis contained in the trial court's ruling on Sean's petitions seeking modification of his support obligation and reimbursement for overpayment on his bonus income. Specifically, Eileen contends that the trial court's analysis of these issues improperly included a finding that the restricted stock, stock options, and performance stock grants that Sean received from his new employer, could *never* be considered bonus income subject to distribution under the unallocated support provisions of the

[3] It should be noted that Sean's Medicare and social security taxes (otherwise known as "FICA" taxes) are a fixed tax on Sean's gross income and are not affected by any possible *income* tax deductions. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 389 (2002). However, the parties did raise certain issues that might arise with respect to potentially inaccurate amounts withheld from Sean's salary and bonus checks for such FICA taxes. The trial court's August 17, 2009, order, thus, contained specific accounting provisions to account for any such inaccuracies. These provisions have not been placed at issue by the parties here, and we need not further address them other than to reiterate that the MSA only permits Sean to deduct "properly calculated" FICA taxes from his bonus income.

parties' MSA.

¶ 45 Specifically, Eileen asserts that "[w]hile the options and restricted stock were not part of [Sean's] salary, they were a bonus, the value of which should be available for purposes of calculating unallocated support either when vested and matured, whether or not exercised ***, or when actually exercised." However, Eileen argues that in ruling on Sean's motions, the trial court's "discussion made it clear that it was *permanently* excluding the stock options and restricted or performance stock from any calculation of funds due to Eileen as unallocated support." (Emphasis added.) Finally, Eileen contends that if she does not now raise a challenge and obtain a reversal of the trial court's ruling on this issue, "that exclusion will have collateral estoppel effect and will prevent her from claiming any right to proceeds from the exercise of the options or the maturing of the stock."

¶ 46 We find that Eileen's arguments reveal a basic misunderstanding of both the proceedings below and the trial court's analysis. First, it must be recalled that the findings Eileen now challenges were made in the context of the trial court's analysis of Sean's initial motions to: (1) modify the amount of support he owed on his new, lower base salary; and (2) be reimbursed for his claimed overpayment on prior cash bonus income. It was Eileen that injected the issue of Sean's non-cash compensation into the proceedings on those issues, contending that the stock grants and stock options were additional income that should be fully considered in light of Sean's request that his unallocated support obligation be reduced due to a change in circumstances. At no time did Eileen make a specific request that she be paid any portion of that non-cash compensation under either the salary or bonus provisions of the MSA. Instead, it was Eileen's contention that this additional "income" was evidence that Sean both could and should continue to pay support at the previous level and, that Sean's motion to modify his level of support should be denied.

¶ 47 Moreover, in its analysis of the parties' arguments, the trial court never indicated that Sean's non-cash compensation would *never* be considered bonus income subject to the provisions of the MSA. Instead, the trial court clearly indicated only that it was "enforcing the parties' agreement." After reviewing the provisions of the MSA, the trial court did express doubts that Sean's non-cash compensation would ever be considered "salary" under the MSA. The court noted that while such compensation might be income, the MSA defined "salary" more narrowly and, that definition did not appear to include Sean's stock grants for stock options. However, Eileen does not raise any argument on appeal challenging that conclusion, focusing instead on the contention that this non-cash compensation was "bonus income" subject to the relevant provisions of the MSA.

¶ 48 More generally, the transcript from the initial hearing on Sean's petitions includes a number of instances where the trial court clearly indicates–not that Sean's non-cash compensation could never be considered bonus income in the future–but, rather, that it was not *current income* subject to distribution under the MSA. For example, the trial court specifically noted that "the stock options and the restricted stocks that [Sean] has are really not relevant at this time, because he hasn't exercised them, and they haven't become income to him even yet." The trial court later indicated that the stock options and restricted stock would not be at issue until they were exercised, "[a]nd that hasn't happened." Finally, the trial court indicated that if and when Sean exercised any of his stock options in the future, that it fully expected Eileen to "file something and then argue that at that point they become part of his salary." Thus, we find that the concern Eileen raises on appeal–that she is somehow *permanently* precluded from any claim on Sean's non-cash compensation as bonus income under the MSA–is not a concern at all because no such finding was ever actually made by the trial court.

¶ 49 In so ruling, we must make two additional points. First, we do note that there is some language in the trial court's March 9, 2009, written order which could, arguably, be read to indicate a broader ruling, one that did indeed exclude Sean's non-cash compensation from *any* calculation of Sean's unallocated support obligation now or in the furture. Specifically, that written order–drafted by counsel for Sean–included a finding that "Sean's Stock Options, Restricted Stock and Performance stocks are not part of Sean's salary and are not included based on the Judgement for Dissolution of Marriage specifically, Section 2.2 as it relates to unallocated support. The Court finds that the parties agreed on a specific formula for the payment of unallocated support and bonuses." However, "[w]hen there is a conflict between the trial court's oral pronouncement and its written order, the oral pronouncement controls." *Danada Square, LLC v. KFC Nat. Management Co.*, 392 Ill. App. 3d 598, 607 (2009); *In re William H.*, 407 Ill. App. 3d 858, 866 (2011) (same). Therefore, our analysis of the trial court's ruling is guided by the oral ruling which, as discussed, included no finding regarding the applicability of the "bonus income" provisions of the MSA to Sean's non-cash compensation.

¶ 50 Second, *our* analysis of this issue is also limited, addressing and rejecting only Eileen's assertion that the ruling below had "permanently exclud[ed] the stock options and restricted or performance stock from any calculation of funds due to Eileen as unallocated support." We, therefore, express no opinion on the ultimate merits of any claim that Eileen may or may not make upon such non-cash compensation in the future, pursuant to her rights under the MSA. *In re Luis R.*, 239 Ill. 2d 295, 306 (2010) (quoting *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 266 (2010) (Karmeier, J., concurring in part and dissenting in part, joined by Garman, J.)) (courts '"cannot pass judgment on mere abstract propositions of law, render an advisory opinion, or give

legal advice as to future events.' ").

¶ 51 C. Fee Dispute

¶ 52 Finally, we address Eileen's contention that the trial court improperly denied her the opportunity to resolve her fee dispute with Beermann through a statutorily mandated ADR process before holding a final hearing on the matter. However, we find that we cannot consider this issue on the merits because the record reflects that Eileen never served Beermann with her notice of cross-appeal or otherwise informed Beermann of her claims before this court.

¶ 53 Specifically, the record on appeal contains only the notice of cross-appeal Eileen filed in the circuit court on June 23, 2011. There is no notice of filing therein indicating that Beermann was ever notified of the filing of Eileen's cross-appeal below. Furthermore, this court's own records do not contain a notice of filing related to the filing of Eileen's notice of cross-appeal with the clerk of this court. A copy of that notice of filing *is* attached to Eileen's brief before this court, bearing a file stamp from the clerk of this court. However, that copy indicates that Eileen's notice of the filing of her cross-appeal with this court was sent only to counsel for Sean. There is, thus, no indication that Beermann ever received notice of Eileen's cross-appeal. We also note that all of the other filings Eileen has made in this court–*i.e.*, her briefs and various motions for extension–similarly reflect that only Sean's counsel was given notice. Beermann had never filed an appearance or a brief in this matter.

¶ 54 Pursuant to Supreme Court Rule 303(d) (Ill. S. Ct. R. 303(d) (eff. June 4, 2008)), the "party filing the notice of appeal or an amendment as of right, shall, within 7 days, file a notice of filing with the reviewing court and serve a copy of the notice of appeal upon every other party and upon any other person or officer entitled by law to notice. Proof of service, as provided by Rule 12, shall

be filed with the notice." While a failure to serve a copy of the notice of appeal upon an opposing party does not deprive this court of jurisdiction, an appeal can be dismissed where such a failure results in prejudice to that party. *Simmons v. Chicago Housing Authority*, 267 Ill. App. 3d 545, 551 (1994). Indeed, this court has previously dismissed that portion of an appeal challenging the trial court's award of fees to appellant's former counsel in a dissolution of marriage action where no notice of the appeal was served upon the appellant's former counsel. *In re Marriage of Glusek,* 168 Ill. App. 3d 987, 993-994 (1988).

¶ 55 In light of Eileen's failure to serve Beermann with notice of her cross-appeal, and Beermann's resulting inability to defend itself with respect to Eileen's contentions regarding the fee dispute, we decline to further address Eileen's contentions on this issue.

¶ 56 III. CONCLUSION

¶ 57 For the foregoing reasons, the judgment of the circuit court is affirmed and Eileen's cross-appeal is dismissed in part.

¶ 58 Affirmed in part; cross-appeal dismissed in part.