2014 IL App (1st) 120067-U

FIFTH DIVISION
September 26, 2014

No. 1-12-0067

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Marriage of:	)	Appeal from the
	)	Circuit Court
PHILIP L. KAMPF, JR.,	)	of Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 06 D 4764
and	)	
	)	
CYNTHIA TRIPP KAMPF,	)	Honorable
	)	John Thomas Carr
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Robert E. Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's orders setting child support, reserving maintenance, determining support arrearage and denying respondent's motion for contribution to attorney fees are affirmed in part, vacated in part and remanded with directions.

¶ 2 The trial court entered a judgment dissolving the marriage of petitioner Philip L. Kampf, Jr., and respondent Cynthia Tripp Kampf. Cynthia appeals the court's orders deciding maintenance, child support, arrearage and attorney fees. She contends the court erred in (1) awarding child support that substantially deviates from the statutory

guidelines, (2) determining the arrearage amount owed by petitioner, (3) reserving maintenance and (4) denying her petition for contribution to her attorney fees. Philip has not filed a brief in response but we may consider the case on respondent's brief alone pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).[1] We affirm in part, reverse in part and remand with instructions.

¶ 3 BACKGROUND

¶ 4 Cynthia and Philip were married in June 1989. Two children were born of the marriage, a son in 1992 and a daughter in 1995. In April 2006, Philip filed for dissolution of marriage in the circuit court of Cook County. Cynthia filed a counter-petition some months later. She also filed a petition for temporary support.

¶ 5 On November 8, 2007, on Cynthia's petition, the court ordered Philip to pay assorted expenses relating to the parties' children and real estate holdings. It also ordered him to pay Cynthia $22,000 per month for "child support and maintenance," with payments due on the 1st and 15th of every month, starting November 15, 2007. The court ordered that the "maintenance/child support" payments be considered "unallocated." In February 2008, the court entered an order amending the November 8, 2007, order by agreement of the parties to provide that its terms and provisions were entered without prejudice. The court set Cynthia's petition for temporary support for an evidentiary hearing in April 2008 and ordered that

"[t]he temporary support hearing shall be conducted *de novo* and any support

[1] " 'A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment.' " *Frank v. Hawkins,* 383 Ill. App. 3d 799, 807 (2008) (quoting *Benjamin v. McKinnon,* 379 Ill. App. 3d 1013, 1019 (2008)). If Cynthia's brief demonstrates *prima facie* reversible error and her contentions are supported by the record, the trial court's judgment may be reversed. *Talandis Construction Corp.,* 63 Ill. 2d at 133.

> obligations imposed on the petitioner [Philip] shall be retroactive to November 8, 2007, with the petitioner receiving credit for any and all payments made from that date and/or obligated for [illegible] payments to that date, if any, to the respondent."

¶ 6 In May 2008, the court entered an order incorporating an April 2008 letter agreement between the parties modifying the November 2007 agreement without prejudice. In the letter agreement, the parties agreed that Philip would pay Cynthia $7,000 per month as "child support/maintenance" and the terms of the agreement were effective for April, May and June 2008. In late June 2008, the court continued a hearing on Cynthia's motion for temporary support to September 2008 and ordered that "the parties' letter agreement remains in full force and effect." In September 2008, it continued the hearing regarding temporary support to November 2008 and ordered that the parties' letter agreement "regarding support remains in full force and effect." In November 2008, it struck the hearing date, ordered pretrial memoranda and set a pretrial conference for January 2009.

¶ 7 Philip initially made the court-ordered payments for unallocated support and the family's expenses. At some point, he stopped making the support payments. He filed a petition to modify support in March 2009. Cynthia filed petitions for rule to show cause why Philip should not be held in contempt for his failure to make the court-ordered payments. In her December 2009 petition for rule to show cause, she claimed, in relevant part, that Philip was $341,239 in arrears for unpaid support. She asserted that, except for the months of April, May and June 2008, the support payments were $22,000 per month from entry of the November 2007 order until the "present", then December

2009. For the months of April, May and June 2008, the support payments were $7,000 per the May 2008 order entered on the parties' April 2008 letter agreement.

¶ 8 Philip responded that he did not earn sufficient income to make all support payments and the court's November 2007 order setting $22,000 in monthly support was based on his $1.5 million 2006 yearly income, which income was not customary. He asserted his income before and after 2006 was much lower: $451,678 in 2004, $430,641 in 2005, $1,545,764 in 2006, $235,618 in 2007, $158,803 in 2008 and $250,000 in 2009, estimated through December 31, 2009. He also asserted that he had made $377,000 in support and other payments on behalf of Cynthia and the children in 2007 and $313,000 in 2008.

¶ 9 Philip further argued that Cynthia's assertion that he owed $22,000 per month in support was mistaken. He asserted that, because no order was entered continuing the letter agreement after November 6, 2008, either (1) the letter agreement and modified provisions of the November 7, 2007, order were no longer in effect after that date and his obligations to pay Cynthia monthly support were extinguished as of November 2008 or, in the alternative, (2) the reduction to $7,000 remained in full force and effect following November 6, 2008.

¶ 10 On March 16, 2010, the court held a hearing on Cynthia's motion to compel support payments and for attorney fees she incurred in enforcing discovery orders. After hearing testimony from Philip and argument on the motions and considering Philip's income and expenses, the court stated its finding that Philip had the ability to make payments to Cynthia. It found Philip had the wrong priorities in paying toward his attorney and expert witness fees, family ski trips and his son's $200 weekly allowance

instead of paying for his wife and children's support. The court set a trial date for March 29, 2010, and entered an order requiring Philip to pay Cynthia "$15,000 for support from March 16, 2010, through trial without prejudice to [Cynthia's] various petitions for rule to show cause regarding support, which are to be heard at trial together with [Philip's] petition to modify support." It also ordered Philip to pay $17,500 for Cynthia's attorney fees associated with enforcing discovery orders.

¶ 11 In April 2010, the court held four days of evidentiary hearings regarding the parties' assets and obligations. It subsequently heard closing argument regarding allocation of assets, support and maintenance on October 4, 2010.

¶ 12 In May 2010, Cynthia filed a "motion to direct temporary support payments," seeking $5,833.33 in monthly child support and $1,667.67 for other support, for a total of $7,500 per month in temporary support. Philip admitted in his response that he had not directly paid Cynthia support between December 2008 and March 2010, but stated he had paid numerous other expenses. He stated his gross 2009 income was $350,000 and anticipated his gross 2010 income would be $215,000.

¶ 13 On June 8, 2010, on Cynthia's motion, the court ordered that Philip pay Cynthia "$5,700 in temporary and unallocated support, without prejudice, on the 15th of each month until the entry of final judgment or until further Order of Court." It ordered that Philip no longer needed to pay the mortgages and assessments for the parties' former marital home on Sheridan Road and ordered that the home be listed for sale.

¶ 14 At some point, Cynthia received a $40,000 cash pre-distribution from an individual retirement account held by Philip.

¶ 15 Cynthia filed a petition for contribution toward her attorney fees and challenged

the attorney fees claimed by her former attorneys Novack & Macey LLP. The court held evidentiary hearings regarding contribution and attorney fees in December 2010 and February 2011 and heard closing argument regarding attorney fees in April 2011.

¶ 16 On September 16, 2011, the circuit court entered an order awarding the parties a judgment for dissolution of marriage, apportioning their assets and deciding child support, maintenance, attorney fees and other obligations. In the order, the court stated that Cynthia was self-employed in a business generating little income and Philip was self employed and the sole owner of Macatawa Investments, Inc. (Macatawa). During the marriage and the pendency of the case, Macatawa owned interests in four businesses, including Galois Investments, Inc (Galois). Galois in turn owned interests in other businesses, which in turn owned interests in further businesses. Philip's valuation expert valued Philip's interest in Macatawa at $789,000. The expert indicated that he was not comfortable with his valuation because the information he received from Philip and Philip's business associates varied from the financial information he reviewed. He opined the divorce might have had something to do with the information he received. In contrast, Cynthia's valuation expert valued Macatawa and its associated businesses at $4,920,000.

¶ 17 The court found the valuation of Macatawa by Philip's expert was based less on facts than on what he was told by various parties in interest and, therefore, not credible. It found the valuation by Cynthia's expert "more credible but still generated doubt" because the appraisal was based on large part on anomalous earnings generated in 2009 and the windfall sale of a $1 million asset in 2007. It noted that Philip's yearly income from Macatawa varied widely over the past five to seven years and the

armaments business, which formed a substantial part of the income stream for Macatawa and its associated businesses, "ha[d] dramatically fallen off." The court also noted that Philip's partner, Mox Tan, and Philip's main investor, James Haber, "were the necessary cogs" in the businesses and there was no evidence that Philip's personal efforts contributed "very much, if at all, to the businesses." The court determined that neither appraisal was "even close to the value of the businesses" and stated that "multiples of Macatawa's income stream," which would include "income from all of the sub-companies which produce income to Macatawa," was "a more appropriate way to value the business."

¶ 18 The court stated that the evidence showed that yearly gross income to Macatawa could be expected to range from $330,000 to $360,000, most of it coming from Galois. Macatawa owned 50% of Galois and received 50% of Galois' $660,000 yearly income, or $330,000 per year. The court found that Philip had been paid bonuses by Haber, the main investor in several of Macatawa's "sub-companies," but that "the bonuses are not guaranteed." It found that, "taking into account monies available to Macatawa from all sources and factoring in a small amount of bonus," it believed that Macatawa's net earnings were approximately $350,000 per year.

¶ 19 Noting that a multiple of six times net earnings was a more appropriate determiner of the value of the company than either of the appraisers' valuations, the court set the value of Macatawa at $2,100,000. It found that Cynthia was entitled to 50% of Macatawa's value, $1,050,000. It ordered Philip to pay Cynthia $1,050,000 amortized over a six-year period at an interest rate of 5% per year.

¶ 20 The court found that the parties had a "substantial lifestyle" and travelled "a lot,"

with vacations to Hawaii, Europe, Mexico, Caribbean and New York City. It noted the children's private schools, multiple real estate properties, Philip's memberships in assorted golf and country clubs "where thousands of dollars were spent on a monthly basis" and the boat owned by one of Philip's companies moored at the Chicago Yacht Club. The court also noted that Cynthia was the beneficiary under two trusts, which were her non-marital assets, and she had supplemented Philip's income by paying certain marital expenses from the trusts. The court stated that, despite the lavish expenditures, the parties had little or no liquid assets and, when attorney fees were taken into account, had disposed of almost every liquid asset. Cynthia's non-marital property had been used as security for loans to pay her attorney fees in the matter.

¶ 21 The court found "child support arrears from January 1, 2010, until October 1, 2010[,] are $102,466.00 which consists of 14 months of unpaid child support in the amount of $7,319.00 monthly (admitted by husband)." The court noted that, "a few months before October 1, 2010[, it] did lower the child support to $5,700 a month."[2] It ordered that the $5,700 per month amount was to stand in full force and effect "until entry of this judgment[, at] which time the support determined in this cause will go into effect." The court initially ordered Philip to pay Cynthia the $102,466 arrearage in equal installments over the following 12 months at 9% interest but subsequently ordered that Philip could pay the arrearage, together with assorted other indebtedness, over 72 months at 5% interest.

¶ 22 Noting that Philip had, in the past, received bonuses as a result of his ownership

[2] In fact, the court's June 8, 2010, order had awarded Cynthia $5,700 for monthly "temporary and unallocated support," not for "child support" as the court stated in its September 16, 2011, order.

interest in various companies, the court found that Philip's income was $18,000 per month plus any bonus he might receive from Macatawa or any of the companies in which Macatawa had an interest.

¶ 23 The court found that, although Cynthia's financial disclosures indicated she had "substantial needs" totaling in excess of $35,000 a month, those needs had been justified in the past by the bonuses received by Philip, monies Philip received as a result of the sale of certain assets and monies Cynthia received from her trusts. It stated that, unless Philip were to receive "very substantial bonuses" or some of the companies in which Philip had an interest were sold, it did not believe that the evidence showed Philip "has the ability to provide the level of support requested by" Cynthia. The court stated that its valuation of Macatawa "really consists of the income stream from the various businesses owned by Macatawa" and that it "believes any award of maintenance [to Cynthia] at this time would really be a double dip" for her. It stated that, "[a]ny award of maintenance would be based on the husband's earnings and his earnings are already taken into consideration by the appraisal value of Macatawa."

¶ 24 The court found that Cynthia "would have trouble supporting herself." It found that the William Tripp Trust which had been supplementing her income was a discretionary trust from which she had no right to support or payments and a second trust at Northern Trust bank did not have sufficient funds from which to contribute to Cynthia's monthly expenses. It found both trusts were non-marital assets. Although the court stated that Cynthia was "entitled to support" from Philip, it "believe[d] that maintenance should be reserved due to the length of the marriage and the condition of the parties." The court stated "but due to the business being basically valued as a

stream of income[,] the court believes that the payments to the wife for the wife's interest in the business and no award of maintenance would avoid a double dip in this case."

¶ 25 Noting that it had heard testimony and reviewed evidence regarding attorney fees, the court ordered Cynthia to pay her attorney fees as follows: $40,000 to Rinella & Rinella Ltd. (on its $49,908 fee petition), $400,000 to Novack & Macey LLP (on its $462,336 fee petition) and $51,980.93 to Miller Shakman & Beem LLP (pursuant to an agreed order). It found Philip's agreements to pay in excess of $226,000 to his own attorneys fair and reasonable.

¶ 26 At the time judgment was entered, the parties' son was in college and their daughter was 15 years old. The court ordered Philip to pay Cynthia $2,438 per month in child support for their daughter. It ordered Philip to pay for all costs associated with his son's enrollment at the University of Puget Sound but directed that the parties were both responsible for the daughter's post-high school education. Philip was responsible for providing health and dental insurance for the children as long as they remained in college. The parties would pay equally for any medical expenses not covered by insurance.

¶ 27 The court awarded Cynthia 50% of the value of assorted stock owned by Philip and of the proceeds from any sale of such stock by Philip prior to entry of judgment. It awarded her a $20,000 cash payout from Philip's individual retirement account and ordered Philip to transfer the $10,000 remaining in the account to her.

¶ 28 The court found the marital estate consisted of Macatawa ($2,100,000), dissipation of marital assets used by Philip to pay his attorney fees ($243,201.98), a

property on Sheridan Road ($0) and a property in Steamboat Springs (estimated at $200,000). The court ordered the Sheridan Road property to be sold and that any proceeds should be given to Cynthia "as a credit towards her interests in [Macatawa]. 50% of the proceeds to the wife and 50% to the husband but his share to the wife as a credit towards her share of Macatawa." It ordered that the Steamboat Springs property be sold and the proceeds given to Cynthia, again 50% would be Cynthia's share and the remaining 50% would be Philip's share given to Cynthia as a credit towards her share of Macatawa.

¶ 29 The court stated in summation that Philip owed Cynthia $1,050,000 as a buyout of her interest in Macatawa, $121,600.00 for dissipation and $102,466 for "child support" arrearage, for a total of $1,274,066.99. It found that, "in order to preserve the husband's interest in Macatawa's sub-companies, it is pretty obvious that [Philip] does not have the ability to pay the sums due [Cynthia] all at once." "In order to ensure that [Philip] has an income stream," the court ordered that he pay the $1,274,066.99 to Cynthia "amortized in a 72 month period" at 5% interest, beginning on January 1, 2012. It also ordered that, from October 1, 2011, to December 30, 2011, Philip pay, "in addition to the child support, $5,000 per month which is to be a credit to the amounts to be amortized." The court stated the payment plan "should give [Philip] an opportunity to make the appropriate arrangement regarding the payments to be made."

¶ 30 On December 13, 2011, the court entered an order denying Philip's motion to reconsider and granting in part Cynthia's motion to reconsider, granting only her claim that statutory interest be imposed on past due temporary child support payments from the date of each missed payment. With regard to its decision regarding who should pay

attorney fees, the court stated that it took into consideration that it had heard a lot of testimony, "hearing after hearing after hearing of stuff," that showed Cynthia's attitude was "I don't care what it costs, we're going ahead" and "damn the torpedoes, all full speed ahead." Cynthia filed a timely notice of appeal on January 9, 2012, and subsequently filed her appellate brief.

¶ 31 During the pendency of this appeal, Cynthia filed for Chapter 7 bankruptcy in the United States Bankruptcy Court of the Northern District of Illinois. The bankruptcy trustee for her estate filed an application with the bankruptcy court seeking leave to sell the bankruptcy estate's right, title and interest in the non-support portions of the September 16, 2011, judgment against Philip to AOC Equity, LLC for $115,000. He specified that only the $1,050,000 awarded to Cynthia as a buyout for her interest in Macatawa and the $121,600.99 awarded to her for Philip's dissipation of assets were the property of the estate and to be sold. Noting that the child support portion of the court's judgment was not the property of the estate, the trustee specifically excluded the judgment for child support arrearage from the sale. The trustee disclosed that AOC Equity, LLC was controlled by Haber, Philip's "close business associate and partner."

¶ 32 On March 23, 2013, the bankruptcy court entered an "order re sale of right, title and interest in non-support portion of divorce judgment" authorizing and approving the sale. The order recited the facts stated in the trustee's application, including the fact that "the portion of the judgment relating to support" was not the property of the estate and any issues regarding this portion of the judgment would be decided by the "divorce court." The bankruptcy court noted that the $115,000 offer was "specifically limited to the estate's right, title and interest in the non-support components of the judgment" and

that the sale took into consideration that the appellate court might increase the non-support portions of the judgment, reduce them or keep them the same. During the hearing on the application, following the bankruptcy court's approval of the sale, the court clarified that maintenance, support and attorney fees were not affected by the order and the trustee reiterated that he was selling only the "non-support issues."

¶ 33 After the sale, the bankruptcy trustee distributed the entirety of the $459,345.27 bankruptcy estate, including the $115,000 received from the sale. He first paid the administrative and legal fees incurred during the bankruptcy and tax indebtedness. He then distributed the remaining $337,062.65 to the estate's creditors, paying timely unsecured claims in full and untimely unsecured claims in part. Among the amounts paid to Cynthia's creditors were $202,431.48 to Stout Risius Ross Ltd., $41,163.84 to Rinella & Rinella Ltd, $38,745.48 to Miller Shakman & Beem LLP and $53,014.77 to Novack and Macey LLP (a 13.2% "dividend" on its untimely claim for $402,692.02), all for claims for attorney fees and expert witness fees Cynthia incurred in the dissolution action.

¶ 34 ANALYSIS

¶ 35 Cynthia initially presented six arguments on appeal. Following entry of the bankruptcy order approving the sale of Philip's non-support obligations, she presented the order to this court and posited that two of the issues she raised on appeal were mooted by the order. On our order, she then filed a supplemental brief addressing the impact of the bankruptcy sale on her appeal. Cynthia asserts that, as a result of the bankruptcy sale, her arguments that the trial court (1) should have made the cash property award to her immediately payable rather than payable in 72 installments and

(2) had deprived her of $1 million in property distribution because it had undervalued by over $2 million became moot. We agree with Cynthia that the bankruptcy order removed the value of Philip's business interests and the division of that value from the possibility of reversal on appeal and her arguments directed to challenging the court's findings related to the property distribution here are, therefore, moot. However, as she also points out, the impact of any errors by the trial court on those issues affected the entire dissolution judgment and could arguably be relevant in deciding Cynthia's remaining issues.

¶ 36 In Cynthia's four remaining arguments, she argues the court abused its discretion by (1) awarding child support substantially deviating from statutory guidelines; (2) determining that Philip owed only $102,466 in arrearages; (3) reserving maintenance to allow Philip to pay a property judgment over the course of 72 months even though he had a history of nonpayment; and (4) denying Cynthia's petition for contribution to her attorney fees. These arguments remain viable. The bankruptcy sale was for only the non-support components of the judgment against Philip, *i.e.*, for the $1,050,000 award for Cynthia's 50% interest in Macatawa and for the $121,600.99 awarded to her for Philip's dissipation of marital assets. Child support, maintenance and related arrearages are all support obligations specifically excluded from the bankruptcy and we will, therefore, consider Cynthia's arguments directed to those issues.

¶ 37 We will also consider Cynthia's argument regarding contribution to attorney fees. The trial court had not ordered Philip to contribute to Cynthia's attorney fees and, therefore, Philip had no indebtedness to Cynthia for such contribution to attorney fees that was affected by the bankruptcy order. We address Cynthia's four arguments

seriatim.

¶ 38 1. Child Support Award

¶ 39 Cynthia first argues that the court abused its discretion by awarding child support substantially deviating from statutory guidelines without stating any findings to justify a deviation. She requests that we reverse and vacate the amount set for child support and remand for calculation of the correct guideline amount.

¶ 40 When the court entered the judgment for dissolution, only the parties' daughter was still a minor. Pursuant to section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501 *et seq.* (West 2010)) (the Act), the court must impose a minimum amount of 20% of an obligor/non-custodial parent's net income as child support for one minor child. 750 ILCS 5/505(a)(1) (West 2010). The court must comply with the statutory guideline unless, after considering the best interests of the child in light of evidence of certain enumerated factors, it makes a finding that application of the guideline would be inappropriate. 750 ILCS 5/505(a)(2) (West 2010). If it deviates from the guideline, "the court's finding shall state the amount of support that would have been required under the guidelines, if determinable," and "include the reason or reasons for the variance from the guidelines." 750 ILCS 5/505(a)(2) (West 2010).

¶ 41 In determining the proper amount of child support, the court must first determine the noncustodial parent's net income. *In re Marriage of Gosney,* 394 Ill. App. 3d 1073, 1077 (2009). The Act defines "net income" as the total of all income from all sources, minus certain statutory deductions such as for state and federal taxes and prior support or maintenance obligations. 750 ILCS 5/505(a)(3) (West 2012). The court's findings regarding net income and the award of child support lie within the court's discretion and

we will not disturb its decision absent an abuse of that discretion, *i.e.*, unless the trial court's ruling is arbitrary, fanciful, or unreasonable or no reasonable person would take the view of the trial court. *In re Marriage of Lindman,* 356 Ill. App. 3d 462, 467 (2005); *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103 (1995). We allow a trial court's factual findings to stand unless they are contrary to the manifest weight of the evidence, *i.e.,* when they are unreasonable or not based on the evidence. *In re Marriage of Eberhardt,* 387 Ill. App. 3d 226, 233 (2008). The credibility of witnesses and weight to be given their testimony is for the trier of fact, here the trial court, to decide. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011).

¶ 42 The court set child support at $2,438 per month but stated no explanation for its finding. Section 505(a) requires the court explain its child support award only if it deviates from the statutory guidelines. Given that the court did not explain its child support award, we presume, without more, that its award does not deviate from the statutory guidelines requiring child support in the amount of 20% of Philip's net income for his one minor child.

¶ 43 The court did not state a finding regarding Philip's net income. Applying the statutory guideline (20% of net income), Cynthia asserts the court's award of $2,438 in monthly child support necessarily means that it found Philip's monthly net income to be $12,190 ($2,438 = 20% x $12,190), and his annual net income to be $146,280. She argues that there was no evidence at trial that Philip's income was ever that low, pointing *inter alia* to the court's finding that Macatawa received gross income between $330,000 to $360,000 per year from Galois and that, as the sole owner of Macatawa, Philip received the entire Macatawa distribution. She asserts that Philip received

$350,000 in 2009 distributions and $150,000 in the first quarter of 2010 and the usual income from Galois was on track to occur in 2010, leading to the conclusion that his net income was greater than $146,280 .

¶ 44 Net income is "the total of all income from all sources, minus" deductions for, *inter alia*, federal and state taxes, social security payments, "[d]ependent and individual health/hospitalization insurance premiums," "[e]xpenditures for repayment of debts that represent reasonable and necessary expenses for the production of income," medical expenditures and "reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts." 750 ILCS 5/505(3) (West 2010). Cynthia's argument that the court's finding that Philip grossed $330,000 to $360,000 per year from Macatawa shows that Philip's income was vastly higher than the $146,280 net income found by the court fails to take into account all the possible deductions from that gross income.

¶ 45 Although the court did not specify Philip's monthly net income, it did find, without explanation, that Philip's monthly gross income was $18,000 plus bonuses, noting that the bonuses were "not guaranteed." Putting aside the bonuses, this monthly income equates to a $216,000 gross income per year (12 x $18,000). In his *pro* se closing argument, under extensive questioning by the court, Philip explained that Galois had income of $660,000 (therefore arguably $330,000 would go to Macatawa) but expenses of $230,000, leaving $430,000 to be distributed equally between Macatawa and Mox Tan, Philip's business associate, or $215,000 each. Evidence in the record supports these amounts. When an obligor owns a business, the trial court may subtract the day-to-day operating expenses of the business in determining the obligor's net income. *In re Marriage of Tegeler,* 365 Ill App. 3d 448, 455 (2006). Therefore, subtracting Galois'

expenses from its income, Galois had a net income of $430,000 to be distributed equally between Macatawa and Tan, each receiving $215,000. The $215,000 would, however, be gross income to Macatawa and, therefore, to Philip. Therefore, there is an evidentiary basis for the court's finding that Philip had monthly gross income of $18,000 or yearly gross income of $216,000.

¶ 46 During the evidentiary hearings in April 2010, the parties stipulated to Philip's adjusted gross income as follows: $1,855,093 in 2001; $2,059,152 in 2002; $518,640 in 2003; $438,486 in 2004; $417,192 in 2005; $1,536,677 in 2006; $181,618 in 2007; and $173,615 in 2008. As Cynthia points out, the evidence shows that, between 2001 and 2006, Philip's gross income averaged over $1 million per year. However, we see no reason why, in determining Philip's prospective income, the court in 2011 should have considered Philip's income from 2001 to 2006, income earned 5 to 10 years earlier.

¶ 47 Net income for purposes of the Act is generally determined with reference to the current circumstances of the parties, based on the most recent accurate income data. *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 160-61 (1991). For child support purposes, if the support-paying parent's income fluctuates significantly, the court should consider prior income in determining the parent's prospective income. *Freesen*, 275 Ill. App. 3d at 103-04. Philip is self-employed and his income varied significantly year-to-year, depending on receipt of bonuses or the sale of subsidiary businesses. Therefore, income averaging would be appropriate to determine his income. *Freesen*, 275 Ill. App. 3d at 103-04. When income averaging, "[a]t least the three prior years should be used to obtain an accurate income picture" but, beyond that, the income determination is left to the discretion of the court. *Freesen*, 275 Ill. App. 3d at 103. However, "[w]hile a court

should not base net income findings upon the mere possibility of future financial resources, neither should it rely upon outdated information which no longer reflects prospective income." *Marriage of Freesen*, 275 Ill. App. 3d at 103-04.

¶ 48 The court made its income determination in September 2011. Philip's income from the years 2001 through 2006, 5 to 10 years before 2011, is clearly outdated information that does not reflect his prospective income.

¶ 49 Even were we to consider the historical data, we see that from 2002 through 2008, with the exception of 2006, Philip's income steadily declined, with the two most recent years, 2007 and 2008, showing income well below $215,000. Philip explained the downward trend in his testimony, asserting that many of the businesses in which he, through Macatawa, had an interest were related to armaments/munitions and these businesses were in significant decline. He explained that his unusually high $1.5 million income in 2006 as an aberration resulting from the one-time sale of one of the businesses in which Macatawa held an interest. He also testified that, although he received a bonus in 2009, he did not anticipate that he would receive one again in 2010. He anticipated his 2010 income would be $215,000. The weight to be accorded Philip's testimony and evidence regarding his income is for the trial court to determine. On this record, the court's finding that Philip's gross monthly income is $18,000 and its inherent finding that his annual income is $216,000 is supported by the evidence.

¶ 50 Philip is required to pay for health insurance and other expenses for his children. Taking as true a suggestion made by Cynthia in closing argument, Philip's average combined federal and state income tax is 22.2% of income. These insurance premiums, expenses and taxes are all to be deducted from gross income to determine net income

for child support purposes. Taken together, the court's presumed finding that Philip's base monthly net income is $12,190 on a monthly gross income of $18,000 is supported by the record and reasonable. If the court's finding of $18,000 gross monthly income was the sole basis on which it awarded child support, its $2,438 per month child support award (20% of a monthly net income of $12,190) would comply with the statutory requirements.

¶ 51 However, although the court found that Philip's gross monthly income was $18,000 plus bonuses, the court did not address the bonuses beyond stating that "the bonuses are not guaranteed." Even though the bonuses were not guaranteed, we agree with Cynthia that the court should have provided for additional child support from any income Philip receives in excess of $216,000 gross per year, whether that additional income is derived from bonuses, the sale of businesses or other sources. As Philip himself acknowledged in his closing argument, Cynthia is entitled to 20% child support on any income he received over $216,000 per year. Accordingly, while we find no error in the court's calculation of the base child support award, we vacate and remand to the trial court for entry of an order providing for additional child support should Philip receive gross yearly income in excess of $216,000, no matter the source. This order shall be retroactive to the date of entry of the judgment for dissolution of marriage.

¶ 52 2. Arrearage

¶ 53 In its September 16, 2011, order dissolving the parties' marriage, the court found that Philip owed $102,466 in child support arrearage "from January 1, 2010, to October 1, 2010, which consists of 14 months of unpaid child support in the amount of $7,319 monthly (admitted by husband)." Cynthia argues that the court's finding that Philip owed

$102,466 in child support arrearage was contrary to the manifest weight of the evidence and an abuse of discretion. She requests a finding that Philip owes her $478,406.56 in arrearage or, in the alternative, remand for an accounting determining the additional arrearage owed and statutory interest. As with matters involving child support, the judicial determination of child support arrearage is reviewed for abuse of discretion. *In re Marriage of Paredes,* 371 Ill. App. 3d 647, 650 (2007). We reverse and remand for four reasons.

¶ 54 First, the court stated the $102,466 arrearage accumulated "from January 1, 2010, to October 1, 2010, which consists of 14 months of unpaid child support." However, that period spans only 9 months, not 14. Therefore, accepting the court's finding that the support arrearage was "$7,319 monthly (admitted by husband)," the arrearage would total $65,871 (9 months x $7,319 monthly), not $102,466 as the court found.[3] The court's statement is inaccurate and confusing. It is, therefore, inadequate for our review and clarification by the court is warranted.

¶ 55 Moreover, while not raised by Cynthia, we note that she has directed us only to unallocated support orders in the record. The trial court's dissolution order, however, refers to "child support" arrearage. We direct the court to clarify whether it intends these arrearages to be considered unallocated or child support.

¶ 56 Second, the evidence supports Cynthia's assertion that Philip admitted that he stopped paying support in January 2009. Given that Philip admitted he stopped making support payments in January 2009, we do not know on what basis the court found Philip

[3] Cynthia does not point us to where in the record Philip admitted his obligation to pay her $7,319 in monthly support as found by the trial court. However, given that Philip failed to file a brief challenging this finding, we accept it as true.

owed child support arrearage only from January 2010. Similarly, given that the court entered its order dissolving the marriage and setting the child support award on September 16, 2011, we do not know on what basis it determined that the Philip accrued the arrearage only until October 2010, rather than until October 2011. Arguably, the arrearage accumulated between January 1, 2009, and October 1, 2011, a period of 23 months. Given that there is no explanation in the record or the court's order for the court's determination that the arrearage accumulated only between January 1, 2010 and October 1, 2010, the court's reconsideration of its arrearage finding is warranted.

¶ 57 Third, as Cynthia points out, the court did not address her December 2009 petition for rule to show cause asserting that Phil owed arrearage of $349,409.56 for unallocated support and other court ordered expenses for the period between December 2007 and December 4, 2009. The court had continued Cynthia's petition to trial but then did not address Cynthia's petition in its dissolution order. The court should have addressed the petition and we remand with direction to address the petition.

¶ 58 Although we agree with Cynthia that remand is warranted to address the arrearage claimed in the petition for rule, we do not agree that she should be awarded arrearage in the amount of $478,409.56. She claims $129,000 is due for the period between January 1, 2009 and October 1, 2010, and $349,409.56 is due as claimed in her petition for rule. The petition sought unpaid unallocated support for the period between December 2007 through September 2009. Therefore, in requesting $129,000 for support arrearage for the period between January 1, 2009 and October 1, 2010, Cynthia is requesting a double recovery for the period between January 1, 2009, and

October 1, 2009, because she is already claiming arrearage for this same period in her petition.

¶ 59 We also note that Cynthia misrepresents the record regarding orders entered by the court. The court's determination of the arrearage was necessarily based in part on previous orders it had entered setting both unallocated support and child support. Cynthia refers only to the court's initial November 2007 order awarding her $22,000 per month for unallocated "child support/maintenance," its May 2008 order incorporating the letter agreement reducing unallocated monthly support to $7,000 for three months, and its June 2010 order setting monthly child support at $5,700 per month. She asserts that, when the reduction agreed to in the letter agreement expired after June 2008, the $22,000 per month order was back in effect. However, a cursory review of the record reveals two orders that Cynthia fails to mention. Specifically, a June 2008 order and a November 2008 order stating that the letter agreement remained in full forth and effect, *i.e.,* that the monthly unallocated support remained set at $7,000 after June 2008. There may be additional orders in the record setting Philip's support obligations but, given that he did not file a brief on appeal, we will not parse through the record to find them on his behalf. Suffice it to say, from these 2008 orders alone, it appears that the unallocated support award did not revert back to $22,000 per month after June 2008 as Cynthia claims but instead remained at $7,000 per month as set forth in the letter agreement, arguably until the court entered its June 2010 setting child support at $5,700.[4]

¶ 60 Lastly, remand is warranted because the sale by the bankruptcy estate of Philip's

[4] The fact that the court stated in its September 16, 2011, order that it "did lower the child support" to $5,700 per month shortly before entry of the order leads to the inference that there was an order setting child support in effect at the time the September 2011 order was entered.

non-support obligations eliminated his obligation to pay Cynthia $1,050,000 for her interest in Macatawa and $121,600 for his dissipation of marital assets, a total of $1,171,600. Finding Philip unable to pay Cynthia the sums due all at once, the trial court had ordered that he pay the $1,171,600 property award, together with the $102,466 arrearage, over 72 months at 5% interest. Therefore, given the bankruptcy sale of the non-support obligations and putting aside any interest calculations and amounts already paid by Philip, Cynthia will now no longer receive approximately $16,272 per month from Philip ($1,171,600 non-support obligation ÷ 72 months).[5] In other words, the effect of the bankruptcy sale is to reduce Cynthia's monthly income by this amount. Granted, as discussed in section 4 *infra*, Cynthia's obligation to pay in excess of $700,000 for her attorney and expert witness fees was discharged in bankruptcy, positively affecting her financial condition. Nevertheless, given the substantial impact of the bankruptcy on Cynthia's income, we remand for the court's reconsideration of its order allowing Philip to pay the child support arrearage over 72 months.

¶ 61 In summation, we vacate the court's arrearage finding and remand for reconsideration and clarification of the arrearage finding, consideration of Cynthia's December 2009 petition for rule asserting arrearage of $349,409.56, and reconsideration of its determination that the arrearage should be paid over 72 months.

¶ 62 3. Reservation of Maintenance

¶ 63 Cynthia argues that the court abused its discretion in reserving maintenance to

[5] We presume interest had accrued on the non-support obligations by the time the bankruptcy court entered it decision and that Philip had made payments toward these obligations. Therefore, our calculation of the monthly amount is necessarily an extremely rough estimate. It is for the trial court to determine the actual impact of the bankruptcy sale on the parties' financial circumstances.

allow Philip to pay the $1,050,000 Macatawa property judgment over 72 months when he had a history of non-payment of maintenance and child support. She also asserts that, as a result of the bankruptcy proceeding, she will not receive any of the property distribution, thus vindicating her position that it was error to reserve maintenance. We agree with Cynthia that remand is warranted for reconsideration of the reservation of maintenance.

¶ 64 The Act makes the division of marital property the primary means of providing for the parties' future financial needs, such that each party is in the position to begin anew. *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 338 (1999) (citing *Hollensbe v. Hollensbe*, 165 Ill. App. 3d 522, 527-28 (1988)). In contrast, maintenance is intended for the support and maintenance of the recipient spouse, to meet the spouse's reasonable needs as determined by the parties' standard of living during the marriage, until such time, if ever, that spouse is able to become self-sufficient. *In re Marriage of Harlow,* 251 Ill. App.3d 152, 158 (1993). The trial court "may grant maintenance when it finds the spouse seeking maintenance lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through employment or is otherwise without sufficient income." *Marriage of Harlow*, 251 Ill. App.3d at 157; 750 ILCS 5/504(a) (West 2010). "When it is necessary to award large or income-producing assets to one spouse, the court can comport with the mandates of section 503(d) by authorizing offsetting payments." *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 163 (1991). However, "an award of maintenance in lieu of property is improper." *Marriage of Brackett*, 309 Ill. App. 3d at 338. "As with other maintenance determinations, a trial court's decision to reserve jurisdiction on the issue of

maintenance will not be disturbed absent an abuse of discretion." *In re Marriage of Wojcik,* 362 Ill. App. 3d 144, 168 (2005).

¶ 65 The financial circumstances on which the court based its decision to reserve maintenance no longer exist. As noted *supra* at ¶¶ 31 and 60, due to the bankruptcy sale, Philip's obligation to pay Cynthia for her interest in Macatawa and for his dissipation of assets was compromised and sold to AOC Equity, LLC. As a result, Philip's monthly obligation to pay Cynthia no longer exists and the terms and conditions under which the debt must be paid to AOC Equity, LLC are unknown. Philip, therefore, may have a substantial amount of additional available income per month while Cynthia has a substantial amount per month less. A reconsideration of the reservation of maintenance is warranted on this basis alone. Moreover, although the court found Cynthia unable to support herself, it reserved maintenance in order to protect Philip's earnings stream from Macatawa from being double counted by simultaneous payments for the property allocation and for maintenance. Since Philip is no longer obligated to make the allocation payments to Cynthia, this basis for reserving maintenance may no longer exist. The court upon remand must determine and consider Philip's obligation to AOC Equity, LLC as a result of the sale of this asset and the payment terms of that obligation. The trial court must also consider the change in Cynthia's financial circumstances as a result of her no longer being entitled to those payments from Philip. Accordingly, given the change in the parties' financial circumstances, we vacate the order reserving maintenance and remand to the trial court with directions to reconsider the maintenance award.

¶ 66 4. Contribution to Attorney Fees

¶ 67 Cynthia argues that the court abused its discretion in denying her petition for contribution to her attorney fees. Cynthia filed her petition in September 2010. In the court's September 2011 order dissolving the marriage and settling the marital estate, it ordered Cynthia to pay her attorney fees as follow: $40,000 to Rinella & Rinella Ltd. (on its $49,908 fee petition), $400,000 to Novack & Macey LLP (on its $462,336 fee petition) and $51,980.93 to Miller Shakman & Beem LLP pursuant to an agreed order. Although the court did not specifically address Cynthia's petition for contribution, its denial of her petition is inherent in its order finding Cynthia liable for the enumerated attorney fees.[6] She requests that we reverse and vacate the denial of petition for contribution to her attorney fees and remand with instructions to require Philip to contribute to those fees in an appropriate amount. Although we find no error with the court's initial denial of Cynthia's petition for contribution to attorney fees, we vacate the order and remand for reconsideration of the petition in light of the change in circumstances resulting from the bankruptcy.

¶ 68 As a general rule, attorney fees are the primary responsibility of the party for whom the services were rendered. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 598 (2001). However, section 508(a) of the Act provides that the court may order either spouse to pay all or part of the other spouse's attorney fees after considering the financial resources of both parties. 750 ILCS 5/508(a) (West 2010)*; In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). The spouse seeking the award of attorney fees and costs must show financial inability to pay the fees as well as the financial ability of the other spouse to pay them. *Marriage of Hasabnis*, 322 Ill. App. 3d at 598 (citing *Marriage*

[6] The court's order did not mention the approximately $240,000 Cynthia still owed her expert witness.

of Minear, 181 Ill. 2d at 562). The party seeking the award need not be destitute. *Marriage of Hasabnis*, 322 Ill. App. 3d at 598. Rather, it is sufficient that payment of the legal fees would exhaust that spouse's estate, strip his or her means of support or undermine his or her economic stability. *Marriage of Hasabnis*, 322 Ill. App. 3d at 598. The award of attorney fees and the proportion that each spouse will pay lies within the discretion of the trial court and will not be disturbed on appeal absent an abuse of the court's discretion or unless it is against the manifest weight of the evidence. *Marriage of Hasabnis*, 322 Ill. App. 3d at 598 (citing *Marriage of Minear*, 181 Ill. 2d at 561).

¶ 69 As Cynthia points out, inherent in the court's decision is its conclusion that she had the ability to pay her fees. She argues this finding is baseless because she has no income or assets, the court awarded her no maintenance or property of any consequential value, she had no reasonable expectation of receiving the court ordered child support and property installment payments given that Philip "had not met a single direct payment obligation in two years" and, even if Philip did pay the installments, it would take more than two years of those payments for her to satisfy the award to Novak and Macey alone. She also argues that Philip did have the ability to pay given that he had been awarded Macatawa. She asserts that, although the court had determined Macatawa had a value of $2.1 million and a yearly stream of income of $330,000 to $350,000, Philip's yearly income from Macatawa was actually considerably higher than the court's estimate, averaging in excess of $900,000 between 2001 and 2006. Cynthia also argues that, in addition to the pure economic inquiry, we should also consider that Philip had exacerbated the litigation by failing to comply with "a stream of support orders," necessitating her filing numerous contempt petitions, and that, as the court

itself noted, the proceedings had been handicapped by Philip's lack of production, necessitating the court's finding of contempt against him for discovery violations and sanctioning him for lying in a Rule 214 affidavit.

¶ 70 Our review of the reports of proceedings shows that Cynthia made these same arguments to the trial court. The court was well aware of the evidence she presented to meet her burden to show her inability to pay and Philip's ability to pay the fees and clearly found she did not meet her burden. The hearings regarding the parties' financial conditions spanned four days and the hearings regarding attorney fees and the contribution petition even longer. As held *supra*, the evidence supports the court's findings regarding Philip's income and his expenses, the majority of which were paid for the benefit of Cynthia and the parties' children, and we will not belabor these findings again. It also had ample evidence of the parties' conduct during the proceedings, noting specifically the "hearing after hearing after hearing" in which it heard testimony regarding Cynthia's attitude that she would pursue Philip no matter the cost. The court's denial of Cynthia's petition for contribution was clearly based on the evidence and neither arbitrary nor unreasonable. It did not abuse its discretion in denying Cynthia's petition for contribution.

¶ 71 Nevertheless, remand for reconsideration of Cynthia's petition for contribution is arguably warranted given the bankruptcy sale of Philip's non-support obligations. The court's decision that Cynthia was able to pay her own attorney fees necessarily included consideration of its order requiring Philip to pay Cynthia $1,171,600 over 72 months for her interest in Macatawa and Philip's dissipation of assets. But, as a result of the bankruptcy sale of Philip's non-support obligations, his obligation to pay Cynthia this

amount was sold and Cynthia will no longer receive the monthly payout. See *supra* at ¶ 60. Arguably, therefore, given that Cynthia's monthly income has been substantially reduced while Philip's available monthly income may have been increased by the same amount, reconsideration of the denial of her contribution petition is warranted.

¶ 72 We note that Cynthia's obligations to pay the legal fees she incurred in the dissolution action, specifically the $491,980.93 attorney fees the circuit court ordered her to pay in its September 16, 2011, dissolution order, and the fees for her expert witness were also discharged in bankruptcy. The supplemental record shows that, upon approval by the bankruptcy court, the bankruptcy trustee distributed the entirety of Cynthia's $459,345.27 bankruptcy estate, including the $115,000 she received from the sale of Philip's non-support obligations, to her creditors. After paying tax indebtedness and administrative and legal fees incurred during the bankruptcy, the trustee distributed the remaining $337,062.65 to the estate's creditors, paying timely unsecured claims in full and untimely unsecured claims in part. Among the claims paid by the trustee were the following claims for attorney and expert witness fees incurred by Cynthia during the dissolution proceedings:

Name of Creditor	Stout Risius Ross	Rinella & Rinella Ltd	Miller Shakman & Beem LLP	Novack and Macey LLP
Type of Fees	Expert Witness Fees	Attorney Fees	Attorney Fees	Attorney Fees
Amount Claimed by Creditor	$202,431.48	$41,163.84	$38,745.48	$400,692.02
Amount Paid from Bankruptcy Estate	$202,431.48 Paid in Full	$41,163.84 Paid in Full	$38,745.48 Paid in Full	$53,014.77 (paid 13.2% "dividend" on untimely claim)
Amount trial court ordered Cynthia to	Not addressed in the order	$40,000	$51,980.93	$400,000

Pay in 9/16/11 Order				

¶ 73 Federal bankruptcy cases make clear that attorney fees, as with other debt, are dischargeable in bankruptcy. *In re Matter of Rios*, 901 F. 2d 71 (7th. Cir. 1990); *In re Lindberg*, 92 B.R. 481 (D. Colo. 1988). "As a legal matter, an ordinary lawyer's bill is no better than a grocer's bill." *Rios*, 901 F. 2d at 72. Both are clearly dischargeable in bankruptcy. *Rios*, 901 F. 2d at 73. Therefore, once the trustee paid the expert witness and law firm creditors, Cynthia's obligations to pay the claimed fees were discharged. Indeed, Cynthia herself admits in her supplemental brief that the $115,000 received from the sale of the non-support obligations was used "to pay Cynthia's creditors (including her dissolution attorneys ***) *who have no further recourse against Cynthia*."

¶ 74 Cynthia points out that "the bankruptcy judge concurred that the issues of support, maintenance and attorney's fees were not [a]ffected by his order." However, the record shows that the bankruptcy judge made this comment strictly in the context of its order approving the sale of the non-support obligations and the comment had nothing to do with whether the attorney fees Cynthia owed were dischargeable in bankruptcy.

¶ 75 Cynthia asserts that, "to the extent that fees may have been awarded as part of an order for support or maintenance, they may well not have been discharged." Awards of attorney fees for services in obtaining support or maintenance orders have been held non-dischargeable in bankruptcy under the exception stated in section 523(a)(5) of the United States Bankruptcy Code (the Code) (11 U.S.C. § 523(a)(5) (eff. Dec. 22, 2010)). *In re Papi*, 427 B.R. 457, 462 (N.D. Ill. 2010); *Rios*, 901 F. 2d at 72 (interpreting a

former version of section 523(a)(5)); *In re Maddigan*, 312 F. 3d 589, 597 (2d Cir.2002). [7]

¶ 76 Under section 523(a)(5), a Chapter 7 discharge does not discharge a debtor from a debt "for a domestic support obligation." 11 U.S.C. § 523 (a)(5) (eff. Dec. 22, 2010). The Code defines a "domestic support obligation" as a debt

> "(A) owed to or recoverable by-
>
> (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative;
>
> ***
>
> (B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;
>
> (C) established *** by ***
>
> (i) a separation agreement, divorce decree, or property settlement agreement;
>
> (ii) an order of a court of record[.]" 11 U.S.C. § 101(A)(i), (B), (C)(i), (C)(ii) (eff. Dec. 22, 2010).

¶ 77 Courts have extended the section 523(a)(5) exception to awards of attorney fees for services in obtaining support and maintenance orders, under the theory that a spouse or child's expenses of collection are part of the underlying support or

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[7] The former version of section 523(a)(5) interpreted by the *Rios* court provided, similarly to the statute at issue here, that a Chapter 7 discharge:

> "does not discharge an individual debtor from any debt to a spouse, former spouse or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record ***." 11 U.S.C § 523(a)(5) (1990).

maintenance obligation. *Rios*, 901 F. 2d at 72. But these exceptions apply only to attorney fees owed to "a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative" (11 U.S.C. § 523(a)(5) (eff. Dec. 22, 2010)), such as where a bankruptcy debtor has been ordered by a court to pay the attorney fees his spouse or child incurred in obtaining support or maintenance from him. A debtor's liability for his or her own attorney fees incurred in pursuing support or maintenance in divorce proceedings is not a debt owed to a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative for purposes of section 523(a)(5) and is, therefore, fully dischargeable in bankruptcy. *Rios*, 901 F. 2d at 72 (referring to a prior version of section 523(a)(5) as set forth *supra* in footnote 6); *Lindberg*, 92 B.R. at 483 (referring to a prior version of section 523(a)(5) as set forth *supra* in footnote 6).

¶ 78 Here, the trial court had ordered Cynthia to pay her own attorney fees. When she filed for bankruptcy protection, she was a debtor seeking to discharge her debt for her own attorney fees. This was a debt she owed to her former attorneys, not to her spouse, former spouse, her child or her child's parent, legal guardian or responsible relative. Therefore, the exception in section 523(a)(5) does not apply to her attorney fees and they were dischargeable in bankruptcy, even if she incurred those fees in pursuing Philip for maintenance or support. There is no question that any debt Cynthia owed for expert witness fees was dischargeable in bankruptcy. Accordingly, given that much of Cynthia's pre-bankruptcy debt for her attorneys fees and expert witness fees have been discharged in bankruptcy, she no longer has a basis for seeking contribution from Philip for these debts.

¶ 79 Nevertheless, as Cynthia points out, she had already paid in excess of $300,000 to her attorneys before the bankruptcy and, as a result of the bankruptcy, the majority of her remaining $300,000 in assets and the $115,000 she received from the bankruptcy sale were used to satisfy the bankruptcy creditors, thus depleting her assets. Taken together with the significant reduction in her available monthly income resulting from the bankruptcy sale and the potential increase in Philip's monthly income, remand for reconsideration of the court's denial of Cynthia's petition for attorney fees with regard to those amounts described above that she had actually paid is warranted.

¶ 80 CONCLUSION

¶ 81 For the reasons stated above, we affirm in part, vacate in part and remand with directions.

¶ 82 Affirmed in part, vacated in part and remanded with directions.