2015 IL App (1st) 130278-U

SECOND DIVISION
June 9, 2015

Nos. 1-13-0278 and 1-13-1910
(CONSOLIDATED)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEBRA YAMPOL,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 99 D 5004
	)	
MICHAEL KASKEL,	)	Honorable
	)	Nancy J. Katz,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not abuse its discretion in apportioning child-related costs between parties to dissolution judgment, and in particular did not err by granting reimbursement of expenditures by non-custodial parent without consent of custodial parent.

¶ 2 This case arises out of the 1999 agreed judgment dissolving the 1986 marriage of petitioner Debra Yampol and respondent Michael Kaskel, awarding custody of their two minor children to petitioner, and disposing of various collateral matters. In particular, petitioner appeals from orders denying reconsideration of orders of June 6 and October 4, 2012, regarding child

support and the apportionment of expenditures for support of their children. Petitioner contends that the court erred by incorrectly apportioning expenses and by disregarding prior dispositions and uncontradicted testimony in reaching its decisions. For the reasons stated below, we affirm.

¶ 3 BACKGROUND

¶ 4 Marital Settlement Agreement and Judgment

¶ 5 The parties signed a marital settlement agreement (Agreement) on September 10, 1999. The Agreement recites that petitioner had counsel, respondent waived his right to counsel and acknowledged that he could petition for attorney fees and that petitioner's counsel was not representing his interests, and the Agreement was drafted by petitioner's counsel to reflect the parties' oral agreement. The Agreement gives petitioner sole custody of the children – two daughters born in 1992 and 1995 – with detailed provisions on respondent's visitation (Tuesdays, Thursdays, and alternate Sundays, and one week of vacation annually), sharing of information with respondent, and both parties' "right to participate in all school activities of the children, not limited to extra-curricular activities." The Agreement provides that the children will be raised in the Jewish faith in kosher homes and thus provides for equal[1] division between the parties of the cost of each child's *bat mitzvah* – with arrangements to be made by petitioner "who will use her best efforts to ensure that the cost for same is reasonable, relative to the parties' incomes and comparable to that of the child's peers" – and one trip to Israel for each child. The Agreement expressly waives both parties' right to maintenance and provides for child support of $1,000 monthly from respondent (25% of his net income), with a 1% annual increase after five years up to 35% of his net income, until July 31, 2016. The Agreement provides for equal[1] division of the

[1] Unless respondent's income is 25% greater or more than petitioner's, then he shall contribute "proportionately."

children's "summer camp, gym classes, and other extra-curricular activities," and their uninsured medical, dental, and mental health expenses. The children's medical insurance shall be provided through petitioner's employment coverage, at equal expense of the parties in the absence of such coverage, and by respondent's employment coverage if petitioner becomes unemployed. The Agreement provides that each party must notify the other within three days of securing "hospital, serious or emergency" treatment of the children. The Agreement provides for respondent to pay two-thirds, and petitioner one-third, of the children's tuition and fees through high school, with any division of the expense of post-high-school education to be determined by law. The Agreement provides for the division of property, including awarding the jointly-titled marital home to petitioner with her "responsible to pay the mortgage."

¶ 6 On September 21, 1999, the court held a prove-up hearing attended by petitioner and her counsel. The court ascertained from petitioner at length why the Agreement awards her the marital home. The court ascertained from her when the parties married, that they had two daughters, that both parties were waiving maintenance, that she was to receive sole custody of the children with respondent having visitation three days weekly, that child support would be $1,000 per month with automatic increases, various ancillary matters, and that she considered the agreement fair and equitable to both parties. The court found that it had jurisdiction and the parties entered into the Agreement.

¶ 7 The court entered a written judgment of dissolution (the Judgment) on September 28, 1999, incorporating the Agreement. The Judgment notes that petitioner was in court in person and through counsel, the parties stipulated to an immediate hearing as an uncontested matter, and the court heard testimony before making findings and approving the Agreement. The findings include that both parties "are employed full-time, each earning sufficient income with which to

provide for his or her own support without contribution from the other," both parties entered into the Agreement freely and voluntarily, and the Agreement is fair and equitable.

¶ 8 2006 Memorandum Opinion on Child Support

¶ 9 Upon motions of the parties regarding child support, the court issued a memorandum opinion and order on child support on August 22, 2006 ("the 2006 Order"), reciting that it held a multi-day hearing with testimony and exhibits. Petitioner in 2002 sought increased child support, alleging that respondent's income increased, while respondent in 2005 sought abatement of child support during his alleged unemployment. Petitioner claimed that respondent's living expenses for 2002 through 2006 belied the income he declared on tax returns for those years, while respondent argued that expenses petitioner alleged to be personal were business expenses and his tax returns were accurate. The court did not accept either parties' claims uncritically but divided respondent's expenses for 2002 through 2005 into undisputed personal expenses and disputed expenses and concluded from the fact that undisputed personal expenses exceeded adjusted gross income in all four years that he "had more income available to him for personal expenses than his tax returns would suggest" and imputed his undisputed personal expenses for each year as that year's income for computing child support.

¶ 10 After applying a 36% tax rate as petitioner argued, the court found monthly net income of $4,972 for 2002, $6,172 for 2003, $3,211 for 2004, and $2,634 for 2005. Monthly child support of 25% was $1,243 in 2002, or $243 over the Judgment's $1,000 monthly adding up to $972 owed for September through December 2002. Monthly child support was $1,543 in 2003, or $543 over the Judgment, with $6,516 owed for 2003. Monthly child support of 28% as required in 2004 was $899, less than the Judgment, but respondent did not seek reduction until August 2005. Monthly child support was $738 in 2005, or $262 over the Judgment, adding up to $1,310

from August through December 2005. The court used the 2005 numbers for 2006, absent fuller data, and found respondent overpaid $1,310 from January through May 2006. In sum, the court found respondent owed $4,868 from 2002 through May 2006, to be paid at $150 monthly. The court found that any improvement in respondent's lifestyle was due to his new wife's resources and should not affect child support. The court found both parties capable of contributing towards expenses and ordered that respondent continue to pay for the children's health insurance and half of their uninsured medical costs while reducing his tuition contribution from the Judgment's two-thirds to half. The court rejected respondent's abatement request but found that his change in employment was not done to avoid child support. His monthly child support obligation was modified to $738 as his 2005 income was imputed to 2006. The court ordered that each party pay its own attorney fees and costs.

¶ 11 Petitioner timely moved for vacatur of the 2006 Order, raising various challenges. The court denied the vacatur motion on April 2, 2007, finding that it was legally deficient or the court had considered and rejected its factual allegations.

¶ 12 2008-2009 Orders

¶ 13 On January 8, 2008, the court ordered respondent to pay "without prejudice" certain expenses of the younger daughter's *bat mitzvah* totaling $3,500 while reserving "the issue of any further responsibility of respondent for other *bat mitzvah* expenses." On May 13, 2008, the court denied petitioner's motion for reimbursement of *bat mitzvah* expenses following a hearing with testimony and evidence. Noting that the Judgment provides that *bat mitzvah* costs be reasonable to the parties' incomes and comparable to those of the daughters' peers, the court found the costs "excessive and unreasonable in light of the parties' incomes" and concluded that respondent's earlier $3,500 contribution satisfied his obligation under the Judgment.

¶ 14 On July 15, 2009, the court entered an agreed order modifying child support, finding respondent's annual gross income to be $70,000 and setting his monthly payment at $952.

¶ 15 Proceedings Leading to the June 2012 Memorandum Opinion

¶ 16 Respondent filed motions in 2008 and 2009 seeking to modify the Judgment regarding the children's expenses. Petitioner responded to the motions, arguing that a custody judgment is not modifiable absent a change in circumstances for the child or custodial parent, a property judgment is not modifiable except under the limited conditions for reopening a judgment including a two-year limit, respondent should be bound by the Agreement, and his wife's resources should be considered in addition to his own income.

¶ 17 The court held a multi-day hearing on the petitions. The hearing of March 16, 2011, began by referring to prior evidence presented and ended by referring to evidence yet to be presented. On that day, the parties presented and were examined and cross-examined upon a handful of exhibits including bank statements and checks. On April 13, 2011, the court ordered the parties to submit their closing arguments in writing.

¶ 18 Petitioner's argument described in detail the contributions she was seeking from respondent for medical, eyecare, dental, counseling, educational, *bat mitzvah*, and activities expenses for the children. She argued that her sole custody renders as mere gifts any expenses respondent incurred for the children without her permission. She argued that respondent had unpaid obligations for child support, attorney fees, and repair of the marital home, that a car he gave her in payment had incurred parking tickets and was subject to a "boot" order, and that he was delinquent in his Judgment obligation to maintain life insurance. On matters not addressed in the Judgment, she sought respondent's contribution to the college tuition of the older daughter and to the children's car insurance.

¶ 19 Respondent argued that various expenses sought by petitioner were either incurred by her without regard for the parties' incomes or not actually paid by her. He allegedly overcontributed for tuition, dental, eyecare, medicine, camp, and counseling expenses, and he argued that the Judgment requires that petitioner pay half of the premium he paid for health insurance for the children when neither party was employed. He challenged petitioner's stance that expenses he incurred without her permission were gifts and argued that he incurred expenses for the children because petitioner "exercised poor judgment" on matters such as eyecare. He argued that the marital home repair was not pursuant to the Judgment, petitioner failed to produce the alleged parking tickets, she did not allege unpaid child support in the proceedings leading to the 2006 Order, and he paid attorney fees in full. He argued that the older daughter had not completed high school and he saw "no reason" for her to be taking college courses. He conceded that his wife pays household expenses including mortgage and utilities but argued that his debts exceed his income to the degree that he could not support himself and the children if he was on his own.

¶ 20 Memorandum Opinion of June 6, 2012

¶ 21 The court issued its memorandum opinion and order on June 6, 2012, noting that it heard the testimony of the parties and considered their exhibits. The court found respondent generally credible and "forthright" with a few exceptions, though he "occasionally appeared arrogant." By contrast, petitioner "consistently portrayed herself in an extremely favorable light" and as respondent's victim, "blam[ing] him for her every misfortune" so that her view of herself and respondent "skewed her perspective on past events" and rendered her account exaggerated and unreliable. For example, she argued that he chose to end his career, while the court found in the 2006 Order that his income had declined and he did not change careers to avoid his obligations to his children. Petitioner asserted that various documents supporting her claims were destroyed

and relied in part on her recollection and respondent's documentation of payments. She presented bills for certain expenses but not documentation that she paid them, and many bills were prepared for litigation years after the services at issue. The court therefore carefully scrutinized non-contemporaneous bills though "no foundation or authenticity objections were made by either party." Conversely, many checks respondent presented as proof of payment were hard to read and consolidated obligations without distinction. On respondent's argument that petitioner received gifts to pay various child-related expenses and presented no evidence that she paid many of the bills she presented, she testified that she either paid the bills or received loans to pay them. However, many documents were silent or ambiguous regarding if or by whom payment was made, and petitioner "did not substantiate any loans."

¶ 22 Regarding health expenses, the court found that the Judgment's division of medical expenses according to income – two-thirds from respondent, one-third from petitioner – applies to expenses before the 2006 Order while the equal division in the 2006 Order applies thereafter. The court noted that the Judgment requires the parties to carry health insurance for the children, and found respondent credible that either he or petitioner had insurance at the relevant times, so that the court had to evaluate the parties' assertions on whether insurance claims were made before ruling on reimbursement. Omitting bills paid by an acquaintance of petitioner, accepting respondent's proof of payment, and rejecting petitioner's claim that respondent should pay the entire cost of glasses and medication lost during visitation, the court found respondent owed petitioner $1,069.46 for eyecare and $254.90 for medication. As to medical care, the court rejected a bill unsupported by documentation of payment or insurance claim where testimony conflicted as to why insurance did not cover the claim, rejected other claims for lack of a bill or documentation that a bill was submitted to insurance or paid, rejected a claim for 100% of an

emergency-room test because petitioner was punishing respondent for not taking the child for the test, and found respondent owed $187.50 and $119.88 to petitioner and $424.34 to providers. Regarding dental care, the court rejected a claim for cosmetic fillings as unnecessary and on conflicting testimony as to whether respondent agreed to the procedure, rejected a claim for travel to an Indiana orthodontist (petitioner's cousin) on conflicting testimony as to why petitioner chose him, and found respondent liable to the orthodontist for $1,215. Regarding counseling and therapy, the court rejected as unproven respondent's argument that free speech therapy was available through school, rejected his argument that one child did not need therapy, denied as undocumented and of unproven necessity petitioner's claim for hydrotherapy, and found respondent owed petitioner $843.

¶ 23 Regarding tutoring, the court acknowledged respondent's arguments that the Judgment does not require him to contribute for tutoring and that he had no decision-making power in choosing tutors so petitioner chose expensive providers. The court noted that two providers sent letters in 2010 for services rendered from 2003 to 2006, and the court found the letters to be "hearsay documents drafted years after the tutoring occurred" and thus of "little evidentiary value." The court also found that the Judgment does not require respondent to contribute towards tutoring and rejected all such claims. As to class portraits from 2000 through 2011, the court found that class portraits are not tuition nor mandatory school fees under the Judgment and (from testimony) that the parties never agreed to share the costs. As to the older daughter's college tuition, petitioner testified to enrolling her in college courses to complete high school as an alternative to summer school, while respondent testified that he was not consulted before petitioner enrolled her and he was already contributing for high school, and presented a letter from the high school that the daughter had completed the State requirements for high school

although not the school's own requirements to graduate. The court rejected the college tuition claim, finding that the college tuition did not constitute high school tuition under the Judgment and that the parties did not agree to the college courses.

¶ 24 The court agreed with petitioner that respondent holding a separate *bat mitzvah* for the younger daughter did not obviate his Judgment obligation to contribute to reasonable expenses of the *bat mitzvah* she organized. However, the court found petitioner's $9,000 event unreasonable while respondent's $6,000 event was reasonable and concluded that he owed $4,000.

¶ 25 As to the children's various activities, including camps, retreats, and music lessons, respondent challenged "many" expenses as unagreed, not paid by petitioner, or not being extracurricular activities under the Judgment. Regarding a retreat, the court took evidence on whether petitioner applied a scholarship to her share of the expense rather than equally to both parties' shares. Respondent testified that the rabbi from the retreat organization told him that the organization was not seeking payment from him. However, the rabbi testified that the "scholarship" in the organization's bill was its deferral of a portion of respondent's share, and he told respondent that he was deferring to the court to decide whether respondent would pay. The court questioned the rabbi's explanation of why the organization called a deferral a scholarship, found it to be indeed a scholarship, and adjusted the claim accordingly. The court found camp expenses for 2009 and 2010 unreasonable in light of the parties' income. The court found various documents purporting to be a park district's account statements to be "prepared years later for the purposes of litigation" and thus not credible. The court found that respondent documented but could not accurately apportion 2002 payments "vastly in excess of his payments for child support" and other expenses and thus deemed as paid all activity expenses for 2002. In light of previous payments by respondent and findings that scholarships were awarded to the children

rather than petitioner and that certain expenses were undocumented, the court found respondent owed $147.19 for 2000, $711.79 for 2001, $13.33 for 2003, $96 for 2004, $385.42 for 2005, $277 for 2006, and providers were owed $332 for 2009 and $549.50 for 2010.

¶ 26 Regarding child support, petitioner testified to a $3,533 arrearage for 2002 to 2004 that she did not recognize until she compared her receipts to respondent's documentation, while he denied any arrearage and claimed to have overpaid. The court rejected the arrearage claim. The court found the documentation "not dispositive" due to illegible and inadequate check notations but noted that the parties were disputing child support at that time and found that petitioner would have asserted the arrearage then. The court found its 2006 Order dispositive of the issue of child support up to the time of that Order, as the court heard and ruled on evidence of child support payments for 2002 to 2004, and disposed of the present arrearage claim as *res judicata*. A challenge to the 2006 Order under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) would fail as untimely, and a motion to modify child support from the 2006 Order could only be prospective.

¶ 27 Regarding car insurance, petitioner was seeking $1,625 as respondent's equal share based on an oral agreement rather than the Judgment. After considering the parties' testimony, the court found an insufficient meeting of the minds for an agreement except for six weeks of insurance that respondent agreed to pay, and thus ordered him to pay $100 for his half of six weeks' insurance. Regarding life insurance, the court noted that the Judgment directs respondent to provide it but found that the parties agreed that petitioner would buy the insurance and respondent would reimburse her until 2004 when he began paying the premium himself. The court found that respondent documented his reimbursements up to 2004 but no credible evidence for 2004 and thus found that he owed her $1,079.10 for 2004 premiums.

¶ 28 Regarding repair of the heating and air conditioning system in the marital home, petitioner asserted that respondent insisted on inspection of the system but refused to pay. He asserted that he agreed to pay for the inspection but did not receive a bill until 2008, and noted that petitioner tendered a check but no invoice. In the absence of clear agreement by the parties, the court rejected the claim. Regarding the parking tickets, the parties agreed that respondent gave petitioner a car in lieu of paying certain obligations. Petitioner testified that the car was "booted" in 2002 and she paid $570 in tickets rather than delay return of the car by contesting them, while respondent testified that he was unaware of any tickets or "boot" order when he transferred the car in November 2001. The court found petitioner credible as there were nine tickets by mid-November but rejected the claim, noting that there was no testimony that the oral transfer agreement addressed liens or attachments, the five-year limitation period for enforcing oral agreements had passed, and petitioner waived any defenses to the tickets. The court rejected petitioner's claim for attorney fees, noting that she offered only a letter from her attorneys "dated after the initiation of this litigation" assigning the debt to her for collection, while respondent testified that he reimbursed petitioner's sister for paying the bill.

¶ 29 On respondent's counterclaims, the court found that he should receive $377.29 for half of his documented and necessary eyecare expenses for the children in 2007 and 2008, expressly rejecting petitioner's gift argument. On his claim that he overpaid on his two-thirds of school tuition for seven years to $12,214.69 total, the court noted its rejection of petitioner's argument that scholarships should be credited to her third but found the school's documentation inadequate and rejected the claim. Regarding camp expenses, respondent argued that he overpaid certain 2004 and 2005 expenses, and the court found that it had not clearly addressed pre-2006 camp expenses. Applying respondent's two-thirds contribution as before the 2006 Order, the court

found $1,796.65 total overpayment. Regarding counseling expenses, each party claimed to have paid a counselor for services in 2001 and 2002. Respondent corroborated his claim but petitioner did not, so the court awarded respondent one-third of his expense or $1,548.50. The court found respondent's evidence credible on the remaining expenses of school lunches and gym clothing for 2003 and found that petitioner's one-third portion was $237 and $12.50 respectively.

¶ 30 Regarding health insurance, the court construed the Judgment to first require petitioner to provide such insurance through her employer, then split the cost of insurance if her employer would not provide it, then require respondent to buy insurance if she was unemployed. While respondent noted that the 2006 Order found that petitioner was employed or should have been employed for the relevant period, that Order also found that the parties had agreed for respondent to provide the insurance without addressing reimbursement by petitioner. Since respondent could have, but did not, raise that issue during litigation of the 2006 Order, the court rejected the claim.

¶ 31 In conclusion, the court found the net obligation of respondent to petitioner to be $5,313.28 and ordered him to pay within 30 days or pay at least $150 monthly until paid in full with 9% interest. The court reiterated that both parties should pay providers as ordered above.

¶ 32 Proceedings After the June 2012 Memorandum Opinion

¶ 33 On petitioner's timely motion for additional time to file a post-trial motion, the court granted her until August 31, 2012. Petitioner filed a motion to reconsider the June 6 order, as respondent filed a November 2012 response thereto, but the record does not contain a copy of the motion for reconsideration.

¶ 34 On October 4, 2012, the court denied respondent's motion to modify child support, finding no substantial change in circumstances. The court also denied petitioner's affirmative defenses based on the court's prior child support decisions.

¶ 35 Petitioner timely filed a motion to reconsider the October 4 order. She argued that the court's reliance on its prior child support decisions meant that the court was applying *res judicata* but *res judicata* should not apply because respondent did not seek to, and could not, modify the Agreement and Judgment as they awarded child support as "a vested right."

¶ 36 On December 26, 2012, the court denied petitioner's motion to reconsider the June 6 order, having "read the motion" and found that she did not meet "any of the standards under the law for reconsideration" such as misapplication of law or new facts. The order denying the motion for reconsideration included a finding that "there is no just cause for delay of enforcement or appeal of this final order." Petitioner timely filed a notice of appeal, commencing case number 1-13-0278.

¶ 37 On May 2, 2013, the court denied petitioner's motion to reconsider the order of October 4, 2012, expressly finding no errors of law in that order. The court took the matter off-call "although subsequent pleadings on other matters remain before the court," and in another May 2 order it scheduled a hearing on "setting a possible cap on younger daughter's expenses in Israel 2013/2014." On May 30, on petitioner's motion noting that the court "was agreeable to the 304A wording" at the May 2 hearing, the court amended its May 2 order *nunc pro tunc* to include a finding that "[p]ursuant to Rule 304(a) *** there is no just reason for delaying appeal." Petitioner's notice of appeal, commencing case number 1-13-1910, was filed June 10, 2013.

¶ 38 ANALYSIS

¶ 39 No Appellee Brief

¶ 40 Before addressing the merits of this appeal, we note that we are considering the merits of this appeal on petitioner's brief alone, as respondent has elected to not file an appellee's brief. See *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 13.

¶ 41 The Factual Issue Presented by Petitioner

¶ 42 We note that the record does not include a transcript or appropriate substitute (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) for various proceedings. Transcripts of the hearings where witnesses testified leading up to the key 2006 Order and denial of its vacatur are absent, as is the hearing transcript of May 12, 2008, on petitioner's motion for reimbursement of *bat mitzvah* expenses. The absence of transcripts for the hearings – except for one day – leading up to the memorandum order of June 6, 2012, is notable as this is one of the two orders petitioner is challenging on appeal. Also notable is the absence of the hearing transcripts of October 4, 2012, resulting in the other order being challenged on appeal, and the denial of reconsideration for that order.

¶ 43 As appellant, petitioner is obligated to provide us a sufficiently complete record of the trial court proceedings to support her claims of error, so that we must presume in the absence of such a record that the court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). In particular, an issue relating to a court's factual findings and basis for its legal conclusions cannot be reviewed absent a report or similar record of the proceeding. *Id*. Modification of a dissolution judgment is a matter for the sound discretion of the trial court and we reverse only upon an abuse of discretion; that is, where no reasonable person would take the view adopted by the trial court. *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 45. The court here was fastidious in explaining why it accepted certain claims and rejected others and why it credited certain evidence and discounted other evidence. We find its explanations reasonable and well within its discretion as trier of fact. Moreover, petitioner's contention that the court disregarded uncontradicted and uncontested testimony in reaching its decisions is a factual issue inextricably linked to evidence presented at

hearings so that issue cannot be resolved on the incomplete record before us containing only a fraction of the evidence presented to the court.

¶ 44 Questions of Law

¶ 45 However, review is not precluded where this court is presented with a question of law and can decide the issue based on the documents found in the record. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007)(review not precluded where record contains all the evidence a reviewing court needs to dispose of legal issues raised under the applicable standard of review because a reviewing court is in same position as trial court). For reasons stated below, we find that two of petitioner's contentions may be addressed as legal questions based on the applicable statutes, the Agreement and Judgment, and the trial court's written orders.

¶ 46 There are two questions of law presented by petitioner (a) whether the court erred when it awarded respondent reimbursement of expenditures incurred without consent of petitioner as custodial parent; and (b) whether the court's prospective modification of the judgment infringed upon the petitioner's vested rights.

¶ 47 Section 502 of the Illinois Marriage and Dissolution of Marriage Act (the Act)(750 ILCS 5/101 *et seq.* (West 2012), provides that the parties to a dissolution action "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 2012). The terms of such an agreement "except those providing for the support, custody and visitation of children" become the enforceable contract of the parties and judgment of 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), (e) (West 2012). Such an agreement may preclude or limit later modification "except for terms concerning the support, custody or visitation of children," and where modification is not or cannot be limited by the agreement the "terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West 2012). In the same vein, section 607 of the Act governing visitation provides that a "court may modify an order granting or denying visitation rights of a parent *whenever* modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." (Emphasis added.) 750 ILCS 5/607(c) (West 2012).

¶ 48 Section 505 of the Act governs child support and authorizes a court in a dissolution action to "order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the support of the child, without regard to marital misconduct." 750 ILCS 5/505(a) (West 2012). The duty of support "includes the obligation to provide for the reasonable and necessary educational, physical, mental and emotional health needs of the child" and a "child" for support purposes is one under age 18 or under age 19 if still attending high school. 750 ILCS 5/505(a) (West 2012). Section 505 provides that the court "shall determine the minimum amount of support" with guidelines that, in relevant part, a party supporting one child shall pay 20% of his or her net income and a party supporting two children shall pay 28% thereof.

> "The *** guidelines shall be applied in each case unless the court finds that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, one or more of the

> following relevant factors: (a) the financial resources and needs of the child; (b) the financial resources and needs of the custodial parent; (c) the standard of living the child would have enjoyed had the marriage not been dissolved; (d) the physical, mental, and emotional needs of the child; (d-5) the educational needs of the child; and (e) the financial resources and needs of the non-custodial parent.
>
> If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines." 750 ILCS 5/505(a)(2) (West 2012).

Section 505 also grants the court discretion to "order either or both parents owing a duty of support to a child of the marriage to contribute to the following expenses, if determined by the court to be reasonable: (a) health needs not covered by insurance; (b) child care; (c) education; and (d) extracurricular activities." 750 ILCS 5/505(a)(2.5) (West 2012).[2]

¶ 49 Section 510 of the Act governs modification of judgments as to maintenance, support, and property and provides that a child support provision in a judgment may be modified "upon a showing of a substantial change in circumstances" and only prospectively; that is, "only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a)(1) (West 2012). This is in distinct contrast to property dispositions in a judgment, which "may not be revoked or modified, unless the court finds the

[2] Before this provision was added, this court recognized the trial court's authority to order such contribution at its discretion, arising from the general support obligation in section 505(a) and from sections 505.2 and 513(a)(2) of the Act. 750 ILCS 5/505.2, 513(a)(2) (West 2012); *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 385-86 (2010); *In re Marriage of Waller*, 339 Ill. App. 3d 743 (2003).

existence of conditions that justify the reopening of a judgment under the laws of this State." 750 ILCS 5/510(b) (West 2012).

¶ 50 Section 608 of the Act governs court supervision of custody matters and provides that:

> "*Except as otherwise agreed by the parties in writing at the time of the custody judgment or as otherwise ordered by the court*, the custodian may determine the child's upbringing, including but not limited to, his education, health care and religious training, unless the court, after hearing, finds, upon motion by the noncustodial parent, that the absence of a specific limitation of the custodian's authority would clearly be contrary to the best interests of the child." (Emphasis added.) 750 ILCS 5/608(a)(West 2012).

¶ 51 Reimbursement of Expenses Not Approved by the Custodial Parent

¶ 52 Here, petitioner first argues that the court erred by awarding respondent reimbursement of expenses not approved by petitioner, as she is the custodial parent under the Judgment and thus has plenary authority over the raising of the children to the exclusion of respondent. Therefore, she argues, any expense incurred by respondent without her consent must be deemed a gift. However, while the Judgment indeed awards petitioner sole custody of the children, it does not give her plenary authority over the raising of the children to the exclusion of respondent, nor does it convert any child-related expenses incurred by respondent without her consent into gifts. While section 608 of the Act indeed provides that the custodial parent "may determine the child's upbringing, including but not limited to, his education, health care and religious training," the court is empowered to supervise a custodial parent's exercise of custody if the custodian's authority would be contrary to the best interest of the child. 750 ILCS 5/608(a)(West 2012). We note that petitioner cites no case or statutory authority supporting her

contention that here plenary authority over the parties' children renders respondent's child-related expenses incurred without petitioner's consent into gifts.

¶ 53 Moreover, section 608 clearly provides that the custodial parent's authority may be modified in the agreed judgment or by the court. 750 ILCS 5/608(a)(West 2012). The Agreement provides for sharing of information with respondent, that he has "the right to participate in all school activities of the children, not limited to extra-curricular activities," and that each party must notify the other within three days of securing "hospital, serious or emergency" treatment of the children. The latter implicitly contemplates respondent incurring expenses on behalf of the children without petitioner's permission. The Agreement also provides that the parties shall equally bear the children's uninsured medical, dental, and mental health expenses, without a limitation or proviso that the expenses be incurred with petitioner's consent. In light of the preceding, we will not hold that petitioner's sole custody of the children renders respondent's child-related expenses incurred without her consent into gifts.

¶ 54 The Court's Prospective Modification of the Judgment Did Not Infringe on the Petitioner's Vested Rights

¶ 55 Next, petitioner contends that the orders at issue are erroneous because the court failed to award her certain claims though they were already vested under law. However, as noted above, a marital settlement agreement cannot limit modifications for "support, custody or visitation of children," and a modification of the judgment also modifies the underlying agreement. 750 ILCS 5/502(f) (West 2012). Thus, the provisions of an agreement relating to support, custody, and visitation of children are not binding on the trial court. *In re Marriage of Linta*, 2014 IL App (2d) 130862, ¶ 13, citing 750 ILCS 5/502(b) (West 2010). While a court cannot modify child support retroactively, the court here was scrupulous in both the order of June 6, 2012, and the key 2006

Order in ruling only prospectively on child support and reimbursement of child-related expenses. When apportioning expenses in the 2012 order, it applied the Judgment's apportionment to expenses incurred before the 2006 Order and applied the new apportionments of the 2006 Order only to expenses incurred after the 2006 Order. We see no basis for a claim that the court infringed upon any vested rights of petitioner.

¶ 56 Conclusion

¶ 57 Accordingly, we affirm the judgment of the circuit court.

¶ 58 Affirmed.