FIRST DIVISION
July 31, 2017

No. 1-16-1240
2017 IL App (1st) 161240-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
CHRISTOPHER L. CASEY,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant,	)	
	)	No. 07 D 8286
and	)	
	)	
HOLLY W. CASEY,	)	Honorable
	)	Mark J. Lopez,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Although respondent never sought full-time employment, the trial court's grant of respondent's petition to extend maintenance was not an abuse of discretion where the trial court considered the statutory factors in reaching its determination that good cause existed for respondent's inability to achieve partial or full financial independence; the trial court's decision to hold petitioner in indirect civil contempt was not an abuse of discretion where petitioner sought to avoid paying respondent her agreed-upon share of his annual bonus by engaging in self-help; trial court's decision denying petitioner's request to require respondent to retroactively contribute to the oldest child's college education affirmed where petitioner failed to present a sufficiently complete record; affirmed.

¶ 2 Petitioner, Christopher L. Casey, appeals a postdissolution order dated April 8, 2015, that granted the petition of respondent, Holly W. Casey, to extend maintenance and that held petitioner in indirect civil contempt. Petitioner also appeals the trial court's April 13, 2016, order

that denied his request to require respondent to contribute retroactive college contribution for their oldest child. We affirm.

¶ 3 BACKGROUND

¶ 4 Petitioner and respondent were married on June 29, 1991, and they had three children, namely, Sean, born March 27, 1995, Dylan, born October 2, 1996, and Anna, born October 12, 2001. Petitioner filed for dissolution in August 2007 and the parties were awarded a judgment for dissolution of marriage on March 12, 2009. In the judgment of dissolution of marriage, the circuit court made the finding that during the marriage, irreconcilable differences and difficulties arose that caused the irretrievable breakdown of the marriage. Additionally, the judgment for dissolution of marriage incorporated the parties' marital settlement agreement (MSA), dated March 12, 2009, that addressed, *inter alia*, the issues of maintenance, each party's property rights, and child support. The parties had previously executed a joint parenting agreement that resolved all custody and parenting time issues.

¶ 5 Article 5(b) of the MSA provided:

> "Upon entry of judgment for dissolution of marriage Chris shall pay to Holly as and for unallocated family support the sum of $12,000.00 per month from his base income as and for maintenance for 60 months (unallocated family support) predicated on his represented current annual base gross salary of $300,000.00. Chris shall pay this unallocated family support via an order of support which deducts support in equal installments from his paychecks which are currently 26 per year and thus, $5,538.00 per paycheck. In addition, gross employment cash bonus income received by Chris above this $300,000.00 or his base income threshold, he will pay an amount equal to 50% of said sum after reducing said figure for FICA, Medicare/Medicaid or other mandatory

> taxes withheld (initial bonus family unallocated support). From Chris' gross employment cash bonus income received by Chris in excess of $352,500.00, and less than $600,000.00, he will pay 20% of said cash bonus income, after reducing from said income any FICA, Medicare/Medicaid or other mandatory tax withholding (secondary bonus unallocated family support). The parties agree that Chris will not accrue any additional bonus unallocated family support and/or child support and/or maintenance on bonus income earned in excess of $60,000.00 in gross income, absent further order of Court as set forth later in this agreement."

¶ 6 The MSA stated that respondent's right to receive unallocated family support would terminate upon the first to occur of the following: respondent's marriage, respondent's death, petitioner's death, respondent's cohabitation with an individual on a continuing conjugal basis, or on February 28, 2014. The MSA further provided that respondent's right to maintenance beyond February 28, 2014, was to be determined if respondent filed a petition seeking to extend and that "[t]he parties agree that the language contained in this Article shall not create a presumption in favor or against either party as to Holly's petition filed pursuant to this paragraph and neither party shall have a greater burden of proof." If respondent did not file a petition seeking to extend maintenance by January 1, 2014, then she would be barred from seeking and/or receiving maintenance beyond February 28, 2014.

¶ 7 The MSA reflected that for tax purposes, all unallocated family support and bonus support would be included in respondent's gross income and deductible from petitioner's. Also in relevant part, the MSA stated:

> "Chris shall be obligated to disclose to Holly any additional gross income he earns or receives above the aforementioned $300,000 annual threshold within 7 days of

such occurrence with documentation thereof, and shall be obligated to make such payment and shall be obligated to make the payments to Holly set forth hereinabove within 14 days from the occurrence thereof."

¶ 8 The parties' agreement further stated respondent would receive the marital home, located in Wilmette, free and clear of any claim by petitioner. At respondent's option, the parties agreed to cooperate to have respondent refinance the debt associated with the home so as to remove petitioner's name therefrom, which included the first mortgage and a home equity line of credit (HELOC).

¶ 9 Regarding the children's postsecondary education, the MSA provided that the parties' obligations to pay the children's educational expenses would be determined in accordance with the provisions of Section 513 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/513) (West 2012).

¶ 10 On July 31, 2013, in advance of the eldest child, Sean, starting college, petitioner filed a petition for contribution to college expenses. The petition stated that according to the MSA, both parties were to pay for the educational expenses of the children and that the parties' son, Sean, would be attending Boston College in fall 2013. The petition alleged that respondent had the financial resources to contribute to Sean's education expenses. Respondent filed her response to the petition for contribution on September 19, 2013, admitting all of the allegations in the petition but stating that her financial resources were "dwarfed" by petitioner's. Respondent also argued that she made a contribution for that academic year commensurate with her limited financial resources.

¶ 11 On December 26, 2013, respondent filed a petition to extend unallocated family support, in the alternative to establish maintenance and child support, and in the third alternative to

establish child support. The petition stated that respondent was the children's primary residential custodian, and that two of the three children were still minors who required continuing support. The petition averred that respondent was employed on a part-time basis with the Northwestern Physician Group, earning approximately $10,000 per year in gross salary. Respondent was also self-employed on a part-time basis as a nutritionist, earning a nominal income. The petition alleged that petitioner was employed by the Nielsen Company and earned an income of nearly $600,000 per year in gross salary. The petition further asserted that although respondent was employed, she was unable to work to support herself in a manner consistent with the standard of living attained during the marriage because she cared for the parties' children. Also, respondent alleged that she "[had] attempted to become self-sufficient and fully rehabilitate herself; however, her attempts have been unsuccessful at this time." Further, the petition stated that without receiving monthly unallocated support from petitioner, respondent would not be able to support herself or the two minor children or maintain the standard of living experienced during the marriage. Respondent's petition sought an extension of unallocated support for a period of at least five more years.

¶ 12 On January 28, 2014, petitioner filed his response to the petition for extension of maintenance, arguing that respondent had the ability and the obligation to support her own reasonable needs and marital lifestyle. Petitioner pointed out that one of the parties' children no longer lived in the home, and argued that respondent failed to comply with the terms of the Marriage Act that required her to take certain actions to become self-supporting.

¶ 13 On February 28, 2014, respondent filed an emergency petition to set interim support that again argued that although respondent attempted to become self-sufficient and fully rehabilitate herself, she had been unsuccessful. The emergency petition stated that it was brought on a time-

sensitive basis because respondent had several bills that were due and owing, including property taxes and state and federal taxes, and she would be unable to maintain the children's previous standard of living without an extension of unallocated maintenance or child support.

¶ 14 On March 5, 2014, the parties entered into an agreed order that stated in part:

¶ 15 "Christopher has informed Holly, through counsel, of his intent to pay Holly approximately $14,000.00 as and for what he believes is the appropriate calculation of support under the terms of the Judgment (support including child support and maintenance). As these calculations have not been reviewed by counsel, the figure and method of calculation are not yet agreed, but subject to Court review in the event of a disagreement. Christopher shall tender (in person or by mail) to Holly a payment of $14,000.00 which represents his calculations on Friday, March 7, 2014, without prejudice to any pending issues."

¶ 16 Petitioner filed his response to the emergency petition on April 16, 2014, that only included admissions or denials in response to the allegations of respondent's emergency petition.

¶ 17 The court conducted four days of hearing on August 19, 2014, October 6, 2014, October 7, 2014, and November 3, 2014. At the hearing, petitioner and respondent were the only witnesses called. Petitioner testified that was living with his current wife in a 6-bedroom, 6-bathroom home in Northfield that he purchased for $1.5 million, with a $500,000 down payment from his own funds. Petitioner's current wife's three children also resided in the home. Petitioner testified that he was the current president of Nielsen Innovation Practice, which is in the consumer insights business. His 2012 income tax returns showed wages of $587,266, and two stock sales with proceeds of $525,000. In 2013, his wages were $763,000, and his total ordinary income was $807,000. He also sold stock for $535,305, upon which the taxable gain

was $40,000. Petitioner stated that his current salary was $350,000, and that he received a bonus every February. Specifically, in February 2014, he received a $290,000 bonus. Petitioner testified that he only paid respondent $14,000 of that bonus because he prorated it for the year and only paid the first two months.

¶ 18 Petitioner testified that he pays $4330 per month for college tuition for Sean, the oldest child. He also acknowledged that respondent had contributed $5000 total to pay for Sean's college. Petitioner also testified that there was a 529 account for Sean with approximately $30,000 in it, but that he had not used that money to pay for Sean's college. Petitioner stated that he currently had total monthly expenses of approximately $41,000 per month, and that when he was married to respondent, his monthly expenses were only approximately $15,000. Petitioner acknowledged that he was living better at the time of the hearing than previously in his life.

¶ 19 Respondent testified that at that time she was 47 years old, in good health, and resided in the marital home in Wilmette, as she had done for 17 years. The parties oldest child was 19 years old and in college, the second oldest was 18 and a senior in high school, and the youngest was 12 and in seventh grade. Petitioner stated she received a bachelors of science degree from Rutgers University prior to the marriage and a master's degree in nutrition from Drexel University in 1991, the year she and petitioner were married. During the marriage but prior to having children, respondent acknowledged that she worked in a hospital setting and an outpatient clinic as a registered dietician for more than three years while petitioner attended business school. Respondent testified that she was a full-time wife and mother, and that she believes she could not seek to be employed full-time until their youngest child went to college. Respondent stated that she had not made any application for full-time employment because her primary duty was to her children and taking care of the children took up most of her time.

¶ 20 Respondent testified that in 2012, she started working part time, on Wednesdays and every other Saturday, at Deerpath Primary Care in Libertyville. She worked as an independent contractor and was paid 40% of each patient's fee. Respondent stated that the most she made in a year at that job was $5000. Subsequently, Deerpath was purchased by Northwestern Medical and respondent then worked as a "casual employee," which meant she could work 12 hours per week at a rate of $29.71 per hour. At this job, respondent stated she made approximately $2000 to $3000 per year. Additionally, respondent testified that she got re-licensed so that she could see private clients, and at most, she has had four clients at one time and gets paid approximately $70 to $100 per session.

¶ 21 Regarding the debts owed on the marital home, respondent testified that she was unable refinance the home as was stated in the MSA, so she paid off the first mortgage and the HELOC with funds she borrowed from her parents. Respondent testified that she has a monthly obligation of $4500 to repay the money borrowed from her parents, but that she has not been able to pay that amount every month. Respondent testified that she signed a promissory note for her parents on April 10, 2009, in the amount of $347,000, which was for the first mortgage on the marital home. Respondent stated that she also had a promissory note for the HELOC, but did not have it with her at the hearing. Respondent also testified that after her father died in September 2014, her mother's attorney had respondent sign a consolidated loan agreement for $4500 per month.

¶ 22 Regarding Sean's college expenses, respondent testified that she paid $5000 toward college expenses for him, and that she also paid for flights to and from Boston and provided spending money. Respondent stated that she has a $75,000 investment account and $78,791 in a retirement fund, which represents her life savings.

¶ 23 Both parties testified that petitioner had made all 60 monthly payments of unallocated support as required by the MSA. At the close of the hearing, both parties submitted written closing arguments to the court.

¶ 24 On October 7, 2014, during the interim of the hearing dates, respondent filed a petition for rule to show cause for indirect civil contempt, stating that on February 21, 2014, petitioner received a bonus in the amount of $290,000, which was prior to the termination of his unallocated support obligation. The petition alleged that petitioner paid respondent $14,000 of said bonus at the time the bonus was paid, rather than paying the full amount of the bonus for the year 2014, as he had done in 2010, 2011, 2012, and 2013. According to respondent, petitioner had alleged that the full amount of her share of the bonus in previous years had been approximately $70,000, but that petitioner had "pro-rated" the bonus for the first two months of 2014, as February 28, 2014, was the date that the unallocated maintenance obligation expired under the MSA. The petition argued that petitioner had no legally sufficient reason not to pay the full amount owed to respondent, that he had the financial capacity to comply, and that his failure to do so was contumacious of the court. Respondent's petition asked, *inter alia*, that she be awarded attorney fees for having to bring the petition and that petitioner be compelled to pay her the remaining amount due pursuant to his bonus, which was approximately $56,000, within 7 days.

¶ 25 On October 29, 2014, petitioner filed his response to the petition for rule to show cause and for indirect civil contempt, asserting that respondent had not and refused to seek full-time employment despite her ability to do so. Petitioner also argued that he had a variable income that was significantly less than alleged by respondent. Petitioner admitted that he prorated the bonus for the first two months of 2014, but argued that was the proper amount because his

obligation to pay support tantamount to maintenance was only for 2 of the 12 calendar months of 2014.

¶ 26 On April 8, 2015, the court ruled on respondent's motion to extend maintenance and her petition for rule to show cause in a 12-page order that made certain findings and subsequent rulings. The court cited to section 5/504(a) of the Marriage Act, (750 ILCS 5/504(a) (West 2012)), and stated that it was required to consider all statutory factors contained therein. The court noted that petitioner argued that great weight should be given to respondent's purported failure to seek full-time employment or additional education so that she would be more marketable for full-time employment. The court rejected petitioner's argument, pointing out that nowhere in the MSA did the parties include an affirmative obligation by respondent to obtain full-time employment. Additionally, the court found "that the parties agreed during their 18 years of marriage that Holly would be a stay at home mother to the parties[']children and that Christopher would be the bread winner." The court further explained that:

> "Notwithstanding this agreement between the parties during their 18 years of marriage, now that Christopher is divorced and remarried, he expects Holly to obtain full time employment and earn an income commensurate with the life style she enjoyed during the marriage, while she still maintains domestic responsibility for the raising of the parties remaining two minor children as she has done for their benefit and his benefit during their marriage. See 750 ILCS 5/504 (3), (4), (5), (10) and (11)."

After considering all of the statutory factors, the court rejected petitioner's arguments, specifically noting that it "reject[ed] Christopher's argument that the Court impute any income toward Holly for what she might have earned had she made employment as high a priority as Christopher now believes it should be." Recognizing that respondent "had two minor children at

home," the court found "good cause" for respondent's inability to achieve full or partial financial independence. Additionally, the court stated that although petitioner argued that the amounts respondent claimed to be repaying her parents were a "phantom mortgage/debt," it found that the presumption of a gift from parent to a child only applied to property determinations pre-decree in determining whether an asset or a debt is marital or non-marital. Because the presumption did not apply, the court stated that respondent did not have a clear and convincing burden to rebut any presumption, and found that respondent did, in fact, have a current liability of $4500 per month to repay her mother for the payoff of the first mortgage, in addition to the real estate taxes on the property and the HELOC on the former marital home.

¶ 27 In determining whether to extend maintenance, the court found that respondent met her burden. The court noted that petitioner's income has increased substantially since the entry of the MSA. Specifically, the court stated that the record showed that petitioner had a gross income of $502,000 in 2010, $554,000 in 2011, $704,000 in 2012, $807,000 in 2013, and as of October 5, 2014, a year-to-date total of approximately $626,000. The court also pointed out that "Christopher is remarried, his current spouse has three children of her own and that Christopher supports these children financially although he has no legal obligations to do so." Notwithstanding petitioner's increase in income, the court found that the method by which respondent's share of his bonus would be calculated was to remain the same.

¶ 28 Regarding respondent's petition for rule to show cause, the court found that petitioner "engaged in self help in rewriting terms of a judgment which are clear and precise and the record shows he followed without objection or confusion for the prior years between the judgment being entered and 2014." The court also found that petitioner "is keenly aware of what that provision requires him to do and he simply chose to ignore it and impose new conditions that are

not set forth in the judgment," specifically noting that petitioner's obligation to pay support from his bonus was independent from his obligation to pay his base family support. Thus, the court found petitioner to be in indirect civil contempt.

¶ 29 Ultimately, the court granted respondent's petition for extension of maintenance, but denied her request for an increase. The order stated that petitioner would continue to pay $12,000 per month as unallocated maintenance. Upon the emancipation of Dylan, the parties' middle child, the amount of unallocated support would reduce to $10,500 per month, and would continue until the youngest child, Anna, emancipates, at which time petitioner's maintenance obligation would be subject to review if respondent filed a petition seeking to extend maintenance prior to Anna's emancipation date. The order further required that petitioner's obligation to pay respondent his bonus be calculated in the same manner as set forth in the MSA.

¶ 30 The court also granted respondent's petition for rule to show cause, holding petitioner in indirect civil contempt due to his failure to pay the additional unallocated maintenance resulting from his 2013 bonus received in 2014. The court ordered that petitioner pay the balance of the additional maintenance based on his 2013 bonus (approximately $56,000) within 14 days. Further, respondent was given leave to file a petition for attorney fees as a result of petitioner's noncompliance with his court-ordered obligations stemming from his 2013 bonus. Finally, the court reserved the issue of college contribution per the parties' request.

¶ 31 On April 28, 2015, respondent filed a petition for attorney fees and costs and a motion to clarify the April 8, 2015, order. Respondent's motion to clarify requested that the court enter an order requiring petitioner to pay retroactive unallocated family support back to March 2014.

¶ 32 On April 13, 2016, the court conducted a hearing on respondent's petition for attorney fees and costs, respondent's motion to clarify, and petitioner's petition for college contribution

that was filed nearly three years prior on July 31, 2013. The court granted respondent's petition for attorney fees, specifically ordering petitioner to pay $5000 toward respondent's attorney fees, and granted respondent's motion to clarify, ordering petitioner to pay $171,792 in retroactive unallocated support. The court also ruled on petitioner's petition for college contribution, ordering that respondent pay 25% of the first $32,000 of the children's college education costs beginning with the 2015-2016 school year. Petitioner's request for retroactive contribution was denied. The record does not contain a transcript of the proceedings that resulted in the order entered on April 13, 2016.

¶ 33 Petitioner timely filed his notice of appeal on May 4, 2016.

¶ 34 ANALYSIS

¶ 35 Petitioner has raised three separate issues on appeal and we address each in turn.

¶ 36 Extension of Maintenance

¶ 37 Petitioner argues that respondent has forfeited her right to receive additional maintenance as a matter of law due to her failure to present adequate evidence of efforts made to seek appropriate employment and become self-sufficient. Respondent argues that the granting of her petition to extend maintenance was a proper exercise of the trial court's discretion.

¶ 38 A trial court's decision on a review or modification of maintenance is reviewed for a clear abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). "A clear abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Id.*

¶ 39 When the parties' MSA provides for unallocated maintenance and support that is "reviewable" after a certain amount of time, they have agreed to a general review of maintenance. *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 24. "A general review of

maintenance does not require the moving party to prove a substantial change in circumstances. [Citation.] Instead, the trial court considers the factors set forth in sections 504(a) and 510(a-5) of the Act and determines whether to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms." (Internal quotation marks omitted.) *Id.*

¶ 40 Section 504(a)(1-12) of the Marriage Act sets forth the following relevant factors that a court must consider when determining if a maintenance award is appropriate:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
>
> (2) the needs of each party;
>
> (3) the present and future earning capacity of each party;
>
> (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
>
> (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;
>
> (6) the standard of living established during the marriage;
>
> (7) the duration of the marriage;
>
> (8) the age, and the physical and emotional condition of both parties;
>
> (9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties;

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a)(1-12)[1] (West 2012).

¶ 41 Petitioner argues that the trial court improperly extended maintenance when respondent failed to show she had satisfied her affirmative obligation to establish her efforts over the previous five years to seek appropriate employment, advance her career, and make *bona fide* efforts to become self-sufficient. Petitioner further asserts that respondent did not present any evidence that her age, health, or parental obligations prevented her from working in an appropriate position in her field. In response, respondent argues that the trial court's decision was proper because the self-support factor is merely one of many that the court was required to consider. Also, respondent points out that the parties' MSA did not impose a separate contractual obligation regarding employment. In its April 8, 2015, order granting respondent's petition, the court rejected petitioner's arguments, stating that he was essentially asking the court to give weight only to the self-support factor and ignore all the other factors.

¶ 42 Petitioner relies on *In re Marriage of Koenigsknecht*, 302 Ill. App. 3d 474 (1998), and *In re Marriage of McGory*, 185 Ill. App. 3d 517 (1989), as support for his position. In *Koenigsknecht*, husband and wife were awarded a judgment for dissolution of marriage, whereby the wife, who at the time of the divorce was a full-time homemaker with no apparent income, was awarded maintenance and child support for the couple's two minor children. *Koenigsknecht*, 302 Ill. App. 3d at 475. The former wife brought a petition to extend

[1] We note that effective January 1, 2016, Public Act 99-90, §5-15 amended section 504(a) of the Marriage Act to include two additional factors. However, because this amendment postdated the trial court's analysis here, we only consider the 12 factors that were then part of the statute.

maintenance seemingly due to a substantial change in circumstances, which the trial court granted by decreasing the amount of maintenance and extending it two years, and increasing the amount of child support. *Id.* at 475-76, 478. The trial court found that the former wife's job-seeking efforts "were not commensurate with her education and her abilities, because she had started a business that produced almost no income and received no job offers for the advertising and teaching positions she applied for." *Id.* at 477. On appeal, the court reversed, holding that "the extension of maintenance constituted an abuse of discretion in light of the court's finding that respondent's job searching efforts were insufficient." *Id.* at 479. Specifically, the court noted that the record reflected that the former wife, who possessed a Ph.D. in French, was a "highly educated person" that was "capable of finding gainful employment," and that "[a] continuation of maintenance would only reward respondent's behavior in conducting an unrealistic job search and in choosing to run an unprofitable business." *Id.*

¶ 43 In *Koenigsknecht*, the court was faced with the question of whether to modify maintenance due to a substantial change in circumstances, not a review of maintenance pursuant to a petition to extend as is the case here. We note that although it is not expressly stated what type of petition the former wife in that case brought, it appears to be one based on a substantial change because the court referenced "[t]he factors to consider when modifying maintenance due to a substantial change in circumstances." *Id.* at 478. The factors[2] the court considered differ from the factors that the trial court in our case addressed. Thus, although the factual scenario of *Koenigsknecht* and our case may seem similar, the analysis and conclusions by the trial courts differed. For example, in that case, the appellate court made clear that it believed the trial court

[2] Specifically, the court stated that "[t]he factors to consider when modifying maintenance due to a substantial change in circumstances include the standard of living created during the marriage; the seeking party's financial resources; the ability of the other spouse to pay; the parties' needs, the parties' ages and physical conditions; the seeking party's contribution and services to the other party's education, training, career or career potential." *Id.*

abused its discretion when it awarded maintenance while also finding the former wife's job search efforts to be insufficient. Conversely, in our case, the trial court expressly found that good cause existed for respondent's "inability to achieve full or partial financial independence."

¶ 44 Even if the bases upon which the petitions to extend maintenance were the same in both cases, we still do not find the court's decision in *Koenigsknecht* to be helpful because we share in the concerns expressed by the dissenting justice. We are, of course, aware that "a dissent to a majority opinion is not the law of the case" (*AMF, Inc. v. Victor J. Andrew High School*, 172 Ill. App. 3d 337, 341 (1988)). However, we find it pertinent to briefly set forth the language from the dissent in *Koenigsknecht* because it articulately states what we believe are problematic issues with the majority's reversal of the trial court. The dissenting justice pointed out that the trial court had made the specific finding that some form of maintenance should be continued because the former wife was still taking care of two minor children. *Koenigsknecht*, 302 Ill. App. 3d at 480 (Gallagher, J., dissenting). The dissent also stated that "[t]he majority does not allow for the considerable latitude that is placed with the trial court. The effect of the majority's decision is that unless a trial judge reaches precisely the same conclusion as the majority, and terminates maintenance completely, there is an abuse of discretion." *Id.* (Gallagher, J., dissenting). Ultimately, in a strongly-worded conclusion, the dissenting justice stated, "[t]he truth is, moreover, that the conclusion reached by the trial court in this case is eminently reasonable and fair and takes into account the two minor children living at home and what is in their best interest. The trial court balanced the various interests and made intelligent findings based on the evidence. Therefore, there was no abuse of discretion." *Id.* at 480-81. (Gallagher, J., dissenting). Similar to the dissent's reasoning there, we too believe that the trial court made a reasonable

decision in light of the fact that respondent was still caring for the parties' two minor children who lived at home.

¶ 45 Petitioner also relies on *In re Marriage of McGory*, 185 Ill. App. 3d 517 (1989). In *McGory*, the trial court terminated maintenance upon motion by the former husband that alleged that his former wife had not been a full-time student, which was required by the court after it previously allowed additional support. *Id.* at 519-20. On appeal, the court noted that "the record is void of any bona fide attempt by [the former wife] to obtain self-sufficiency absent being a full-time student." *Id.* at 520. Ultimately, the court found that its primary reason for its affirmance of the trial court was the former wife's "less than diligent attempt to earn a degree that properly should have taken two years, and her further failure, in the meantime, to diligently seek employment." *Id.* at 521. In reaching this conclusion, the court recognized that "[t]he [Marriage Act] creates an affirmative obligation on the part of the spouse requesting maintenance to seek and accept appropriate employment." (Internal quotation marks omitted.) *Id.* at 520-21. The court also mentioned that "[i]f the record revealed that [the former wife] was seeking a four year degree, or that she had been diligent in looking for employment, the results here may have differed." *Id.* at 521.

¶ 46 We do not find *McGory* to be convincing because the award of maintenance in that case was conditional upon the former wife's attendance at an institution of higher learning. The court had ordered the former husband to pay the former wife indefinite maintenance as long as she was enrolled as a full-time student in college-level classes, with a review scheduled after four years. In the case before us, nothing in the parties' MSA, court orders, or other agreement required respondent to seek and obtain full-time employment. Rather, "whether that party is able to support himself or herself through appropriate employment" is merely one of the factors that the

trial court was required to, and did, consider in reaching its decision. See 750 ILCS 5/504(a)(5) (West 2012). In fact, our supreme court recently reiterated the importance of this point in *In re Marriage of Heroy*, 2017 IL 120205, ¶ 28, when it stated, "the self-support factor is just one of several factors that the circuit court considers when deciding whether to modify a maintenance award." In that case, the supreme court affirmed a trial court's decision to allow a former spouse to continue to receive maintenance in spite of acknowledging that the seeking spouse's efforts to become self-sufficient were "minimal," but "reasonable in light of the circumstances." *Id.*

¶ 47 We find the trial court did not abuse its discretion when it granted an extension of maintenance where the court cited to section 504(a) of the Marriage Act, (750 ILCS 5/504(a) (West 2012)), and examined the relevant factors contained therein. "Where the record establishes the basis for a maintenance award, the trial court need not make explicit findings for each of the statutory factors." *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 29. Additionally, this court may affirm the judgment of the circuit court on any basis contained in the record. *Heroy*, 2017 IL 120205, ¶ 24. Here, although the trial court did not set forth its analysis of each of the statutory factors in its April 8, 2015, order, it is clear the record contained a basis for respondent's maintenance to be extended. The trial court expressly noted that the parties' MSA did not require an affirmative obligation by respondent to obtain full-time employment. The court also found that the parties had agreed during their 18-year marriage that respondent would be a stay-at-home mother to their 3 children. The court stated that at the time of trial, respondent still had two minor children at home to care for, and as a result, the court found that good cause existed for her inability to achieve full or partial financial independence. Rejecting petitioner's argument that the loan agreement between respondent and her mother was fictitious, the order also reflected that after hearing testimony and examining the parties' monthly

expenses, the court determined that respondent had a $4500 per month liability to repay her mother. In addition to the foregoing, the record contained testimony regarding the increase in petitioner's income since the dissolution of marriage, the tax consequences of the maintenance arrangement, the duration of the maintenance payments (4 years) relative to the length of the marriage (18 years), and the property acquired by petitioner after the entry of judgment, namely his house in Northfield. As a result, we find the record contained a sufficient basis for extending maintenance.

¶ 48 We simply cannot conclude that no reasonable person would have found as the trial court did. We also do not find that the trial court's decision was arbitrary or fanciful. See *S.D.*, 2012 IL App (1st) 101876, ¶ 29. The trial court here heard four days of evidence, judged the parties' credibility, balanced all the equities, reviewed the requisite statutory factors, and determined that an extension was proper. Therefore, despite respondent's admission that she did not seek full-time employment, it was not an abuse of discretion to order petitioner to continue to pay maintenance.

¶ 49 Indirect Civil Contempt Finding

¶ 50 Next, petitioner contends that the trial court erred when it found him to be in indirect civil contempt and subsequently awarded attorney fees pursuant to section 508(b) of the Marriage Act, which provides, *inter alia*, "[i]n every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2012). Specifically, petitioner argues that the parties entered into an agreed order on March 5, 2014, which contemplated that any disputes arising from the prorated

payment of $14,000 relating to petitioner's 2014 bonus would be resolved by the trial court at the ultimate adjudication of this matter and would not subject petitioner to a claim of contempt for underpayment.

¶ 51 Respondent asserts that the court's decision was proper because the March 2014 agreed order did not render any provision of the MSA ambiguous and it did not contain any language that conceded an ambiguity. Thus, respondent contends that petitioner's position that he could amortize the 2014 bonus over the course of a year and pay respondent only two months' share of the bonus is absurd. Respondent argues that the terms of the MSA were clear and the terms of the MSA did not expire until the end of February 28, 2014.

¶ 52 In its April 8, 2015, order, the trial court stated that petitioner received a bonus in the amount of $290,000 on February 21, 2014, and paid respondent $14,000 of his bonus at that time. The court acknowledged that during the hearing on this matter, petitioner raised affirmative matter, namely, that because his obligation to pay maintenance only extended through the first two months of 2014, then his bonus should be prorated to only reflect those two months' share. The court ultimately rejected petitioner's arguments, finding that "he has engaged in self help in rewriting terms of a judgment which are clear and precise and the record shows he followed without objection or confusion for the prior years between the judgment being entered and 2014." The court went on to note that petitioner "is keenly aware of what that provision requires him to do and he simply chose to ignore it and impose new conditions that are not set forth in the judgment." The court stated that the record reflects that petitioner's obligation to pay family support from any bonus he received was independent from his obligation to pay his base family support. Thus, the court found petitioner to be in indirect civil contempt for his noncompliance with article 5(b) of the MSA, which required him to pay 20% of

his bonus within 14 days of his receipt thereof. As a result, the court found that approximately $56,000 was due and owing to respondent and respondent was given leave to file a fee petition under section 508 of the Marriage Act, (750 ILCS 5/508 (West 2012)).

¶ 53 Turning to the merits of the contempt order, we note that "[a] court has the authority to enforce its orders by way of contempt." *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 52. Civil contempt proceedings are coercive in nature and are intended to compel the contemnor to perform a specific act. *Id.* "Whether a party is guilty of contempt is within the sound discretion of the trial court, and we will not reverse a trial court's determination absent an abuse of discretion." *Id.*

¶ 54 We find that the record on appeal supports the trial court's decision to hold petitioner in indirect civil contempt and such a determination was not an abuse of discretion. We do not find convincing petitioner's argument that the agreed order somehow absolved him of paying the requisite share of his bonus to respondent. Nothing in the parties' March 5, 2014, agreed order shows that petitioner complied with or intended to comply with the terms of the MSA. In fact, the agreed order explicitly stated,

> "Christopher has informed Holly of his intent to pay Holly approximately $14,000 as and for what he believes is the appropriate calculation of support under the terms of the [j]udgment (support including child support and maintenance). As these calculations have not been reviewed by counsel, the figure and method of calculation are not yet agreed, but subject to Court review in the event of a disagreement."

The agreed order merely reflects respondent's right to seek court review of petitioner's calculations of her share of his bonus if the parties disagreed. The parties did, in fact, disagree as to whether petitioner's prorated calculations were correct, and respondent sought court review

through her petition for rule to show cause. Thus, the agreed order did nothing to relieve petitioner's duty to pay respondent from his bonus pursuant to the MSA. As a result, we find unconvincing petitioner's argument on this issue.

¶ 55 We further find the terms of the parties' MSA, which were incorporated into the March 12, 2009, judgment for dissolution of marriage, were clear. Article 5(b) of the MSA required petitioner to report any income he earned or received above his annual $300,000 salary within 7 days of its receipt and pay respondent her share within 14 days. The share respondent was required to receive, 20% of income in excess of $352,500 and less than $600,000, was also clearly set forth in the MSA. Unallocated maintenance, which included any bonus income, was to expire on February 28, 2014. Petitioner received his bonus one week prior to the expiration date on February 21, 2014. As the trial court noted, in all previous years, petitioner abided by the terms of the MSA and properly paid respondent her share of his bonus income. We agree with the trial court and find that when respondent prorated his bonus payment for only two months of 2014, petitioner engaged in self-help. These actions by petitioner evidence his willful noncompliance with the clear, unambiguous terms of the parties' MSA. As a result, we find the trial court's decision to hold petitioner in indirect civil contempt was not an abuse of discretion.

¶ 56 Retroactive Contribution to College Education

¶ 57 Finally, we address petitioner's argument that the court abused its discretion when it denied his request to retroactively enforce the allocation of college education expenses. Petitioner contends that the trial court should have made its order retroactive because all of the expenses in question were incurred after petitioner filed his petition for contribution. Specifically, petitioner asserts that the evidence showed that he paid $4330 per month toward Sean's college education for the 2013-2014 and 2014-2015 school years, while respondent only

contributed $5000 total. He further argues that there was no testimony that would lead a reasonable person to believe that respondent did not have the ability to contribute retroactive college expenses, especially in light of her owning a house worth over $1 million, her considerable savings, and her monthly maintenance from petitioner.

¶ 58 Conversely, respondent asserts that petitioner chose not to use the 529 funds for Sean's freshman year expenses. She also pointed out that petitioner acknowledged that she contributed $5000 toward Sean's college expenses, part of which was paid after petitioner stopped paying her anything more than his self-help based child support. Respondent also paid transportation expenses, and provided Sean with spending money and a place to stay when he was home from school. Most significantly, respondent argues that petitioner left her with completely inadequate means of supporting herself and their two minor children during most of the time period in which Sean was in college.

¶ 59 In relevant part, the trial court ordered the following in its April 13, 2016, order,:

> "9. Commencing with the school year 2015-2016, the parties' obligation to pay for their children's post-secondary educational expenses is as follows: Christopher shall pay 75% and Holly shall pay 25% of Sean and Dylan's post-secondary educational expenses after the application of any 529 Plans and student loans and scholarships obtained by either or both children up to a cap of $32,000 per year per child which is the University of Illinois at Urbana-Champaign annual average for tuition, room and board, books and supplies and other expenses."

¶ 60 Whether to award educational expenses is within the discretion of the trial court. *In re Marriage of Stockton*, 169 Ill. App. 3d 318, 328 (1988). "The factors the court is to consider are

the financial resources of both parents, the financial resources of the child, and the standard of living the child would have enjoyed had the marriage not been dissolved." *Id.*

¶ 61 We affirm the trial court's decision denying petitioner's request to make respondent's contributions to the children's college educational expenses retroactive, because petitioner failed to present this court with a complete record. The court's April 13, 2016, order begins:

> "This [c]ause coming on to be heard before the court for hearing on Holly's Motion to Clarify and Petition for Attorney[] Fees Pursuant to 750 ILCS 5/508(b) and Christopher's Petition for Contribution to College Expenses, the court hearing the pending pleadings and the court being fully advised in the premises[.]"

The order expressly states that the matter was before the court for *hearing*. Additionally, in her brief, respondent points out "there is [] no transcript of any proceeding which resulted in the April 13, 2016 order." Petitioner's opening and reply briefs are silent regarding whether a sufficient record exists. Further, the court's order does not state what factors the court considered in reaching its decision to only require prospective contribution. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Here, the record on appeal does not contain a report of proceedings, bystander's report, or agreed statement of facts relating to petitioner's request for retroactive contribution. All of these are allowable under Supreme Court Rule 323. See Ill. S. Ct. R. 323 (a), (c), (d) (eff. Dec. 13, 2005). Further, the court's April 8, 2015, order expressly stated that, "[t]he [c]ourt reserves the issue of college contribution pursuant to the parties' request." Thus, it is clear the court did not consider that issue during the four days of hearing

that culminated in the April 8, 2015, order, and of which the record contains full transcripts. Because the record before us does not contain a report of proceedings, bystander's report, or agreed statement of facts for the hearing at issue, we are unable to determine whether an abuse of discretion occurred. As a result, we presume the order denying petitioner's request for retroactive college contribution was in conformity with the law and had a sufficient factual basis. Therefore, we affirm the trial court's decision.

¶ 62 CONCLUSION

¶ 63 Based on the foregoing, we find that the circuit court's decisions granting respondent's motion to extend maintenance, holding petitioner in indirect civil contempt, and denying petitioner's request to require respondent to contribute retroactively to their oldest child's college education were not an abuse of discretion. Therefore, we affirm.

¶ 64 Affirmed.