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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF CHRISTINE RANDAZZO, n/k/a Christine Kruse,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellee,)	
)	
and)	No. 02—D—1021
)	
ROBERT RANDAZZO,)	Honorable
)	Marmarie J. Kostelny,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in finding the defendant in indirect civil contempt or in setting the purge amount for that contempt.

On April 25, 2008, the plaintiff, Christine Randazzo n/k/a Christine Kruse, filed a petition for rule to show cause seeking a finding of indirect civil contempt against the defendant, Robert Randazzo. The petition alleged that Robert had refinanced a marital property in violation of the parties' marital settlement agreement that provided that no further liens or encumbrances were to be placed on that property. On January 14, 2010, the trial court entered an order granting Christine's petition, finding Robert in indirect civil contempt of court, and setting a purge amount. On May 27,

2010, the trial court entered an order directing the manner in which the purge was to be paid. Robert appeals from these orders. We affirm.

The record reveals that a judgment for dissolution of marriage between the parties had been entered on November 29, 2005. The judgment incorporated a marital settlement agreement. The agreement provided that a business known as JAM Trucking (JAM) was Robert's non-marital asset. The parties agreed that another company, Robert Randazzo LLC (the LLC), was marital property. The LLC owned real property at 1100 North Ellis, in Bensenville (the Bensenville property). The Bensenville property was encumbered by a mortgage with an unpaid balance of \$1,513,747.31 as of December 31, 2005. The agreement provided that the Bensenville property would be sold and that the parties would divide the proceeds equally.

The agreement further provided that, until the closing on the Bensenville property, the LLC was to stay current with all expenses on the property, and the parties were to obtain each other's approval before incurring any major expenses. The parties agreed "that all payments for which bills have been received in connection with the Bensenville property are current." The parties agreed that the only encumbrances on the property were the purchase mortgage, unpaid real estate taxes for the year 2005, and title objections present at the time of the original purchase. The agreement provided that neither party was to allow any other lien or encumbrance to attach to the property and that, if he or she did, the amount of the lien and expenses were to be deducted from his or her share of the proceeds from the sale of the Bensenville property. Finally, in furtherance of the division of marital property, the agreement also provided that Robert was to pay Christine the sum of \$100,000 at the time of the dissolution judgment and \$130,000 by December 31, 2005.

On March 1, 2006, Christine filed her first petition for rule to show cause alleging that Robert was not cooperating with the sale of the Bensenville property. The rule was continued numerous times and was never brought to hearing because Robert ultimately signed a purchase contract. However, in December 2006, the sale had fallen through before closing. On March 9, 2007, Christine filed an emergency motion for the sale of the Bensenville property. On March 14, 2007, the parties entered an agreed order that indicated the parties had agreed to a listing price, had signed a listing agreement, and agreed to a price at which the parties would be required to accept the offer.

On March 13, 2008, Christine filed her second petition for rule to show cause alleging that an acceptable offer had been made on the Bensenville property but that Robert was not cooperating with the sale. On May 5, 2008, the trial court entered an order, *nunc pro tunc* to April 16, 2008, finding Robert in indirect civil contempt for his willful refusal to cooperate with the sale of the Bensenville property. The trial court allowed Robert to purge his contempt by either cooperating with the sale or by paying Christine the sum of \$193,072.50, the approximate sum Christine would receive at a closing on the pending offer. Robert chose the second option and paid Christine the \$193,072.50.

On April 25, 2008, Christine filed her third petition for rule to show cause, which is the subject of the present appeal. The petition alleged that, in violation of the parties' marital settlement agreement, Robert had refinanced the mortgage on the Bensenville property, thereby increasing the mortgage to \$1,904,312.75 as of January 1, 2008. The petition further alleged that Robert's unilateral refinancing, in violation of the agreement, caused the Bensenville property to be encumbered by an additional \$338,141.70. Christine requested that Robert be required to pay her

half this sum, \$169,070.88. Christine also requested costs and attorney fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2008)).

On March 20, 2009, Robert filed a response to Christine's petition and a counter-petition for contribution. In his counter-petition, Robert alleged that the LLC had been unable to pay all its monthly expenses for the Bensenville property and that the shortfall had been paid by Robert, personally, and by JAM. Robert alleged that he had demanded that Christine pay her share of the shortfall but that she had failed to do so. Robert requested that Christine be ordered to reimburse him for one-half of the expenses that had been paid by him and JAM.

On June 25, 2009, a hearing was held on Christine's third petition for rule to show cause and Robert's counter-petition for contribution. Robert testified that he refinanced the mortgage on the Bensenville property on February 1, 2006, in the amount of \$1,950,000. He immediately paid JAM \$176,054.09 out of the refinance proceeds because he had borrowed that amount from JAM to pay expenses for the LLC. After paying the previous mortgage, JAM, and the loan costs, there was an excess of loan proceeds totaling \$246,590.96. He never discussed the refinance with Christine or filed a motion with the court for permission to refinance. He used the excess loan proceeds to pay expenses associated with the LLC and to repay money he had borrowed to pay Christine the \$230,000 he owed her under the dissolution judgment. He had borrowed in excess of \$200,000 for that purpose. He borrowed some money from a friend and he "think[s]" he repaid that in monthly installments of \$11,000. He did not know what portion of the excess loan proceeds was used to repay amounts borrowed to pay Christine. Some of the proceeds were also used to pay legal fees and living expenses.

Robert further testified that on January 1, 2006, the LLC entered a two-year lease agreement with a company named K2 Express (K2). JAM also leased space at the Bensenville property. There was originally another tenant, General Car, but they moved out in the middle of 2004. In addition to its original space, JAM occupied the space that used to be occupied by General Car. JAM always paid \$5,000 per month in rent, even after it started to occupy the additional space. Robert acknowledged that Crown Truck Service (Crown) had a yellow pages listing at the address of the Bensenville property. Robert explained that Crown used space at the Bensenville property to do some repair work “on a sublet thing.” He did not receive any rent payments from Crown.

Robert testified that the \$176,000 due to JAM was because JAM paid most of the mortgage for the Bensenville property in 2005 because there were basically no tenants. After General Car moved out, he contacted a real estate agent to assist in leasing the space. The real estate agent helped him find K2. He was not currently trying to rent any other space because there were problems with the building and the village would not allow him to lease it out. The reason he did not want to sell the Bensenville property in 2008 was because he felt the price was too low. He recently painted the walls and repaired a leaking roof at the Bensenville property. Robert acknowledged that a June 30, 2007, financial statement indicated that he owed the LLC \$85,483.12. Robert did not know what that was for—he did not remember borrowing money from the LLC. He acknowledged that from January 1, 2006, through April 30, 2008, the LLC wrote checks totaling \$228,436.79.

John Schroeder, a licensed certified public accountant, testified that he started working with Robert and for Robert’s business entities in 1996. Robert’s business entities included the LLC, JAM, and JR’s Fuel Co. Schroeder prepared corporate tax returns, partnership returns, and K-1 statements. When one of Robert’s businesses was short of funds, Robert transferred funds from a

different business. Schroeder testified that the \$176,000 paid to JAM from the refinance proceeds was because JAM had loaned money to the LLC to pay for expenses. He reviewed banking records and the bills paid by the LLC to determine how much money the LLC owed to JAM. Most of the \$176,000 accumulated in 2005. The remainder of the excess proceeds from the refinance, \$246,000, went to Robert or JAM and was treated as personal funds. However, Schroeder testified that between January 1, 2006, and April 30, 2008, JAM had paid \$253,987.50 for LLC expenses. Schroeder testified that the refinance in 2006 did not affect Christine's equity in the LLC because the loan proceeds were still an asset of the LLC.

Robert testified on his own behalf that the Bensenville property was in need of repair prior to April 2008. The Village of Bensenville was making certain demands of the LLC. In fact, the LLC was prohibited from taking on any new tenants. K2 was brought in without the Village knowing about it. He had received notices of violations from the Village. One issue was the leaking roof which caused damage to the whole outside wall on the back of the building. Robert testified that if JAM had not loaned money to the LLC in 2006, 2007, and 2008, the LLC would not have been able to meet its financial obligations and the bank would have foreclosed on the Bensenville property.

The parties entered various exhibits into evidence. Christine's Exhibit No. 1 was a "Summary of Use of Loan Proceeds" prepared by Schroeder. The exhibit showed that funds were often transferred between Robert's various businesses and himself personally. Christine's Exhibit No. 6 was a list of all checks written by the LLC between January 1, 2006, and April 30, 2008. Christine also introduced various financial statements for the LLC. Robert's Exhibit No. 1 was a list of rental income for the LLC from 2003 through 2008. Robert's Exhibit No. 2 was a recap of the amounts due to JAM from the LLC at the time of the refinance. It purported to show the various

fund transfers that resulted in the LLC owing \$176,000 to JAM at the end of 2005. Of the original funds provided by JAM to the LLC, the exhibit showed that \$4,000 was taken by Robert for personal use.

On November 9, 2009, the trial court issued a letter opinion. The trial court stated that it considered the credibility, demeanor and manner of the witnesses, and the exhibits, stipulations, arguments of counsel, and the relevant law. The trial court found that Robert's refinance on the Bensenville property was willful and contemptuous. The trial court found that Robert treated the LLC as his own business without regard to Christine's interests or his court-ordered obligations. The trial court found that Robert had used the proceeds from the refinance to pay Christine the \$230,000 he owed her under the dissolution judgment. The trial court found that Robert's actions were in willful disregard of the trial court's orders and held him in indirect civil contempt of court. The trial court required Robert to purge his contempt by paying Christine the amount she would have received from the sale of the property had Robert not refinanced, \$383,355.20. In consideration of the fact that Robert had already paid \$193,072.50, the trial court determined that Robert had to pay an additional \$195,282.70 to purge the contempt. The trial court granted Christine leave to file a petition for attorney fees and deferred the issue of the time frame within which the purge had to be paid. The trial court also denied Robert's counter-petition for contribution because it found that he had failed to show the proper expenses for the LLC.

On January 14, 2010, the trial court entered an order consistent with its letter opinion. On March 24, 2010, the trial court granted Christine's petition for attorney fees. On May 27, 2010, the trial court entered an order addressing the manner in which Robert was required to pay his purge.

On the same date, the trial court entered an order *nunc pro tunc* to May 5, 2008, terminating Christine's ownership interest in the LLC. Thereafter, Robert filed a timely notice of appeal.

On appeal, Robert argues that the trial court erred in finding that he failed to prove the LLC's expenses for the Bensenville property. Rather, Robert argues that the expenses were proved and that the trial court further erred in failing to order Christine to pay half those expenses. Robert also argues that the trial court erred in finding that Christine's equity in the LLC had been reduced by the refinance. Finally, Robert contends that the trial court abused its discretion in finding him in contempt of court.

Robert's first contention is that the trial court erred in finding that he had failed to prove the LLC's expenses for the Bensenville property. "When a challenge is made to a trial court's ruling following a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence." *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009). A finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 826 (2004).

The trial court found that "[a]lthough [Robert] provided many financial statements and summaries, he failed to clearly show by a preponderance of evidence the proper expenses for the corporation." This determination was not against the manifest weight of the evidence. Robert submitted financial statements for 2004, 2005, 2006, and 2007. Those financial statements indicate that the expenses of the LLC exceeded its revenue. However, Robert did not submit any supporting documentation as to the expenses. There were no tax bills, insurance bills, or maintenance receipts.

Robert testified that he repaired the roof at the Bensenville property, but he did not provide copies of receipts from those repairs. Although Robert submitted a summary of checks written by the LLC, he did not submit any bank statements or copies of cancelled checks. As the exhibits admitted into evidence, alone, did not prove the proper expenses for the corporation, the trial court had to make an assessment of the credibility of both Robert and Schroeder. The trial court did not find their testimony credible and we decline to disturb this determination. *See People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (the trial judge is in the best position to determine the credibility of the witnesses and resolve conflicts in the testimony). As such, based on the evidence presented, the trial court's finding that Robert failed to prove the LLC's business expenses by a preponderance of the evidence was not arbitrary or unreasonable. Because Robert failed to sufficiently prove these expenses, the trial court did not err in denying his counter-petition for contribution.

Robert's second contention on appeal is that the trial court erred in finding that Christine's equity in the LLC was reduced by the refinance. The trial court found that Robert's practice of transferring funds between businesses amounted to a "financial shell game" and that Robert essentially paid Christine the amount due under the dissolution judgment from her own equity in the LLC. Robert argues that this finding is contradicted by Schroeder's and his own testimony. Specifically, Schroeder testified that all the funds from the refinance were accounted for. Furthermore, Robert testified that had he not used the loan proceeds from the refinance to pay expenses of the LLC, the bank would have foreclosed on the Bensenville property.

Robert's second contention is also without merit. Although Schroeder testified that all the refinance proceeds were accounted for, he also acknowledged that the excess \$246,000 in proceeds went to Robert or JAM and was treated as personal funds. Schroeder then tried to show that through

various fund transfers from January 1, 2006, to April 30, 2008, between Robert's various business entities, JAM had paid over \$253,000 in LLC expenses. The trial court characterized this as nothing more than a "financial shell game." We agree. The evidence overall failed to establish the reasons or the necessity for all the fund transfers. Moreover, Robert testified that he had borrowed in excess of \$200,000 to pay Christine the \$230,000 due to her under the dissolution judgment and that he had used proceeds from the refinance to repay the amounts he had borrowed. When asked how much of the refinance proceeds was used for those repayments, Robert stated "I don't know." Robert also acknowledged that part of the refinance proceeds were used to pay legal fees and living expenses. Finally, although Robert attempted to establish that the LLC owed JAM \$176,000 at the end of 2005, he agreed at the time of dissolution (November 2005) that the only lien on the property was the mortgage and that "all payments for which bills have been received in connection with the Bensenville property are current." At the time of dissolution, there was no indication that amounts were due to JAM or that the LLC was having problems meeting its financial obligations. If there were problems, Robert could have moved for leave to refinance, but he did not. Again, the trial court is in the best position to determine the credibility of the witnesses and resolve conflicts in the testimony. *Sutherland*, 223 Ill. 2d at 242. Accordingly, we cannot say that the trial court's determination that Christine's equity in the LLC was diminished by the refinance was against the manifest weight of the evidence.

Robert's final contention on appeal is that the trial court improperly held him in indirect civil contempt. Civil contempt occurs when a party fails to do something ordered by the court, resulting in the loss of a benefit or advantage to the opposing party. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010). Indirect contempt is contempt that occurs outside the presence of the trial court. *Id.*

Willful disobedience of an existing court order is essential to a finding of indirect civil contempt.

Id. Once a petitioner shows by a preponderance of the evidence that the alleged contemnor has violated a court order, the burden then shifts to the alleged contemnor, who must show that his noncompliance with the trial court's order was not willful or contumacious and that he had a valid excuse to violate the order. *Id.* A trial court's contempt finding is reviewed under the abuse of discretion standard. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 62 (2008).

In the present case, the basis for the contempt finding was that Robert refinanced the mortgage on the Bensenville property in violation of the marital settlement agreement. Robert does not dispute that the refinance was in violation of the trial court's order, but argues only that the refinance was not contemptuous. Robert argues that the refinance was prompted by a financial necessity to preserve the Bensenville property from possible foreclosure.

Robert has failed to show that his conduct was not contemptuous. Robert failed to provide sufficient evidence of the expenses for the Bensenville property or show that it was at risk of foreclosure. Furthermore, Robert never attempted to discuss the financial problems or the refinance with Christine and never moved for leave to refinance. In fact, Robert did not seek financial contribution from Christine until after she discovered the refinance and filed this petition for rule to show cause. Moreover, despite the LLC's allegedly precarious financial position, Robert had been repeatedly uncooperative with the sale of the Bensenville property. Finally, rather than set the proceeds from the refinance aside to pay for LLC expenses, the evidence showed that Robert used part of the proceeds to pay Christine the amounts owed her under the dissolution judgment, legal fees, and living expenses. Accordingly, we cannot say that the trial court abused its discretion in finding that Robert's conduct was willful and contemptuous.

For all of the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

Affirmed.