2012 IL App (2d) 110563-U
No. 2-11-0563
Order filed February 1, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF HEATHER KIRCHHEIN, Petitioner-Appellee, and ALBERT KIRCHHEIN, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 08-D-407 Honorable Rodney W. Equi, Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court did not err in denying respondent's motion to modify unallocated family support.

¶ 1 Respondent, Albert Kirchhein, appeals from the trial court's judgment denying his motion to modify and reduce the unallocated support he was paying petitioner, Heather Kirchhein. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Albert and Heather were married on October 13, 2001. Their daughter, Theodora, was born on April 26, 2002. The parties' marriage was dissolved November 5, 2009, and the judgment incorporated their marital settlement agreement (MSA), which was dated the same day.

¶ 4 The MSA states, under the heading "**UNALLOCATED FAMILY SUPPORT**":

"Day-to Day Support.

A. Amount of Payment for Unallocated Family Support: The Husband shall pay to the Wife, as and for unallocated family support of the minor child, Theodora, 50% (50 percent) of his gross income, earnings, commissions and bonuses in accordance with this Agreement, commencing upon December 15, 2009 and upon receipt of any pay check, commission check, bonus check or other instrument, and continuing on the fifteenth day of each month thereafter (or upon receipt) for a period of 42 months commencing November 15, 2009 (through 6/15/2013), at which time the Husband's obligation to pay the Wife unallocated family support shall cease. ***

B. *Minimum Support. In no event shall the Husband pay the Wife a sum of unallocated support less than $9,000.00 per month gross under the terms of this agreement during the 42 month period, as, inter alia, the parties recognize that the Husband has the ability to earn at least $18,000/gross per month. As such and for example, the Husband taking a leave of absence (voluntary or involuntary) shall not relieve the Husband of this minimum payment amount.*

***

D. Child Support. Commencing on June 15, 2013 *** the Husband shall pay to

> the Wife, as and for child support of the minor child, Theodora, statutory child support in an amount equal to twenty (20%) percent of his then net income, not subject to downward deviation, and continuing on the first day of each month thereafter. Further, the Husband shall pay to the Wife as additional child support, a sum equal to twenty (20%) of any properly calculated net bonuses, commissions, and/or earning which he may receive through his employment." (Italicized emphasis added.)

¶ 5 On March 11, 2010, Heather filed a petition for an adjudication of indirect civil contempt. She alleged, among other things, that pursuant to the MSA, Albert had paid 50% of his income for the months of December 2009 and January 2010, but he voluntarily terminated his employment and thereafter had refused to pay family support for February 2010, contrary to the agreement.

¶ 6 On March 16, 2010, Albert filed a *pro se* petition to reduce his support obligations due to a change in employment status. On April 16, 2010, Albert filed, through his attorney, a petition to reduce support, which incorporated the *pro se* petition. He alleged as follows. At the time of the entry of the dissolution judgment, he was employed by Scouler & Company earning an expected gross annual income of about $350,000, including the possibility of a bonus. The judgment also anticipated that he would receive a 2009 year-end bonus. Since the entry of the judgment, there had been a substantial change in his financial situation. Namely: he did not receive a 2009 bonus due to a business slowdown; on January 8, 2010, he was "forced into resigning his employment with Scouler & Company"; he had since been diligently seeking employment opportunities, but he had not yet earned any further income; and he had no assets with net values and substantial debts. Albert sought an order reducing his unallocated family support obligation in an amount in accordance with his current earnings and ability to pay.

¶ 7 On October 19, 2010, the trial court issued a rule to show cause regarding Heather's petition requesting a finding of indirect civil contempt for failure to pay unallocated support.

¶ 8 A hearing on the rule to show cause and Albert's petition to modify support took place on December 7, 2010. We summarize Albert's testimony. On November 5, 2009, he was employed by Scouler & Company, which specialized in troubled companies. He was a "principal" and provided financial consulting to the company's clients. For personal or business trusts, he would wind down the remainder of any assets. Albert identified a letter of resignation that he signed on January 8, 2010; the letter was admitted into evidence. The letter stated, "Please accept this letter as my resignation as employee of Scouler & Company, as Liquidating Trustee of the Valley Media, Inc. Liquidating Trust, and in my capacity as manager of other liquidating trusts or bankruptcy cases on behalf of Scouler & Company, effective immediately." The letter stated that Albert understood that his compensation "for the months of December 2009 and January 2010 [would] be reduced by the amount of $13,163.31." The letter also stated that Albert understood that by resigning at that time, any claims that the company had against him would be waived, as long as he did not try to pursue any claims against the company.

¶ 9 Albert testified that he did not voluntarily resign from his employment at Scouler & Company, in that he was given the option to either resign or be terminated. He wanted to avoid being terminated because of the stigma; he wanted to leave on as good of terms as possible. The company's chief administrative officer gave him the letter to sign on January 8, and he took no part in drafting it. It was his understanding the he was repaying the sum of $13,163 to the company because the money "would be placed back in a trust that [it] had originally come out [of] by way of a debit card." He testified that he had "no choice in the matter." He had used the debit card for trust

expenses. Before January 8, respondent had not taken any steps to obtain a position with another company or start his own business because he had intended to remain employed by Scouler & Company.

¶ 10 Albert identified the two pay stubs he received for January 2010, one for $29,166.67 gross and the other for $8,333.34. The net amounts of the pay stubs were zero due to deductions for repaying the Valley trust, for unallocated support, and for taxes.

¶ 11 The field Albert was in could be called "troubled debt restructuring." A typical professional in his industry would have a MBA, CPA, accounting degree, and/or law degree, but he had none of these degrees. A relative had helped Albert get started in the industry, and Albert had been in the field for 15 years. After January 8, Albert tried to find a position with another firm or pick up his own "cases." He made phone calls, sent e-mails to industry contacts, visited contacts in various states, and worked with a headhunter. Albert had not received any interviews. He was retained in one matter to serve as the administrator to wind down a 401(k) plan and monitor its distribution. He received two $31,000 payments, one in April 2010 and the other in May 2010, as his total compensation for the matter. Albert had not yet completed all of the work. He had not received any other work since leaving Scouler & Company. The industry climate was as slow as it had ever been. Albert had looked into other fields for employment, and he had signed up for classes to obtain a real estate license.

¶ 12 Albert further testified regarding his bank accounts, which had minimal to negative balances. On February 1, 2010, his only other assets were a car, clothing, watches, and cufflinks. The car had a loan against it, he was behind in payments, and he was planning to surrender it to the bank. He had sold a watch and cufflinks for $5,100 and forwarded the proceeds to Heather. Albert was living with

his parents because he did not have money to pay for his own residence, and he had filed for Chapter 7 bankruptcy. Albert testified regarding his various debts, which were substantial. He was receiving $385 per week in unemployment compensation.

¶ 13 Albert testified that he took a trip to Colorado with his girlfriend and her children in March 2010, but he did not pay for the airfare, lodging, or meals. He used credit card points to pay for a rental car and to buy clothing for the family as a thank-you. Albert had also paid his mother back about $2,000 in June or July 2010 for a loan. He agreed that up to October or November 2010, he continued to go to a golf club where he still had a membership. Albert also agreed that he had incurred various credit card charges since the beginning of the year, including for massages, dining out, and a wine club.

¶ 14 The parties stipulated that following the January 2010 support payment, Albert made the following support payments during the calendar year 2010: $4,500 on May 27; $4,500 on June 17; and $5,100 on October 14. Albert agreed that he did not pay Heather half of the two $31,000 payments he received. He testified that he had used much of the money for business expenses and to pay debts that he needed to satisfy to keep his business afloat.

¶ 15 Heather testified that she was working about 20 to 30 hours per week for a property management company. She could not work additional hours because she could not afford child care. Her comprehensive financial statement showed a monthly deficit of $4,843. Theodora had not been able to participate in extracurricular activities she was interested in due to the expense.

¶ 16 Following the submission of written closing arguments, the trial court issued a letter ruling on January 22, 2011. The trial court found as follows, in relevant part. The "credibility of the witnesses had limited impact on the court's decision." "For the court to find that the parties

contemplated Mr. Kirchhein's unemployment is a somewhat extraordinary result" but was supported by the evidence. Albert was employed at the time of the "December 2009" judgment but " 'forced' " to resign almost immediately afterwards. He received almost no income in January 2009 because his employer " 'charged back' significant sums to a trust account" Albert was administering. It was a reasonable inference that Albert had misappropriated funds from a bankruptcy estate, and his employer discovered the misappropriation and " 'forced' " his resignation. Because he was forced to resign, Albert's change in employment status was not voluntary. However, the trial court could reasonably conclude that Albert was aware at the time of the judgment that his employer had discovered the misappropriation and had sought his voluntary resignation, so there was no " 'substantial change in circumstances' sufficient to trigger a modification." Albert entered into the MSA "knowing (or at least suspecting) that his employment would not continue," and since he contemplated that result, he was not entitled to a modification of support. Still, it was "clear at the time of the hearing [Albert] lacked any ability to comply with the judgment." The trial court would not set any purge "[g]iven his testimony of rather complete indigence," but it would order an arrearage based upon $9,000 per month.

¶ 17 On February 22, 2011, the trial court entered an order incorporating the letter ruling. It denied Albert's petition to reduce his support obligation and denied Heather's request to find Albert in contempt. The trial court entered judgment against Albert for $98,953.25 "as of February 15, 2011." This amount represented the support owed to Heather from February 15, 2010, until January 15, 2011 ($94,400), plus statutory interest that accrued from March 15, 2010, to February 15, 2011 ($4,553.25).

¶ 18 On March 23, 2011, Albert filed a motion to reconsider. Albert argued that the trial court's assumption that, at the time of the dissolution judgment, he was aware that his employer had discovered misappropriation and sought his voluntary resignation, was not only unsupported by the evidence but was contradicted by the evidence. Albert argued that: the dissolution judgment was entered on November 5, 2009, as opposed to December 2009, as stated in the ruling; his unrebutted testimony was that he first learned that he was being forced to resign on January 8, 2010, when he received the resignation letter; and he received full paychecks in November and December 2010, which is contrary to a finding that his employer knew of a misappropriation on November 5. Albert further argued that if he were aware when the MSA was entered that he would be asked to resign, he: would not have agreed to make minimum payments of $9,000; would have filed a petition to reduce support immediately after resigning, rather than waiting until March 2010; and would not have paid Heather support of $14,500 for December 2009 and $18,750.01 for January 2010. Albert also argued that the loss of employment was not the only basis for finding a substantial change in circumstances, because the evidence also showed that he was subsequently unable to earn any income other than the $62,000 from one client, and he had little assets and substantial debts.

¶ 19 A hearing on the motion to reconsider took place on May 9, 2011. The trial court stated as follows. It had used the term "misappropriate" to mean that that money was supposed to be in one place rather than another, and it was not imputing an illegal act. Even if it had found that Albert was not aware of his impending termination at the time of the dissolution judgment, the remaining testimony would support the conclusion that he voluntarily left his employment, which would still result in the denial of Albert's motion to reduce support. The MSA was "peculiarly written" regarding the minimum support, which was mentioned at the time of prove-up; Albert was an

experienced business individual who understood what the MSA meant when he entered into it; and people have an obligation to honor their agreements. Albert timely appealed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Albert argues that the trial court abused its discretion in finding that: he had misappropriated funds; his employer discovered the misappropriation and forced him to retire; and it could "reasonably conclude that [Albert] was aware that his employer had discovered misappropriation and sought his resignation at the time of the judgment [so] there was no 'substantial change in circumstances' sufficient to trigger a modification." Albert maintains that there was no evidence that he misappropriated funds from any estate or trust. Albert contends that even otherwise, such an inference would not lead to the conclusion that, at the time of the dissolution judgment, he was aware that his employer discovered his misappropriation and would seek his voluntary resignation. Albert maintains that the uncontradicted evidence actually shows the contrary, for he continued as an employee for more than two months after the dissolution judgment before being forced to abruptly resign or be terminated on the afternoon of January 8, 2010. He argues that there is additional support that he was unaware of the impending job loss through his testimony that: he had never seen the resignation letter before that date; prior to that time, he had not taken any steps to find another position or start another business; and if he had not received the resignation letter, his desire was to continue as an employee of Scouler & Company. Albert contends that the trial court's mistaken belief that the dissolution judgment was entered in December 2009, as set forth in its letter ruling, as opposed to November 5, 2009, as reflected in the record, likely contributed to the trial court reaching the wrong conclusion.

¶ 22 Heather argues as follows. Albert either voluntarily quit as indicated in his resignation letter or put himself at risk of discharge by wrongfully removing money from a client's trust fund, an inference the trial court was justified in making. Therefore, his change in employment status was not made in good faith and was tantamount to a voluntary resignation, which does not justify a reduction in child support. See *In re Marriage of Dall*, 212 Ill. App. 3d 85 (1991); *In re Marriage of Chenoweth*, 134 Ill. App. 3d 1015 (1985). Heather argues that a lack of good faith was also shown by these factors: Albert changed his employment status within eight weeks of the entry of the MSA; Albert failed to provide any corroborating evidence that his resignation was involuntary, which is contrary to the language of the resignation letter; he testified that he had not been able to land another position because of his educational background, but he also testified that he was an expert in the field due to his 15 years of experience, and he had been confident enough to sign a pledge that if he had left his job involuntarily, he could find another similar position; Albert failed to pay Heather 50% of the gross income of $62,000 that he had earned subsequent to his resignation, contrary to the MSA; and Albert testified to thousands of dollars in expenditures showing that he had not altered his lifestyle, including payments for his Porsche, his golf membership, dinners out, massages, and travel. Further, Albert's voluntary resignation failed to show a substantial change in circumstances, because the MSA specifically contemplated that he could become unemployed but still have to pay $9,000 per month in support.

¶ 23 Heather analogizes this case to *In re Marriage of Sassano*, 337 Ill. App.3d 186 (2003). There, the marital settlement agreement provided for nonmodifiable, unallocated support for the wife and the parties' children. The agreement stated that the parties' assets and liabilities were not fully disclosed, and the parties waived their right to such disclosure. The husband subsequently petitioned

to modify support, alleging a substantial change in circumstances. *Id.* at 189. At the hearing, the husband testified that the month before the entry of the dissolution judgment, his income had increased from $80,000 to $202,000 due to a second job. He subsequently lost the second job, and his salary at the time of the hearing was $70,000. The former wife presented evidence that respondent represented during settlement negotiations that his annual salary was $80,000. *Id.* at 190. The trial court denied the husband's petition, reasoning that his second job was " 'a fact known only to him' " at the time of dissolution and not disclosed during discovery, and he could not use that termination to prove a substantial change in circumstances. *Id.* at 190-91. The trial court found that his currently salary of $70,000 was not substantially less than the $80,000 salary he had disclosed. *Id.* at 191. This court affirmed. *Id.* at 195. Heather argues that as in *Sassano*, Albert had unique knowledge of his employment status and was the only one who could have known what risks he was taking when he agreed that his employment status would not affect his base support obligation. Therefore, argues Heather, Albert cannot now use his employment status to support a substantial change in circumstances.

¶ 24 Heather also argues that we should not consider Albert's post-resignation activity as a grounds for modification because while Albert mentions these facts in his brief, he does not use this set of facts as a basis for reversal. Heather argues that even if we do consider this information, the "key is credibility," and the evidence that Albert maintained his lifestyle and spent every dollar of his income, while failing to support Theodora, "shows that Albert's credibility does not allow this Court to find that his change in employment was made in good faith."

¶ 25 Having set forth the parties' arguments, we begin our analysis by looking at the parties' marital settlement agreement. Such an agreement is construed in the same manner as any other

contract. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). Our main objective in construing a marital settlement agreement is to give effect to the parties' purpose and intent at the time they entered into the agreement (*In re Marriage of Schurtz*, 382 Ill. App. 3d 1123, 1125 (2008)), which we ascertain from the agreement's language (*Blum*, 235 Ill. 2d at 33). "We consider the instrument as a whole and presume that the parties included each provision deliberately and for a purpose." *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 305 (2002).

¶ 26 Here, the MSA states, under the heading "Minimum Support":

> "In no event shall the Husband pay the Wife a sum of unallocated support less than $9,000.00 per month gross under the terms of this agreement during the 42 month period, as, inter alia, the parties recognize that the Husband has the ability to earn at least $18,000/gross per month. As such and for example, the Husband taking a leave of absence (voluntary or involuntary) shall not relieve the Husband of this minimum payment amount."

The agreement's language is clear that the parties intended that Albert pay a monthly minimum of $9,000, regardless of his employment status.

¶ 27 The question then becomes whether support could be modified notwithstanding the language prohibiting modification. If clearly manifested in their agreement, parties may agree that maintenance will not be modified or terminated except upon specified conditions, and such an agreement will be enforced. *In re Marriage of Schweitzer*, 289 Ill. App. 3d 425, 428 (1997). In contrast, parties may not agree to make child support nonmodifiable, as section 502(f) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/502(f) (West 2010)) prohibits such a limitation. *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1063-64 (2007). "[W]here a marital settlement agreement contains an unallocated combination of child support and taxable maintenance,

that payment is subject to the statutory right of modification contained in the Marriage Act even if the agreement contains a nonmodification clause." *Sassano,* 337 Ill. App. 3d at 193. That is because otherwise, two classes of child support beneficiaries would exist depending on whether the support was labeled child support or unallocated support, with only the former class being subject to review, contrary to the intent of the Marriage Act. *In re Marriage of Gleason*, 266 Ill. App. 3d 467, 468-69 (1994). The child support is modifiable for either the benefit of the children or the payor. *Id.* at 469. Thus, here, the unallocated support was subject to modification, regardless of the language requiring minimum support of $9,000 per month.

¶ 28 Section 510 of the Act (750 ILCS 5/510 (West 2010)) provides that an award of maintenance or child support can be modified "upon a showing of a substantial change in circumstances." The party seeking the modification has the burden of demonstrating that a substantial change in circumstances has occurred. 750 ILCS 5/505(a-5) (West 2010); *In re Marriage of Plotz*, 229 Ill. App. 3d 389, 391 (1992). We will not disturb a trial court's determination that there has been a substantial change in circumstances warranting a modification of maintenance and child support absent an abuse of discretion. *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 974 (1997); see also *In re Marriage of Rogers,* 213 Ill. 2d 129, 135 (2004) (modification of child support payments is generally within the trial court's sound discretion). But *cf. In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 821 (2004) (trial court's determination of whether there has been a substantial change of circumstances is one of fact and will not be disturbed unless it is against the manifest weight of the evidence). An abuse of discretion occurs where the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would decide as the trial court did. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011). We will not reverse a trial court's factual findings unless they are

against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010).

¶ 29 Here, Albert challenges only the inferences made by the trial court related to the loss of his employment, namely that he misappropriated money and was aware when he entered the MSA that his employer had discovered the misappropriation and had sought his voluntary resignation. Accordingly, we limit our review to the issue of whether Albert's job loss showed a substantial change in circumstances requiring a modification of support. The trial court stated that the "credibility of the witnesses had limited impact on" its decision, meaning that it accepted the factual testimony provided by the parties. Regarding inferences, " '[w]here there are different ways to view the evidence, or alternative inferences to be drawn from it, we accept the view of the trier of fact as long as it is reasonable.' " *Westlake v. C. House Corp*., 2011 IL App. (1st) 100653, ¶21, *quoting People ex rel. Illinois Historic Preservation Agency v. Zych*, 186 Ill. 2d 267, 278 (1999).

¶ 30 We conclude that the trial court's inference that Albert had misappropriated money from his employer was reasonable. At the hearing on Albert's motion to reconsider, the trial court clarified that it was using the term "misappropriated" to mean that money was supposed to be in one place rather than another, and it was not imputing an illegal act. An inference that Albert had mishandled money he was in charge of through his job was amply supported by: Albert's testimony that he was abruptly asked to resign; the fact that his resignation letter provided for a mutual release of claims and stated that he understood that his compensation for December 2009 and January 2010 would be reduced by $13,163.31; and Albert's testimony that the withheld money "would be placed back in a trust that [it] had originally come out [of] by way of a debit card."

¶ 31 That being said, we also conclude that the trial court made an unreasonable inference in finding that Albert knew when he entered the MSA that he misappropriated money and his employer had discovered the misappropriation and had sought his voluntary resignation. As stated, the trial court did not find Albert's credibility to be at issue. There was no evidence regarding when the debit card was used. Albert testified that January 8 was the first time he had seen the resignation letter, he had no role in drafting it, and he had previously intended to remain employed by the company. This case is distinguishable from *Sassano*, where it was clear that, at the time of the dissolution judgment, the husband was receiving and therefore knew of his undisclosed, second income. No such evidence existed here, and, significantly, it would not have been logical for Albert to enter into the MSA requiring a minimum of $9,000 monthly support knowing or suspecting that he was going to be asked to resign from the job that was his sole source of income. As Albert points out, the trial court may have reached its inference in part based on its incorrect statement that the MSA was entered into in December 2009, a few weeks before the resignation, as opposed to the actual date of November 5, 2009, which was a couple of months before the resignation.

¶ 32 Still, the trial court later provided an alternative basis to support its ruling at the hearing on the motion to reconsider. See also *Forsberg v. Edward Hospital & Health Services*, 389 Ill. App. 3d 434, 440 (2009) (we review the trial court's judgment rather than its reasoning and therefore may affirm on any basis supported by the record). It stated that even if it had found that Albert was unaware of his impending termination at the time of dissolution judgement, the remaining testimony would support the conclusion that he voluntarily left his employment. We therefore examine this finding. If made in good faith, economic reversals caused by changes in employment may constitute a material change in circumstances warranting a modification of child support. *In re Marriage of*

Gosney, 394 Ill. App. 3d 1073, 1076 (2009). The central consideration in determining whether the change is made in good faith is if the change was prompted by a desire to evade financial responsibility for support of the children or otherwise jeopardize their interests. *Id.* at 1076-77. "While substantial economic reversals resulting from employment or investment are proper circumstances in considering whether support obligations should be reduced or terminated, such changes in economic circumstances must be fortuitous in nature and not the result of deliberate action by the party seeking the reduction." *Dall*, 212 Ill. App. 3d at 95.

¶ 33 In *Dall*, cited by Heather, the husband resigned from his position as a sheriff because there were criminal charges pending against him. *Id.* at 93-94. The appellate court affirmed the trial court's ruling that the resignation was not made in good faith because the husband voluntarily resigned before any proceedings to remove him from office, and he did not have any prospects of or make significant attempts to seek alternative employment. *Id.* at 95-96; see also *Chenoweth*, 134 Ill. App. 3d at 1017-18 (husband did not show good faith in unemployment from quitting his job allegedly because of depression, where he never sought medical help). *Cf. In re Marriage of Barnard*, p;, 371-72 (1996) (affirming trial court's decision that husband's voluntary resignation from firm was made in good faith, where the wife's new husband was a client and was pressuring the firm, affecting the husband's ability to pursue postdissolution actions in the court).

¶ 34 Thus, depending on the circumstances, a change in employment that may outwardly appear to be involuntary may be treated as voluntary, and a change that outwardly appears to be voluntary may be more properly categorized as involuntary. *Id.* at 372-73. A case demonstrating the former principle is *In re Marriage of Imlay*, 251 Ill. App. 3d 138 (1993). There, the husband had a sales job requiring in person and telephone contact with clients. He was convicted of drunk driving, and his

driver's license was revoked. *Id.* at 139. The company later fired the husband based on nonperformance, and he sought a reduction in child support payments. The trial court denied the husband's petition, finding that the husband's loss of employment was not fortuitous but rather the result of his deliberate conduct of driving while drunk, which jeopardized his children's interest because his employment required extensive use of a car. *Id.* at 140. The husband appealed, arguing that he did not voluntarily lose his employment and there was no evidence showing that he lacked good faith or caused his termination because he wanted to evade financial responsibility for his children. *Id.* at 141. The appellate court affirmed, holding that there was sufficient evidence to support the trial court's conclusion. It stated that the husband's drunk driving, foreseeably resulting in the DUI conviction, affected his ability to make in-person calls on his customers, and the evidence also showed that his job performance suffered because he failed to maintain sufficient phone contact with customers. *Id.* at 141. It further stated that while evidence that a party had a motive to evade financial responsibility to support his children may defeat a showing of good faith, the absence of such evidence does not establish good faith, and the record contained no good-faith motive for the husband's loss of employment. *Id.* at 142-43.

¶ 35 In light of *Imlay* and the facts of this case, we conclude that the trial court's alternative finding that Albert's resignation was "voluntary," as opposed to fortuitous, is not against the manifest weight of the evidence. It is undisputed that Albert signed a letter on January 8, 2010, in which he voluntarily resigned from his position and agreed to have $13,163.31 reduced from the compensation due to him. If Albert had believed that he had done nothing improper and the company was wrongfully reducing his pay, he could have chosen to contest this, but instead he agreed in the letter to a mutual release of claims. As stated, the trial court's finding that he

misappropriated or mishandled money was not against the manifest weight of the evidence. Even accepting Albert's limited testimony as to the circumstances behind the resignation, including that he had previously planned to continue working at Scouler & Company, his loss of employment can be labeled as voluntary, as in *Imlay*, because he made deliberate choices in misusing the debit card that later resulted in the pay-back and resignation. Albert had the burden of showing a good-faith loss of employment (*id.* at 142), and it is not against the manifest weight of the evidence to conclude that he failed to meet this burden. Accordingly, the trial court acted within its discretion in denying Albert's petition for a modification of unallocated support.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 38 Affirmed.