2016 IL App (2d) 150910-U
No. 2-15-0910
Order filed October 24, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF TERESE M. HENRICKS, Petitioner-Appellant, and JOHN M. HENRICKS, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 01-D-1496 Honorable Mark A. Pheanis, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court acted within its discretion in its initial determination of the child support arrearage that respondent owed to petitioner, as the amount corresponded to the terms of the parties' marital settlement agreement. However, the trial court miscalculated the total amount due, and we modified its order to reflect that respondent owed petitioner $8,025. The trial court's decision not to find respondent in contempt for the arrearage was not against the manifest weight of the evidence or an abuse of discretion, as one of the parties' children was living with respondent during the relevant time, and respondent provided his sole financial support. The trial court erred in not awarding petitioner statutory interest on the child support arrearage, as such interest was mandatory. It likewise failed to award such interest on the educational expenses awarded to respondent, which are treated as child support. Therefore, we remanded the cause to determine the respective amounts of interest due.

¶ 2 Petitioner, Terese M. Henricks, and respondent, John M. Henricks, were married on October 3, 1993. They had two children: Ryan, born February 23, 1994, and Eric, born May 3, 1996. Their marriage was dissolved on July 16, 2002. Over one decade later, petitioner filed the petition at issue in this appeal, namely a petition to increase child support and a petition for rule to show cause for failing to pay past due child support. She appeals from the trial court's rulings, arguing that the trial court erred in: (1) reducing respondent's child support obligations beginning in June 2010, even though respondent never filed a motion for modification or termination of child support; (2) failing to find respondent in contempt for not paying past child support; (3) and failing to award statutory interest on the child support arrearage.

¶ 3 We affirm in part, modify in part, and remand the cause.

¶ 4 I. BACKGROUND

¶ 5 The parties' dissolution judgment incorporated their marital settlement agreement (MSA). The MSA gave petitioner residential custody of the children. Respondent was to pay her $900 per month in child support, which represented 25% of his net income. Upon Ryan's emancipation, child support was to be reduced to 20% of respondent's net income, and child support would terminate upon Eric's emancipation. Emancipation was defined as the occurrence of the first of the following events: (1) the child's death; (2) the child's marriage; (3) the later of the child reaching 18 years of age or completing high school; (4) the child's entry into the armed forces; (5) the child's "maintaining a full-time residence away from the home of the custodial parent," excluding residence at a boarding school, camp, or similar facility; and (5) the child's continuing conjugal cohabitation with another person. The parties would "address the issue of the cost" of postsecondary education if the children had the desire and ability to pursue their education beyond the high school level. The parties were to cooperate in the completion of

college financial aid forms.

¶ 6 On October 21, 2004, petitioner filed a motion seeking contribution to enroll the children in full time daycare. She also filed a petition for rule to show cause alleging that, contrary to the MSA, respondent did not pay child support when he had an extended three-month visitation with the boys during the summer of 2004. On November 18, 2004, the trial court entered an agreed order resolving petitioner's claims.

¶ 7 A. Petitions at Issue on Appeal

¶ 8 On October 30, 2013, petitioner filed a petition to increase child support. She alleged that respondent had an arrearage of $27,900 plus statutory interest; that Eric's reasonable needs and expenses had increased; and that, on information and belief, respondent's income had increased. Petitioner also filed a petition for rule to show cause regarding the child support arrearage.

¶ 9 On December 12, 2013, respondent filed a petition for rule to show cause seeking civil contempt, support for educational expenses, and for other relief, and he filed an amended version of the petition on January 3, 2014. He alleged as follows. Ryan had been residing with respondent since June 2010, when Ryan was 16, and respondent had been his sole provider. Ryan graduated from high school in June 2012 and began attending a 51-week automotive program at Universal Technical Institute (UTI) in Glendale Heights in July 2012. He was set to graduate in February 2014. As part of his continuing education, Ryan was accepted into a Porsche training program in Pennsylvania starting in April 2014. Prior to Ryan's acceptance into UTI, petitioner refused to discuss the costs of the education, contrary to the MSA. She refused to cooperate in the completion of financial aid forms or contribute any money towards Ryan's education. Ryan had continued to live with respondent while attending UTI, and respondent had

solely paid for his room, board, and transportation expenses.

¶ 10 On January 21, 2015, petitioner filed a petition seeking to require respondent to contribute towards Eric's college expenses. She alleged that he began Elgin Community College in fall 2014; he continued to reside with her while attending school; and she had already paid $4,474.74 towards his first year.

¶ 11 B. Hearing

¶ 12 A hearing on the petitions took place on June 17 and 18, 2015. Petitioner testified as follows, in relevant part. Ryan graduated high school in 2012, and Eric graduated high school in 2014. Respondent had been ordered to pay $900 per month in child support, and that order had never been modified. Petitioner identified a list of child support payments she had received from respondent from the time of the dissolution. She was supposed to receive $10,800 per year, but she received: $9,900 in 2009; $8,700 in 2010; $900 in 2011; $1,400 in 2012; $7,200 in 2013; and $3,600 in 2014. She did not petition the court for child support because respondent kept promising that he would pay, and she knew that he would "put the boys in the middle like he did" in 2004.

¶ 13 Eric was currently attending Elgin Community College, and petitioner identified receipts for tuition and books, which she had solely paid. She had asked respondent to contribute, but "with all this going on," there was "no exchange of funds."

¶ 14 Ryan started living with respondent in June 2010, but petitioner denied that Ryan spent a majority of his time at respondent's house. Petitioner and respondent signed a notarized agreement that child support would continue at the previous rate. At the time of the switch, Ryan was mostly getting C's in school. He then started attending a different high school with an automotive program, and his grades improved.

¶ 15 Petitioner's adjusted gross income from 2010 to 2014 ranged from about $30,000 to $54,000. She was self-employed and had been doing work for a single customer, but she had been laid off by the client the previous week. Petitioner agreed that she had been laid off periodically by clients in the past, but she had been with this particular client for the previous 4½ years.

¶ 16 Petitioner agreed that her company was an S-corp. The company paid her a salary, and it also paid her $1,400 per month for office space that she used within her house, which was about equal to her monthly mortgage for the house. She claimed that amount of money as rental income for herself. The company also paid for her home phone, a prorated amount for utilities, and some of her home and auto insurance. The company's total income for 2010 was $73,261. In 2013, the company's gross profits were $105,080, and she claimed $30,000 in wages that year. The company did not have any employees, and its expenses other than the amounts previously listed were for things such as paper, toner, and marketing. The marketing consisted primarily of petitioner sending out her resumes.

¶ 17 Respondent provided the following testimony. He had three biological children and three stepchildren. He agreed that the MSA required him to pay $900 per month in child support, and that it was never modified by court order.

¶ 18 In February 2010, petitioner called him and said that she could no longer handle Ryan, and that respondent would have to raise him. Ryan was skipping school, showing up to school intoxicated, getting D's and F's, getting in trouble, and constantly fighting with petitioner. Ryan moved in with respondent full time at the end of May 2010. At that point, under the MSA respondent was no longer required to pay child support for Ryan because he was was no longer living with petitioner. Respondent did not petition the court to change custody or the child

support because he did not have the financial means to do so. Ryan stayed with petitioner frequently until that school year ended, and then he lived with respondent permanently. Respondent wanted Ryan to switch high schools, but the only way his school would transfer the grades over was if the custodial parent "signed off and released her custodial rights." Petitioner would do that only if respondent agreed to continue paying child support, and she claimed that her work contract had expired and she had no income. Respondent signed an agreement in June 2010 to continue paying the original amount of child support because he believed petitioner and was worried about Eric. The agreement stated that there was a "huge disparity" in petitioner's income.

¶ 19 Respondent had re-married in April 2009, and he and his wife filed joint tax returns. Respondent was a mortgage loan originator. Respondent's wife worked part time as a school bus driver, and she had not received any child support from her ex-husband since the end of 2008. Their adjusted gross income was $156,325 for 2012 and $122,973 for 2013. Respondent's W-2's indicated that his income was $129,567 for 2012; $116,612 for 2013; and $104,927.94 for 2014. Respondent had rental property from which he received $1,600 per month, but his mortgage on that property was $1,690. At different times in the past, respondent had allowed his wife (then girlfriend) and his adult son from a prior marriage to live in the home rent-free.

¶ 20 Respondent filed for bankruptcy in February 2010. In September 2010, respondent refinanced petitioner's mortgage to save her money. He found out at that time that she was making $8,800 per month, which was more than he was. He told petitioner that they had similar incomes and they were each raising one son, so he would not be paying child support anymore. Petitioner acquiesced by not filing any petitions in court. Respondent still paid all child support up through December 2010.

¶ 21 In 2012, respondent was not able to procure health insurance for his family. He paid for all of the expenses for his children and stepchildren out of pocket.

¶ 22 Ryan started at UTI in July 2012, though respondent did not file a petition for contribution until December 2013. When respondent asked petitioner during Ryan's senior year in high school whether she would contribute to his school, she laughed and said that she had no money. Respondent told petitioner that if she was not going to help pay for Ryan's college, he could not pay child support for Eric. Both respondent's and Ryan's names were on Ryan's school loan, and it had an outstanding balance of $32,128.27. Respondent had previously paid $9,735 for Ryan's tuition. He also gave Ryan a credit card to use for gas and automotive expenses. Respondent estimated that it cost him $1,500 per month to have Ryan living at home while he attended college. Respondent further paid for Ryan's rent in Pennsylvania, which was $550 per month, and some other expenses.

¶ 23 Ryan testified as follows, in relevant part. During his sophomore year in high school, he was living with petitioner. He was drinking alcohol, smoking, using illegal drugs, staying up all night with his friends, sleeping in class, and getting bad grades. Ryan argued with petitioner whenever he was home, and towards the end of sophomore year, she said that he was going to live with respondent. He moved in with respondent in May 2010. Respondent started attending a new school junior year and made new friends. Respondent gave him a "push" that he did not have living with petitioner. His grades improved, and he was on the honor roll senior year. Both of his parents knew that he wanted to go to an automotive technical school. Petitioner insisted that Ryan get a diesel certificate, which raised the tuition cost by several thousand dollars. Ryan commuted to the school 50 miles each way because it was cheaper than getting an apartment nearby. Ryan did not discuss the division of the tuition expenses with his parents.

¶ 24 Ryan graduated UTI as the valedictorian of his class. Porsche accepted him into its specialized training program, which required Ryan to go to Pennsylvania for six months. Rent was $550 per month, and he also had food expenses. Respondent paid for the rent and assisted Ryan with all of the remaining expenses. Ryan got a job at a Porsche dealership in Texas in October 2014, and he was currently making $22 per hour.

¶ 25 Eric provided the following testimony. He lived with petitioner and used to see respondent on a regular basis, but that stopped early on in high school. He graduated high school in May 2014 and was currently attending Elgin Community College. He applied for scholarships and financial aid but did not receive any. Respondent never asked if he needed help paying for college. Eric began working at a pizza place in May 2015 for about 16 hours per week, earning minimum wage.

¶ 26 C. Trial Court's Ruling

¶ 27 The trial court entered its written order on August 3, 2015, finding as follows. Ryan and Eric's[1] testimony was very credible. Respondent's testimony was also credible, except as to his continued reliance upon an alleged agreement between him and petitioner that all child support was terminated during the time that Ryan lived with him. Such an agreement might have been fair, but it did not exist, as evidenced by a signed agreement to the contrary, several promises to pay, and the fact that neither party sought a court order to that effect. Respondent found himself in his current position primarily due to his failure to file appropriate motions regarding child support when there were the substantial changes in circumstances evidenced by the testimony.

¶ 28 A "good portion" of petitioner's testimony lacked credibility, especially her testimony about Ryan's living arrangement after May 2010, when Ryan clearly took up living with

[1] The trial court incorrectly refers to Eric as "Zack" in its order.

respondent on a permanent basis. She was also insincere in her statement minimizing her income. Examination of the exhibits showed that she paid normal living expenses out of her business to the extent that she earned nearly as much as respondent in relevant years, and sometimes more.

¶ 29 Regarding petitioner's petition to increase child support and rule to show cause for failure to pay, Ryan maintained a permanent residence away from the custodial parent beginning at the end of May 2010. Therefore, beginning in June 2010, respondent should have been paying $720 per month for child support under the MSA. Respondent did not file a motion for child support for Ryan or to abate or terminate support for Eric while he cared for Ryan, so his responsibility to pay the $720 per month would run to at least the date petitioner filed her petition to increase. This constituted 41 months during which respondent owed $29,520 in support and paid $11,000, thereby leaving a deficit of "8,520" [*sic*]. The trial court did not find respondent's failure to pay willful or contumacious, as he was paying the expenses of raising Ryan without assistance or setoff from petitioner.

¶ 30 Petitioner filed her petition to increase child support in October 2013. In 2013 and 2014, respondent's W-2's showed an annual average income of $110,762. Reducing that amount by 30% to account for taxes and health insurance would result in a net income of $77,533.40, which resulted in a monthly child support payment for Eric of $1,292, commencing in November 2013. Respondent should have paid that amount until May 2014, when Eric emancipated, for a total of $9,044. He paid $5,400 during that time, leaving an arrearage of $3,644.

¶ 31 As for respondent's petition for rule to show cause for education expenses, there was ample evidence of petitioner's complete disregard for attempting to resolve the issue. Her dismissal of respondent's inquiries was "cavalier," but nothing prevented respondent from

addressing the issue in court. Therefore, the trial court found that petitioner did not willfully violate the MSA. As a result of the parties' similar incomes, the parties should contribute to both boys' schooling. Each parent was to pay one-third of each child's reasonable college or post-high school training, with the child being responsible for the remaining third. For Ryan, the costs were his UTI tuition and fees totaling $41,863; $2,934 for his rent in Pennsylvania during training; $1,135 for transportation to Porsche interviews, and $960 for auto and gas expenses in Pennsylvania, for a total of $46,892. Therefore, petitioner owed respondent $15,631. Similarly, respondent was to reimburse petitioner one-third of Eric's total education expenses of $4,475, with his share being $1,492. The remainder of Eric's college expenses "should be dealt with accordingly." The trial court's opinion was based on the evidence as it existed at the time of the hearing. Petitioner testified that she had just lost her largest client, and an inability to fill that void over time could constitute a substantial change in circumstances regarding future educational expenses.

¶ 32 The trial court concluded that, setting off the amounts owed, petitioner owed respondent $1,975. Petitioner timely appealed.

¶ 33 II. ANALYSIS

¶ 34 A. Amount of Child Support

¶ 35 Petitioner first argues that the trial court erred in reducing respondent's child support obligation from $900 per month to $720 per month beginning in June 2010 "and subsequently terminating [r]espondent's child support obligation for two children," because respondent never filed a motion for modification or termination. Petitioner cites section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), which states that "the provisions of any judgment respecting *** support may be modified only as to installments accruing

subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2014).

¶ 36 Petitioner argues that $720 was not 20% of respondent's net income at the time Ryan began residing with him in May 2010. She argues that she relied on the parties' June 2010 agreement and believed that child support would continue to be paid at a rate of $900 per month. Petitioner maintains that even the $900 rate would have been less than respondent's statutory child support obligation.

¶ 37 Petitioner further notes that the trial court stated that respondent owed support of $29,520 and paid support totaling $11,000 during that time. The trial court then stated that respondent therefore owed petitioner "$8,520." Petitioner argues that the calculation should have been "$18,510" [*sic*].

¶ 38 In general, rulings regarding child support and child support arrearages are reviewed for an abuse of discretion. *In re Marriage of Burns & Stewart*, 357 Ill. App. 3d 468, 470 (2005). However, the interpretation of a marital settlement agreement is essentially contract interpretation, which presents a question of law that we review *de novo*. *In re Marriage of Razzano*, 2012 IL App (2d) 110608, ¶ 13. Accordingly, both the abuse-of-discretion and *de novo* standards of review apply here.

¶ 39 We conclude that the trial court did not abuse its discretion by reducing child support to $720 beginning June 2010. The emancipation of a minor child generally constitutes a substantial change in circumstances warranting a reduction of a maintenance award (which would require a petition for modification), but parties may plan for this eventuality in their marital settlement agreement. See *In re Marriage of Lehr*, 217 Ill. App. 3d 929, 938 (1991). In this case, the parties' MSA specifically contemplated emancipation, and it stated that one emancipation event

was the child's "maintaining a full-time residence away from the home of the custodial parent." The trial court found that this clearly occurred beginning in June 2010, when Ryan was living with respondent on a permanent basis. Section 510(a) of the Marriage Act is not applicable to the question of emancipation here because the issue does not involve a modification of the child support provisions, but rather an enforcement of them. Had respondent filed a petition in June 2010 to declare Ryan emancipated, respondent could have eliminated any risk of violating the MSA if the trial court found that Ryan was not living with respondent on a full-time basis. However, here the trial court ultimately found in respondent's favor on this question.

¶ 40 Accordingly, based on the finding that Ryan was emancipated beginning in June 2010, under the MSA's terms, child support was to be reduced to 20% of respondent's net income. The MSA stated that 25% of respondent's net income was $900, meaning that 20% of his net income would be $720, as the trial court found. Petitioner takes the position that the trial court should have considered that the evidence revealed that respondent's net income was significantly higher in 2010 than at the time of the MSA. Petitioner's assertion is actually contrary to section 510(a), because that section allows a modification of child support only for installments due after a party files a motion for modification. 750 ILCS 5/510(a) (West 2014). As our supreme court has stated, under section 510(a)'s plain language, "a retroactive modification is limited to only those installments that date back to the filing date of the petition for modification," thereby insuring that a respondent is on notice before any change to the original child support obligations. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 18. In keeping with the requirements of section 510(a), the trial court ruled that respondent owed petitioner $720 per month for child support until the date petitioner filed her petition to increase. From the month following the petition's filing to the date of Eric's emancipation, the trial court awarded

petitioner $1,292 in monthly child support, based on evidence of respondent's increased income. Although petitioner references the parties' June 2010 agreement, made outside of court, for respondent to continue paying $900 per month in child support, that agreement was not enforceable. Parties may create an enforceable agreement to modify child support only by petitioning the court and then establishing, to the court's satisfaction, that the agreement is in accord with the children's best interests. *Babcock v. Martinez*, 368 Ill. App. 3d 130, 143 (2006).

¶ 41 Last, respondent stipulates, and we agree, that the trial court made a mathematical error in its order. The order stated that respondent owed petitioner $29,520 in child support for the period of time up to petitioner's petition for modification and paid $11,000, thereby leaving a deficit of "$8,520." However, $29,520 minus $11,000 equals $18,520. The trial court used its improper calculation in ultimately determining that petitioner owed respondent $1,975. As the trial court was $10,000 off in the amount owed to petitioner, it is respondent who actually owes petitioner $8,025. Pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we modify the trial court's order to reflect this figure.

¶ 42 B. Lack of Contempt Finding

¶ 43 Petitioner next argues that the trial court erred in failing to find respondent in indirect civil contempt for failing to pay child support for 41 months, and thereby also erred in not requiring respondent to pay her attorney fees for the petition for rule to show cause. To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving, by a preponderance of the evidence, that the other party has violated a court order. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 50. The burden next shifts to the alleged contemnor to prove that the violation was not willful and contumacious, and that he has a valid excuse for failing to follow the order. *Id.* "Wilfull" means that the noncompliance was without

compelling cause or justification. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 39. Contumacious conduct is conduct that is calculated to embarrass, hinder, or obstruct a court in its administration of justice, or lessen the court's dignity and authority. *Id.* Thus, a party's noncompliance with an order does not automatically necessitate a finding of contempt. See *In re Marriage of Baggett*, 281 Ill. App. 3d 34, 39 (1996). Whether a party is guilty of contempt is a factual question for the trial court, and we will not disturb its determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *Id.*

¶ 44 Regarding attorney fees, section 508(b) of the Marriage Act states, as relevant here:

> "In 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 2014).

A contempt finding is sufficient to require that attorney fees be awarded under section 508(b), but such a finding is not necessary. *In re Marriage of Berto*, 344 Ill. App. 3d 705, 717 (2003).

¶ 45 Petitioner argues as follows. The trial court found that respondent failed to pay 41 months of child support, in violation of the MSA, which did not even include missed support payments before June 2010. During that time, respondent was earning a substantial income, and he did not argue an inability to pay. He was even letting individuals live rent-free in his rental property during this time. The trial court justified the lack of payments based on respondent's role as custodian for Ryan. However, respondent never asked for support from petitioner or requested that the child support obligations be modified by the court. Accordingly, his failure to

pay child support was willful and contumacious, and petitioner was entitled to attorney fees under section 508(b) of the Marriage Act.

¶ 46 Petitioner argues that respondent took the position that equitable estoppel applied because she failed to seek to collect child support for many years after he told her he would not pay any more. Petitioner maintains that the doctrine of equitable estoppel is not relevant here because: neither the passage of time nor a parties' silence is sufficient to establish that the parties had an agreement to reduce child support (see *Elliot v. Elliot*, 137 Ill. App. 3d 277, 279 (1985)); to the contrary, the parties' June 2010 agreement stated that respondent would continue paying child support; respondent thereafter periodically paid child support; and petitioner continued to request child support from respondent. Petitioner argues that she did not acquiesce to his lack of support payments by not taking court action sooner, as respondent also did not file a petition to reduce support payments.

¶ 47 A court may rely on an agreement of the parties or the doctrine of equitable estoppel to reduce child support arrearages. *In re Marriage of Heady*, 398 Ill. App. 3d 582, 585 (2010). However, here the trial court held respondent responsible for the child support payments due under the MSA. The question before us is whether the trial court erred in finding that respondent's failure to pay was not willful and contumacious. In its order, the trial court stated that respondent had paid petitioner $11,000 during the 41-month period, as opposed to the $29,520 owed, and that "[d]ue to the fact that [respondent] had undertaken the expense of raising Ryan without assistance or setoff from [petitioner] during this period of time, the court does not find [respondent's] failure to make these payments willful or contumacious."

¶ 48 According to the evidence at trial, during Ryan's sophomore year of high school, he was getting bad grades, getting in trouble, and constantly fighting with petitioner. Therefore, at

petitioner's request, or at a minimum, her acquiescence, Ryan moved in with respondent in May 2010. Respondent supported Ryan from then on, without any financial contribution from petitioner. Ryan's grades improved and, following graduation, he was accepted into UTI. Respondent continued to pay for his room, board, and transportation during Ryan's time at UTI. He also paid thousands of dollars towards tuition and co-signed a loan with Ryan for the remainder. Respondent additionally paid for Ryan's rent and many other expenses during Ryan's training with Porsche in Pennsylvania. Respondent requested that petitioner contribute towards Ryan's education, but she simply stated that she did not have enough money. However, according to the trial court's findings, the parties had similar incomes during the relevant years. Based on this evidence, we cannot say that it was against the manifest weight of the evidence or an abuse of discretion for the trial court to conclude that respondent showed compelling cause or justification for not paying the full amount of child support during this time, and that his conduct was not contumacious. In other words, we find no error in the trial court's decision not to find respondent in contempt. *Cf. In re Marriage of Kolessar & Signore*, 2012 IL App (1st) 102448, ¶ 26 (trial court did not abuse its discretion in not finding in contempt husband who unilaterally modified unallocated support, because one of the parties' children had reached the age of majority, the wife had remarried, and the husband began receiving a lower salary). Correspondingly, the trial court also did not err in denying petitioner attorney fees under section 508(b). We note that the trial court's finding in this regard did not absolve respondent of the underlying responsibility to pay the child support due, as previously discussed.

¶ 49 C. Interest

¶ 50 Last, petitioner argues that the trial court erred in failing to require respondent to pay statutory interest on past-due child support. She cites section 505(b) of the Marriage Act, which states, in relevant part:

> "A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, *shall* accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure." (Emphasis added.) 750 ILCS 5/505 (West 2014).

¶ 51 Section 12-109 of the Code of Civil Procedure (Code), referenced above, states, as pertinent here:

> "Every judgment arising by operation of law from a child support order *shall* bear interest as provided in this subsection. The interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month." (Emphasis added.) 735 ILCS 5/12-109 (West 2014).

Section 12-109 provides further detail on how to calculate the interest on child support. Section 5/2-1303, which is cited in section 12-109, states that "[j]udgments recovered in any court *shall* draw interest at the rate of 9% per annum from the date of the judgment until satisfied." (Emphasis added.) 735 ILCS 5/2-1303 (West 2014).

¶ 52 All statutory sections listed above provide that past-due child support judgments "shall" accrue interest, and the word "shall" generally indicates a mandatory requirement. *Illinois Department of Healthcare & Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483

(2011). Indeed, our supreme court has held that interest on child support is mandatory under sections 12-109 and 2-1303. *Id.* at 487-88. As such, we agree with petitioner that the trial court should have included interest on the child support arrearage due to her.

¶ 53 Respondent points out that the trial court did not include interest on any portion of its awards, and he argues that if interest is allowed on the child support he owes to petitioner, it must similarly be allowed on the education expenses that petitioner owes him. Under section 513 of the Marriage Act (750 ILCS 5/513 (West 2014)), the trial court may order either or both parties to pay for the post-secondary educational expenses of their children. Respondent cites *In re Marriage of Petersen*, 2011 IL 110984, ¶ 13, where our supreme court stated that "section 513 expenses are a form of child support to be read in conjunction with section 505." We agree with respondent that because Ryan's UTI-related expenses are considered a form of child support under *In re Marriage of Petersen*, they are likewise subject to the statutory interest rate. Accordingly, we remand the cause for the trial court to calculate interest on the amounts due to both parties.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the trial court's determination of the child support arrearage due to petitioner and its decision not to find respondent in contempt, but we modify its order to correct a mathematical error; the order should state that respondent owes petitioner $8,025. The trial court erred in not awarding statutory interest on the amounts due to both parties, so we remand the cause for the trial court to perform this calculation.

¶ 56 Affirmed in part and modified in part; cause remanded.