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2012 IL App (4th) 120401-U

NO. 4-12-0401

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 27, 2013

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

|                      |   |                     |
|----------------------|---|---------------------|
| TAMARA LOGAN,        | ) | Appeal from         |
| Plaintiff-Appellant, | ) | Circuit Court of    |
| v.                   | ) | Sangamon County     |
| VAN A. LEWIS,        | ) | No. 03F40           |
| Defendant-Appellee.  | ) |                     |
|                      | ) | Honorable           |
|                      | ) | Steven H. Nardulli, |
|                      | ) | Judge Presiding.    |

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

### ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's (1) approval of the parties' child-support agreement, (2) denial of the plaintiff's motion for modification of child-support, and (3) determination regarding plaintiff's petition for attorney fees. In so doing, the appellate court determined that although the defendant failed to file an appellee brief, given this record, justice required addressing the merits of the plaintiff's claims.

¶ 2 As a child, defendant, Van A. Lewis, suffered severe injuries caused by a fire, which left him disabled. As a result of his injuries, Lewis received a structured settlement that entitled him to \$1.515 million over a 35-year period.

¶ 3 In 1997, plaintiff, Tamara Logan, began a relationship with Lewis that produced three children. In 2001, their relationship ended with Logan maintaining custody of the children. In January 2003, Logan filed a petition that asked for child support from Lewis. In November

2003, the trial court ordered Lewis to pay Logan monthly child support of \$133, which it later modified to \$135 per month. Lewis initially complied with the court's child-support order but later failed to consistently satisfy his obligation despite his receiving three large cash advances from his structured settlement.

¶ 4 Following numerous proceedings, in March 2010, Logan filed a petition in March 2010 for rule to show cause, seeking cause as to why Lewis should not be held in indirect civil contempt for failing to comply with the trial court's previous child-support orders. As part of that filing, Logan also requested that the court (1) increase Lewis' child-support obligation and (2) establish a trust for the future support of the parties' children.

¶ 5 At a June 2010 hearing at which Lewis failed to appear despite receiving notice, the trial court found that Lewis was \$34,743 in arrears on his child-support obligation. Thereafter, the court entered a written order, mandating that (1) Lewis execute the appropriate documents to receive an advance on his structured settlement to satisfy his child-support obligations; (2) Lewis pay \$200 per month in child support; (3) the balance of the advance proceeds be placed in trust for future child-support payments; and (4) Lewis pay Logan's attorney fees.

¶ 6 In August 2010, Lewis filed the appropriate paperwork to receive an advance of \$54,700 from his structured settlement, which was held in escrow until further order of the trial court. Shortly thereafter, the parties signed a private written agreement, in which Lewis agreed to pay Logan \$30,000 for his child-support arrearage subject to the court's approval. After signing the agreement, Logan sought her counsel's advice and, as a result, informed Lewis that she was rescinding her approval. In September 2010, Logan filed a motion for immediate payment of child support. Later that month, Lewis *pro se* filed the parties' \$30,000 child-support agreement.

¶ 7 At an October 2010 hearing on Logan's motion for immediate payment of child

support—at which Lewis failed to appear—Logan argued that as of December 2009, Lewis owed her \$33,388 in child support. Logan requested that the trial court disburse \$32,000 of the \$54,700 held in trust. Logan, however, failed to mention the parties' previous \$30,000 agreement. Later that month, the court entered an order, disbursing \$32,000 to Logan, \$10,000 to Lewis, and directing the circuit clerk to hold the remaining \$12,700 until further order. Logan then filed a motion for modification of child support. In November 2010, Logan's counsel filed a petition for setting final fees and costs, claiming that he was owed a contingency fee of \$11,348 plus costs of \$241.

¶ 8 At a March 2010 hearing on Logan's aforementioned filings, the trial court took umbrage with the failure of Logan's counsel to alert the court at the October 2010 hearing of the parties' \$30,000 child-support agreement. The court also found at a June 2011 hearing that Logan's different accounts of why she signed that agreement were not credible. (The court also conducted a November 2011 hearing on Lewis's petition to modify child support that the court later denied, which is not the subject of this appeal.)

¶ 9 In February 2012, the trial court entered an order, finding, in part, as follows: (1) the \$30,000 child-support agreement between Logan and Lewis was fair and evinced Logan's intent to exchange her right to receive the total child-support arrearage in exchange for \$30,000 from Lewis' future entitlements; (2) because Logan failed to present any evidence that Lewis' financial circumstances had improved since June 2010, when the court increased Lewis's monthly child-support obligation to \$200, the court denied Logan's petition to modify child support; and (3) after August 2010, legal services tendered by Logan's counsel were not reasonably necessary to enforce the orders of this court with regard to the collection of the judgment for child support, nor was it necessary to ensure that current payments were being

made. The court then awarded Logan's counsel \$314.50 in attorney fees.

¶ 10 Logan appeals, raising numerous arguments attacking the validity of the parties' August 2010 child-support agreement, the trial court's interpretation of that agreement, the court's denial of Logan's petition to modify child support, and the attorney fees the court awarded. We affirm.

¶ 11 I. BACKGROUND

¶ 12 A. The Circumstances Preceding the Child Support  
and Attorney Fee Disputes at Issue

¶ 13 As a child, Lewis suffered severe injuries caused by a fire, which left him disabled. As a result of his injuries, Lewis was awarded a structured settlement that entitled him to receive the following compensation: (1) \$30,000 in 2004; (2) \$35,000 in 2009; (3) \$50,000 in 2012, 2014, 2017, and 2019; (4) \$75,000 in 2022; (5) \$100,000 in 2024, 2027, and 2029; (6) \$175,000 in 2032; (7) \$200,000 in 2034; and (8) \$250,000 in 2037 and 2039.

¶ 14 In 1997, Logan began a relationship with Lewis, which resulted in the birth of three children, Vani. L. (born June 21, 1998), V.L. (born April 15, 1999), and Vant. L (born December 23, 2000). (Lewis voluntarily acknowledged paternity of the children.) In 2001, the couple's relationship ended with Logan maintaining custody of the children.

¶ 15 In January 2003, Logan filed a petition, requesting child support from Lewis. In April 2003, Lewis filed a petition—in another case—requesting assignment of a portion of his future annuity payments to a company in exchange for a present-value cash settlement. In May 2003, Lewis received \$71,435, which represented the present value—minus various fees—of the structured-settlement payments he was entitled to receive through 2022.

¶ 16 In October 2003, the trial court—specifically, Judge Robert Hall—ordered Lewis

to pay Logan temporary child support of \$100 per month. One month later, Judge Hall entered a child-support order, mandating that Lewis pay Logan child support of \$133 per month, recognizing that in December 2018, the parties' youngest daughter would be emancipated. In April 2004, Judge Stuart H. Shiffman modified Lewis's monthly child-support obligation to \$135 based on his monthly receipt of \$423 in social security disability payments. Lewis complied initially with the court's child-support order but later failed to consistently satisfy that obligation.

¶ 17 On September 1, 2004, Lewis filed a change of address, listing a Springfield address as his new residence. Four weeks later, Logan's former counsel filed a notice of hearing, intending to inform Lewis about an October 2004 hearing. The address listed for Lewis, however, was not his Springfield address. (The address used by Lewis's former counsel does not appear anywhere else in the record.)

¶ 18 At the October 2004 hearing—at which Lewis failed to appear—Judge Shiffman entered a written order, mandating that Lewis pay Logan \$22,720 in child support. In particular, the trial court found that (1) in May 2003, Lewis received \$71,435 as an advance on a structured settlement, (2) Lewis failed to give any portion of those proceeds to Logan to fulfill his child-support obligation, and (3) Lewis was able to pay Logan 32% of the \$71,435 for child support.

¶ 19 In August 2009, Lewis received \$16,295, which represented the present value of the structured-settlement payments—minus various fees—that he was entitled to receive through 2027. At that time, Logan received \$6,330 of the \$16,295 in partial satisfaction of Lewis' child-support arrearage. In March 2010, Logan's current counsel filed a petition for rule to show cause, seeking cause as to why Lewis should not be held in indirect civil contempt for failing to comply with the trial court's previous child-support orders. As part of that filing, Logan also requested that the court (1) increase Lewis' child-support obligation and (2) establish a trust for the future

support of the parties' children.

¶ 20 At a June 2010 hearing at which Lewis failed to appear despite being informed by the trial court at an earlier proceeding about the hearing, Judge Steven H. Nardulli, found that Lewis was \$34,743 in arrears on his child-support obligation (\$22,727 in child-support and \$12,233 in interest minus a \$217 payment). Thereafter, the court entered a written order, mandating that (1) Lewis execute the appropriate documents to receive an advance on his structured settlement to satisfy his child-support obligations; (2) Lewis pay \$200 per month in child support; (3) the balance of the advance proceeds be placed in trust for future child-support payments; and (4) Lewis pay Logan's attorney fees.

¶ 21 On August 11, 2010, Patriot Settlement Resources, LLC (Patriot), filed a petition for approval of transfer of structured-settlement payment in Sangamon County case No. 10-CH-0939. Specifically, Patriot requested assignment of a portion of Lewis's future annuity payments in exchange for \$54,700, which represented the present value—minus various fees—of \$555,000 of the \$725,000 Lewis was to receive through 2037. One week later, Logan filed a petition to intervene in that case, which resulted in Judge Leo J. Zappa entering a September 2010 order, mandating the \$54,700 be held in escrow until further order of the trial court.

¶ 22 On August 24, 2010, the parties signed the following written agreement:

"I[,] \*\*\* Lewis, irrevocably authorize Patriot \*\*\* to make payment to \*\*\* Logan for my back child[-]support obligations. I authorize this payment in the amount not to exceed \$30,000 \*\*\*. This payment will be made to \*\*\* Logan by Patriot \*\*\* only upon Patriot receiving a signed order from the presiding judge in Sangamon [C]ounty approving the transfer of payments from \*\*\*

Lewis to Patriot[.]"

¶ 23 On August 30, 2010, Logan filed a petition for rule to show cause, seeking cause as to why Lewis should not be held in indirect civil contempt for failing to comply with the trial court's June 2010 child-support order. Specifically, Logan alleged that Lewis surreptitiously sought an advance on his structured settlement, intending to avoid the court's June 2010 child-support order. In support of her allegation, Logan relied on the petition Patriot filed earlier that month in another case, requesting approval of an advance on Lewis's structured settlement, which omitted any reference to Lewis's child-support obligation. As part of her filing, Logan also requested that the court order Lewis to pay the attorney fees she incurred pursuing that support.

¶ 24 On September 3, 2010, Logan sent the following handwritten correspondence to the trial court:

"I have told [my attorney] on August 31, 2010, that I no longer wanted him to represent me. Since then[,] he has filed many documents that I didn't approve of. I am asking the court[] to withdraw \*\*\* my attorney. I am also asking the court to vacate all other motions filed by [my attorney] on my behalf [e]xcept [the] Rule to show cause for back child support. \*\*\* Lewis has agreed to start payment of \$135 monthly on October 1, 2010. I am also asking that the court[] approve immediate transfer of back child[-] support payment[s] once [the] circuit clerk receives it."

On September 9, 2010, Logan's counsel filed a motion for immediate payment of child support. At a case management conference conducted four days later, the court approved Logan's request to rescind her *pro se* motion to terminate her counsel's representation. On September 30, 2010,

Lewis *pro se* filed the parties' \$30,000 child-support agreement.

¶ 25 At an October 2010 hearing on Logan's motion for immediate payment of child support—at which Lewis failed to appear—Logan argued that as of December 2009, Lewis owed her \$33,388 in child support. Logan requested that the trial court disburse \$32,000 of the \$54,700 held in trust. Later that month, the court entered an order, disbursing \$32,000 to Logan, \$10,000 to Lewis, and directing the circuit clerk to hold the remaining \$12,700 until further order. That same month, Logan filed a motion for modification of child support, claiming that Lewis's annual income of \$20,400 as a handyman entitled her to \$439 in monthly child support. In November 2010, Logan's counsel filed a petition for setting final fees and costs against client, claiming that he was owed a contingency fee of \$11,348 plus costs of \$241.

¶ 26 B. The March 2011 Hearing on Logan's Motion for Modification of Child Support and Her Counsel's Motion for Setting of Fees and Costs

¶ 27 At a March 2011 hearing, Logan and Lewis—the latter being represented by counsel—agreed that Logan's motion for modification of child support and her counsel's petition for setting of final fees and costs were the sole issues before the trial court. (Despite this agreement, the parties did not argue the merits of Logan's motion for modification of child support at the hearing. The court's subsequent February 2012 order also addressed Logan's August 2010 petition for rule to show cause.)

¶ 28 During the hearing, Logan summarized the trial court's June 2010 order in which the court mandated, in part, that Lewis (1) execute the appropriate documents to receive an advance on his structured settlement, (2) pay \$200 per month in child support, and (3) pay Logan's attorney fees. In response, the court stated the following:

"THE COURT: Quite frankly, [the court] was very ill-

advised at that time \*\*\*. The more [the court] look[s] into this, the more troubled [the court is] by what we are doing.

[Lewis] has a responsibility to support his children; there's no question in [the court's] mind about that, and if there is a [j]udgment that [Lewis] can't attack collaterally, which there is, he has to take responsible steps, if he can, to satisfy that judgment. But, what we're doing now is we're going beyond just the satisfaction of the judgment[. T]he judgment has pretty much been satisfied, and he did what he was supposed to do, as best as [the court] can tell, to satisfy the judgment.

What we're now doing is taking money to compensate him for injuries that [are not] going to be due to him until he's an old man, and use that for the present support of his children."

¶ 29 On the issue of attorney fees, the trial court had the following exchange with Logan's counsel:

"THE COURT: \*\*\* [The court is] in favor of lawyers earning a living, but it appears to [this court] that this has been a systematic—and [Lewis] owes the child support—but it appears this has been a systematic effort to strip [Lewis] of all the money that's due to him for the injuries he suffered when he was a juvenile. This is enormously troubling \*\*\*.

\*\*\* [The court has] a different opinion on all of these \*\*\* ['it's-your-money, you're-entitled-to-it-now'] schemes that we see

on television, \*\*\* but the whole thing really bothers [the court.

W]hat is your bill at now, according to you?

[LOGAN'S COUNSEL]: Well, it was 11[,000 but it's] grown to 15[,000].

THE COURT: First of all, [the court is] telling you right now, you are not going to be paid for this litigation on this subject.

\*\*\* [T]he money that is being run up litigating this, you're not going to be paid out of these advances, period.

[LOGAN'S COUNSEL]: Well, certainly I would rely upon the Court's order of June—

THE COURT: —It's [the court's] fault. The court] had a substantial misunderstanding of the nature of what we were doing.

[This court is] not going to strip [Lewis] of this money.

There's a good reason why this case was settled. This money

[Lewis] is going to need to support himself when he's an old man."

¶ 30        Thereafter, the trial court had an intense exchange with Logan's counsel regarding the parties' August 2010 child-support agreement for \$30,000 and counsel's appearance at the October 2010 hearing, where he requested \$32,000 in child support, which the court granted. After granting a request by Logan's counsel to make an offer of proof regarding the circumstances surrounding Logan's agreement with Lewis, Logan testified that Lewis initially offered her \$25,000 in child support and payment of half her attorney fees, adding that Logan should terminate her counsel's representation. Logan then stated that she exchanged "several" telephone calls with representatives from Patriot to discuss the child-support arrearage amount. Eventually,

Patriot offered Logan \$30,000, which Logan accepted. Patriot then sent Lewis a proposed written agreement to that effect, which the parties signed in August 2010.

¶ 31 Logan later sought her counsel's advice on the \$30,000 agreement. Counsel advised Logan that Lewis owed her more than \$30,000 and because Lewis had the money, Logan was entitled to be paid the entire amount of the child-support arrearage. Logan later informed Lewis that she was "getting [her] attorney back, and [she] wanted what was due[.]" After Logan's counsel concluded his offer of proof, the following exchange occurred:

THE COURT: "[Logan is] entitled to the arrearage; she's entitled to the current support. \*\*\* [The court does not] quarrel with that, not one bit, but she entered into a contract to accept a certain amount of money and then after she signed it, and \*\*\* Lewis ha[d] complied with that contract, you talked her out of the contract, and that's what led to all this litigation.

[LOGAN'S COUNSEL]: Because \*\*\* this \$30,000 was a sham. She signed it under duress.

THE COURT: A sham? Duress? [Logan] negotiated with [Patriot] on the phone herself. She just said so."

The court then continued the hearing.

¶ 32 C. The Resumption of the March 2011 Hearing

¶ 33 In June 2011, the hearing resumed with Logan testifying that while she was living with Lewis, he frequently sold drugs to finance their lifestyle. Logan recounted that the day Lewis presented her with the written child-support agreement for \$30,000, she never read the document, and Lewis pressured her to sign it. Logan stated that, at the time, she understood the

document to be a promise that (1) Lewis would pay her \$30,000 in four days and (2) she would receive an extra \$7,000—the remaining child-support arrearage—"whenever the rest of the money came." The trial court then admonished Logan that she should "be very careful" because the court recalled her testimony at the March 2011 hearing, which had since changed. Despite the court's admonishment, Logan maintained that she signed the August 2010 child-support agreement under duress, adding that "I felt threatened, and I felt like if I didn't do something to make [Lewis] happy, something was going to happen."

¶ 34           Thereafter, the following exchange occurred between the trial court and Logan's counsel:

                  "THE COURT: Did you know that [Logan] signed this document \*\*\* accepting \$30,000 when you came up in front of [the court] and asked for a disbursement of \$32,000 from the money that had been placed on deposit with the Clerk?

                  [LOGAN'S COUNSEL]: There was some discussion.

                  THE COURT: Did you know \*\*\* this document existed?

                  [LOGAN'S COUNSEL]: I was told that there was a document.

                  THE COURT: Simple yes or no \*\*\*. Did you know this document existed?

                  [LOGAN'S COUNSEL]: That particular document, no. I was told that she had signed some agreement without discussing it with me.

                  THE COURT: What investigation did you do to find out

what she had signed?

[LOGAN'S COUNSEL]: \*\*\* [A]t the time we were before Judge Zappa, [I] was told she signed some agreement, and \*\*\* Lewis was there at that hearing. We then appeared before Your Honor. \*\*\* Lewis chose not to appear at that time. \*\*\* I believe that I became aware that there was some writing. I advised my client that I did feel that it was binding upon her—it was not in her best interest that \*\*\* Lewis apparently and [tortiously] interfered with my relationship with \*\*\* Logan.

THE COURT: Except that's not what her testimony was the last time she was here testifying. Her testimony was that she got on the phone with Patriot \*\*\* and started negotiating on her own, and \*\*\* the tenor of her testimony today is significantly different from what it was when she was last in front of [the court], and \*\*\* it sounds \*\*\* as though it's been molded."

The court then found that Logan had "not been truthful."

¶ 35           Thereafter, the trial court accepted the fee affidavit submitted by Logan's counsel, documenting attorney fees of approximately \$12,700. In so doing, the court informed the parties that he would not be awarding any fees to Logan's counsel for litigation that occurred after Logan signed the August 2010 agreement in which she agreed to accept \$30,000 from Lewis for child-support. In so doing, the court stated as follows:

"THE COURT: \*\*\* [M]y lawyers owe a responsibility to the Court, not just to try to figure out a way to maximize a recovery

for their client, but they owe a responsibility to the Court that these be truthful, legitimate proceedings, and this proceeding is no longer a legitimate proceeding. Giving you the benefit of the doubt [Logan's counsel], \*\*\* Logan was doing some things behind your back in order to avoid your fee. That doesn't mitigate against the fact that [the Court has] been significantly misled at the best and lied to at the worst."

(The record shows that Lewis did not testify at either the March or June 2011 hearings.)

¶ 36                                   D. The November 2011 Hearing on Lewis's Petition  
for Modification of Child Support

¶ 37                   (As previously noted, the trial court conducted a November 2011 hearing on Lewis's petition for modification of child support that the court later denied. That determination is not the subject of this appeal. However, because Logan refers to the evidence presented at that hearing to support her claim that the court erred by denying her motion to modify child support, we describe briefly the pertinent evidence presented.)

¶ 38                   Lewis testified that he had been employed at a fast food restaurant making about \$6,700 annually. In January 2009, Lewis quit that job, explaining that the physical requirements caused him to experience leg pain and swelling. In July 2011, Lewis stopped receiving monthly social security disability payments of \$423 because someone informed the administration that he had received a large lump-sum payment. Lewis explained that he had no income and was being supported, in part, by his wife's salary and from financial loans provided by his mother. Lewis confirmed that he had not applied for any other State employment assistance.

¶ 39                   Logan's counsel questioned Lewis on a July 2010 declaration that Lewis had

signed, claiming that he made \$20,400 annually working as a handyman. The declaration was made in support of his August 2010 petition for an advance of \$54,700 from his structured settlement. Lewis denied informing Patriot that he made any income, explaining that Patriot simply filled out the paperwork, which he signed.

¶ 40 E. The Trial Court's Ruling

¶ 41 In February 2012, the trial court entered a written ruling, finding as follows.

¶ 42 1. *The Trial Court's Findings on Logan's August 2010  
Petition for Rule to Show Cause*

¶ 43 In its written order, the trial court first recounted its June 2010 order and Patriot's August 2010 petition for approval of transfer of structured-settlement payment on Lewis's behalf. Thereafter, the court found, as follows:

"This court finds that in August[] 2010, \*\*\* Lewis was acting in compliance with the court's June \*\*\* 2010 Order when he applied for an advance. The court further finds that there is no evidence that \*\*\* Logan and her counsel were not aware of [Lewis'] application, as the Petition was filed only \*\*\* days after [Lewis'] application. As further evidence that \*\*\* Lewis intended to comply with the court's order is the fact that in 2009[], without the necessity of litigation, [Lewis] voluntarily paid \*\*\* Logan 32% of the [advance] he made at that time.

The court finds that \*\*\* Lewis is not in contempt as alleged in the August \*\*\* 2010 petition for Rule. That Rule is ordered discharged and the Petition is dismissed."

The trial court also found that Logan was aware of Lewis's August 2010 application for an advance because she testified that she voluntarily and competently negotiated a settlement with Patriot for \$30,000. In this regard, the court determined that the \$30,000 child-support agreement between Logan and Lewis was fair, despite Logan's testimony that she was coerced into the agreement and that it was only in partial satisfaction of the child-support arrearage. Specifically, the court stated, as follows:

"Neither \*\*\*Logan nor her counsel told this court that a written agreement \*\*\* had been executed by \*\*\* Logan and \*\*\* Lewis by which \*\*\* Logan had agreed to accept \$30,000 in full settlement of her claims for child support and interest. Had this court been aware of such an [agreement,] it would not have ordered the distribution of \$32,000 to \*\*\* Logan.

The court finds that it is unable to give any credibility to the bulk of \*\*\* Logan's testimony. While there may be truth to some of the things she has said, the court is not able to discern truth from fiction.

The court specifically finds that \*\*\* Logan knew what she was doing when she signed [the August 2010 child-support agreement], that she was not coerced into signing the document, that she knowingly participated in negotiations on her own behalf with Patriot \*\*\*, and that it was her intention to exchange her right to receive the total child[-]support arrearage that may have been owed in exchange for \$30,000 from \*\*\* Lewis' future entitlements."

¶ 45 The trial court noted that since August 2010, when the parties contractually entered into the \$30,000 child-support agreement, until February 2012, when the court issued its final order, Lewis owed Logan an additional \$2,295 in child-support payments. During that same time, Lewis paid Logan \$2,684 to satisfy his child-support obligations. Because Logan received \$32,000, instead of the agreed upon \$30,000, and Lewis had paid Logan \$2,684, instead of \$2,295, the court found that Lewis had overpaid Logan \$2,389 as of February 2010. The court then ordered the release of the remaining \$12,700 held in trust to Lewis.

¶ 46 *2. The Trial Court's Findings on Logan's Motion for Modification of Child Support and Her Counsel's Petition for Attorney Fees*

¶ 47 The trial court denied Logan's petition to modify child support, finding that Logan failed to present any evidence that Lewis's financial circumstances had improved since June 2010, when it increased Lewis's monthly child-support obligation to \$200.

¶ 48 With regard to the issue of attorney fees, the trial court found that after contractually agreeing to the \$30,000 child-support agreement in August 2010, Logan conferred with her counsel, "and in bad faith, proceeded with further litigation." In connection with this finding, the court stated the following:

"[A]ny legal services tendered by counsel for \*\*\* Logan after August 24, 2010, were not reasonably necessary to enforce the orders of this court with regard to the collection of the judgment for child support, nor was it necessary to [e]nsure that current payments were being made, as the records of the Clerk of the Court show that the payments were being made."

Based on affidavit of fees presented, the court awarded Logan's counsel \$314.50, which

represented 1.7 hours of work at a \$185-per-hour rate.

¶ 49 This appeal followed.

¶ 50 II. ANALYSIS

¶ 51 A. Logan's Arguments and Lewis's Failure To File an Appellee Brief

¶ 52 Logan appeals, presenting numerous arguments attacking the validity of the parties' August 2010 child-support agreement, the trial court's interpretation of that agreement, the court's denial of Logan's petition to modify child support, and the amount of attorney fees the court awarded. Prior to addressing the merits of Logan's arguments, we note that Lewis did not file a brief with this court in response to Logan's claims. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the options a reviewing court may exercise when, as here, an appellee fails to file a brief, as follows:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases, if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed."

¶ 53 In other words, the supreme court has set forth three distinct discretionary options

a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires; (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief; or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009) (citing *Talandis Construction Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495).

¶ 54           Given the issues presented and the record before us, we conclude that justice requires this court to address the merits of Logan's arguments despite the absence of Lewis's brief.

¶ 55                               B. The Trial Court's Child-Support Findings

¶ 56   1. *The Standard of Review*

¶ 57           Section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) provides that a child support order may be modified upon a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2008). "The modification of a child support obligation is a judicial function, administered exclusively by the court as a matter of discretion." *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 47, 890 N.E.2d 1256, 1264 (2008) (quoting *Blisset v. Blisset*, 123 Ill. 2d 161, 167, 526 N.E.2d 125, 127 (1988)). "It is well established that an abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *In re Smith*, 2012 IL App (2d) 110522, ¶ 46, 2012 WL 6587768.

¶ 58   2. *The Trial Court's Enforcement of the Parties' August 2010 Child-Support Agreement*

¶ 59           In her brief to this court, Logan raises numerous arguments questioning the

validity of the parties' August 2010 written child-support agreement because it violated public policy, lacked consideration, was coerced, was void, or was waived by Lewis. The overarching theme of Logan's various arguments is that the trial court erred by enforcing the terms of the August 2010 child-support agreement. We disagree.

¶ 60 The primary issue considered by the trial court, which affected, in part, the court's other findings, concerned the parties' August 2010 child-support agreement for \$30,000. We note, however, that such an instrument, which is, in essence, a private contractual agreement to modify the previous period of child support, can be operative only when the parties' petition the court and *the court* determines that the proposed modification is in the best interest of the parties' children. See *Babcock v. Martinez*, 368 Ill. App. 3d 130, 143, 857 N.E.2d 911, 921 (2006), citing *Blisset*, 123 Ill. 2d at 167, 526 N.E.2d at 128 ("Parents may create an enforceable agreement for modification of child support only by petitioning the court for support modification and then establishing, to the satisfaction of the court, the parties' agreement is in accordance with the children's best interests").

¶ 61 As we have previously mentioned, in September 2010, Lewis filed the parties' August 2010 child-support agreement and, thus, it was properly before the trial court. Later, the court took umbrage with both Logan and her counsel's failure to alert the court about that agreement when in October 2010, they appeared before the court and successfully argued for a child-support judgment of \$32,000. Thereafter, the court considered Logan's contradictory testimony concerning the drafting of that instrument and found unbelievable Logan's later claim that she signed the agreement under duress, given that she had earlier testified that she voluntarily negotiated the \$30,000 child-support agreement. The court also found that during the conduct of that negotiation, Logan intended to exchange her right to later receive the total child-

support arrearage from Lewis for an immediate payment of \$30,000 from his structured settlement.

¶ 62 In this case, Logan urges this court to set aside the trial court's findings regarding the validity of the parties' \$30,000 child-support agreement—in other words, Logan is requesting that this court determine, on the record presented, that no reasonable person would have taken the view adopted by the court. We decline to do so and, accordingly, conclude that the court did not abuse its discretion by enforcing the terms of the parties' August 2010 child-support agreement.

¶ 63 *3. The Trial Court's Denial of Logan's Petition To Modify Child Support*

¶ 64 Logan next argues that the trial court erred by denying her petition to modify child support. We disagree.

¶ 65 Logan bases her claim on the following assertion: that the trial court "only noted that [her] condition had not changed but did not address [Lewis'] changed condition of increased gross income from \$674 per month to \$20,400 per year." The evidence presented concerning Lewis' employment showed that he had been unemployed since January 2009; a claim that Logan did not refute despite Lewis' signature on a document, claiming to make over \$20,000 annually, which he testified was untrue. The court heard and considered this testimony and found that Logan failed to present any evidence that Lewis' financial circumstances had improved since June 2010, when it increased Lewis' monthly child-support obligation to \$200. Based on this record, we do not conclude that the trial court abused its discretion by denying Logan's motion to modify child support.

¶ 66 *C. The Trial Court's Attorney Fee Determination*

¶ 67 Logan also argues that the trial court erred by awarding only \$314.70 in attorney fees. We disagree.

¶ 68 Section 508(b) of the Marriage Act provides as follows:

"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 2008).

" '[T]he trial court's decision to award fees is a matter of discretion and will not be disturbed on appeal absent an abuse of discretion.' " *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214, 902 N.E.2d 777, 787 (2009) (quoting *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656, 879 N.E.2d 445, 451 (2007)).

¶ 69 In this case, the trial court determined—and the record shows—that Lewis complied with the court's June 2010 order, mandating, in part, that Lewis execute the appropriate documents to receive what later amounted to a \$54,700 advance on his structured settlement in order to satisfy his child-support arrearage. Thereafter, the parties entered into their August 24, 2010, child-support agreement for \$30,000 that Logan's counsel was aware of prior to filing (1) the August 30, 2010, petition for rule to show cause, seeking cause as to why Lewis should not be held in indirect civil contempt for failing to comply with the court's June 2010 child-support order, which the court considered in March and June 2011 and (2) the September 2010 motion for immediate payment of child support, which the court considered in October 2010.

¶ 70 Here, the trial court limited Lewis's liability to pay Logan's attorney fees to fees that occurred prior to August 24, 2010, because the legal fees Logan's attorney generated after that date, "were not reasonably necessary to enforce the orders of [the] court with regard to the

collection of the judgment for child support[.]"

¶ 71 Our review of the trial court's decision to award Logan attorney fees involves determining whether it was *unreasonable* to grant the fees given the evidence presented, which we note does not include reweighing that evidence. Here, the parties presented, and the court considered, the appropriate evidence. Cognizant of our standard of review, we conclude that the court's finding was not an abuse of its discretion.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we affirm the trial court's judgment.

¶ 74 Affirmed.