

NOTICE

Decision filed 08/29/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160456-U

NO. 5-16-0456

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ANGELA VOLLUZ,)	St. Clair County.
)	
Petitioner-Appellant,)	
)	
and)	No. 09-D-762
)	
TIMOTHY VOLLUZ,)	Honorable
)	Randall W. Kelley,
Respondent-Appellee.)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment modifying the respondent's child support and maintenance obligations and denying the petitioner's request for attorney fees and a rule to show cause is affirmed.

¶ 2 The petitioner, Angela Volluz, appeals from the circuit court's order granting judgment in favor of the respondent, Timothy Volluz, on his second motion to modify child support and maintenance and denying her petition for attorney fees and her petition for a rule to show cause. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 The parties were married in August 1991. In November 1997, their only child, a daughter, was born. In January 2010, Angela filed a petition for dissolution of marriage.

¶ 5 In October 2010, the Honorable Michael Cook entered an initial judgment of dissolution on Angela's petition. By agreement of the parties, Angela was awarded custody of the parties' minor child and title to the marital home in Swansea. The marital vehicles were divided, and each party was given title to the retirement accounts that had been separately maintained in their respective names. Timothy was awarded a Wayne Hummer investment account as his nonmarital property and was also given title to the couple's Vanguard money market account. Angela was awarded the marital savings account and was also given a 50% interest in the marital portion of Timothy's union pension fund. Timothy was ordered to pay \$1200 per month in child support and \$500 per month in maintenance until further order of the court. The judgment stated that Angela had an affirmative duty to attempt to become self-sufficient. Judge Cook directed Timothy's attorney to draft and submit a marital settlement agreement and a formal judgment order.

¶ 6 In August 2011, Timothy filed a motion to modify child support and maintenance. The motion alleged that Timothy had recently been laid off from his employment and that the resulting reduction in his income constituted a substantial change in circumstances justifying a modification of his obligations. In December 2011, the Honorable Zina Cruse entered a supplemental judgment of dissolution approving and incorporating the marital settlement agreement that Timothy's attorney had previously been directed to prepare and set a hearing date for Timothy's motion to modify.

¶ 7 In June 2012, following a hearing on Timothy's motion to modify, Judge Cruse found that Timothy's annual income had decreased and accordingly reduced his child support obligation to \$934.41 per month, effective September 1, 2012. Noting that "[d]ue to the type of work he does and

the industry in which he is employed, [Timothy's] income fluctuates throughout the year and is best determined on an annual basis," Judge Cruse determined that for child support purposes, Timothy's annual net income was \$56,064.44. Further noting, among other things, that Timothy had "access to additional liquidated resources (proceeds from lawsuit and investments)" and that Angela required additional time to obtain employment, Judge Cruse increased Timothy's maintenance obligation to \$875 per month for 12 months, effective September 1, 2012, and then \$650 per month, effective September 1, 2013. Judge Cruse also ordered Timothy to contribute approximately \$2200 towards Angela's attorney fees.

¶ 8 On June 28, 2013, Timothy filed a second motion to modify child support and maintenance. The motion alleged that a substantial decrease in Timothy's income since June 2012 constituted a substantial change in circumstances justifying a modification of his obligations.

¶ 9 In January 2014, Angela filed a petition for a rule to show cause alleging arrearages in Timothy's child support and maintenance payments totaling \$2241.81. The petition suggested that Timothy should be held in contempt for his failure to comply with the circuit court's June 2012 judgment order. On July 3, 2014, Angela filed a petition requesting that Timothy be ordered to pay "no less than" \$4500 towards her attorney fees and costs.

¶ 10 On July 10, 2014, Timothy's second motion to modify child support and maintenance proceeded to a hearing before the Honorable Randall Kelley. During the course of the hearing, the following evidence was adduced.

¶ 11 Timothy testified that he was currently paying \$934.41 per month in child support but had stopped making maintenance payments in October 2013. He testified that since June 3, 2014, he had been working as a union boilermaker for Murphy Construction Company in St. Louis. Prior to that, he had been employed by J.S. Alberici Constructors in St. Louis before being laid off in May.

Timothy's final pay stub from J.S. Alberici showed that his gross earnings from January 1, 2014, through May 27, 2014, totaled \$34,428.57. A June 24, 2014, payroll statement from Murphy Construction indicated that he was grossing \$1,354.54 per week at the time of the hearing. Timothy estimated that his employment with Murphy would expire in November 2014.

¶ 12 Timothy's federal income tax returns showed that in 2013, his gross earnings from wages were \$39,267, and he received an additional \$13,475 in unemployment compensation. In 2012, Timothy grossed \$58,395 in wages and received \$7704 in unemployment compensation. In 2011, he grossed \$71,137 in wages and received \$2655 in unemployment. In 2010, he grossed \$78,787 in wages and received no unemployment. Timothy's Illinois income tax returns showed net incomes of \$44,135 for 2013, \$56,525 for 2012, \$62,182 for 2011, and \$63,015 for 2010.

¶ 13 Identifying a statement showing the total number of hours per year that he had worked for his union since 1995, Timothy testified that from 2008 through 2011 his annual totals were much higher than they had been in recent years. He explained that from 2008 through 2011, there had been considerably more work available in his union's jurisdiction. He stated that a new power plant had been built during that time and that "[t]here was a lot of work going on at the refinery in Wood River." Timothy testified that the number of hours that he worked per year coincided with the amount of available work. Timothy indicated that many of the jobs that were available at the time of the hearing required him to drive long distances without compensation for his mileage. He testified that while working for J.S. Alberici, he had spent nearly \$1500 on gasoline traveling to and from Labadie, Missouri.

¶ 14 Timothy testified that since June 2012, he had been "pulling money" out of his Vanguard and Wayne Hummer accounts to cover his household expenses, IRA contributions, and child support and maintenance obligations. From June 2012 to May 2014, the collective balance of the accounts had

gone from \$68,722.31 to \$47,150.87. Additionally, from April 2012 to May 2014, the balance of Timothy's checking account had fallen from \$14,896.67 to \$4272.83. Timothy asked the circuit court to reduce his child support obligation to a "more reasonable level" and "remove the maintenance completely."

¶ 15 When cross-examined, Timothy acknowledged that he sometimes "turned down" jobs that were available to him. Timothy stated that the jobs he turned down were long-distance two or three-day jobs that would generally "cost[] [him] money." He further explained that while working for J.S. Alberici, he had been able to work 60 hours per week but that his present job with Murphy was a 40-hour-per-week job with "spotty overtime." Timothy testified that his normal hourly wage was approximately \$32 and that his overtime hourly wage was approximately \$45.

¶ 16 Timothy acknowledged that for several years, he and his siblings had received settlement checks stemming from an asbestos lawsuit filed by his mother on his deceased father's behalf. Timothy's share of the settlement was approximately \$550,000. Timothy acknowledged that from February 2012 through October 2013, he had received nearly \$28,000 in settlement checks. He explained, however, that the settlement checks were "all but gone" because all of the plaintiffs had been "pretty much paid off." When Judge Kelley later inquired, Angela's attorney conceded that Timothy's settlement checks were nonmarital property that the marital settlement agreement had not addressed.

¶ 17 Timothy testified that he owned two motorcycles and a 2012 Chevrolet Colorado pickup truck and that he purchased the truck in October 2013 for \$21,000. He testified that since June 2013, he had not taken any vacations or long weekend trips and had expended approximately \$900 on home repairs. Timothy indicated that his monthly household expenses were approximately \$3300. Timothy testified that he was presently living with someone who did not contribute to his expenses.

¶ 18 On redirect, Timothy testified that he had not received any settlement checks in 2014 and did not anticipate receiving any checks in the future. He stated that his sole source of income was his employment with Murphy Construction.

¶ 19 As an adverse witness, Angela testified that she presently worked two part-time jobs, one at Custom Cut Stencil Company in Belleville and the other at Cat's Meow Monogramming and Gifts in Des Peres, Missouri. She indicated that she worked approximately 30 hours per week at Custom Cut, earning \$13 per hour, and 10 hours per month at Cat's Meow, earning \$15 per hour. She further indicated that from January 2014 through June 2014, she had grossed approximately \$10,000 working for the former and \$855 working for the latter. Angela had not sought other employment since she began working for Custom Cut in January 2013.

¶ 20 Angela acknowledged that she had \$50,367 in her savings account, \$5495 in her checking account, and an additional \$35,600 in investment accounts. She testified that as of July 3, 2014, her IRA had been worth approximately \$125,000. Angela acknowledged that she had not withdrawn any money from her IRA, her investment accounts, or her savings account since the parties' divorce. Angela agreed that Timothy's child support payments covered approximately 72% of their daughter's reported expenses.

¶ 21 On her own behalf, Angela testified that the hours she worked varied from month to month and that she had made her IRA contributions while she was previously self-employed. Angela explained that she had received her IRA, investment accounts, and savings account pursuant to the parties' marital settlement agreement. She testified that she had a severe degenerative hearing impairment that "to some degree" limited her employment options. In 2013, Angela grossed \$20,487 in wages and received \$7256 in maintenance. Angela indicated that her and her daughter's monthly expenses were roughly \$3800 and that Timothy's child support and maintenance payments covered

the “shortfall” between their expenses and her income. Angela testified that her daughter was 16 years old and in need of a car.

¶ 22 When cross-examined, Angela acknowledged that she had received a \$3000 tax refund in 2013 and that her average monthly income from work was approximately \$2000. She again conceded that she had not taken any money out of her IRA, investment accounts, or savings account since the parties’ divorce. Angela indicated that from 1991 through 2003, she had been self-employed as a freelance graphic designer and embroidery designer. She further indicated that she had not pursued freelance work since 2003.

¶ 23 On redirect, Angela explained that although she made “pretty good money” as a freelance graphic designer and embroidery designer, she could no longer do such work due to her inability to hear people over the telephone. She testified that she never turned down hours at either of her present employers. At the conclusion of the hearing, Judge Kelley took the matter under advisement.

¶ 24 In September 2014, Judge Kelley entered a written order granting Timothy’s second motion to modify child support and maintenance and denying Angela’s petition for attorney fees and her petition for a rule to show cause. Noting that Timothy’s income had decreased since the entry of the circuit court’s previous order, Judge Kelley determined that Timothy’s average net income from June 28, 2013, through June 30, 2014, had been \$4,044.70 per month. Judge Kelley accordingly reduced Timothy’s child support payment to \$808 per month, effective July 1, 2014. See 750 ILCS 5/505(a)(1) (West 2014).

¶ 25 With respect to Timothy’s maintenance obligation, Judge Kelley noted that although Timothy’s gross income had exceeded \$78,000 when the parties divorced in 2010, the types of jobs that allowed him to earn such a salary were no longer available. Judge Kelley found that despite Timothy’s efforts to maximize his income, it had steadily decreased since 2010, and Timothy’s gross

income from wages and unemployment for 2013 had been \$52,742. Judge Kelley further found that “over the past two years,” Timothy had taken nearly \$22,000 out of his investment accounts “in order to comply with the court’s child support and maintenance order and cover his own living expenses.” Noting that Angela was presently grossing approximately \$2000 per month and had received a \$3000 tax refund in 2013, Judge Kelley indicated that Angela was “better able to meet her expenses” than she had been when the court’s previous order was entered. Judge Kelley further noted that Angela had financial assets valued at over \$210,000 that had “remained untouched since the entry of the divorce judgment.”

¶ 26 Judge Kelley ultimately ordered Timothy to pay \$200 per month “in non-reviewable, non-modifiable maintenance” until July 31, 2017, after which his obligation would terminate. The reduction modification was made retroactive to June 28, 2013, and in light of his previous payments of \$650 per month, Timothy was found to be “current through July 31, 2014.” Finding that Angela had the financial ability to pay her own attorney fees, Judge Kelley denied her pending petition for attorney fees. Judge Kelley also denied her petition for a rule to show cause.

¶ 27 In October 2014, Angela filed a motion to reconsider, contending that the circuit court’s determination that there had been a substantial change in circumstances warranting the modification of Timothy’s child support and maintenance obligations was against the manifest weight of the evidence. The motion specifically alleged, among other things, that the court had underestimated Timothy’s average net income and that the “amount and duration” of the “non-reviewable, non-modifiable” maintenance award were contrary to the factors set forth in sections 504 and 510 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/101 *et seq.* (West 2014)). The motion further challenged the circuit court’s denial of Angela’s petition for attorney fees and her petition for a rule to show cause.

¶ 28 In June 2015, Timothy filed a motion to determine arrearage. The motion alleged that although Timothy had “made all required child support payments through the State Disbursement Unit,” he had nevertheless “received a Notice from the Illinois Department of Health and Family Services alleging that he ha[d] an outstanding arrearage.”

¶ 29 In December 2015, Angela filed a petition for relief from judgments. The petition requested, among other things, that the circuit court vacate its September 2014 judgment order. The record indicates that Angela did not subsequently set the petition for a hearing and that it was never ruled upon by the circuit court.

¶ 30 In January 2016, following a hearing on Timothy’s motion to determine arrearage, the Honorable Julia Gomric entered an order finding that from July 2014 through January 2016, Timothy had “overpaid child support by \$2575.17 and underpaid maintenance by \$800.” Judge Gomric accordingly credited Timothy the \$1775.17 difference and determined that his maintenance obligation would terminate as of October 31, 2016, as a result of the overpayment.

¶ 31 In March 2016, Timothy filed a motion to terminate child support, noting that his daughter had turned 18 in November 2015 and would be graduating high school in May 2016. See 750 ILCS 5/505(a) (West 2014). On May 17, 2016, following a hearing on the motion, Judge Gomric entered an order terminating Timothy’s child support obligation.

¶ 32 In August 2016, Angela obtained a hearing date for the motion to reconsider that she filed in October 2014. On September 27, 2016, following a hearing, Judge Kelley entered an order denying the motion. A transcript of the hearing on Angela’s motion to reconsider is not included in the record on appeal.

¶ 33 On October 25, 2016, Angela filed a timely notice of appeal. In her notice of appeal, Angela asserted, among other things, that the circuit court failed to consider Timothy’s “other income” when

reducing his child support and maintenance obligations. She further asserted that the circuit court “erred in ruling that the maintenance obligation of [Timothy] be made non-reviewable and non-modifiable.”

¶ 34

DISCUSSION

¶ 35 On appeal, Angela argues that the circuit court erred in granting Timothy’s second motion to modify child support and maintenance, making Timothy’s final term of maintenance nonreviewable and nonmodifiable, and denying her petition for attorney fees and petition for rule to show cause. Timothy counters that the present appeal should be dismissed due to Angela’s failure to timely obtain a hearing on her motion to reconsider, as required by St. Clair County Circuit Court Rule 6.01(h). Alternatively, he argues that the circuit court’s judgment should be affirmed.

¶ 36

Rule 6.01(h)

¶ 37 At the outset, we will address Timothy’s argument that the present appeal should be dismissed for Angela’s failure to comply with Circuit Court Rule 6.01(h), which provides as follows:

“Failure to Call Motions for Hearing. The burden of obtaining a motion setting in a civil case is on the party making the motion. If a motion setting is not obtained by the moving party within ninety (90) days from the date it is filed, the court may deem the motion withdrawn and deny the relief requested with or without prejudice.” 20th Judicial Cir. Ct. R. 6.01(h) (Dec.12, 1991).

¶ 38 Timothy notes that in October 2014, Angela filed her motion asking the circuit court to reconsider its September 2014 judgment order, but she did not obtain the September 2016 hearing date on the motion until August 2016. Timothy further notes that during the two-year lapse, the parties were in court on numerous occasions, and Angela filed additional pleadings, including her December 2015 petition for relief from judgments that was also directed at the court’s September

2014 order. Timothy argues that the circuit court should have deemed Angela’s motion to reconsider withdrawn under the circumstances, which would have resulted in a jurisdictional forfeiture of her present appeal. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033 (2001). We disagree.

¶ 39 Rule 601(h)’s use of the permissive term “may” indicates that deeming a party’s motion withdrawn for failure to timely obtain a setting lies within the circuit court’s sound discretion. See, e.g., *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 32; *In re Estate of Ahmed*, 322 Ill. App. 3d 741, 746 (2001). A reviewing court will not interfere with the circuit court’s exercise of its authority under local rules absent an abuse of discretion. *In re Marriage of Jackson*, 259 Ill. App. 3d 538, 543 (1994). An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court. *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 973 (1997). “As long as reasonable persons may differ in their opinions regarding the propriety of a trial court’s decision, we will not find an abuse of discretion.” *In re Marriage of Breuer*, 259 Ill. App. 3d 94, 97 (1994).

¶ 40 Here, we cannot conclude that the trial court abused its discretion in allowing Angela to proceed on her motion to reconsider despite her noncompliance with Rule 601(h). The circuit court has the inherent power to govern the administration of its own docket (*Vasa North Atlantic Insurance Co. v. Selcke*, 261 Ill. App. 3d 626, 629 (1994)) and is in “the best position to decide how procedural rules should be applied” (*In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 234 (2008)). Moreover, once a notice of appeal is filed, our appellate jurisdiction attaches immediately (*Daley v. Laurie*, 106 Ill. 2d 33, 37 (1985)), and Timothy cites no authority supporting his suggestion that we have the power to divest that jurisdiction once properly obtained.

¶ 42 Motions to modify child support and maintenance are governed by section 510 of the Act. See 750 ILCS 5/510 (West 2014). Section 510 provides that “upon a showing of a substantial change in circumstances,” an order for child support may be modified and an order for maintenance may be modified or terminated. 750 ILCS 5/510(a)(1), (a-5) (West 2014). “It is well recognized that a substantial change in income of the payor spouse is grounds for modifying maintenance and child support.” *Carpenter*, 286 Ill. App. 3d at 974. Additionally, upon finding a substantial change in circumstances, the circuit court may retroactively modify a support or maintenance obligation to the date of the filing of the motion for modification. *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 707 (2006); *In re Marriage of Pettifer*, 304 Ill. App. 3d 326, 328 (1999).

¶ 43 When determining whether an order for maintenance should be modified or terminated upon a finding of a substantial change in circumstances, the circuit court must also consider factors such as the needs of each party, the duration of the marriage relative to the maintenance payments previously paid, the property awarded to each party under the judgment of dissolution, each party’s present and future earning capacity, and the change in each party’s income since the prior judgment or order from which a modification or termination is being sought. 750 ILCS 5/504(a), 510(a-5) (West 2014). Although the circuit court must consider all relevant factors when determining whether to modify or terminate maintenance, it need not make explicit findings as to how those factors were weighed. *In re Marriage of Viridi*, 2014 IL App (3d) 130561, ¶ 28; but see Pub. Act 98-961 (eff. Jan. 1, 2015) (adding 750 ILCS 5/504(b-2) (“In each case involving the issue of maintenance, the court shall make specific findings of fact *** and shall include references to each relevant factor ***.”)).

¶ 44 The party seeking modification has the burden of proving a substantial change in circumstances, and the circuit court has “wide latitude in determining whether a ‘substantial change’

has occurred.” *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 13. The circuit court’s decision to grant or deny a motion to modify a party’s child support or maintenance obligation will not be disturbed on appeal absent an abuse of discretion. *Carpenter*, 286 Ill. App. 3d at 973; *In re Marriage of Fink*, 275 Ill. App. 3d 960, 964 (1995). Whether to make a modification retroactive to the date of the filing of the motion to modify, or anytime thereafter, is also reviewed for an abuse of discretion. *Brandt v. Brandt*, 99 Ill. App. 3d 1089, 1108-09 (1981). “[I]f the court’s exercise of discretion has an evidentiary basis, then the reviewing court will consider the manifest weight of the evidence.” *In re Marriage of Bates*, 212 Ill. 2d 489, 524 (2004). A judgment is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 45 Maintaining that the circuit court erroneously found that Timothy met his burden of proving a substantial change in circumstances, Angela first argues that the court’s finding that Timothy’s income had decreased since June 2012 was against the manifest weight of the evidence. Referencing a financial statement showing that Timothy’s net income in March 2012 was \$3533.21, Angela asserts that the court’s finding that Timothy’s average net income from June 28, 2013, through June 30, 2014, was over \$4000 per month demonstrates that Timothy’s net income had “actually increased” since the issuance of the circuit court’s prior order. As Judge Cruse noted when determining that Timothy’s annual net income was \$56,064.44 as of June 2012, however, his income “fluctuates throughout the year and is best determined on an annual basis.” Angela’s intimation that Timothy’s monthly net income in March 2012 reflected an annual net income of approximately \$42,400 as of June 2012 is therefore misleading.

¶ 46 Asserting that Timothy’s projected gross income for 2014 would have been “approximately the same” as his gross incomes for 2011 and 2012, Angela next argues that the circuit court erred in

finding that there had been a substantial change in circumstances warranting a modification of his child support obligation. Speculating that Timothy's gross income for 2014 should have totaled approximately \$67,700, Angela notes that his gross income was \$72,598 in 2011 and \$70,817 in 2012. As Timothy observes, however, income for child support purposes is based on the obligor's most recent income information (*In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 160 (1991)), and the relevant focus when fixing a support amount "is the parent's economic situation at the time the child support calculations are made by the court" (*In re Marriage of Rogers*, 213 Ill. 2d 129, 138 (2004)).

¶ 47 Here, the circuit court calculated Timothy's net income from June 28, 2013, the date he filed his second motion to modify, through June 30, 2014, six days after the date of his most recent payroll statement from Murphy Construction. Pursuant to section 505 of the Act, child support is based on actual net income, not projected gross income (see 750 ILCS 5/505(a)(1), (3) (West 2014)), and it is undisputed that in 2013, Timothy's net income was significantly lower than it had been in previous years. Per Timothy's Illinois tax returns, his net income in 2013 was 22% less than it had been in 2012, 29% less than it had been in 2011, and 30% less than it had been in 2010. On appeal, Angela suggests that Timothy needed to show a 50% decrease in income to warrant a modification of his child support obligation. See *Fink*, 275 Ill. App. 3d at 964 ("Ordinarily, absent substantial other income, a 50% decrease in income would be a substantial change in circumstances."). To constitute a substantial change, however, the decrease in an obligor's income is not restricted to a minimum or certain percentage. See *Carpenter*, 286 Ill. App. 3d at 974; see also *Eberhardt*, 387 Ill. App. 3d at 231 ("A change in income is one of the grounds for modification."). Angela's argument also ignores the evidence that in the two years preceding the hearing on Timothy's second motion to

modify, he had taken nearly \$22,000 out of his investment accounts to compensate for his reduced wages, and the balance of his checking account had gone from \$14,896.67 to \$4,272.83.

¶ 48 Suggesting that Timothy received \$550,000 in settlement checks “since maintenance was awarded” in October 2010, Angela asserts that when finding that there had been a substantial change in circumstances, the circuit court failed to consider that Timothy’s ability to pay maintenance had not changed. In response, Timothy accuses Angela of misrepresentation, claiming that most of the settlement checks were received during the parties’ marriage and used to purchase, renovate, and furnish the marital residence, which Angela received “with no encumbering debt and no monthly mortgage payments.” We note that there was limited evidence introduced at the hearing regarding Timothy’s settlement checks, other than that they were “all but gone” and that Timothy had received checks totaling \$27,798.60 from February 2012 through October 2013. That Timothy was awarded the funds as nonmarital property, however, indicates that at the very least, the underlying suit accrued prior to the parties’ marriage. See *In re Marriage of Rivera*, 2016 IL App (1st) 160552, ¶ 42; *In re Marriage of Drone*, 217 Ill. App. 3d 758, 764-65 (1991). In any event, the record belies Angela’s claims regarding Timothy’s receipt of \$550,000 in settlement funds since the parties’ divorce and his continuing ability to pay.

¶ 49 Angela relatedly contends that the circuit court erred in not including a \$10,775 settlement check that Timothy received in July 2013 as part of his total income from June 28, 2013, through June 30, 2014. See *In re Marriage of Fortner*, 2016 IL App (5th) 150246 (holding that settlement proceeds from wrongful death action constituted income for purposes of the Act and warranted a one-time payment of additional child support). Because she specifically raises this claim for the first time on appeal, however, the argument is waived. See *Eberhardt*, 387 Ill. App. 3d at 236; *Gent v. Collinsville Volkswagen, Inc.*, 116 Ill. App. 3d 496, 505 (1983). Waiver aside, as Timothy observes

on appeal, even if the July 2013 settlement check had been added to his net income for 2013, because the circuit court only modified his child support retroactive to July 1, 2014, he would still have “actually overpaid Angela child support in 2013.” We additionally note that in June 2012, Judge Cruse specifically cited Timothy’s “proceeds from lawsuit” as a reason to increase his monthly maintenance payment.

¶ 50 With respect to the circuit court’s decision to reduce and ultimately terminate Timothy’s maintenance obligation, Angela argues that the court failed to consider that in October 2013, Timothy purchased a 2012 Chevrolet pickup truck for \$21,000. The record indicates that Timothy purchased the truck as a replacement for the 2005 Dodge Ram that he had received pursuant to the marital settlement agreement, however, not as an additional vehicle. The record further indicates that as of October 2013, the truck had a related debt of \$9100. In any event, given Timothy’s testimony that his work often required him to drive long distances, the circuit court could have reasonably viewed Timothy’s need for reliable transportation a necessary expense. Additionally, personal property acquired after the entry of a judgment of dissolution is only one factor to consider when making decisions regarding maintenance. See 750 ILCS 5/504(a), 510(a-5) (West 2014).

¶ 51 Angela suggests that the circuit court failed to adequately consider her hearing impairment as an impediment to her earning capacity. Other than indicating that she could no longer do freelance work due to her inability to hear people over the telephone, however, Angela testified that her impairment only limited her employment opportunities “to some degree.” Given her acknowledgements that she had not sought other employment since she began working at Custom Cut in January 2013 and had not sought freelance work since 2003, the extent to which her hearing impairment might actually affect her future earning capacity is thus a matter of speculation.

Moreover, a party's present and future earning capacity is only one factor to consider. See 750 ILCS 5/504(a), 510(a-5) (West 2014).

¶ 52 Angela complains that although she and Timothy were married for 19 years, she received maintenance for only 7 years. The evidence before the court was that she had been self-employed during the first 12 years of the parties' marriage, however, during which she made significant contributions to her IRA. The evidence further established that since recommencing work in January 2013, Angela's monthly income from wages had been considerably more than what she had been receiving in maintenance. Moreover, prior to January 2013, Angela had been meeting her monthly expenses without having to borrow money from her IRA, investment accounts, or savings.

¶ 53 While the circuit court must consider all relevant factors when ruling on a motion to modify or terminate maintenance, "there is no requirement that the factors be given equal weight, so long as the balance struck by the court is reasonable under the circumstances." *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485 (1992). We also note that "[m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent." *Samardzija*, 365 Ill. App. 3d at 708. Here, the record fully supports the circuit court's conclusions that Timothy's income had steadily decreased since the parties' divorce and that Angela was better able to meet her financial needs than she had been when Judge Cruse determined that she required additional time to obtain employment. The record further supports the court's observation that while Timothy had been removing money from his investment accounts to cover his expenses and obligations, Angela's financial assets had "remained untouched since the entry of the divorce judgment." The record also indicates that Timothy was paying a mortgage, and Angela was not.

¶ 54 Lastly, Angela contends that the circuit court erred in making Timothy's final term of maintenance nonreviewable and nonmodifiable. Angela correctly notes that "absent the parties'

express agreement, the Act does not permit a court to make a maintenance award nonmodifiable and nonreviewable.” *Blum v. Koster*, 235 Ill. 2d 21, 42 (2009). Because she failed to object to this error until the filing of her notice of appeal, however, the issue is waived. *Gent*, 116 Ill. App. 3d at 505. Further, as Timothy suggests on appeal, waiver aside, Angela can hardly claim prejudice given that she waited nearly two years before asking the circuit court to hear her motion to reconsider.

¶ 55 Under the circumstances, we cannot conclude that the circuit court abused its discretion in modifying Timothy’s child support obligation and modifying and ultimately terminating his maintenance obligation. “While this court might have decided differently had the task been ours, we are unable to say that no reasonable person could have taken the view adopted by the trial court.” *Miller*, 231 Ill. App. 3d at 485.

¶ 56 Attorney Fees and Rule to Show Cause

¶ 57 Angela argues that the circuit court should not have retroactively reduced Timothy’s maintenance obligation and that Timothy should have therefore been found in contempt, as alleged in her petition for a rule to show cause. She further suggests that because her petition for a rule to show cause should have been granted, the circuit court should have awarded her the attorney fees associated with its preparation and filing. We disagree.

¶ 58 As previously stated, whether to make a modification retroactive to the date of the filing of the motion to modify, or anytime thereafter, is reviewed for an abuse of discretion. *Brandt*, 99 Ill. App. 3d at 1108-09. The circuit court’s decision to grant or deny a petition for a rule to show cause is also reviewed for an abuse of discretion (*In re Marriage of Berto*, 344 Ill. App. 3d 705, 712 (2003)), as is the decision to grant or deny a request for attorney fees (*In re Marriage of Snow*, 277 Ill. App. 3d 642, 653 (1996)).

¶ 59 Here, the circuit court could have made both of Timothy's requested modifications retroactive to June 28, 2013, but did so only as to his maintenance obligation. We find no abuse of discretion in the circuit court's decision. Additionally, once the court retroactively applied the maintenance modification, Timothy was found to be "current through July 31, 2014," so there was no longer an arrearage. There was therefore no basis upon which to find Timothy in contempt, and the circuit court did not abuse its discretion in denying Angela's petition for a rule to show cause. See *Berto*, 344 Ill. App. 3d at 713. We find no abuse of discretion in the circuit court's denial of Angela's petition for attorney fees, either, and we note that she does not contest the court's determination that she had the financial ability to pay them. Furthermore, Angela's July 2014 petition for attorney fees generally requested "no less than" \$4500 in fees but did not specify the costs associated with any of her particular pleadings, including her petition for a rule to show cause. It is well established that a party seeking attorney fees must present "detailed facts and computations upon which the claim for fees is predicated." *In re Marriage of Agostinelli*, 250 Ill. App. 3d 492, 503 (1993); see also *In re Marriage of Konchar*, 312 Ill. App. 3d 441, 444 (2000) ("It is well settled that a party requesting attorney fees must do more than merely ask for attorney fees."), *abrogated on other grounds by Blum*, 235 Ill. 2d at 45-47. In the present case, Angela failed to do so.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, the circuit court's judgment is hereby affirmed in all respects.

¶ 62 Affirmed.