

Family Law and Practice Section MCLE Program Webinar September 19, 2023

Welcome/Announcements and Introductions,
Jane Nagle, Family Law and Practice Section Chair

Domestic Relations Division Update
Hon. Richard D. Felice, Presiding Judge of the Domestic Relations
Division, 18th Judicial Circuit Court

12:00 PM – 1:00 PM

Program

Third Party Visitation: Considering Equity and Best Interests of the Child

Emily Rapp, McSwain Nagle Giese & Rapp, P.C.

This CLE program is designed to provide family law attorneys with a comprehensive understanding of third-party visitation rights in Illinois. Participants will gain valuable insights into the historical development of third-party visitation law, issues related to standing and procedural considerations, examples of equitable arguments (and if they work in Illinois) and the critical implications of these factors on the best interests of the child.

Link to Evaluation

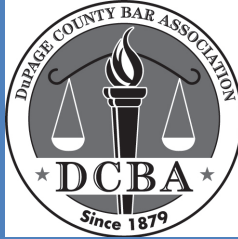
The evaluation must be completed to receive CLE credit.
<https://www.surveymonkey.com/r/FamilyLaw09192023>

Next CLE Program:

October 17th – Disability issues for minors and adult children in relation to family law matters – Jennifer Wheeler

DCBA Events:

September 21st - [Lawyers Lending a Hand September Project](#) Loaves & Fishes, Aurora



September 21st - [Family Fun Night at Edgerton and Edgerton](#) – West Chicago

October 21st - [Day at the Farm – Senior Lawyer Division & New Lawyer Division Family Fun](#) – Kline Creek Farm, West Chicago

Volunteers Needed for the Domestic Relation Pro Se Virtual Helpdesk

Helpdesk Volunteers URGENTLY Needed - We are urgently seeking volunteers for the Domestic Relations Helpdesk for September. Remember, the Helpdesk is unable to open to public appointments until volunteers step forward. Coverage shifts are from 10:00 AM to 1:00 PM on Mondays and Wednesdays and can be shortened upon request. All consultations occur via Zoom. Please help if you can! Click the button below to see open dates.

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Emily Rapp is a partner at McSwain, Nagle, Giese & Rapp PC. Emily practices in Kane, DuPage and Kendall counties and additionally practices at the appellate court level.

Emily is a past President of the Kane County Bar Association, and Immediate Past Chair of the Family Law Section for DuPage County Bar Association, and Co-Chair of the Solo, Small Firm and Technology Committee for the Kane County Bar Association. She has presented at Illinois State Bar Association, DuPage County Bar Association and Kane County Bar Association seminars speaking on topics relating to family law. In addition to her speaking engagements, Emily has authored and edited legal articles including a chapter on the Parentage Act and Elements of Illinois Law: Domestic Relations for Illinois Institute for Continuing Legal Education.

**DUPAGE COUNTY BAR ASSOCIATION
FAMILY LAW SECTION
September 19, 2023**

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FAMILY LAW COMMITTEE MEETING
September 19, 2023
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ALLOCATION OF PARENTAL RESPONSIBILITIES

Illinois Department of Healthcare and Family Services Ex Rel., Tasha P. and Nana W., 2023 WL 5103981 (Ill.App. 3 Dist.), August 9, 2023*

Father sought an allocation of parental responsibilities and parenting time for the parties' minor child. A GAL was appointed, and a temporary order was entered providing Father 35% of the parenting time. Despite Mother having been primary caregiver for the child's first year of life, the GAL testified at trial that it was in the child's best interest for the parties to share equal parenting time. She took into account that Mother resided in Darien and Father resided in Bolingbrook and the short distance could facilitate an equal schedule. The GAL also focused on the fact that Father would be better able and willing to facilitate the child's relationship with Mother (e.g., Mother sought baseless Order of Protection; Mother attempted to surveil Father, etc.), and thus recommended joint decision-making responsibilities. Father, who lived with his Wife and other child of similar age to the minor in question, had also begun taking steps to enroll the child in preschool in the program near his home, whereas Mother had provided little information as to the Head Start programs she testified to have been looking into. Mother also moved regularly, including unilaterally moving the child out of state for a period of time. The trial court awarded joint decision-making responsibilities and equal parenting time. The trial court also found that it would be beneficial for the child to attend the same school as his same-age sibling and held that the child would attend school in Father's district. Mother appealed, arguing that the trial court's decision was unreasonable because she was the child's primary caregiver and changing the allocation would require the child to adjust to a new schedule.

The appellate court affirmed, finding that Mother failed to dispute several of the trial court's findings that weighed against her, including her inability to properly co-parent with Father and her sporadic residency history. While the change in the child's schedule was a factor to be considered, that factor alone, especially given the minor change in the schedule, did not mean the trial court's decision was against the manifest weight of the evidence. The trial court properly relied on the GAL's recommendations and considered the statutory factors.

In re Marriage of Knabb, 2023 WL 4695937 (Ill.App. 1 Dist.), July 24, 2023*

Wife appealed several orders that were entered in the divorce case during the two years it was litigated. The appellate court held that the orders entered prior to the parties' judgment were not final orders and were actually superseded by the judgment. Therefore, any orders entered prior to the judgment were considered moot.

Wife appealed the trial court's ruling awarding Husband sole decision making and majority of parenting time citing Guardian ad Litem bias, evidence of the parties' ability to co-parent, and her history of being the primary caretaker of the child. The appellate court affirmed, noting that the trial court has broad discretion in considering evidence and allocating parental responsibilities

*Unpublished/Rule 23(e)(1) decision.

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and parenting time. The appellate court also noted that Wife failed to present any evidence that the trial court's findings were against the manifest weight of the evidence.

Wife also appealed the trial court's imputation of income to her for purposes of calculating support. She argued no income should have been imputed based on her approval for social security disability benefits as a result of her post traumatic stress disorder. The trial court found that Wife failed to establish her disability at trial and that she was not credible. The appellate court found that given all the evidence, the trial court properly imputed income based on deposits into Wife's bank account that she did not report as income.

Wife further appealed the trial court's award of \$8,982 in fees to Husband based on her violation of two court orders. The appellate court affirmed the fee award and held a finding of contempt was not necessary for a 508(b) award, and Wife did not dispute that she had violated both orders. Wife also argued the amount was improper as Husband failed to establish the reasonableness of the fees incurred. However, Wife failed to provide a complete record of the evidence presented to the trial court as to the reasonableness of fees, and thus, the appellate court found it appropriate to defer to the trial court's discretion as the record reflected the trial court did receive and review some billing records. On appeal, any incompleteness of the record is to be resolved against the appellant. The trial court was familiar with the entirety of the divorce proceedings, including the work of Husband's counsel, and could infer reasonableness based on evidence of fees from a prior rule to show cause.

In re Marriage of Swafford, 2023 WL 5530690 (Ill.App. 5 Dist.), August 28, 2023*

The parties were married in 2017, and they had two children. Wife filed a petition for dissolution of marriage in 2021. Wife was the primary caretaker of the children throughout the parties' marriage. In March 2023, the case concluded and Wife was awarded sole decision-making authority and majority parenting time subject to Husband's reasonable parenting time, and the parties were equally responsible for child-related expenses. In determining the allocation of parental responsibilities, the trial court addressed the applicable statutory factors. Husband appealed, arguing that the trial court erred in allocating Wife sole decision-making authority, majority parenting time, and ordering the parties to be equally responsible for child-related expenses.

The appellate court affirmed. The appellate court stated that Husband did not claim on appeal that the trial court failed to consider the statutory factors pertaining to decision-making authority or that the trial court's findings were not supported by the record, but rather claimed that the trial court ignored the testimony that Husband provided and the evidence he submitted as it related to the statutory factors. The appellate court emphasized that there is no requirement that a trial court must address every piece of evidence or all of the testimony provided during the hearing. The appellate court further explained that here, the trial court relied primarily on testimony and evidence provided by Wife because it found her testimony and evidence to be more credible or compelling than that provided by Husband, and an appellate court will not reweigh evidence or disturb the trial court's credibility determination. As such, the appellate court held that the trial court's allocation of decision-making was not against the manifest weight of the evidence.

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Pertaining to the allocation of parenting time, the appellate court stated that the evidence revealed that a shared parenting time schedule was disruptive, and that the parties disagreed on the major subjects regarding the children. The appellate court held that the trial court applied the statutory factors when making its decision on the allocation of parenting time, and such decision was not against the manifest weight of the evidence.

Lastly, pertaining to child-related expenses, the trial court held that no review of the matter was necessary, as it was barred by the invited-error doctrine. Specifically, the appellate court found that the record showed the parties agreed to equally split child-related expenses between agreed orders, stipulations, and position statements. As such, the appellate court affirmed the trial court's ruling.

ALLOCATION OF PARENTING TIME

See also, ALLOCATION OF PARENTAL RESPONSIBILITIES, *In re Marriage of Knabb*, 2023 WL 4695937 (Ill.App. 1 Dist.), July 24, 2023*

See also, ALLOCATION OF PARENTAL RESPONSIBILITIES, *In re Marriage of Swafford*, 2023 WL 5530690 (Ill.App. 5 Dist.), August 28, 2023*

APPELLATE JURISDICTION

In re Parentage of D.S., Stewart v. Mahoon, 2023 WL 4032373 (Ill.App. 1 Dist.), June 15, 2023*
Father filed a motion seeking an order transferring venue of the case from Cook County to Peoria County. The trial court entered an order transferring the case and taking the matter off call in Cook County. Father appealed that order for reasons not so clear in the opinion. However, the appellate court dismissed the appeal for lack of appellate jurisdiction, finding that the transfer of venue order did not ascertain or fix absolutely the right of any party to the action. Further, the order did not include a finding pursuant to Supreme Court Rule 306 granting Father leave to appeal.

ATTORNEY FEES

Teymour v. Mostafa, 2023 WL 3947939 (Ill.App. 1 Dist.), June 12, 2023*

The parties dissolved their 23-year marriage in 2006. In 2013, Wife filed a petition to extend and increase maintenance and to issue a rule to show cause as to why Husband should not be held in contempt for failing to comply with his insurance obligations, and also seeking attorney fees. Husband sought the abatement or reduction of his maintenance obligation. In 2014, both parties filed motions for discovery sanctions for the other's failure to comply with discovery requests.

The trial court extended Husband's maintenance obligation for three years, finding that the parties' MSA provided that Husband's maintenance payments could not be terminated unless Wife earned more than \$50,000. The trial court also found that Wife made a good faith attempt to increase her income. The trial court found Husband to be in indirect civil contempt regarding his insurance obligations and granted Wife leave to file a petition for attorney fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act. The trial court also granted Wife's

*Unpublished/Rule 23(e)(1) decision.

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motion for sanctions pursuant to Supreme Court Rule 219 due to Husband's untimely and incomplete responses to discovery requests, and as a result, the trial court found it appropriate for Husband to pay Wife's attorney fees related to seeking Husband's compliance with discovery. The trial court denied Husband's motion for sanctions. In 2015, Wife filed a petition for attorney fees pursuant to section 508(b) following the finding of contempt, as well as pursuant to section 508(a), claiming that Husband had the resources to pay her fees, and she did not. Thereafter, Husband filed a motion to reconsider, to which the trial court denied. In 2018, Wife filed a second petition to review and extend maintenance, and Husband asked the court to modify his life insurance obligation. The trial court granted Wife's request to continue maintenance for 36 months, but denied her request for indefinite maintenance, again concluding that Wife's maintenance could not be modified unless she earned more than \$50,000. The trial court denied Husband's assertion that the \$50,000 threshold only applied to the initial seven-year period of maintenance. The trial court reduced Husband's life insurance obligation. The trial court awarded Wife attorney fees pursuant to sections 508(a) and 508(b). Husband appealed.

The appellate court reversed the trial court's contempt finding and affirmed the remaining orders in all other respects. First, the appellate court found that the trial court properly interpreted the MSA's maintenance provisions and continued Wife's maintenance as the terms of the MSA clearly indicated that the \$50,000 threshold would continue to apply after the initial seven-year period. The appellate court emphasized that in reviewing maintenance, the trial court must consider the factors in section 504(a) and 510(a-5) of the Act to determine whether maintenance should be continued, modified, or terminated. The appellate court found that the trial court did not abuse its discretion in continuing Wife's maintenance and properly evaluated the relevant factors.

The appellate court further found that the record indicated that Husband could have complied with Wife's reasonable discovery requests, thus the Rule 219 sanctions were appropriate.

Separately, Husband argued that the election of remedies doctrine barred Wife's contempt action because the MSA specified other remedies for the failure to comply with Husband's insurance obligations. Wife argued that Husband forfeited reliance on the election of remedies doctrine because he raised it in his motion to reconsider. The appellate court found that while Husband's argument was forfeited, it also found that the trial court did not identify a means for Husband to purge himself of contempt and reversed the contempt finding accordingly. However, the appellate court stated that it did not follow that the section 508(b) attorney fees awarded to Wife in conjunction with the contempt finding must also be reversed. The appellate court held that the trial court properly found that Husband lacked compelling cause or justification for his noncompliance, and thus the 508(b) fees were appropriate. The appellate court also affirmed the 508(a) attorney fees awarded to Wife, noting the discrepancy in the parties' incomes, and the presumption that the trial court knew the law and applied it appropriately, absent an affirmative showing to the contrary. The appellate court stated that there was no authority provided that requires the trial court to make express findings regarding the numerous factors to be considered when awarding 508(a) attorney fees as suggested by Husband.

See also, ALLOCATION OF PARENTAL RESPONSIBILITIES, *In re Marriage of Knabb*, 2023 WL 4695937 (Ill.App. 1 Dist.), July 24, 2023*

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See also, PROPERTY CLASSIFICATION, *In re Marriage of Kattner*, 2023 WL 5430740 (Ill.App. 1 Dist.), August 23, 2023*

BUSINESS RECORDS

In re Marriage of Carty, 2023 WL 3862047 (Ill.App. 2 Dist.), June 7, 2023*

Wife petitioned for adjudication of indirect criminal contempt against Husband, alleging that he violated a provision of the JDOM that required him to provide results of breath tests measuring his BAC during times when he was with the parties' children. At trial, the trial court admitted a report of Husband's breath test results into evidence and determined that Husband had failed to provide breath results on certain dates, and further found him in indirect criminal contempt of court. Husband was sentenced to two days in jail and ordered to pay a \$400 fine. Husband appealed, arguing that the trial court erred in admitting the breath test results into evidence, and finding him guilty of indirect criminal contempt.

The appellate court affirmed. Husband argued that the trial court erred in admitting the breath test results because he was not provided sufficient notice of the report and that the report lacked adequate foundation as to its admissibility or accuracy, in violation of Supreme Court Rules 902(11) and 803(7). The appellate court found that Wife sought to admit the report pursuant to Rule 803(6) regarding business records and Rule 902(11). Accordingly, the appellate court found that the report was properly admitted, and that Husband had sufficient notice.

The appellate court rejected Husband's argument that the evidence was insufficient to sustain the finding of indirect criminal contempt, noting that Wife successfully proved that Husband willfully violated a valid and clear court order.

CHILD SUPPORT

In re Marriage of Huffman, 2023 WL 3995684 (Ill.App. 4 Dist.), June 14, 2023*

Following trial, Wife was awarded primary parenting time and Husband was ordered to pay child support and maintenance. Husband filed a motion to reconsider. Thereafter, parenting time was modified temporarily to a week on/week off schedule and a GAL was appointed. However, child support was not modified. The GAL reported to the court that Husband was able to provide "enticing entertainment" for the child as he had a financial advantage since he was not paying the court-ordered support payments. The GAL did not make any specific recommendations as to parenting time. The trial court reduced Husband's child support obligation by approximately \$100.00 per month.

Approximately two months later, both parties filed separate motions to modify the parenting time schedule. Following further investigation, the GAL recommended that Husband be awarded majority of the parenting time and recommended counseling for Wife and child. The court awarded Husband majority time and reserved the issue of child support. Thereafter, Husband filed a petition for child support. Evidence of each party's incomes was produced at the hearing. Wife further testified to Husband's abusive nature and the fact that she left the residence prior to the divorce as a last resort and struggled to become self-supporting. Wife voluntarily was not

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exercising her parenting time at the time of the hearing on support because Husband had alienated her from the child to the extent that she did not believe parenting time with the child was healthy for either her or the child. Wife also requested approximately \$5,000 for the support she believed she was owed prior to the previous reservation of child support. The trial court denied both party's requests but failed to include factual findings regarding what child support should be pursuant to the guidelines. Husband appealed, claiming that the trial court showed personal bias to him and failed to find a proper basis for deviating from the guidelines.

The appellate court vacated the order and remanded the case. While the appellate court stated that the record did not support Husband's claim of bias, the trial court did fail to specifically connect its factual findings to its determination that child support was not warranted as required by Section 505 of the Illinois Marriage and Dissolution of Marriage Act.

In re Marriage of Musiejuk, 2023 WL 5321314 (Ill.App. 1 Dist.), August 18, 2023*

Husband agreed to pay Wife child support as set forth in their settlement agreement. Wife filed a petition for rule to show cause for failure to pay support. Husband sought a modification and/or abatement of his support obligation due to unemployment. The trial court ultimately set Husband's arrearage, reduced Husband's support, and ordered Husband to contribute to college costs.

Husband appealed, claiming that the trial court did not properly enforce the parties' settlement agreement. However, Husband failed to produce a transcript from the hearing and failed to set forth a fully developed and reasoned analysis to support his argument on review. In the absence of such, the appellate court presumed the trial court's order was in conformity with law and supported by the facts. The appellate court further noted that trial courts are vested with the authority to modify child support provisions set forth in a settlement agreement. The trial court's orders were affirmed.

See also, ALLOCATION OF PARENTAL RESPONSIBILITIES, *In re Marriage of Knabb*, 2023 WL 4695937 (Ill.App. 1 Dist.), July 24, 2023*

See also, FOREIGN JUDGMENTS, *In re A.H.*, 2023 WL 5281637 (Ill.App. 1 Dist.), August 17, 2023**

CHILDREN'S ACCOUNTS

Chanen v. Chanen, 2023 WL 4837695 (Ill.App. 1 Dist.), July 28, 2023*

The parties' Marital Settlement Agreement ("MSA") included a provision that the accounts titled in the children's names would be held for the payment of the children's college expenses prior to either party being obligated to contribute. One of the accounts included a Vanguard 500 Index account which was held as custodian by Husband. Following the entry of the judgment for dissolution of marriage, Husband solely paid the taxes associated with the income generated from the Vanguard account. The MSA was silent as to who was responsible for payment of same but did include a provision that each party would be solely responsible for the debts in his/her sole name. Husband sought Wife's agreement for him to be reimbursed from the Vanguard account which continued to hold funds sufficient to pay for the remaining college expenses that were

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expected to be incurred. Wife objected, claiming that since the account was in his name, Husband should be responsible for the tax liability. Husband filed a motion for reimbursement. Wife's motion to dismiss was denied.

The trial court rejected her contention that because the account was titled in Husband's name, he should pay the liability as she failed to acknowledge that the funds were not Husband's but rather were held for the benefit of the children. The trial court found that a constructive trust had been created by the MSA. The trial court further rejected Wife's argument that Husband should be barred from seeking relief by *res judicata* as a previous court order dealing with child support included a provision that all financial issues were resolved and that as of the date of the order, each party agreed that "neither will have a claim against the other for financial issues arising under the terms of the Judgment that predate this order." The trial court's basis was that its decision to allow Husband to reimburse himself from the Vanguard account did not require Wife to contribute to a debt that was not incurred by her. Wife appealed.

The appellate court affirmed, holding that based on a review of the MSA in its entirety, including the provision that neither party would have an obligation to pay "any expenses" related to the children's college education until the funds in the children's accounts were exhausted, the parties did not intend for Husband to be solely responsible for the payment of taxes associated with the income growth. The appellate court held that "any expenses" includes the income tax on the earnings in the children's educational accounts. The appellate court rejected Wife's argument that the trial court improperly modified the MSA, finding that the trial court merely interpreted the MSA by implying a reasonable missing term, consistent with the principles of contract interpretation. Further, Wife was not required to pay any additional debts or obligations as a result of the trial court's ruling. In addition, the parties essentially created a constructive trust by having Husband maintain the accounts for the benefit of the children. Therefore, the appellate court held the trial court's finding that it would be inequitable for Husband to be solely and personally responsible for the taxes was reasonable.

The appellate court further held that *res judicata* did not apply because Husband's motion seeking to assign the tax liability was not the same cause of action that was addressed in the previous court order regarding child support.

CLASSIFICATION OF PROPERTY

In re Marriage of Kattner, 2023 WL 5430740 (Ill.App. 1 Dist.), August 23, 2023*

Husband raised seven claims of error on appeal.

Prior to the filing of the divorce case, the parties entered into an agreement for support and the division of assets which they referred to as their "kitchen table agreement" ("KTA"). The trial court found the KTA unconscionable because it gave an extra \$275,000 to Wife and took away substantial rights to maintenance, was vague and wanton. The appellate court found the KTA to essentially be a postnuptial agreement. The law favors amicable settlement of property rights in divorce cases and the validity of postnuptial agreements is presumed. The appellate court reversed and found the KTA not substantively unconscionable. The court's unconscionability analysis focused on the parties' relative economic positions immediately following the making of

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a postnuptial agreement. Although the parties' economic situations immediately after signing the KTA were not equal, the KTA did not cause the inequality – the imbalance existed years before the KTA due to the parties' earning capacity. No term of the KTA was unduly one-sided or harsh. Further, Illinois law does not specifically require financial disclosures in postnuptial agreements. In addition to the KTA, Wife had signed a "Renunciation and Disclaimer of Property" ("RDP") prepared by Husband's lawyer to disclaim the right to certain property as set forth in the KTA, but it only addressed property Husband was getting. The RDP did not reference the KTA at all. The trial court found the RDP unenforceable due to lack of consideration. The appellate court agreed that the RDP lacked consideration and had no mutual disclaimer of property rights; Wife received nothing and only Wife signed it.

The appellate court held the trial court erred in classifying a condo as Wife's non-marital property when there was a stipulation by the parties that it was marital. The trial court was bound by the parties' stipulation.

Both parties' 401k accounts were started prior to the marriage. The trial court classified Wife's 401k account as non-marital and Husband's as marital. The appellate court reversed the trial court's classification of Wife's 401k account. The trial court reached opposite conclusions for each account even though they were essentially the same. The appellate court held the 401k accounts became marital property through contributions from the parties' salaries during the marriage. The appellate court upheld the trial court's award of 60/40 distribution of marital estate in Wife's favor. In this case, there were two judgments for dissolution of marriage because the parties bifurcated their divorce. For tax reasons, they were divorced in December of 2018, but proceeded to trial thereafter. Both judgments had provisions for contribution to Wife's attorney fees. The December 2018 judgment capped Husband's contribution at \$50,000. Husband paid the \$50,000. Thereafter, the trial court awarded Wife additional fees in the amount of \$143,031.41. The appellate court found that the original \$50,000 award created a property right to Wife and the court lacked jurisdiction to modify that later when it ordered Husband to pay additional fees. Therefore, the additional fee award was reversed.

COHABITATION

In re Marriage of Edson, 2023 WL 4067174 (Ill.App. 1 Dist.), June 20, 2023**

Husband was ordered to pay monthly maintenance to Wife for a period of 20 years. Approximately four years after entry of the Marital Settlement Agreement, Husband filed to terminate his maintenance obligation, alleging that Wife was cohabitating with another party on a continuing conjugal basis constituting a *de facto* marriage. The trial court held a two-day bench trial and ultimately determined that Husband had failed to meet his burden of establishing that Wife was cohabitating with another person in a resident, conjugal, and continuing relationship. Husband had alleged that Wife and her significant other attended family functions together, spent overnights together, travelled and vacationed together, spent holidays together with their families, shared meals together at Wife's residence, held themselves out as a couple on social media, and even listed the significant other as a family member on an obituary. The trial court held that while Husband established that Wife was involved in an intimate dating relationship, he failed to establish by a preponderance of the evidence that she was in a *de facto* marriage. The trial court found that the relationship lacked "the depth of commitment necessary" to find a *de facto* marriage.

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as the two had completely and consistently maintained separate households and finances. Husband appealed, arguing that the trial court's ruling was against the manifest weight of the evidence.

The appellate court affirmed. In determining whether a party is engaged in a resident, continuing conjugal relationship pursuant to section 510(c) of the Illinois Marriage and Dissolution of Marriage Act, the party moving to terminate maintenance must show that the recipient is in a *de facto* relationship with a third party, or cohabitating with a third party. If the moving party meets their burden, the maintenance recipient must then demonstrate that he or she is not engaged in that type of relationship. The appellate court emphasized that the 6-factor *Herrin* test is not the official test to find a *de facto* marriage, but rather the trial court needs to consider the totality of the circumstances, most importantly the financial implications of the relationship, further highlighting that Illinois no longer requires proof of sexual conduct. The appellate court noted that the parties both agreed the 6-factor *Herrin* test was properly utilized by the trial court. The parties' disagreement came from the weight given to each factor in the trial court's ultimate determination. The appellate court reviewed the record and the trial court's detailed findings, and ultimately found that the trial court's conclusion was not against the manifest weight of the evidence in consideration of the totality of the circumstances.

CONTEMPT

In re Parentage of K.N.T., Golliday v. Thompson Sr., 2023 WL 4543053 (Ill.App. 1 Dist.), July 14, 2023*

Father's child support obligation was set in 1991. In 1999, Father was found in contempt for failure to pay and judgment was set in favor of Mother for the past due arrearage. Father was ordered to continue paying his base support and a monthly amount toward the arrearage. In 2018, Father was found in contempt a second time for failing to pay the support as ordered in 1999. At that time, he owed \$129,181.83. However, the trial court made adjustments in "an effort to come to an affordable, realistic, and accountable payment plan" and set the amount at \$65,000. Father was ordered to pay it off at \$300 per month. On appeal, that order was affirmed. Later that year, Father filed a motion to modify the arrearage payment due to physical disability and unemployment. In 2020, Father sought leave to file an amended motion to modify because of the Covid-19 pandemic. In March 2021, the monthly payment amount was reduced to \$100 for a period of time to enable Father to secure a loan. Later that year, the amount was permanently reduced to \$100 a month. In 2022, Mother filed another contempt petition as Father did not pay the \$300 monthly payment or the \$100 monthly payment since the entry of the 2018 and 2021 orders. Father was found in contempt for violating both orders despite Father's reasons and explanations for his nonpayment. Father appealed.

The appellate court affirmed. No transcript from the hearing or bystander's report was provided to the appellate court; therefore, the court was to presume that the trial court's rulings were proper. Father argued that the trial court determined that he did not have the ability to comply with the orders when it reduced his monthly payment to \$100 a month. The appellate court held that, while the trial court modified the payment going forward from that date, it made no finding regarding his ability to pay prior to the entry of the modification and it did not make the modification retroactive. To the contrary, when the trial court found Father in contempt, it specifically made the

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finding that he did have the ability to pay the \$300 a month until it was reduced. As such, the record on appeal did not support Father's contentions.

See also, ATTORNEY FEES, *Teymour v. Mostafa*, 2023 WL 3947939 (Ill.App. 1 Dist.), June 12, 2023*

See also, BUSINESS RECORDS, *In re Marriage of Carty*, 2023 WL 3862047 (Ill.App. 2 Dist.), June 7, 2023*

See also, INVALIDATION OF MARRIAGE, *In re Marriage of Andrew*, 2023 WL 4036605 (Ill.App. 1 Dist.), June 16, 2023**

CREDIBILITY OF WITNESSES

In re Marriage of Mansoor and Mohammed, 2023 WL 4533908 (Ill.App. 3 Dist.), July 13, 2023*

Wife petitioned to remove her personal belongings from the marital residence and/or for a temporary restraining order and attached an inventory of the belongings she had left behind at the marital residence. The trial court granted Wife's petition by agreement of the parties. Wife then moved for an inventory of the marital residence for discovery purposes, which was also granted by agreement. During the trial, the only dispute was the value of Wife's nonmarital property, where Wife testified that she left personal property at the marital residence, most relevant her jewelry acquired before the marriage. The trial court admitted pictures of said property into evidence. The items at issue were a gold necklace and earring set gifted to Wife by her cousin, gold bangles gifted to Wife by her relatives, a necklace and earrings gifted to Wife by her aunt and uncle, a set of six gold bangles purchased by her parents for \$2,000, a pendant necklace and matching earrings gifted by Wife's cousin, a family heirloom pearl necklace and matching earrings gifted by her parents, and jewelry gifted by Husband for the wedding. Wife testified that Husband told her he spent \$60,000 on the wedding jewelry. Husband testified that whatever items he saw he packed up for Wife, and further testified that he only spent \$20,000 on Wife's engagement jewelry, and that the wedding jewelry was costume jewelry in the amount of \$400. The trial court ultimately ordered Husband to reimburse Wife \$30,000 for the cost of the items unless he returned the items she left behind within 30 days. Husband moved to reconsider, because he was not present in court for the ruling due to a family death. The trial court denied the motion, and husband appealed, arguing that the trial court erred in valuing the jewelry at \$30,000, made inappropriate credibility determinations, and lacked sufficient competent evidence to determine the value of the jewelry.

The appellate court vacated and remanded. First, as to credibility determinations, the appellate court found that the review of the record did not support a finding that the trial court erred in its assessment of the parties' credibility at trial. As to the value of the property, the appellate court did find that the trial court's valuation of the missing nonmarital jewelry was against the manifest weight of the evidence. The appellate court stated that it is the obligation of the parties to present the court with sufficient evidence of the value of the property, and the court shall employ a fair market value standard in determining the value of assets. The appellate court ultimately found that the trial court's finding regarding the jewelry's value was not supported by sufficient evidence. The appellate court noted that where a party has had a sufficient opportunity to introduce evidence

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but offers none, that party should not benefit on review from its omission. Here, neither party presented sufficient evidence as to the value of Wife's jewelry, as there were no expert appraisals, receipts, or any other evidence for the court to base its valuation. Therefore, the appellate court found that the trial court's order requiring Husband to reimburse Wife \$30,000 was against the manifest weight of the evidence. The appellate court remanded for the parties to provide evidence of the value of the missing jewelry.

DISCOVERY

In re Marriage of Yearman, 2023 WL 5199473 (Ill.App. 3 Dist.), August 14, 2023*

Both parties were pro se at the time of the trial. Husband appealed the trial court's discovery orders, forcing him to proceed to bench trial without first forcing Wife to comply with his discovery requests. The appellate court found that the record of proceedings showed that the trial court addressed Husband's requests for relief regarding Wife's compliance with discovery and made rulings throughout the proceedings. Rather than imposing sanctions for non-compliance, the trial court moved the case along by questioning the parties directly about the issues in dispute, such as asking Wife if she owned land in Mexico, if she had additional bank accounts, and about Wife's fertility procedures, and ordered Wife to comply and produce certain documents. The appellate court found the trial court took a fair and reasonable approach to resolving the discovery issues and noted the parties were self-represented and did not know how to proceed. The appellate court also noted that much of the uncertainty with discovery was caused by Husband's lack of knowledge about procedure and that Husband was not prejudiced by trial court's decision not to impose Supreme Court Rule 219(c) sanctions against Wife.

Husband appealed the trial court's award of temporary and permanent maintenance to Wife based on her failure to comply with discovery, and that Wife had cash seized by the DEA that should have been included in her income. The appellate court found that the failure to provide corroborating documents in support of Wife's Financial Affidavit did not defeat a maintenance claim but required the trial court to assess credibility. There was no record of the proceeding for temporary maintenance, so the appellate court had to presume conformity with the law. The trial court awarded maintenance based on the disparity of incomes and work histories, which were not disputed at trial. The record showed that the trial court followed the statutory guidelines in making its decision on maintenance.

During the litigation, a paternity test revealed Husband was not the biological father of the child. Husband tried to claim his support of the child as dissipation. The trial court found the expenses were incurred while Husband was enjoying a parent/child relationship. The appellate court upheld the decision that money paid for the child's expenses was not dissipation.

DISSIPATION

See also, DISCOVERY, *In re Marriage of Yearman*, 2023 WL 5199473 (Ill.App. 3 Dist.), August 14, 2023*

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FOREIGN JUDGMENTS

In re A.H., 2023 WL 5281637 (Ill.App. 1 Dist.), August 17, 2023**

The parties' triplet children were born in Thailand. Mother filed suit against Father in Thailand in December 2010, and the Thailand court adjudicated Father as the biological father of the triplets based on a DNA test and ordered him to pay \$1,500 per month in child support for the triplets. Father failed to pay said child support. In 2011, Mother sought recognition, enforcement, and modification of the child support order entered by the court in Thailand against Father. Mother and the triplets were now residing in the United Kingdom with Mother's current husband. Father resided in Illinois. In 2013, the trial court enrolled the Thailand judgment under the principles of comity. In 2017, Mother filed a motion seeking to increase child support, an injunction directing Father to execute the paperwork for the triplets to be recognized as US citizens, an order requiring Father to pay Mother's attorneys' fees, and an order registering the Thailand judgment. Father moved to dismiss the petition, arguing that the trial court lacked statutory authority to modify the Thailand judgment pursuant to section 615 of the Uniform Interstate Family Support Act. Ultimately, the trial court enforced and modified the judgment, and entered orders requiring Father to pay \$76,000 in child support arrears per the Thailand judgment, \$4.5 million into trusts for prospective modified child support, \$2 million in retroactive modified child support, over \$2 million in attorney fees and costs, and \$50,000 in sanctions pursuant to Supreme Court Rule 137.

Father appealed, arguing that the trial court lacked statutory authority to modify the Thailand judgment, erred by applying the pre-July 1, 2017 Illinois child support laws, abused its discretion by barring the testimony of Father's immigration expert, abused its discretion by modifying the child support award in the Thailand judgment and making the modified child support retroactive with interest and creating child support trusts, abused its discretion by adopting the terms of the trust agreements, failed to give Father credit for child support payments and overfunded the child support trusts, erred in awarding attorney's fees, and abused its discretion by ordering him to pay \$50,000 in sanctions.

The appellate court affirmed in part, reversed in part, vacated in part, and remanded for further proceedings.

First, the appellate court found that under the common law principles of comity, the trial court had jurisdiction to modify the Thailand support order and enforce it by calculating the arrears. The appellate court held that sections 603 and 615 of the Uniform Interstate Family Support Act, which Father relied on, did not deprive the trial court of authority to modify or enforce the Thailand judgment.

Second, the appellate court held that because Mother filed her petition to modify the child support terms set forth in the 2011 Thailand judgment, the trial court appropriately applied the pre-July 1, 2017, child support guidelines in consideration of section 801 of the Parentage Act.

Third, the appellate court found that Father's immigration expert's testimony was relevant to the matters at hand, however the appellate court determined that any error as a result was harmless.

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Fourth, the appellate court held that the record demonstrated a substantial change in circumstances which justified a modification of Father's child support obligation, and that the amount of the award was neither an abuse of discretion nor against the manifest weight of the evidence.

Fifth, the appellate court held that the trial court did not abuse its discretion in making the modified support amount retroactive.

Sixth, the appellate court found that the interest on the arrearage of modified child support was statutory interest, and there was no error.

Seventh, the appellate court found that the creation of the child support trusts pursuant to section 503(g) of the Illinois Marriage and Dissolution of Marriage Act was necessary, in the best interests of the children, did not require a finding of contempt, and was appropriate.

Eighth, the appellate court found that the trial court had authority to adopt Thailand law for the duration of Father's child support obligation where the age of majority is 20.

Ninth, the appellate court rejected Father's arguments against the provisions of the trust, except for the provision requiring that if Father died before the termination of the trusts, any remaining funds upon Father's death were to be distributed to his heirs at law. The appellate court vacated that provision and remanded to the trial court to provide that if Father died before the trusts terminated, any funds remaining upon termination are to be paid to his estate.

Tenth, the appellate court agreed with Father that he was entitled to a credit for prospective modified child support payments that were made after the 2018 support judgment and before the section 503(g) trusts were funded with \$4.5 million, and that the trial court overfunded the trusts by \$500,000. The appellate court reversed that order and remanded the trial court to determine the correct credit and proper amount to fund the trusts.

Eleventh, the appellate court held that the award of attorneys' fees was appropriate, and Father failed to argue that the amount of the fees was excessive.

Twelfth, and lastly, the appellate court found that the trial court considered facts that were not a basis for an award of sanctions pursuant to Rule 137, but the appellate court had no way of knowing the weight that the trial court gave to said facts, so the appellate court vacated the sanctions awarded and remanded to the trial court to rule on the motion for Rule 137 sanctions, taking into consideration only those matters for which a sanction might be imposed under the rule.

FRAUDULENT CONCEALMENT

Anderson v. Sullivan Taylor & Gumina, P.C., 2023 WL 4288345 (Ill.App. 1 Dist.), June 30, 2023*

In 2021, Plaintiff filed a complaint against her former attorneys for malpractice, alleging that in 2011 when the Judgment for Dissolution of Marriage was entered, the attorneys told Plaintiff that she would be eligible to receive death benefits from her former spouse. Plaintiff alleged that, in reliance on her attorney's advice that she would receive death benefits, Plaintiff waived other

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financial benefits. In March 2020, Plaintiff was informed that she was ineligible to receive death benefits. Plaintiff contacted her attorneys thereafter. Plaintiff alleged that during the divorce proceedings, her attorneys told her that they would file a Qualified Domestic Relation Order (QDRO) once the settlement agreement was entered to give effect to the provision entitling her to a death benefit from the pension fund. In 2020, upon learning that she was ineligible to receive the death benefits, Plaintiff alleged that she asked her attorneys about the QDRO and whether the Pension Code precluded her from receiving a death benefit, to which Plaintiff alleges that her attorneys told her the purpose of the QDRO was to override the Pension Code so that she could receive the death benefits. In March 2020, Defendant sent Plaintiff a QDRO to sign so that he could file it with the court. Defendant filed the QDRO in June 2020, nearly 9 years after the settlement agreement was entered. In August 2020, the pension plan administrator informed Plaintiff that she did not qualify for the death benefits. Plaintiff alleged that contrary to her attorney's advice, she never could have received a death benefit from the pension, and she would have then taken a different position in the divorce case, but for the Defendants' negligent advice. Plaintiff's complaint sought to recover the losses she sustained due to Defendant's negligent legal representation and claimed that the Defendants should be estopped from asserting a limitation-period defense and that the Defendants fraudulently concealed their professional negligence from her so that she would not discover the erroneous advice. The trial court dismissed her initial complaint without prejudice. Plaintiff then filed an amended complaint. The trial court dismissed Plaintiff's amended complaint with prejudice, holding that the six-year statute of repose for claims against attorneys barred Plaintiff's claim. Plaintiff appealed the trial court's dismissal of the operative complaint.

The appellate court reversed the dismissal of the complaint as being time barred due to fraudulent concealment and remanded the case. The appellate court ultimately found that Plaintiff pled facts that demonstrated that the Defendants fraudulently concealed their negligence from Plaintiff, thereby tolling the statute of repose. The appellate court explained that a statute of repose begins to run when a specific event occurs, regardless of whether an action has accrued. The appellate court stated that the statute of repose begins to run on the date on which the act or omission in the provision of professional services occurred. The appellate court further explained that the six-year statute of repose for claims against attorneys begins to run as soon as the event creating the malpractice occurs. The statute of repose terminates the possibility of liability for an attorney regardless of the Plaintiff's knowledge concerning his or her cause of action. In this case, the appellate court found that the statute of repose began when the Marital Settlement Agreement was approved and entered by the trial court. The appellate court explained that the alleged negligence was complete at the time the Marital Settlement Agreement was entered, where Plaintiff relied on the allegedly negligent advice and fixed her legal rights in accordance with said advice, thus Plaintiff's malpractice claim is barred by the statute of repose. The Plaintiff also argued that the Defendants were equitably estopped from raising the statute of repose. The appellate court held that Plaintiff's claim of equitable estoppel failed because one of the elements of equitable estoppel was not present, as the Plaintiff did not allege that Defendants knew about the erroneous advice, nor did she allege that Defendants prevented her from forgoing or delaying filing her suit. Lastly, Plaintiff argued that the Defendants fraudulently concealed their negligence and the existence of her claim for legal malpractice. The appellate court explained that fraudulent concealment was grounds for tolling statutes of repose, including the statute of repose for legal malpractice, stating that a statute of repose can be tolled if a Plaintiff does not discover the claim due to fraudulent concealment on the part of the Defendant. The appellate court stated that if a

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person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled, the action may commence at any time within five years after the person entitled discovers that she has such cause of action. In order to toll the statute of repose on the basis of fraudulent concealment when the Defendant stands in the position of a fiduciary to the Plaintiff, a Plaintiff may successfully proceed on the claim of fraudulent concealment when the attorney fails to fulfill his duty to disclose material facts concerning the existence of a cause of action. The appellate court found that, taking the Plaintiff's allegations as true, the Plaintiff pled sufficient facts to go forward on a claim that fraudulent concealment tolled the statute of repose, and was entitled to go forward on her claim for legal malpractice.

INVALIDATION OF MARRIAGE

In re Marriage of Andrew, 2023 WL 4036605 (Ill.App. 1 Dist.), June 16, 2023**

Following a 20-year marriage, the parties divorce was finalized in 2014. The parties' judgment incorporated a marital settlement agreement ("MSA"), in which Husband agreed to pay maintenance at a rate of \$20,000 a month. The MSA provided that the maintenance was non-modifiable as to amount and duration except as provided for within the agreement. The MSA set forth six termination events but did not include any terms regarding modification.

In 2020, Wife filed a petition for rule as Husband had ceased paying maintenance. Husband filed a separate petition to invalidate the marriage and then a motion to terminate his maintenance obligation. Husband claimed that, because he began his relationship with Wife while he was a 16-year-old student of Wife's, he had been under her dominance and control when they first married. Therefore, Husband alleged that the marriage was invalid and void. The parties continued their relationship after Husband reached majority and were married when Husband was 25 years old. Husband testified that he was not aware that he was under Wife's dominance and control until he had a breakthrough in therapy and claimed that he was still under Wife's dominance and control throughout the marriage and when he signed the Marital Settlement Agreement. Thereafter, he ceased paying the maintenance. Wife filed a motion to dismiss the petition to invalidate pursuant to both 2-615 and 2-619 of the Code of Civil Procedure. Wife argued that Husband was barred by *res judicata* as the judgment specifically found that the marriage had been valid. Further, as the parties were divorced, Wife argued that there was no marriage to invalidate. The trial court granted Wife's motion to dismiss holding that the marriage was dissolved and therefore, there was no marriage to invalidate. Wife also filed a motion to dismiss Husband's motion to terminate his maintenance obligation because Husband claimed that his therapeutic breakthrough constituted a substantial change in circumstances which was not one of the six termination events set forth in the MSA. Husband asserted that because he was under Wife's dominance and control when he signed the MSA, the MSA was void. However, Husband did not ask the court to vacate the entire judgment. The court granted Wife's motion to dismiss. Wife then filed an amended petition for rule to show cause, seeking payment of the past due maintenance. The trial court found Husband in contempt of court and ordered him to pay the past due maintenance and Wife's attorney's fees. Husband appealed.

The appellate court affirmed the trial court's ruling to dismiss Husband's petition to invalidate the marriage but on different grounds. The appellate court held that the petition was rightfully dismissed due the statute of limitations which required Husband to bring the petition to invalidate

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the marriage within 90 days of gaining knowledge of the alleged condition that deprived him of capacity at the time of marriage. Despite Husband's claim that he was under Wife's dominance and control beyond the dissolution, the documents evidenced otherwise – that Husband was a successful professional who filed the petition for divorce and participated in settlement negotiations while represented by counsel. Also, he ultimately signed the settlement agreement which included language that the marriage was lawful and that he was acting of his own free will when he entered into the contract. Husband failed to plead facts alleging how Wife's dominance and control could have persisted during and beyond the dissolution proceedings, such as allegations of a mental health diagnosis, or repressed memory, or how the dominance and control actually manifested in Husband's life. Because the appellate court affirmed on this basis, the question of *res judicata* was not addressed on appeal.

The appellate court further affirmed the trial court's ruling dismissing Husband's motion to terminate maintenance as the MSA listed the only methods by which maintenance could have been terminated or modified, and a substantial change in circumstances was not included on that list. Husband's argument on appeal that he was under Wife's dominance and control failed because his motion to terminate did not include a request that the MSA be invalidated, and therefore, said argument was waived on appeal. Husband also argued that the trial court erred by not letting him testify regarding Wife's sexual assault during the hearing on her petition for rule. The appellate court found that the proffered testimony would not have had an effect on whether or not he was in contempt of court. Case law provides that to avoid contempt, the delinquent spouse must "prove that he neither has money now with which to pay, nor has he wrongfully disposed of money or assets with which he might have paid." Excuses or explanations for a party's choice not to comply with a court order are irrelevant.

LEGAL MALPRACTICE

See also, FRAUDULENT CONCEALMENT, *Anderson v. Sullivan Taylor & Gumina, P.C.*, 2023 WL 4288345 (Ill.App. 1 Dist.), June 30, 2023*

MAINTENANCE

In re Marriage of Carbone, 2023 WL 5604155 (Ill.App.4 Dist.), August 29, 2023**

Husband appealed trial court's award of maintenance. During the marriage, Husband earned over \$380,000 and Wife earned \$90,000 and they maintained a somewhat frugal lifestyle that enabled them to acquire savings and live debt-free.

A spouse is entitled to maintain a reasonable approximation of the standard of living established during the marriage. Where one spouse has a grossly disparate earning potential, financial self-sufficiency (which is just one of a number of factors the court should consider) might not be required. A former spouse is not required to lower the standard of living if the payor spouse has sufficient assets to meet his needs and the needs of his former spouse.

Wife's financial affidavit showed a deficit and Husband's had a \$16,145.72 surplus. Wife should not be required to tap into her assets to meet her monthly obligations.

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The appellate court rejected Husband's argument that Wife's income and assets made her financially independent. The record was clear that for Wife to maintain a standard of living that included the ability to accumulate savings and live debt-free, she needed support from Husband.

See also, DISCOVERY, *In re Marriage of Yearman*, 2023 WL 5199473 (Ill.App. 3 Dist.), August 14, 2023*

See also, INVALIDATION OF MARRIAGE, *In re Marriage of Andrew*, 2023 WL 4036605 (Ill.App. 1 Dist.), June 16, 2023**

MODIFICATION OF MAINTENANCE

In re Marriage of Watson, 2023 WL 4122076 (Ill.App. 4 Dist.), June 21, 2023*

In 2017, the trial court entered a temporary order that required Husband to pay child and spousal support. Husband filed a petition to modify the temporary support in 2018, alleging that he had been terminated from his employment. Wife filed a motion to modify, claiming she involuntarily lost her employment. In April 2020, Husband filed his second petition to modify support, again alleging that he was terminated from his employment. In September 2020, after three separate hearings, the trial court entered a JDOM, which ordered Husband to pay Wife maintenance of \$276.83 per month for a period of 24 years and 4 months. The trial court indicated that it considered the relevant statutory factors pertaining to child support and maintenance and ordered Husband to pay support arrearage accordingly from the time of the initial temporary support order. Wife filed a motion to reconsider, asserting that the trial court's JDOM contained mathematical errors and computations that were not a correct reflection of the statutory calculation for maintenance, which included the calculations for the adjusted amount. Husband filed a motion to reconsider the award of arrearage for maintenance and child support, arguing that at the time of the final hearing, his two petitions to modify were pending. The trial court granted Wife's motion, denied Husband's motion, and ordered Husband to pay Wife maintenance of \$249.60 per week for a period of 24 years and 4 months, along with the support arrearage. Husband appealed, arguing that the trial court erred in granting Wife's motion to reconsider and in calculating the support arrearage without consideration for his petitions to modify.

The appellate court affirmed. Husband argued that the trial court improperly calculated the amount of support arrearage without considering his reduced income and petitions to modify, while also asserting that the trial court accurately acknowledged the reduction in his income when ruling upon the new amount for maintenance. The appellate court held that upon review of the record on appeal, there was no indication that Husband ever noticed his motions to modify for a hearing or otherwise requested a ruling on them, ultimately abandoning them. Accordingly, the appellate court held that the trial court did not err when not considering Husband's two motions to modify, and the arrearage calculations were proper. Husband further argued that the trial court erred when it granted Wife's motion to reconsider because there was no basis for doing so and improperly requested relief based upon newly discovered evidence. The appellate court noted that the purpose of a section 2-1203 motion to reconsider is to bring to a trial court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. The appellate court held that the trial court specifically noted Wife's calculations were generally conceded by Husband, and Husband denied the appellate court the opportunity to

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review the grounds for his allegations by failing to include in the record on appeal a transcript of the hearing during which evidence and argument were presented to the trial court. Accordingly, the appellate court affirmed.

See also, ATTORNEY FEES, *Teymour v. Mostafa*, 2023 WL 3947939 (Ill.App. 1 Dist.), June 12, 2023*

MODIFICATION OF PARENTAL RESPONSIBILITIES

In re Marriage of Trend, 2023 WL 5092821 (Ill.App. 3 Dist.), August 8, 2023*

Pursuant to the parties' judgment, Mother was awarded majority parenting time and the parties shared decision-making. Following post decree proceedings, Father sought and obtained an order of protection against Mother which provided him with physical custody of the children. Thereafter, an agreed order was submitted providing Mother with supervised parenting time. The agreed order did not address decision-making responsibilities. Father and Mother both filed additional motions, including Mother's motion for a final order on parental responsibilities as Father contended that, with the change in physical custody, he was also awarded sole decision-making responsibilities. The trial court agreed with Father and entered an order providing Father with sole decision-making responsibilities based on the previous agreed order granting Father physical custody. Mother appealed.

The appellate court reversed, finding that the parties' marital settlement agreement provided for joint legal custody of the children which included the joint authority to make major decisions on behalf of the children, and the agreed order setting forth the supervised parenting time could not be reasonably construed as modifying the terms of the settlement agreement. The case was remanded for further proceedings.

In re Matter of Billy Meyers and Jocelin Robledo, 2023 WL 5608931 (Ill.App. 3 Dist.), August 30, 2023*

Per the parties' agreed parenting plan, they shared joint decision-making responsibilities for the child, and Mother's current address was to be utilized for purposes of school enrollment. Father filed a motion alleging that the parties were unable to reach an agreement as to where to register the child for fifth grade. Father wanted the child to attend a private Catholic school and offered to be solely responsible for the cost. Mother wanted the child to continue in the public school in her district. Due to the Covid-19 pandemic, the only data available for the public school to be compared to was class size. Mother argued that Father was seeking a modification. Father argued that it was not a modification because the child could still utilize Mother's address for school enrollment purposes if the child attended the private school. The trial court believed the private school to be the superior opportunity and ordered that Father could enroll the child in the private school. The trial court stated that this was a decision the parties could not agree on and not a modification. Mother appealed.

The appellate court reversed, finding that the trial court did, in fact, modify the parenting plan, noting that the parenting plan did not specify whether the child would attend public or private school. Therefore, when the trial court entered an order allowing Father to enroll the child in

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private school and directed Father to pay for the costs of said education, the trial court modified the plan. The trial court failed to make any findings consistent with Section 610.5 of the Illinois Marriage and Dissolution of Marriage Act and there was no indication that the child was struggling and needed a change. Thus, the trial court's order was against the manifest weight of the evidence.

MODIFICATION OF PARENTING TIME

In re Marriage of Bastian, 2023 WL 5103984 (Ill.App. 3 Dist.), August 9, 2023*

Father filed a petition to modify his parenting time and Mother filed a motion to dismiss. The trial court denied Mother's motion and increased Father's parenting time. The appellate court affirmed trial court's rulings.

Trial court found the children's increased activities were a substantial change in circumstances. The trial court found it was in the children's best interest to spend more time with Father and awarded some, but not all the time, that Father requested.

The appellate court found the trial court's denial of Mother's 2-615 motion to dismiss appropriate as Father did set forth in his petition to modify that a change of circumstances occurred and that a modification was in the children's best interest.

The trial court's finding that the child's extracurricular activities were increasing and affected Father's alone time with the children was not against the manifest weight of the evidence.

In re Marriage of Hinnen, 2023 WL 3787339 (Ill.App. 2 Dist.), June 2, 2023*

Father filed a petition seeking to change residential custody of the minor child who had autism and significant behavioral issues including violent outbursts. A few months before Father filed his petition, the parties had litigated Mother's petition to relocate, which was granted. Father filed his petition and alleged a substantial change of circumstances, claiming that Mother moved, did not provide her address, failed to provide the child with health care and an education, and that the child's behavior had deteriorated in Mother's care. Father also alleged alienation. Father had his sister, a board-certified mental health nurse practitioner, testify as an expert witness about what she described as Mother's "psychopathology" which she testified she had personally observed over the years and during Father's video visits with the child.

The trial court found no substantial change of circumstances and denied Father's motion. The court noted that further deterioration of the parties' relationship was all that had changed. The court discounted the sister/nurse's testimony because she did not conduct a formal evaluation. The appellate court deferred to the trial court's assessment of Mother's credibility. Mother discounted many of Father's allegations. The appellate court noted it was clear that both parties were combative and blamed each other and that both parties had not followed the Allocation Judgment.

The appellate court also affirmed the trial court's denial of Father's motion for a psychological evaluation of Mother finding that Father failed to tie Mother's behavior to his conclusory and

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speculative allegations, made by his sister, the nurse, concerning Mother's psychological health and that it was reasonable for the trial court to discount the allegations in its assessment for the need of an evaluation.

ORDER OF PROTECTION

Gibson v. Runkle, 2023 WL 5609043 (Ill.App. 5 Dist.), August 30, 2023*

Petitioner's petition for order of protection alleged a detailed incident of severe physical abuse. The trial court granted a plenary order of protection, and Respondent filed an appeal. At the plenary hearing, testimony of the incident included some inconsistencies and additions compared to the written petition. The appellate court stated that inconsistencies in statements and/or testimony taken at different times are not unusual and go to the weight to be given to the testimony by the trial court, but they do not destroy the credibility of the witness.

The appellate court upheld the trial court's finding that Petitioner's testimony taken in its entirety was sufficient to demonstrate that abuse was more likely than not.

The appellate court also rejected the Respondent's argument that the trial court failed to consider his evidence, including his exhibits and his witnesses' testimony. At most, Respondent's witnesses cast question on the timeline of events but none of his witnesses established that the Respondent could not have inflicted the alleged abuse.

Finally, the Respondent argued that the trial court did not make findings required by the Domestic Violence Act because it failed to make oral findings at the conclusion of the hearing and there was a missing word in the written plenary order. At the conclusion of the hearing, the trial court took the matter under advisement and later issued the plenary order which included a finding that the circuit court had considered all the statutory factors. The trial court, using the form for the plenary order of protection, had checked the box indicating that it had made oral findings. The trial court was only required to make findings in an official record or in writing. In this case, the written order was forthcoming, and it was not necessary to make oral findings as well.

In re Marriage of Bryant, 2023 WL 4079523 (Ill.App.1 Dist.), June 20, 2023*

Wife filed a petition for an order of protection in conjunction with the pending dissolution of marriage. The emergency order of protection was entered and extended on six occasions. Hearing on the plenary was to occur at the divorce trial. At a pretrial conference, Husband made threatening statements and told the trial judge to f*** off. He was found in direct civil contempt and ordered to turn himself in, which he did not do. Husband also failed to appear in person at the trial. The court granted a plenary order of protection after hearing Wife's testimony.

Husband appealed the entry of the plenary order of protection by arguing that the events that took place do not qualify as warranting an order of protection as he was seeking to enforce his parenting time because Wife refused to comply with the parenting time order. The appellate court rejected Husband's argument and noted that had he appeared at the trial, he could have testified and presented evidence as to his version of events and cross-examined the Petitioner and made appropriate arguments. The trial court's finding that Wife had been abused by Husband was not

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contrary to the manifest weight of the evidence. The appellate court cited the testimony that Husband had come to Wife's workplace and threatened her. The trial judge found Wife credible in her testimony and added that he had witnessed the respondent's aggressive behavior firsthand at the pretrial conference.

Husband also argued that the trial court blocked a thorough GAL investigation. Husband's petition for the appointment of a GAL had been granted, but the GAL that was appointed failed to appear. Husband did not notify the court or pursue a different GAL. The trial court did not abuse its discretion in failing to appoint a GAL *sua sponte*. It was Husband's duty to seek another GAL.

Husband was barred from making certain arguments for the first time on appeal as he did not raise any of them to the trial court. Husband failed to argue to the trial court that he should have been given seven days to review evidence tendered by Wife, that he had not been given adequate time prior to trial to review the evidence, that his failure to appear in person was based on a misunderstanding, or that he was prejudiced by his inability to request a continuance of the trial via Zoom. Husband did not file a motion to vacate. Arguments that are never presented to the trial court are forfeited and may not be made for the first time on appeal.

Watkins v. Watkins, 2023 WL 5500862 (Ill.App. 4 Dist.), August 25, 2023*

The parties were initially involved in a marriage dissolution proceeding in Morgan County, Illinois. In July 2021, the trial court entered an agreed order allocating parenting time for the parties' two minor children. In February 2022, Wife filed a separate petition for an emergency order of protection in Morgan County for her and the children against Husband. Said petition was pending during the events at issue in the appeal. In January 2023, Wife filed another petition for an order of protection against Husband for her and the children in Morgan County, which the trial court dismissed on February 3, 2023, finding the allegations were insufficient to grant relief. On February 3, 2023, after Wife's petition for an order of protection was dismissed in Morgan County, Wife filed the petition for an emergency order of protection in Scott County, Illinois, a neighboring county. The Scott County trial court entered an emergency order of protection on behalf of Wife and the children against Husband. Three days later, Husband filed a motion to dismiss the petition, or alternatively, to vacate the emergency order and transfer the case to Morgan County, arguing that the issues of child custody and parenting time should be decided in the dissolution proceedings in Morgan County. The Scott County trial court denied Husband's motion to dismiss. Husband filed another motion under section 2-619(a)(3) of the Code of Civil Procedure, alleging that there was a pending petition for an order of protection in Morgan County. After a hearing on Husband's second motion to dismiss in Scott County in March 2023, the trial court in Scott County entered a plenary order of protection set to expire on May 31, 2023, and reserved the issue of parenting time. Husband appealed, arguing that the court erred in denying his motion to dismiss under 2-619(a)(3), the trial court deprived him of his right to a fair and impartial hearing, the court's decision granting the plenary order of protection was against the manifest weight of the evidence, and the court erred by reserving the issue of his parenting time.

The appellate court reversed the Scott County trial court's judgment granting an order of protection and vacated the order. First, the appellate court noted, that even though the order of protection was expired and potentially moot, this case satisfied the public interest mootness exception, thus the appellate court applied the exception and addressed the merits of the appeal+.

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The appellate court stated that section 2-619(a)(3) does not require an automatic dismissal even when the same cause and same parties' requirements are met. In deciding whether to grant a motion to dismiss under that section, the court should have considered the factors set forth in *Kellerman*. The appellate court found that the Scott County trial court did not mention the *Kellerman* factors when weighing whether to grant the motion to dismiss, nor did it provide any real reasoning for denying the motion to dismiss based on the pending action in Morgan County. The appellate court held that the Scott County's denial of the motion to dismiss undermined the purpose of section 2-619(a)(3) to prevent duplicative litigation and abused its discretion by doing so. The appellate court further held that the record showed Wife was allowed to continue filing petitions in multiple counties until she obtained an order of protection, and that doing so was not the proper procedure for resolving child custody or visitation issues and was a form of forum shopping. The appellate court did not address the remainder of Husband's arguments seeking reversal because it reversed based on the trial court's failure to grant Husband's motion to dismiss the petition under section 2-619(a)(3).

POSTNUPTIAL AGREEMENT

See also, CLASSIFICATION OF PROPERTY, *In re Marriage of Kattner*, 2023 WL 5430740 (Ill.App. 1 Dist.), August 23, 2023*

PRENUPTIAL AGREEMENT

In re Marriage of Amyette, 2023 WL 5160000 (Ill.App. 3 Dist., 2023), August 11, 2023**

The parties signed a pre-nuptial agreement three days before they got married. Said agreement contained several provisions related to real and personal property owned by each party prior to the marriage. One provision stated that the parties waived any claim to maintenance in the event of a divorce. The agreement also contained two exhibits that listed each of the parties' property. Husband filed a motion for declaratory ruling in 2019 asking the trial court to find that the agreement was valid and enforceable. The trial court ultimately determined that the agreement was valid regarding the listed assets of the parties, except for one piece of real estate. The trial court considered the factors in section 504 and determined that the hardship exception applied to the parties' waiver of maintenance and awarded indefinite maintenance to Wife. Husband appealed.

The appellate court affirmed in part, reversed in part, and remanded in part. Husband argued that the trial court erred when it ruled that the undue hardship provision of the Act applied to preclude the enforcement of the agreement's prohibition on maintenance awards. The appellate court found that there was sufficient evidence that Wife's circumstances at the time of the divorce were not reasonably foreseeable at the time the parties executed the pre-nuptial agreement. The appellate court held that the trial court's determination that undue hardship precluded a denial of maintenance was supported by the manifest weight of the evidence. The appellate court ruled that absent a proper argument supporting a claim that the trial court's undue hardship determination was against the manifest weight of the evidence, there was no basis on which the appellate court could find that the trial court's determination was erroneous, thus the finding of undue hardship was affirmed.

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Husband further argued that the trial court erred in its calculations for the amount and duration of maintenance because the trial court improperly took into account expenses of Wife that were no longer being paid. The appellate court agreed and remanded to the trial court to recalculate maintenance.

Lastly, Husband argued that the trial court erred when it refused to enforce the agreement's designation of the East Moline house as Husband's nonmarital property and instead found that the parties owned it as tenants in common. The appellate court stated that the agreement listed the East Moline house as Husband's nonmarital property, no statutory invalidity applied, and thus the designation should have been as Husband's nonmarital property and Wife should not have received the additional award of equity from the house. Thus, the appellate court reversed and remanded to the trial court to litigate the issue of whether Wife was due to receive section 503(c)(2)(A) reimbursements for any contributions she made beyond her initial contribution.

REFORMATION OF MARITAL SETTLEMENT AGREEMENT

In re Marriage of Herring, 2023 WL 4582808 (Ill.App. 2 Dist.), July 18, 2023*

Husband filed a petition for reformation of the Marital Settlement Agreement based on a mutual mistake under Section 2-1401 of the Code of Civil Procedure regarding the division of funds held in college savings accounts for the children. The Marital Settlement Agreement stated the parties were obligated to pay the children's college expenses pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act. Section 513 limits the obligation based on, *inter alia*, grades and age. The parties' children dropped out of college and Husband wanted to be allocated a portion of the unused college funds. The MSA did not provide that remaining funds would be disbursed to the parties, but stated the college funds should be maintained for the benefit of the children.

Husband argued that the failure to specify that remaining college funds would be allocated per the property settlement was a mutual mistake. He pointed to the balance sheet which listed all property dividing it 35/65. However, the balance sheet did not list the college funds in the list of marital property; the college funds were listed under children's accounts. Wife argued the college funds were a resource for the children regardless of their age or GPA. Wife wanted funds preserved for the children and not disbursed to the parties. Wife prevailed on a 2-615 motion to dismiss. The appellate court affirmed the trial court's dismissal because Husband failed to state a cause of action and allege sufficient facts to show the parties had an agreement to disburse the college funds per the property agreement in the MSA once the children were 23 years old.

RELOCATION

Burmood v. Anderson, 2023 WL 5159844 (Ill.App. 2 Dist.), August 10, 2023**

Both parties grew up in Galesburg, Illinois, but eventually Mother moved to Naperville, Illinois, and Father moved to Aurora, Illinois. The parties had a child together in 2019. The trial court entered a judgment providing that the child would primarily reside with Mother. In 2021, Mother filed a petition to relocate to Galesburg with the child, alleging that the relocation would allow her to move into a single-family residence in a great neighborhood with a top elementary school

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versus her current one-bedroom apartment. Mother claimed that the cost of living was less expensive in Galesburg. Mother also stated that Father was in arrearage on his child support and daycare expenses obligations. Lastly, Mother claimed that the relocation would be in the child's best interest because the child would be closer to both her maternal and paternal grandparents and would be able to attend a Catholic school that several of her cousins were already attending. Mother also had another child with another party, both of whom lived in Galesburg, so the minor in question would be able to see her sibling more frequently.

Father filed a petition for a temporary restraining order and a preliminary injunction seeking to prevent Mother from relocating with the child to Galesburg, claiming that relocation would negatively impact his parenting time with the child. Father had previously filed an Order of Protection and a DCFS claim against the father of Mother's other child, and told Mother that he did not care if she moved to Galesburg as long as his daughter was not around the father of Mother's other child. Guardian ad litem (GAL) was appointed in the matter. The trial court held a hearing on the matter, considered the parties' testimonies, and took judicial notice of the child support and daycare arrearage. The trial court ultimately denied Mother's petition to relocate, stating it had considered all the statutory factors set forth in section 609.2(g) of the Illinois Marriage and Dissolution of Marriage Act and found that most of the factors weighed against or strongly against relocation. Mother appealed, arguing that the trial court's decision denying her petition to relocate with the child was against the manifest weight of the evidence.

The appellate court reversed and remanded. The appellate court noted that a court must make its determination for relocation based on the best interests of the child and should consider the factors in 609.2(g) when making such a determination. After review of the factors, the appellate court found that the evidence indicated that Mother's move to Galesburg would enhance her financial position and allow her to receive more assistance from her extended family, which was significant due to Father's failure to pay child support. The appellate court further held that while it would be easier for Father to maintain a relationship with the child in Naperville, that factor did not outweigh the other considerations indicating that the child's life would be improved if she moved to Galesburg, especially when the trial court determined that a reasonable visitation schedule could be made if relocation was approved. The appellate court held that overall, the majority of the statutory factors showed that relocation would have a positive impact on the child, and that the negative impact on Father was limited. After consideration of the record and the trial court's findings based on the statutory and other relevant factors, the appellate court concluded that the trial court's decision to deny the petition to relocate was against the manifest weight of the evidence, thus remanding to the trial court to grant the petition for relocation and to establish a new parenting time schedule.

In re Marriage of Kenney v. Strang, 2023 WL 4079513 (Ill.App. 1 Dist.), June 20, 2023*

The parties were married shortly after Wife became pregnant with their twins. At the time, Husband was a licensed attorney in Illinois working in Chicago, he owned property in Chicago, and his immediate family was in the area. Wife was working and living temporarily in Texas, but also maintained a home in Colorado, which she had owned for at least a decade, and her immediate family lived in Colorado. The parties split their time between Illinois and Colorado during the pregnancy and marriage. The twins were born in Chicago, and the parties agreed to renovate the Chicago property for the twins. When the twins turned 4 months old, Wife began

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traveling with them frequently and regularly between Chicago and Colorado. The twins remained with Wife for a vast majority of the time and Wife was their primary caretaker. In 2018, Wife took the twins to Colorado and did not return to Chicago. Husband filed a petition for dissolution of marriage in Illinois, as well as an emergency motion for the return of the minor children to their home state, wherein he claimed Illinois was the children's home state. Wife filed a petition for dissolution of marriage in Colorado, and subsequently moved to dismiss Husband's petition for dissolution of marriage in Illinois for lack of personal jurisdiction. The trial court denied Wife's motion to dismiss, and Illinois found under the long arm statute that it had jurisdiction over Wife. To determine whether the court had jurisdiction over the twins, the court looked to the UCCJEA, and ultimately determined that Illinois was the twin's home state. Thereafter, Wife filed a petition to relocate with minor children and entry of a parenting plan and/or allocation order. After a lengthy and detailed trial, and application of the factors in 602.5(c) pertaining to decision making, 602.7(b) pertaining to parenting time, and 609.2(g), the trial court ultimately granted Wife sole decision making, granted Wife majority parenting time, and granted Wife's petition for relocation. Husband appealed, arguing that the trial court erred in failing to regard the instant case as a relocation matter pursuant to section 609.2 of the Act and that it impermissibly shifted the burden of proof to him, and that even if that were not the case, the trial court erred in weighing the evidence at trial in granting Wife's petition to relocate.

The appellate court affirmed, finding that the burden was always with Wife, that the trial court properly considered the case as a relocation matter, and Husband failed to adequately demonstrate that the trial court impermissibly shifted the burden to him. The appellate court further found that the trial court's finding that the twin's primary residence had always been with Wife was proper and supported by the evidence. Such finding did not ignore or violate the trial court's prior order that the twin's home state was Illinois under the UCCJEA for jurisdiction purposes because the term "home state" as defined by the UCCJEA and the term "primary residence" as defined by the IMDMA are two different legal concepts.

The appellate court found it appropriate for the trial court to consider the concept the expert used that the children had lived in Colorado "all of their conscious lives" and noted that the relocation statute allows the court to also consider "any other relevant factor bearing on the children's best interests." The appellate court held that the trial court's findings were proper and supported by the evidence.

RES JUDICATA

See also, CHILDREN'S ACCOUNTS, *Chanen v. Chanen*, 2023 WL 4837695 (Ill.App. 1 Dist.), July 28, 2023*

SANCTIONS

See also, ATTORNEY FEES, *Teymour v. Mostafa*, 2023 WL 3947939 (Ill.App. 1 Dist.), June 12, 2023*

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STATUTE OF REPOSE

See also, FRAUDULENT CONCEALMENT *Anderson v. Sullivan Taylor & Gumina, P.C.*, 2023 WL 4288345 (Ill.App. 1 Dist.), June 30, 2023*

SUPPORT

Kunsemiller v. Kunsemiller, 2023 WL 5274664 (Ill.App. 5 Dist.), August 16, 2023*

At the time of the entry of the parties' judgment for dissolution of marriage in 2014, there were three minor children. The judgment awarded Wife permanent maintenance and statutory child support, and also required Husband to provide health insurance for the children and be responsible for 75% of the children's out of pocket expenses. Wife filed a motion for a new trial or to reconsider. Husband also filed a post-trial motion/motion to reconsider. The trial court modified child support and maintenance retroactively to the date of the hearing on the motions. Wife filed her notice of appeal, and the appellate court affirmed. In 2016, Wife filed a motion to modify child support and maintenance, arguing a substantial change in circumstances. Husband filed a cross motion to modify support. In 2018, Wife filed a petition for nonminor support. The trial court entered a motion modifying child support and maintenance. The court also required Husband to make Wife the beneficiary on his life insurance policy for so long as he had a support obligation and denied Wife's request for attorneys' fees. Husband filed a motion to set aside/vacate the order, which the trial court granted because Husband's counsel at the time did not properly present Husband's case and left him in the hallway during the proceedings. The trial court then entered an order granting Wife interim attorneys' fees. In 2020, the trial court entered an order on the motions to modify support, setting the modification retroactive and calculating arrearage, and denying Wife's motion for nonminor support and her request for attorneys' fees. Wife filed a motion to reconsider, and Husband filed a motion for clarification and reconsideration. The trial court denied both motions for reconsideration. Wife appealed, and Husband cross appealed.

The appellate court affirmed. The appellate court found that the trial court did not err in vacating the May 2019 order. It did not abuse its discretion in calculating the income of the parties, denying the award of nonminor education expenses, denying Wife's request for additional attorneys' fees, and did not err in denying an award of sanctions against Wife. Specifically, the appellate court found that the trial court had authority to vacate the May 2019 order, and doing so did substantial justice between the parties. Additionally, the appellate court found that the trial court made clear in its order that neither party was credible as to reporting their income and could not say that the court abused its discretion in coming to its determination of the parties' incomes. Further, the appellate court held that, as required by section 513 of the IMDMA, there was not sufficient evidence to justify an award of nonminor support where there was no evidence presented as to the financial resources of their eldest daughter or her academic performance.

Additionally, the appellate court affirmed the trial court's denial of Wife's request for additional attorney's fees pursuant to Section 508(a) of the IMDMA. The trial court noted that, while Wife may have had difficulty paying her fees, Husband was not in a position to contribute to her fees, and that both parties had been living beyond their financial means. Vacating the prior order for fees did not serve to establish that the denial of further fees is an abuse of discretion as Wife suggested.

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Furthermore, while it was undisputed that Wife destroyed relevant financial records during the pendency of the litigation, the trial court specifically stated that it did not rely on the parties' testimony or personally prepared documents in determining incomes for support. Therefore, the trial court's decision was not affected by the lack of the destroyed financial documents, and thus, the appellate court affirmed the trial court's denial of Husband's request for Supreme Court Rule 219 sanctions.

VALUATION OF PROPERTY

See also, CREDIBILITY OF WITNESSES, *In re Marriage of Mansoor and Mohammed*, 2023 WL 4533908 (Ill.App. 3 Dist.), July 13, 2023*

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