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ALLOCATION OF PARENTAL RESPONSIBILITIES

A.K. v. J.T., 2017 WL 203675 (Ill.App. 3 Dist.), January 17, 2017*

The parties entered a joint parenting agreement which gave Mother sole custody of the child. Father filed a petition to modify the agreement and sought sole custody of the child and Mother filed a counter claim for sole custody. The court appointed a guardian ad litem (GAL) to conduct a psychological evaluation of the parties and provide a recommendation as to custody. The GAL originally recommended that Mother retain sole custody, but after hearing testimony at trial, changed his recommendation to state that both parties are fit and proper parents. The court found that the parties were incapable of communicating and cooperating with parenting decisions. The court found that Father would serve the child's best interests and was most likely to facilitate a relationship between the child and Mother than vice versa. For example, Mother spoke poorly of Father in the children's presence.

The appellate court found that the trial court did not abuse its discretion in awarding Father sole custody of the child. The court noted that the trial court considered the Mother and Father's testimony during a nine-day custody hearing, appointed a GAL for evaluation, and gathered as much information as it could to make its determination. Thus, the appellate court upheld the trial court's decision.

Allen v. Edwards, 2017 WL 764182 (Ill.App. 2 Dist.), February 24, 2017*

The parties dissolved their marriage and entered a custody judgment, granting the parties joint legal custody of the parties' minor children and awarding Mother sole physical custody. Both parents were on active duty in the United States Navy. The parties originally entered their judgment in Maryland, and due to the parties' reassignments, the judgment was subsequently registered in Georgia. When Mother was later stationed in Illinois, she petitioned the court to register the judgment in Illinois and filed a motion to modify the judgment to allow her to bring her children with her during her forthcoming deployment to Bahrain. Mother was pro se at this time. Mother later obtained counsel and withdrew her motion on the basis that the language of the custody judgment allowed her to relocate to Bahrain without filing a motion to do so. Mother instead filed a motion to enforce the judgment. Father filed a petition for modification of parental responsibilities, requesting that the court grant him the majority of parenting time and terminate his obligation to pay Mother child support. The trial court granted Mother's motion to enforce the judgment and denied Father's petition for modification of parental responsibilities, finding that the relocation to Bahrain was not a change of circumstances that warranted a modification.

On appeal, the court found that it was appropriate to apply Illinois law when determining whether to grant Mother's motion to enforce the judgment. The court considered whether the parties' judgment allowed Mother to retain custody while relocating with the children. The parties' judgment stated that "in the event Mother is deployed for a period greater than four weeks to a station where she is unable to take the minor children, the Father shall have physical custody of the children." The court deferred to the trial court's intended interpretation of this language by considering the pleadings, motions and issues before the court, the transcript of proceedings before the court and arguments of counsel. The trial court considered whether the navy would permit the children to accompany Mother as the crucial factor in determining whether the change of location would necessitate a transfer of physical custody. Because the Navy allowed Mother to

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take her children with her to Bahrain, the court affirmed the trial court's decision to grant Mother's motion to enforce the judgment.

Brown v. Groothuis, 2017 WL 6345899 (Ill.App. 4 Dist.), December 11, 2017**

The parties entered into a joint parenting agreement in 2014. Pursuant to that agreement, if Mother moved to Maryland, the parties would meet at a halfway location and exchange the child every six weeks until the child began kindergarten. Prior to the child beginning kindergarten, Father filed a petition to modify, requesting that he be allocated the majority of the parenting time with the child in Illinois. Mother filed a counter-petition, requesting that she be allocated the majority of the parenting time with the child in Maryland. The court found Mother's relocation to be successful as she was earning more and she had improved earnings prospects. The court found that the child's doctors were in Maryland and that Mother arranged the medical appointments for the child. The court also found that Mother was involved with the child's learning and preschool. The court observed that Father gave no testimony regarding those matters. The court concluded that it was the child's best interest to spend the parenting time during the school year with Mother.

On appeal, Father argued that the trial court lacked jurisdiction to award primary parenting to Mother as she did not file a petition to remove the child to Maryland. The appellate court found that Father's petition and Mother's counter-petition, in which she alleged that she resided in Maryland and sought primary parenting in Maryland, created a justiciable matter as to the child's custody. Therefore, the court had jurisdiction to determine the matter.
Father next argued that the trial court's order allowing the relocation of the child to Maryland and granting Mother primary parenting and responsibilities is against the manifest weight of the evidence. Upon review of the court's analysis, the appellate court found that the court failed to consider section 609.2(g) of the IMDMA factors in deciding whether the relocation of the child, not Mother, was in the child's best interest. Because the court did not consider section 609.2(g) factors and how they relate to the child's best interest in relocating her to Maryland for the school year, the case was remanded back to the trial court.

In re Marriage of Brian D.G. and Sarah B.G., 2017 WL 5952795 (Ill.App. 3 Dist.), November 29, 2017*

After a hearing, the trial court allocated sole decision-making authority and the majority of the parenting time to Father. Mother appealed, contending that the trial court modified the custodial history of the parties.

The record reflected that the parties were married in 2008 and that Father moved out of the home and filed for divorce in January of 2014. The trial court awarded temporary custody of the children to Mother. The trial court appointed Dr. Gardner pursuant to section 604(b) of the IMDMA. Dr. Gardner recommended sole decision making to Father and recommended that he be allocated the majority of the parenting time. Mother requested Dr. Finn be appointed under section 604.5. He recommended that Mother be allocated parental responsibility for education and extracurricular activities and that both parents share responsibility for healthcare and religion decisions. He also recommended that Mother be allocated the majority of the parenting time. Father requested Dr. Shapiro to be appointed to evaluate Mother's mental health under Supreme Court Rule 215. He diagnosed Mother with adjustment disorder, anxiety and depression, but

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noted that her diagnosed personality characteristics should not interfere with parenting. During the pendency of the case, the parties had agreed to a temporary order for 50/50 parenting time. After trial and reviewing all testimony, the trial court awarded sole decision-making authority to Father and also allocated the majority of parenting time to Father.

On review, the appellate court reviewed the factors of both 602.5 and 602.7. The court found that the children had not adjusted well to a 50/50 parenting schedule. Mother, in particular, continued to have anxiety about the divorce and the children observed same. The court further found that Mother's adjustment disorder affected her ability to adjust to change. The court noted that the children needed stability and predictability and that Mother was causing distress to the children. Further, there was evidence that Mother involved the children in a number of the arguments with Father. Because of the acrimony between the parties, the court found that the parties could not be allocated joint decision making. Based on all of the factors, the trial court's decision was not against the manifest weight of the evidence.

In re Marriage of Bush and Vandy, 2017 WL 887151 (Ill.App. 4 Dist.), March 3, 2017*

During the dissolution of the parties' marriage, the parties were granted joint custody of their two minor children. Four years later, the parties filed cross petitions for sole custody of the children and Father requested that they be allowed to move with him to Wisconsin. Father's petition included 11 different reasons for his request, including alleging that Mother undermined his relationship with the children, failed to schedule their therapy and tutoring, and failed to communicate medical and school related information. Mother's petition alleged 12 reasons for the modification, including that Father created a hostile environment for the parties, the school in Wisconsin is inferior to the school in Illinois, and that Father's religious celebrations prevented observation of Mother's religious holidays. The court considered the relevant statutory factors and awarded Mother sole custody of the parties' two children.

Later, Mother filed an emergency order of protection requiring the children's return after Father failed to return them after a trip to Wisconsin. Father filed an emergency petition for temporary and permanent modification of parental responsibilities, for relocation of the children to Wisconsin and for leave to enroll the children in school in Wisconsin. Father requested an in-camera interview of the child and the appointment of a guardian ad litem. Father also filed an emergency motion for temporary custody in Wisconsin pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act. He obtained a Wisconsin court order granting him temporary sole custody of the children. Two days later, the Illinois court entered an order superseding the Wisconsin order, stating that Father must return the children to Illinois. Mother filed an order of protection requesting no contact with Father, but was unsuccessful. Subsequently, Mother filed a petition for rule to show cause on the same basis. The court issued the rule and when Father failed to appear in court, the court issued a body writ for Father and suspended all Wisconsin visitation. Mother then filed a motion to strike and dismiss Father's petition for temporary and permanent modification of parental responsibilities, which the court granted. The court also found that Father's pleading was barred by res judicata. Father appealed the court's ruling on Mother's motion to strike and dismiss.

On appeal, Father argued that he was merely required to show that the modification that he sought was in the children's best interests, but alternatively, that his allegations sufficiently demonstrated that the children's present environment with Mother is severely endangering them. The court

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found that Father's allegations were purely conclusory and did not rise to the level of serious endangerment. For example, and most troubling to the court, Father failed to state any allegations of which he had first-hand knowledge, but rather admitted to getting information from his children. Further, despite the fact that Father is a physician, his claims regarding Mother's mental health and prescription drugs were conclusory and unreliable, as he is not Mother's doctor. Additionally, the allegations were exaggerated and, in some cases, already cured by the court. On the issue of res judicata, the appellate court found that the trial court improperly characterized all of Father's allegations as barred by res judicata, whereas only a few of the issues were barred. Thus, the court found that the trial court properly dismissed Father's petitions, as they were based on hearsay, conclusory, and did not constitute serious endangerment.

In re Marriage of Wendy L.D. and George T.D., 2017 WL 575970 (Ill.App. 1 Dist.), February 10, 2017

In 2010, the parties dissolved their marriage and entered a custody judgment awarding Mother sole custody of the parties' three children and granting Father regular parenting time. In 2011, the parties entered an agreed order modifying the custody judgment concerning summer parenting time. In 2012, Father filed a petition to modify the custody judgment, claiming that changed circumstances warranted that Father be awarded sole custody of the children. Father alleged that since the entry of the judgment, Mother engaged in increasingly bizarre and erratic behavior and consistently attempted to alienate children from Father. Father alleged that Mother made false accusations on three occasions that Father abused the children, causing unnecessary investigations by the Department of Child and Family Services (DCFS). Although all the investigations concluded that Mother's accusations were "unfounded", Mother misrepresented these facts to the children's medical personnel and teachers. The trial court conducted a trial on Father's petition, which included over 30 days of testimony. Mother argued that because Father's petition was filed less than 2 years after the 2011 agreed order modifying the custody judgment, Father was obligated and failed to demonstrate that the children were seriously endangered by their environment. In 2015, the trial court entered a 125-page order and judgment granting Father's petition to modify custody. The court rejected Mother's argument that the petition was filed less than two years after the custody judgment, finding that it was not appropriate to measure the two-year period from the date that the 2011 agreed order was entered because the agreed order did not substantively modify the custody judgment.

On appeal, Mother asserted that Father failed to meet his burden justifying a modification of custody, arguing that there were no material changes in circumstances, that the children's increased ages was an insufficient reason and that her behavior was irrelevant in determining the children's best interest, as Father failed to prove that her behavior affected the children. The court affirmed the trial court's decision, noting that the trial court had ample opportunity to assess the parties' demeanor and concluded that Mother's testimony was less credible than Father's. Further the court found the trial court's reasoning persuasive, and that Mother's pattern of alienation of Father was impacting the children by interfering with their relationship with him. Finally, the court did not find the trial court's conclusion erroneous on the basis that it was in opposition to Mother's expert and the children's representative. The court stated that while it is in the court's discretion to seek independent expert advice, it is well settled that a court is not bound to abide by the opinions or implement the recommendations of its court appointed expert.

Dustin F. v. Denise C., 2017 WL 455323 (Ill.App. 3 Dist.), February 2, 2017*

The parties originally entered an order which gave Mother sole care, custody, control and education of the parties' two children. However, the parties had a breakdown of communication in the following months. When exchanging the children for Father's parenting time, the parents had verbal altercations leaving the children visibly upset. Thereafter, the children began to act inappropriately at school and their grades began to decline. The parents continued to struggle to cooperate with their parenting responsibilities. Mother ignored Father's attempts to address the children's school behavior and failed to take her own steps to assist them with their homework and emotional issues. The court appointed a guardian ad litem to evaluate Mother and Father's interactions with the children. The guardian ad litem found that Father should be awarded the majority of parenting time and to have decision-making responsibilities for their health, education, religion and extracurricular activities. The guardian ad litem noted that the children's grades improved when they were with Father and that although the children expressed an interest in living with Mother, this was likely because she was the more lenient parent. The trial court awarded Father the majority of parenting time.

The appellate court found that there was sufficient change of circumstances to justify the reallocation of parenting time from Mother to Father. The court considered the fact that the children were much older, that the parties had a diminished ability to communicate, and that the children's school performance and behavior had declined. Thus, the court upheld the trial court's decision.

In re Marriage of Koza, 2017 WL 4843016 (Ill.App. 2 Dist.), October 24, 2017*

About two years after the parties dissolved their marriage, Mother filed a petition for a modification of the parenting agreement and for the appointment of a guardian ad litem. Father also filed a motion to modify the parenting agreement, requesting that he be allocated sole decision-making authority regarding the children and to increase his parenting time. After conducting a hearing on the parties' motions, the court found that the parties had extreme difficulties communicating and cooperating as parents, which was impacting the children's lives with respect to their education, mental and physical well-being, and relationships with their parents. The court first addressed the allocation of parental decision-making by explicitly addressing each of the 15 statutory factors. The court found that none of the factors favored Mother and awarded Father final decision-making authority regarding the children's educational needs, medical and healthcare issues, and the extracurricular activities. Both parties were allocated decision-making regarding the children's religious upbringing. Next, the court addressed the 17 statutory factors regarding parenting time. The court again found that none of the factors favored Mother, and modified the parenting time schedule in accordance with Father's proposed schedule. Mother appealed.

On appeal, the court found that the trial court had considered the evidence at trial and the appropriate statutory factors, such that the decision was not against the manifest weight of the evidence. The court noted that the parties' relationship "has been an epic failure and the level of dysfunction which existed when the parenting agreement was entered has progressively gotten worse." Further, the court noted that Mother had stated that if Father was granted sole decision-making authority over the children, she would not participate in their upbringing. This statement suggested that Mother was putting her own interests above that of the children.

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In re Marriage of Smith, 2017 WL 1088059 (Ill.App 5 Dist.), March 21, 2017*

Father appealed the decision of the lower court in which the court awarded sole allocation of parental responsibilities to Mother and ordered Father have supervised parenting time with the child.

During the trial, evidence was presented that Father had sent many disturbing text messages to Mother. Further, several orders of protection had been entered against Father limiting his contact with Mother and child. The guardian ad litem and the child's therapist testified that Father had been verbally abusive to their staff members and Father cancelled all appointments with the guardian ad litem and the child, so the guardian ad litem was unable to observe Father with the child. After trial, the court ordered that Mother have sole responsibility for decision making and ordered supervised parenting time. The court also ordered Father to pay $350 per month as and for child support.

On appeal, the court found that the trial court properly reviewed the best interest factors. The court found that the child was well adjusted to her home and community and that there was no concern with regards to Mother's mental health. The court found that the child was bonded with Mother and that Mother was the primary caretaker. It was clear that Father was unable to co-parent with Mother. Further, there was sufficient evidence to restrict Father's parenting time as he exhibited bitterness and anger to the child and Mother.

In re Marriage of Tworek, 2017 WL 4534505 (Ill. App. 3 Dist.), October 11, 2017**

The parties' judgment for dissolution of marriage granted Mother the majority of parenting time and allocated a parenting time schedule for Father. Under the judgment, Father was to give at least five days' notice of any nonemergency conflict, or else forfeit his parenting time. Father filed a motion to modify the judgment as to the notice provision, arguing that his work schedule was often unpredictable and that he often received last minute notice of meetings. Father testified that the meetings were generally after-hours social events to foster new business. The trial court denied Father's request for the modification. Further, Mother filed a petition for contribution to her attorneys' fees, alleging that she lacked the ability to pay them and that Father had unnecessarily increased the cost of litigation. The trial court ordered Father to contribute $24,000 to Mother's attorneys' fees. Finally, Father filed a motion to deviate downward from the child support award to Mother, due to a drastic increase in his commissions, which, because Mother got a percentage of Father's additional income, caused Mother to be unjustly enriched. The trial court denied Father's motion and Father appealed the above decisions.

On appeal, the court denied Father's request to modify the notice requirement in the parties' judgment, finding that the change would not serve the best interests of the children, as the notice requirement was specifically ordered to redress Father's historic habit of dictating and controlling parenting time. Further, the court upheld the trial court's award of attorneys' fees, considering the financial circumstances of the parties. Finally, the court affirmed the trial court's denial of Father's request to deviate downward with the child support obligation, considering that Father intentionally reduced his expenses in his Financial Affidavit, while purchasing a vehicle with cash and amassing savings.

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White v. Daniels, 2017 WL 4877477 (Ill.App. 4 Dist.), October 27, 2017*

Mother and Father were not married and had a child on October 3, 2013. On October 2, 2014, the trial court entered an agreement that awarded temporary physical and legal sole custody to Father. The order stated that the order could not be modified unless Mother filed a petition to modify. The parties reached this agreement because Mother was about to begin a 13-month incarceration. Upon her release, Mother filed a petition to change custody. The trial court noted that both parents loved the minor child and had the ability to cooperate. Therefore, the court allocated joint decision-making responsibilities to the parents. The trial court went through the factors of 602.7 of the Act. The trial court believed that Mother was primarily responsible for the child from the time of the child's birth until Mother's incarceration. The court noted that Father had stepped up over the past year. The court found that Mother was working and in recovery and that her work scheduled allowed her to be present for the child. Father, who worked full time, left the care of the child with his girlfriend. Based on the evidence in this case, the appellate court affirmed the decision of the trial court allocating the majority of the parenting time to Mother.

ALLOCATION OF PARENTAL RESPONSIBILITIES AND PARENTING TIME MODIFICATION

In re Marriage of Jones, 2017 WL 3895119 (Ill.App. 2 Dist.), September 1, 2017*

Mother alleged that the children were being sexually abused by Father, and Father alleged that Mother's new boyfriend (who later become her new spouse) was physically abusive to Mother and children. Each party filed competing petitions to modify custody. The guardian ad litem filed a report with the court whereby she recommended that Father have majority of parenting time with the children. The guardian cited to Father passing a lie-detector test that he did not sexually abuse the children, an unfounded DCFS report as a result of Mother's false allegations and observed parenting time between Father and children where the children were happy to see their father. Further, the guardian alleged in her report that Mother unreasonably withholds children from their Father and has no valid reason to do so. Ultimately, the guardian determined that Mother's behavior was not in the children's best interests and failed to facilitate a relationship between the children and Father.

On appeal, Mother argued that the trial court erred in granting Father's request to modify custody of the children. The appellate court noted that the pro se litigants submitted improper briefs that were severely deficient in several ways. Despite the issues with Mother's brief, the appellate court found that the trial court's decision was proper. The appellate court affirmed the trial court's ruling and found that the trial court properly considered the guardian's report, which properly assessed both parties and their households with regards to the children's best interests. The appellate court rejected Mother's argument that the guardian was harder on her than Father and found that the guardian properly found that a modification of residential custody was appropriate because Mother failed to facilitate visitation with the children's Father, which was a requirement as the primary custodian of the children. The appellate court also found no merit to Mother's argument that the trial court's order fails to take into consideration the children's medical needs because both parents properly administered prescription medication for the children's asthma. The appellate court agreed with the trial court's deference to the guardian's report and that there was no foreseeable risk to the children by Father's behavior. Last, the appellate court rejected Mother's argument that there was a mistrial because the trial court returned the incorrect exhibits to each party.

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In re Parentage of V.P., 2017 WL 4126896 (Ill.App. 5 Dist.), September 13, 2017*

Mother filed a petition for parentage in Kendall County in 2006. The case was transferred to Cook County in 2008 and later transferred in 2015 to St. Clair County where Mother and child resided. In 2012, Mother relocated and moved to St. Clair County for a better job, and Father, who resided in Chicago, spent less time with the child as a result. In 2011, the Cook County circuit court awarded sole decision making to Mother and parenting time between Father and child. Subsequently, upon Mother's move from Chicago to St. Clair County, Father filed a motion to modify custody/allocation of parental responsibilities and parenting time, which the trial court denied because he failed to establish that a modification was in the child's best interests.

Father argues on appeal that the trial court failed to consider the endangerment evaluation performed by a psychologist in Chicago as well as Mother's boyfriend's domestic battery record, denied Father's motion to interview the child in camera and failed to rule on several motions and petitions. The appellate court rejected all of Father's arguments and cited to the record that the trial court properly read the evaluation previously completed and would not review Mother's boyfriend's prior record because Father failed to provide a certified copy of a conviction and any documents provided violated the rules of evidence. In addition, the court properly denied the in-camera interview based upon the review of the record and gave deference to the trial court. Further, there was no neglect or malicious conduct on the part of the judge with regard to a failure to rule on pending issues because Father failed to seek rulings on those pending motions. Ultimately, the appellate court found that the trial court property denied Father's request to modify as he failed to prove that a modification was in the child's best interests because the child lived with Mother his whole life, Mother's home appeared loving per the record, the child was doing fairly well in school and had friends.

ATTORNEY FEES

In re Marriage of Goesel, 2017 WL 5894294 (2017), November 30, 2017*

In January 2013, Wife filed a petition for dissolution of marriage. Husband's attorney filed a motion to disqualify Wife's attorney for allowing Wife to provide her attorneys with Husband's mail, which her attorneys opened. The trial court disqualified Wife's attorneys. During the disqualification proceedings, Husband's attorney withdrew and Husband hired a new attorney. Wife also hired new attorneys, who filed a petition for interim attorneys' fees. Wife requested that the court order Husband to contribute to her fees to "level the playing field", or in the alternative, to disgorge the necessary amount from the funds Husband paid to his attorneys. At the hearing, Husband testified that he had paid his attorneys a total of $100,022.27. Wife had paid her attorneys $18,117.04. Therefore, the court applied the "leveling the playing field" principle and ordered Husband's attorney to disgorge $40,952.61 of her fees. Husband's attorney refused, and Wife's attorney filed a petition for rule to show cause. Husband's attorney argued that she did not willfully disobey he court order, but rather that she did not have the requested funds to turn over. However, the court found Husband's attorney in indirect civil contempt, and Husband's attorney appealed. On appeal, the court reversed the trial court's disgorgement order, based on the fact that it was not proper to order the disgorgement of fees that were paid to the attorney for services already rendered. Wife appealed.

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The Supreme Court found that the issue was one of statutory construction, requiring the court to assess the legislative intent of the statute regarding the "leveling the playing field" principle. The court noted that it had previously explained that the purpose of the "leveling the playing field" amendment was to equalize the parties' litigation resources where it is shown that one party can pay and the other cannot. The court noted that previous cases on the issue delineated three different types of retainer fees: general retainers, security retainers and advance payment retainers. The court, however, found that the issue in this case was more complicated than this construct and was not answered by simply determining which type of retainer was given. Therefore, the court focused on whether the fees were "available" under the statute. The court disagreed with a prior case on the issue, which defined "available" as "existing somewhere", meaning that fees could be disgorged whether they were previously earned or not. The court found that only reasonable interpretation of the term "available" is those fees which the attorney is holding for the client, which have not yet been earned by the attorney at the time the attorney is given notice of the petition for interim fees. Therefore, the court affirmed the appellate court's ruling.

In re Marriage of Heroy, 2017 WL 1090568 (Ill.), March 23, 2017**

Husband filed a petition to modify or terminate his permanent maintenance payment to his former Wife and Wife filed a petition for contribution to attorney fees. The circuit court modified the maintenance payments from $35,000 to $27,500 per month and awarded a contribution to Wife's fees in the sum of $125,000, which Husband appealed. Wife subsequently filed a petition for prospective attorney fees to defend against Husband's appeal and was awarded prospective fees in the sum of $35,000. Husband appealed this order as well. The appellate court consolidated the appeals under 2015 WL 5690909 and the appellate court determined that the circuit court had made an error when calculating the amount of the modified maintenance payment. The appellate court modified the maintenance payment to reflect the court's perceived intent to order an award of approximately 25% of Husband's cash flow, which would equate to maintenance of $25,745 per month instead of $27,500 per month. The appellate court further found that the circuit court did not err in refusing to further reduce the maintenance payments based upon Wife's alleged failure to become self-supporting. The appellate court also reversed the circuit court's award of attorney fees in Wife's favor because the court found that there was no evidence to support Wife's claims that she was unable to pay the attorney fees. The case was remanded to the circuit court where the awards for fees were vacated and the court entered a maintenance award of $25,745 per month. Wife appealed the appellate court's decision and Husband requested cross-relief.

Husband argued on appeal to the Illinois Supreme Court that there was an inconsistency in appellate decisions with regards to awards of attorney's fees and a requirement to prove an inability to pay standard against the statutory language in section 508, which directs the court to a list of factors not including the ability or inability to pay fees (such as leveling the playing field). Husband argued that an award of fees should only occur where a party was entirely unable to pay their attorney fees and the opposing party was able pay the attorney fees. Section 508 required the court to consider the financial resources of the parties and make a decision on a petition for contribution in accordance with Section 503(j) of the statute. The court found that the previous case law regarding the inability to pay standard was in fact consistent with the statutory language and requirements in 508. Specifically, a party would be unable to pay if after considering all relevant statutory factors requiring the party to pay their attorney fees would undermine that party's financial stability. The court found that Wife's existing assets were substantially lower than

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what she received originally in the underlying divorce case, she enjoyed a lavish standard of living during the marriage, she had been the primary caretaker of the children during the marriage, she was unlikely to resume a career as a law librarian and she was unable to substantially increase her retirement accounts, unlike Husband. At the time of appeal, Husband's assets had increased in value and he also had a sizeable non-marital interest in his family's business and other assets. Based upon this information and the amount of her attorney fees at approximately $1,000,000 and prospective fees in the sum of $100,000, the Illinois Supreme Court found it was not an abuse of discretion for the circuit court to find that Wife's payment of her fees would have threatened her financial stability.

The court reversed the appellate court's ruling that decreased the circuit court's modified amount of maintenance from $27,500 per month to $25,745 per month because the court found that the circuit court did not intend for the maintenance figure to be set at exactly 25% of Husband's cash flow. The reference to 25% of Husband's cash flow was only used once in the circuit court's decision, in response to Husband's statement that the maintenance award to Wife equaled 33% of his income. The court did not find that the circuit court made a calculation error and instead just referenced an approximate percentage in response to Husband's statements. The court also found that Wife's efforts to become self-supporting were adequate despite Husband's arguments otherwise. The circuit court reviewed Wife's efforts to become self-supporting and the court specifically referenced Wife's investigation into selling her business, her inquiry to a hiring agency who told her she was not qualified as a librarian and her training to work as a tax preparer. The court found that while these efforts may be minimal, the circuit court did not abuse discretion in concluding that Wife's efforts were reasonable in light of the facts and circumstances of the case.

Ultimately, the Illinois Supreme Court reversed the appellate court decision in part and affirmed the circuit court's judgment finding that modification of maintenance was proper, there was no evidence of a calculation error, the reduction originally calculated by the circuit court was proper, and the award of attorney fees was appropriate and not an abuse of discretion.

In re Marriage of Hotopp and McGuigan, 2017 WL 657640 (Ill.App. 2 Dist.), February 16, 2017*

Husband appealed an award of attorney fees in favor of Wife and argued on appeal that the award was unsupported by the marital settlement agreement, and that billing statements provided by the attorney seeking fees were not specific enough to support the award of attorney fees.

Husband filed a petition for rule against Wife for removal of personal property from the marital residence that was not specifically set forth in the parties' marital settlement agreement, as well as a motion for specific relief related to a car crash that Wife had been in and false use of a military dependent ID card for insurance purposes. The trial court entered an order discharging the rule to show cause with no finding of contempt and Husband later voluntarily withdrew the motion for specific relief without any notice to Wife's attorney one day prior to hearing. As a result, Wife filed a petition for attorney fees setting forth total fees incurred by Wife of $4,497.50.

On appeal, the appellate court rejected Husband's argument the trial court showed bias against him by interpreting the marital settlement agreement and finding in favor of Wife's removal of personal property from the marital residence. Specifically, the trial court found that the marital settlement agreement was not specific as to the removal of a vacuum cleaner and wooden file cabinet, which ultimately did not allow the court to find Wife in contempt of court. Next, the appellate court rejected Husband's argument that the billing statements provided by Wife's

*Rule 23(e)(1) decision.

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attorney were not specific enough because the statements grouped together certain tasks, such as drafting a petition and drafting a letter and a phone conversation, in one entry. The appellate court found that the itemized statement of services provided the court with sufficient information to judge the reasonableness of the fees requested and the award was proper.

Howard v. Howard, 2017 WL 3707209 (Ill.App 1 Dist.), August 25, 2017*

As part of the judgment for dissolution of marriage, the court ordered Husband to pay $130,000 in attorney fees to Wife's attorneys. After the proceedings, Husband filed for bankruptcy and Wife filed a petition for rule to show cause for his failure to pay her fees. The court ordered Husband to pay an additional $20,000 to Wife's attorneys as and for fees incurred as a result of the petition for rule to show cause. On appeal, Husband argued that the court erred in entering memoranda of judgments against him in the amounts of $130,000 and $20,000 because those obligations were discharged in bankruptcy. The appellate court affirmed finding that the $130,000 debt either qualifies as a domestic support obligation, that is non-dischargeable under section 523(a)(5), or constitutes another type of divorce-related obligation which is non-dischargeable under section 523(a)(15). With regard to the $20,000 that was ordered pursuant to section 508(b), the court found that Husband failed to mention those orders in his notice of appeal. Therefore, Husband forfeited this argument. However, the court noted it has held that attorney fees awarded in connection with post-dissolution contempt proceedings are non-dischargeable in bankruptcy.

In re Parentage of J.W., 2017 WL 1534845 (Ill.App 2 Dist.), April 28, 2017

On November 2, 2015, Mother filed a motion for interim attorney fees, pursuant to sections 501(c-1) and 508 of the Illinois Marriage and Dissolution of Act and section 17 of the Parentage Act of 1984. On February 29, 2016, Mother filed a second motion for interim attorney fees and on March 8, 2016, Mother filed a third motion for attorney fees. In all three motions, Mother alleged that she had engaged a law firm and that she and her counsel were unable to come to a meeting of minds regarding the hourly rate that should be charged for the legal services rendered. She alleged that she did not pay a retainer fee nor had she paid any amount towards the fees that had accrued and that there was no written engagement agreement. Mother also alleged that the attorney was entitled to be paid for his services based on a *quantum meruit* basis. Father filed a motion to strike and dismiss the third motion, and the trial court granted the motion and dismissed Mother's third motion for attorney fees.

On appeal, Mother argued the trial court abused its discretion by failing to expeditiously schedule hearings on her first two motions. The appellate court found that the failure to request a hearing results in a forfeiture of one's right to the hearing. Mother also argued that the court erred in granting Father's 2-615 motion to dismiss her third motion for interim attorney fees. Appellate court found that the plain language of 508(c) clearly indicates that the legislature intended the requirement of a "written engagement agreement" to apply to "an attorney seeking fees from his or her former client." Since Mother was seeking fees from the opposing party, the appellate court found that this does not apply. The court held that the plain language of section 503(j)(5) clearly indicates that the legislature intended that, where counsel has received no payment from his client due to hardship, a court could order a contribution award. Thus, it did not matter that there was no written agreement as the court could have determined a contribution award. This case was reversed and remanded.

*Rule 23(e)(1) decision.

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In re Marriage of Loessy, 2017 WL 3995595 (Ill.App. 1 Dist.), September 7, 2017*

In June 2011, the trial court entered a judgment for dissolution of marriage. There were several post-decree motions filed by both parties. The motions alleged that both parties had failed to comply with the judgment. Before going to trial on these post-judgment claims, the parties were ordered to participate in mediation. At some point during the proceedings, Wife died, and her executor completed the case. Ultimately, the parties reached an agreement on the issues, and the court entered a five-page agreed order. The order allowed Husband and Wife's estate to file a petition for attorney fees. The trial court denied both petitions with prejudice, ruling that the court had no basis or jurisdiction under section 508(b) of the IMDMA. The executor appealed.

The court first addressed the trial court's ruling that it lacked "jurisdiction." The trial court had subject-matter jurisdiction to entertain the fee petition. However, the court had its "doubts that the trial court really meant to indicate that it lacked subject-matter jurisdiction." The court noted that often attorneys and judges misuse the term "jurisdiction" to refer to a lack of authority under a statute.

The court next addressed the trial court's ruling that it had "no basis under section 5-508(b) to grant fee petitions." The court found that this ruling was based on the fact that the trial had no basis to find that either side "failed to comply with the order or judgment without compelling cause or justification." When the fee petitions were filed, there was no basis for the trial court to determine whether either party failed to comply with the judgment order. The plain language of section 5-508(b) says nothing about a contempt finding. If a party has not complied with an order, and has failed to do so without compelling cause or justification, the trial court may award fees under section 5-508(b) without first finding a party in contempt. The salient point is that the trial court needed some basis for determining whether Husband had failed to comply with the judgment, and if so, whether he had justification for failing to do so. There is nothing in the record to suggest that Husband failed to comply with the judgment.

In re Marriage of Myers, 2017 WL 1375307 (Ill.App 5 Dist.), April 12, 2017*

The trial court ordered Husband to pay $20,000 of Wife's attorney fees. On appeal, the court affirmed the decision of the trial court.

Wife alleged that she had incurred $35,033.85 in attorney fees. She alleged that she only owed $1,957.55. The court found that Husband earned two times more than Wife, and ordered the Husband to pay $20,000 towards her fees.

On appeal, the appellate court found that the disparity of the parties' incomes ordinarily justifies an award of attorney fees, and in some cases, a court's refusal to award attorney fees in the face of a substantial difference in income may constitute an abuse of discretion. The fact that Wife had paid most of her fees does not necessarily mean that she had the means to pay her fees. Wife had exhausted her assets and had gone into debt to do so. Therefore, paying the fees was undermining her financial security.

In re Marriage of Sariri, 2017 WL 1806748 (Ill.App 2 Dist.), May 3, 2017

The parties were divorced in May of 2000. The record reflected that this was a highly litigated post dissolution case. In February 2016, after proceeding *pro se,* Wife hired an attorney who filed two pleadings concerning medical coverage for the minor children and the payment of medical expenses. Those pleadings were resolved with an agreed order. Attorney for Wife also filed a petition for attorney fees. At a hearing on the attorney fees, Wife revealed that her net monthly

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income was $360 and her monthly expenses were $1,509. The attorney fees were $8,069.86 for the period of February 5 through April 14, 2016. The parties stipulated that Husband had the ability to pay the fees. The court determined that Husband should be responsible for 80% of the attorney fees.

Husband appealed the award of attorney fees. The appellate court found that although Wife was awarded a great deal of property when the marriage was dissolved, she now earned an amount insufficient to meet her needs, and Husband had the financial means to pay the attorney fees. Further, the court found that the fees were necessary. During the 16 years after the parties were divorced, the court file was made quite extensive and it was clear that the parties harbored a great deal of animosity towards one another. The court found that within 43 days of being hired, the attorney, via an agreed order, was successfully able to end to the litigation. Therefore, the court found that the fees were reasonable and necessary.

See also **ALLOCATION OF PARENTAL RESPONSIBLITIES** *In re Marriage of Koza*, 2017 WL 4843016 (Ill.App. 2 Dist.), October 24, 2017*

See also **ALLOCATION OF PARENTAL RESPONSIBILITIES** *In re Marriage of Tworek*, 2017 WL 4534505 (Ill. App. 3 Dist.), October 11, 2017**

See also **CHILD SUPPORT**, *In re Parentage of O.J.D. and V.J.D.,* 2017 WL 4251110 (Ill.App. 2 Dist.), September 22, 2017*

See Also **MARITAL PROPERTY**, *In re Marriage of Bacon*, 2017 WL 664230 (Ill.App. 4 Dist.), February 17, 2017*

See also **MOTION TO VACATE** *In re Marriage of Benjamin,* 2017 WL 3528948 (Ill.App 1 Dist.), August 14, 2017

ATTORNEY MALPRACTICE

Mark Hexum v. Rob Parker et al, 2017 WL 508166 (Ill.App. 3 Dist.), February 6, 2017*

Husband petitioned to dissolve his marriage from Wife in 2010. During the trial on issues of property distribution and maintenance, the court called a recess to allow the parties to discuss settlement. Following the settlement negotiations, the parties' attorneys informed the court that they had reached an agreement as to the maintenance amount. The trial court accepted the agreement and incorporated its terms into the final judgment of dissolution of marriage. Subsequently, Husband retained new counsel and filed a motion to vacate the judgment. Husband alleged that after the attorneys discussed the issue of maintenance with the court in a pretrial conference, Husband's attorneys indicated that the court would impose maintenance of 50-60% of his gross income if the matter proceeded to trial. Following Husband's testimony on the issue, Wife moved for a directed verdict and the court granted her request, denying Husband's motion. Husband appealed, claiming that the agreement should be vacated on the ground of fraud and coercion. The appellate court found that Husband's evidence failed to evidence either claim. Subsequently, Husband filed a complaint for legal malpractice. Husband alleged that his attorneys gave him negligent advice that inclined him to agree to the high maintenance award. Further Husband argued that the evidence that he presented would require him to pay less in maintenance. The trial court dismissed Husband's complaint, on the grounds the issue had been

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fully litigated, decided and appealed to this court during the divorce proceedings. Husband appealed.

On appeal, the court found that Husband was required to prove that the attorneys improperly prepared for trial and misinformed him regarding the trial court's alleged statement that if the matter proceeded to trial, it would impose a maintenance obligation of 50-60% of Husband's gross income. The court found that these factual determinations were not made in the divorce proceedings. Thus, the court reversed and remanded the matter on the basis that the issues were not barred by collateral estoppel and should be considered.

BINDING ARBITRATION

In re Marriage of Haleas, 2017 WL 1367007 (Ill.App. 2 Dist.), April 13, 2017*

Husband and Wife were married for eight years. The parties agreed to resolve their property and maintenance issues through binding arbitration, rather than litigate their issues through a trial. At the outset of the divorce, Husband was the chairman and Wife was the vice president of commercial lending of Bridgeview Bank Group. Wife petitioned the court for temporary maintenance, which she was awarded in the amount of $7,500 per month, plus travel expenses and other expenses associated with the marital residence. Subsequently, Wife was terminated from her employment. Throughout the marriage, Wife consistently earned more than $100,000 annually. During arbitration, the arbitrator found that Wife had intentionally not filed for unemployment benefits, misrepresented her job search efforts, and had not made a good faith effort to secure new employment. To resolve the case, the arbitrator ordered fixed-term permanent-termination maintenance for 37 months. Further, the arbitrator divided the parties' marital property and awarded Husband his non-marital personal property and non-marital business interests. Husband requested the trial court confirm the arbitration award but Wife alleged that the award was unconscionable. Nevertheless, the trial court confirmed the arbitration award, finding that "the parties agreed to and did enter into binding arbitration."

On appeal, Wife argued that the arbitrator erred in finding that Husband's business interests were his non-marital property and contested the termination date and amount of her maintenance award. Husband argued that Wife failed to assert valid grounds for either vacating or modifying the arbitration award. The appellate court agreed with Husband, acknowledging that the Arbitration Act provides for very limited judicial review. The appellate court rejected Wife's contention that her case was distinguishable from the long-established precedent that defines the court's authority to review arbitration awards. First, the court acknowledged that it may only set an arbitration award aside if it contains gross mistakes of law or gross mistakes of fact, which are evident on the face of the award itself, which the court failed to find. Second, the court recognized that Wife had the burden to prove that the award was improper pursuant to Section 12 or 13 of the Arbitration Act. However, Wife failed to assert any valid ground under these sections of the Arbitration Act. Rather, Wife asserted that the arbitration award violated public policy and requested the court review the maintenance portion of the arbitration award de novo as a question of law under the Illinois Marriage and Dissolution of Marriage Act. The court asserted that it is beyond the court's authority to reconsider the merits of the case, as this would nullify the provisions of the Arbitration Act that severely limit the court's ability to review arbitration awards. Thus, the court affirmed the trial court's decision to confirm the arbitration award.

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CHILD SUPPORT

In re Marriage of Anderson, 2017 WL 4161896 (Ill.App. 3 Dist.), September 19, 2017*

At the time of divorce, Father paid temporary support for three children at the statutory rate of 32% of his net income. A parenting agreement was entered where Father exercised parenting time with the children on alternating weekends along with one overnight and one evening per week. Before the trial court, Father testified that he had the children 40% of the time, made less money than Mother as he was unable to work overtime due to the separation and time spent with the children and that he covered the children on his health insurance plan. Mother did not work but had a master's degree and was board certified in counseling. Instead, Mother received distributions from a trust established by her father and received approximately $65,500 in pretax income from the trust in 2015. The trial court deviated due to Father having approximately 35% of parenting time and the income of both parties being roughly the same. The trial court found statutory support to be $634.60 bi-weekly and deviated to an order of $317.30 bi-weekly.

On appeal, Mother argued that the trial court abused its discretion in ordering a deviation of approximately 50% and refusing to order retroactive child support. The appellate court affirmed the trial court's deviation, as the trial court specifically cited to reasons why the deviation was appropriate, including the similarity of the parties' incomes, the division of parenting time with the children, Father's payment of the children's health insurance and Mother's earning potential. The appellate court did vacate the trial court's decision as to the amount because the trial court granted an even greater deviation than what Father requested at hearing and found that approximately $8,249.80 less per year in child support was a significant amount. The appellate court also found that the trial court improperly considered the impact the health insurance had on the calculation for support.

Bickers v. Murphy, 2017 WL 887151 (Ill.App. 4 Dist.), March 3, 2017*

In 2008, the court ordered Father to pay Mother $500 per month toward child-care costs for the parties' two minor children. In 2014, Father filed a motion to determine his child support and day-care contribution arrearage. In 2015, Father filed a motion to correct the docket to state that he was ordered to pay 33% of the day-care costs rather than $500 per month. Father's motion was denied. Father also claimed that the $500 payment was conditioned on Mother incurring a minimum of $500 in child care costs. Thus, Mother could receive a windfall if the day-care costs were less than $500. Father argued that Mother failed to provide evidence of day-care expenses after she moved in 2010. Ultimately, the court found that Father failed to prove his affirmative defense, as the order establishing Father's daycare contribution did not necessitate that the child care expenses equal or exceed $500. Further, the court found that Mother's testimony that the monthly daycare costs exceeded $500 was more credible than Father's testimony. Father appealed and the appellate court affirmed the trial court's ruling. The court found that the trial court was in the best position to assess the veracity of the parties' testimony. The court noted that Father's testimony before the trial court was conflicting and disingenuous, as he claimed to be unaware that the children were in daycare, but later admitting knowing same. Finally, the court was not persuaded by Father's argument that the amount could result in a windfall to Mother, as Father cited to unpersuasive case law which in fact found in opposition to Father's contention.

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In re Marriage of Jordan, 2017 WL 785608 (Ill.App 3 Dist.), February 28, 2017*

The parties were divorced in January 2010. In August 2013, Wife filed a motion to establish child support. In September 2013, the trial court entered an order setting support and an arrearage of $5,300 for 2012. In February 2014, Wife filed a motion to modify child support. During the trial, Husband testified that he sold a church in 2010. Wife never made any allegations about the church in her petition. The trial court found that Husband owed a child support arrearage of $50,985.13. The court found that $46,056.98 of the arrearage was from the sale of a church that took place after the dissolution of the marriage.

On appeal, Husband argued that the judgment should be reversed to the extent that it awarded $46,056.98 in child support arrearages from the 2010 sale of a church. Husband argued that Wife's motion did not meet the requirement for vacating or amending a judgment pursuant to section 2-1401 of the Code. The appellate court found that Wife's February 2014 petition to modify child support failed to comply with the requirements of a 2-1401 petition for relief. Wife's motion did not reference the sale of the church, nor did she explain her failure to bring it to the court's attention in 2013. Therefore, the trial court erred in allowing Wife to provide evidence of the prior sale and in finding that there was an arrearage of $46,056.98.

In re Marriage of McGrath, 2017 WL 5146044 (Ill.App. 5 Dist.), November 3, 2017**

Father appealed the trial court's order whereby the trial court ordered an upward deviation of child support. This case had previously been appealed to the Supreme Court and remanded. *See McGrath v. McGrath,* 2012 IL 112792. In its ruling, the Supreme Court found that Father's withdrawals from a savings account are not income and should not be included in the court's calculation for child support purposes. Upon remand, Father's financial situation had changed. Father was now qualified for SSDI benefits and had inherited over 1 million in assets. After a hearing, the court found that if the child support were to be based on Father's tax return, he would pay $317 per month for child support, as his income was $37,951. The court specifically stated that the figure in the tax return was not believable. The court noted that Mother was receiving $1,262 from SSDI for the benefit of the children because of Father. The court concluded that it would be unconscionable to find that the $1,262 monthly SSDI relieved Father of paying additional child support in light of the increase to his estate (now valued at $3 million) and the fact that Mother's financial situation since the divorce had not changed. Therefore, the child support was set at $4,500 per month with credit for the $1,262 SSDI dependent benefit.

On review, the appellate court found that the circuit court followed the Supreme Court's mandate and did not abuse its discretion in deviating upward from the guideline amount when determining the child support amount. Father failed to fully disclose his financial resources and the circuit court had stated 28% of his monthly net income for child support was $312. Thereafter, the court reviewed Father's assets, the needs of the children (one child required significant psychological treatment and required around the clock care). The appellate court found that the circuit court was not required to make specific findings in its order regarding the dollar amount of Father's income or the children's actual needs because the statute does not require it. Therefore, there was no abuse of discretion.

In re Marriage of Morgan, 2017 WL 2304415 (Ill.App. 2 Dist.), May 25, 2017*

Pursuant to the parties' judgment for dissolution of marriage, Mother was awarded monthly child support. The parties agreed that child support would be paid through an income withholding order

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on Father's employer and processed by the State Disbursement Unit. Two and a half years after the divorce, Mother filed a third-party complaint against Father's employer, stating that she had not received two months of child support. However, Mother voluntarily dismissed the Petition after Father's employer remedied the problem. Three years later, Mother filed a second Petition against Father's employer, claiming that they knowingly failed to withhold money owed for child support for approximately two and a half years. Within 14 days, Father's employer alleged that the nonpayment was a clerical error and paid the entire amount of past due child support owed. Mother did not ask for interest and Father's employer did not pay interest. At a hearing on the matter, the court ordered Father's employer to pay interest on the child support owed. However, the court declined Mother's request to order Father's employer to pay a $100 per day penalty for the failure to pay. Mother appealed.

On appeal, the court affirmed the trial court's denial of the penalty. The court considered that Father's employer presented testimony that it was not aware of the error, alleging that a one-time override of the payment had inadvertently not been corrected for the period of non-payment. Father's employer explained that Father was the only employee that had a child support obligation that they were responsible for submitting to the State Disbursement Unit, evidencing a lack of experience with the process. Father's employer stated that had it been alerted of the nonpayment, it would have remedied the problem immediately, as it had done in the past. In fact, Father's employer provided Mother the entire amount of unpaid child support immediately upon learning of the deficiency. Thus, the appellate court affirmed the trial court's denial of the penalty, finding that Father's employer did not intentionally withhold the child support payments.

In re Parentage of O.J.D. and V.J.D., 2017 WL 4251110 (Ill.App. 2 Dist.), September 22, 2017*

In May 2014, the parties entered two orders. The first order concerned custody and visitation. The second order addressed financial matters. In January 2015, Mother filed a petition to modify and increase the child support. She alleged that there was a substantial change in circumstances in that the expenses related to the children had increased. Her only allegation with regards to this was that she no longer had the use of the Porsche and her car expense had increased and she needed the car to transport the children. After a hearing, the trial court ruled that there was a substantial change in circumstances and increased the child support.

On appeal, Husband argued that there was no substantial change in circumstances. The evidence reflected that during the hearing, the Mother testified to a financial affidavit that was completed before May 2014. In that affidavit, the Mother knew that she would have to surrender her Porsche and put in her affidavit that the replacement cost of a vehicle would be $750 per month. However, the new cost of her car payment was $370 per month plus $200 per month for insurance. Therefore, this amount was clearly contemplated by Mother, and the evidence regarding a change in vehicle did not constitute a substantial change in circumstance.

The court noted that an increase in the obligor's ability to pay support may justify on its own an increase in child support. Further, the court may consider that fact that the children are older and that the expenses are presumed to have increased. However, in this case, the expenses for the minors decreased.

Father also appealed the trial court's decision that he should contribute to Mother's attorney fees. After reviewing the evidence, an award of attorney's fees was appropriate as the court found that Mother had a limited ability to pay fees and that Husband had a superior ability to pay and contribute to her fees regarding these proceedings since the entry of the judgment.

*Rule 23(e)(1) decision.

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In re Marriage of Pomerantz, 2017 WL 3616891 (Ill.App. 2 Dist.), August 22, 2017*

The appellate court affirmed the trial court's decision to deny the Father's petition to modify child support, calculation of past due child support owed, and finding Father in indirect civil contempt for his failure to pay support.

Here, Father argued for a reduction in child support due to a bad real estate investment resulting in a judgment being entered against him. A wage garnishment was entered against him, which resulted in a loss to his total net income of approximately 15%. Father, who was an attorney, unilaterally reduced his child support payments, and Mother filed a petition against him for indirect civil contempt for his failure to pay child support as well as his failure to properly pay support on a 2012 bonus. With regards to the bonus, Father argued that additional distributions from his employer were made, but that said distributions were to be used to pay taxes on his W-2 and K-1 income from the firm.

On appeal, the appellate court found that the real estate investment in this case was not a reasonable or necessary expense to produce income. Further, the appellate court found that the marital settlement agreement previously entered based child support off Father's law firm salary, which had not changed at all, and that the child support calculation did not take into consideration any real estate investment income. In addition, the appellate court found that Father continued to contribute a great deal to his own personal 401(k) account during the time he argued for the reduction in child support and voluntarily decreased child support payments to Mother. Therefore, the appellate court found that the trial court acted within its discretion by denying the modification of child support.

Next, the appellate court rejected Father's argument that the trial court erred in applying the statute and terms of the marital settlement agreement in determining additional child support owed from his bonus income. The appellate court noted that the trial court specifically found that Father's expert accountant was not credible and failed to explain how Father's law firm distributions were used to pay taxes on his W-2 and K-1 income (which already had taxes taken out). The appellate court deferred to the trial court's finding that Mother's accountant was more credible. As a result, the appellate court determined that the trial court did not err in calculating the amount of money owed by Father for additional support.

Last, the appellate court rejected Father's argument that he only minimally reduced his child support payment, he was advised to do so by his counsel and accountant and that his failure to pay the proper amount in child support did not rise to the level of contumacious because his actions were reasonably justified. The appellate court noted that Father failed to provide a transcript or bystander's report from the hearing and therefore the court found it impossible to confirm whether Father was specifically advised previously by his counsel or accountant to lower his child support payments to Mother. Further, the appellate court reasoned that Father owed approximately $32,000 in child support, which was not a minimal reduction, and that Father was an attorney with independent knowledge as to the importance of following court orders. In sum, the appellate court affirmed the trial court's decision to deny the request to modify child support, the calculation of child support owed and the finding of contempt against Father.

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In re Marriage of Sorokin, 2017 WL 3404986 (Ill.App. 2 Dist.), August 8, 2017*

At the time of divorce, the court entered an ex-parte judgment for dissolution of marriage without Father being present. The trial court calculated child support based upon Father's W-2 employment wages and self-employment income, which Mother testified to at the time of trial. Thereafter, Father filed a petition to modify child support because he no longer operated his business, A&N, and instead only earned a gross annual salary from his employer, Allstate. Father stopped operating his business due to the fact that it stopped being profitable, which the trial court found was in good faith.

On appeal, the appellate court determined that there was a change in circumstances that actually occurred before the court entered the dissolution judgment. The appellate court rejected Mother's argument that no substantial change in circumstances occurred because the change was before and not after entry of the judgment and that the termination of A&N was in bad faith because the business was in fact profitable. The appellate court found that the income used at the time of entry of the judgment was incorrect because Father was not making that amount of money from A&N and the income used to calculate child support was based only on Mother's testimony at the time. The appellate court found that Father proved a change in circumstance by showing his net income was far less than what the trial court found at trial based upon Mother's testimony. The fact that such a change occurred before entry of the judgment had no impact on the case and finding that a substantial change had occurred was not against the manifest weight of the evidence.

Next, the appellate court rejected Mother's argument on appeal that the trial court should have imputed income to Father for his bad faith decision to terminate the business. The appellate court found that Father's decision to close the business was in good faith because of the drop in profits, Father's financial condition, the depletion of his retirement funds and his limitation with regards to activities with the children. In sum, the appellate court affirmed the trial court's decision to grant Father's request to modify.

In re Marriage of Storms, 2017 WL 58817 (Ill.App. 5 Dist.), January 4, 2017*

The parties entered a marital settlement agreement where the parties shared joint custody with equal parenting time and Father agreed to pay 28% of the net of his income for the parties' two minor children. Mother filed a petition to modify as Father was no longer self-employed and his income had increased. The trial court granted Mother's request to modify support and set support based on Father's current net income. Approximately two months after the court released its ruling with regards to Mother's request to modify, Father filed a petition to modify his support obligation arguing that he had the children for an equal amount of time. The trial court granted Mother's motion to dismiss Father's motion because he failed to prove a substantial change of circumstances since the court's ruling on Mother's request to modify.

On appeal, Father also argued that the trial court failed to consider Mother's income and that the court erred by retroactively ordering 28% of the net of his income based upon the language of the parties' agreement. The appellate court rejected Father's arguments as Father agreed that he had obtained new employment and that Father's support obligation was 28% of the net of his current income, not only self-employment income. Last, the appellate court found that Father's parenting time had not changed since entry of the marital settlement agreement. As such, the appellate court affirmed the trial court's ruling denying Father's request to modify.

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In re Marriage of Toeniskoetter, 2017 WL 2578721 (Ill.App. 5 Dist.), June 13, 2017*

Father was ordered to pay child support to Mother for the parties' minor child pursuant to the parties' marital settlement agreement. Three years later, Mother filed a motion to modify child support, seeking increased child support and attorneys' fees. Father also filed a motion to modify child support, seeking a downward modification due to his termination from employment. The court ordered Father to temporarily pay Mother a decreased amount of child support, enjoined Father from spending 20% of his worker's compensation settlement in the amount of $14,000 and reserved the review of Mother's petition for a modification. The following year, Father received an Equal Employment Opportunity Commission ("EEOC") award of $60,000 and Mother filed a motion for temporary restraining order regarding the award. The trial court ordered 20% of the award to be held in Father' attorney's trust account until further order of court. Subsequently, the court enjoined Father from spending any money he might receive from a worker's compensation claim. Additionally, Mother filed four motions for sanctions for Father's repeated failure to provide documentation of his income. The following year, Father filed a motion to modify child support, stating that he was no longer eligible to receive unemployment benefits and was making minimum wage. The court found that Father owed $8,000 in past-due child support. At a separate hearing, the court ordered Father to pay $14,000 from his worker's compensation settlement, 15% of his EEOC settlement and 20% of his pending worker's compensation claim for the benefit and needs of the child. The court further ordered Father to pay $3,000 in attorneys' fees. Father appealed.

On appeal, the court found that Father's worker's compensation and wrongful termination settlements were correctly categorized as "net income" for the purpose of calculating child support and affirmed the trial court's rulings. Father argued that only the portion of the award that was designated as lost wages should be considered "net income." Further, father argued that the amount of lost wages should be prorated for the period of time that he would be responsible for providing child support. The court found that Illinois courts had previously found that lump-sum worker's compensation awards fall within the statutory definition of income. Further, the court found that no facts necessitated a deviation in the form of a proration of the award. Rather, the court did not abuse its discretion in ordering Father to pay the statutory guideline amount of 20% of the award. Finally, the court declined Father's argument that the EEOC settlement was not subject to child support guidelines because the settlement stated that the award was for "the employee's asserted claim for emotional distress." Father argued that the court should only consider the portion of the settlement that was allocated to lost wages as income. However, the court found that the entire lump sum should be considered nonrecurring income under the statute.

In re Marriage of Volluz, 2017 WL 3747730 (Ill.App. 5 Dist.), August 29, 2017*

Pursuant to the parties' judgment for dissolution of marriage, Wife was awarded child support and maintenance. One year later, Husband petitioned to modify his support obligations, alleging that he was recently laid off, resulting in reduced income. The court granted Husband's motion, noting that due to Husband's type of work, his income fluctuates throughout the year and his income is best determined on an annual basis. Two years later, Husband filed a second motion to modify, alleging that his income drastically reduced. Wife filed a petition for rule to show cause and petition for attorneys' fees, for Husband's failure to fully comply with his support obligations. The court granted Husband's motion, decreased his child support and maintenance obligations and classified maintenance as nonmodifiable and non-reviewable. The court found that although Husband earned around $78,000 when the parties divorced, the types of jobs that allowed him to earn such a salary were no longer available. The court found that Husband's income steadily

*Rule 23(e)(1) decision.

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decreased over the last two years, despite Husband's efforts to maximize his income, and that he had taken out significant sums from his investment accounts in order to comply with his support obligations and pay his living expenses. Wife appealed.

On appeal, the court affirmed the court's order granting Husband's motion to modify. The court reasoned that child support is based on the party's net income, not projected gross income. Wife argued that settlement money that Husband received for an asbestos lawsuit should be considered for the purpose of calculating support. However, the settlement proceeds were received prior to the time period that the court was considering Husband's income and the parties had mutually spent the money to furnish the marital residence. Wife argued that Husband's purchase of a new truck was evidence of his ability to pay support. However, the court disagreed, reasoning that the truck was necessary for Husband's employment. Wife argued that she had an inability to earn more money than at the time of the support review, but the court did not find this persuasive because Wife had not resorted to withdrawing money from her retirement funds to pay for her living expenses, as Husband had. The court also affirmed the trial court's denial of Wife's petition for rule to show cause because the trial court made Husband's downward modification retroactive and therefore, no arrearage existed. Accordingly, the court also upheld the trial court's denial of Wife's petition for attorneys' fees.

In re Marriage of Warren, 2017 WL 635562 (Ill.App. 2 Dist.), February 15, 2017*

Mother filed a petition to modify in April 2015 alleging that the child's needs had increased and Father's income had increased. The petition also alleged that Father failed to provide income documentation as provided for in the marital settlement agreement. Mother argued that she could have filed a motion to modify child support sooner had she received Father's income information and that child support should be retroactive to February 2014 when Father was required to produce his 2013 income information.

The appellate court agreed with Father's argument that the trial court only had discretion to modify child support as to installments accruing after the date of filing and erred in ordering retroactive child support prior to the date of filing. The appellate court vacated the trial court's order increasing child support effective February 2014 and instead ordered increased child support effective April 16, 2015 moving forward. The case was remanded to the trial court to recalculate the child support arrearage owed by Father and all other aspects of the trial court's judgment was affirmed.

In re Marriage of Watkins, 2017 WL 5472588 (Ill.App. 3 Dist.) November 14, 2017*

The parties were married for eight years and had two children. When the parties divorced, Mother was granted the majority of parenting time and Father was ordered to pay child support. Mother was also given the right to claim both children as tax exemptions each year. Two and half years after the parties divorced, Father filed a petition for temporary relief, requesting that the parties each be allowed to claim one child as a dependent on their tax returns. Mother, in response, filed a motion to modify child support. After the hearing on the issues, the parties entered an agreed order, which increased Father's child support obligation and allowed Father to claim both children as dependents on his tax returns each year. That year, in 2016, Mother claimed both children as dependents before Father filed his tax returns, and Father filed a petition for rule to show cause. The court ordered Mother to appear and show cause, if any, why she should not be punished for refusing to follow the agreed order. Wife responded by arguing that the parties' intention was for

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the agreed order to apply to the following year, 2017, and that the agreed order was therefore entered by mutual mistake of fact or mutual scriveners' error. Mother further argued that the agreed order was silent as to the start date of the order. During the hearing, the parties failed to supply a transcript of the previous hearing, as there was not a court reporter in the courtroom during the hearing and therefore argued their settlement positions from the original hearing.

The court ordered that, based on the attorneys' recollection of the previous hearing, the court did not mean for the agreed order to apply retroactively, and therefore did not hold Wife in contempt of court. Husband appealed. On appeal, the court noted that tax exemptions are an element of child support, and therefore subject to the trial court's discretion. The court also noted that the review of the trial court's interpretation and effect of the parties agreement presents a question of law, which should be reviewed de novo. The court, therefore, considered all of the facts and circumstances surrounding the execution of the agreed order. The court noted that Father had filed the petition for temporary relief the previous year and specifically requested that the issue be resolved before the parties file their taxes for tax year 2014. In Wife's response, she indicated that the ruling should pertain to the parties' 2015 taxes, filed in 2016. Therefore, the court found that the parties' intention was that Father would claim the children as exemptions beginning in 2016, and reversed the trial court's ruling.

In re Marriage of Woolsey, 2017 WL 5969230 (Ill.App. 3 Dist.), December 1, 2017*

After a trial, the court found that Husband retired in bad faith and imputed income to him for purposes of calculating maintenance and child support.

The parties were first married in 1991 and divorced in 2002. Wife became pregnant by another man and gave birth to a daughter in 2003. The parties remarried in 2007. At that time, Husband was retired. In 2008, the Husband adopted the daughter and returned to work. The couple began building a house together and planned on living there until the daughter graduated from high school. The cost of building the home was $580,000 and the parties took out a 10-year adjustable rate mortgage with a 30-year amortization period. In September 2014, Wife filed for divorce. In November of 2014, the court entered an order requiring Husband to maintain the health insurance. In February 2015, Husband was ordered to pay temporary support. In November 2015, the parties entered into a partial settlement agreement. The judge stated that maintenance would be settled on another date. Husband announced that he was going to "retire tomorrow." That same night, Husband emailed Wife and advised that he was going to retire. Husband retired on December 31, 2015 and downgraded the insurance. After a contempt petition filed by Wife, Husband was ordered to reinstate his insurance, and the court reserved the contempt issue. Husband later filed a petition to modify temporary support as he was now retired.

At the hearing, Husband testified that he retired because he was 68 years of age and his health was declining. The court found Husband in contempt due to his decision to reduce the health insurance and ordered him to pay $50,000 in attorney fees. Further, the court found that the timing of his retirement was in bad faith and ordered him to pay maintenance and child support based on his earnings when he was employed.

On review the appellate court found that the trial court did not abuse its discretion by finding that Husband's retirement was in bad faith. The record shows that he abandoned his retirement after he adopted daughter. Further, the parties took out a loan that they could only pay back if Husband was working. This, coupled with Husband's abrupt announcement in November of 2015 that he

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was retiring, the recorded supported the conclusion that his retirement was in bad faith. The issue as to the duration of maintenance was remanded only because the trial court's order was unclear, and the appellate court set forth the time period.

See also **ALLOCATION OF PARENTAL RESPONSIBLITIES** *In re Marriage of Tworek*, 2017 WL 4534505 (Ill.App. 3 Dist.), October 11, 2017**

See also **DISSIPATION,** *In re Marriage of Covello,* 2017 WL 3297998 (Ill.App 1 Dist.), August 1, 2017*

See also **REAL PROPERTY** *In re Marriage of Campbell*, 2017 WL 4857016 (Ill.App. 2 Dist.), October 27, 2017**

CHILD SUPPORT MODIFICATION

In re Marriage of Peffer, 2017 WL 6553623 (Ill.App. 3 Dist.), December 21, 2017*

Husband filed a petition for dissolution of marriage. At the time of filing, the parties had three children and Wife was pregnant. The fourth child was born throughout the course of the proceedings. A judgment for dissolution of marriage was entered on May 5, 2003, wherein custody of the parties' two eldest children was awarded to Husband and custody of the parties' two younger children was awarded to Wife. The judgment was silent as to child support. In 2005, Wife filed a petition to modify, and sought an award of child support. In 2006, the court ordered Husband to pay Wife $1,000 per month. In 2010, both parties filed cross petitions for child support. Husband's petition also included a count requesting that the court grant him custody of the parties' third child. The court used a three-year average, and Husband's child support was increased to $5,127 per month. In 2011, the court awarded Husband custody of the parties' third child for seven months, which is when the child would reach the age of majority. In 2012, Husband filed a petition to modify child support, and the child support amount was reduced to $3,000 per month. In 2013, Husband filed a second petition to modify child support, alleging there was a substantial change in circumstances as his income was lower. An agreed order was entered reducing Husband's child support obligation to $2,500 per month. In 2014, Husband filed a third petition to modify child support, again alleging a substantial decrease in income and arguing the three-year average used for the calculation should no longer be employed. In 2015, Wife filed for upward modification of child support stating that Husband's three-year average income had increased. In 2016, Wife filed a petition to vacate the 2013 agreed order, stating that in 2012 Husband deposited $32,408 into a retirement savings account, prepared an amended tax return, and did not disclose same. The court recalculated child support, and ordered Husband to pay $2,996 per month for the period of March 12, 2013 to February 13, 2015. The court denied Husband's third petition to modify child support, and ordered Husband to pay $3,862 per month for the period of February 13, 2015 to May 17, 2016. The court also found Husband had a total child support arrearage of $31,148. Husband filed an appeal.

The appellate court affirmed the decision of the trial court, and ruled that the modification of Husband's child support obligation was not an abuse of discretion. Where a party's income fluctuated from year to year, the trial court may use an income average. Husband also argued on appeal that the trial court judge should have recused himself because he had a personal and working relationship with Wife and her new spouse. The appellate court did not review this issue,

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as Husband raised it for the first time in his direct appeal. The appellate court denied Wife's request to impose sanctions, as the grounds involved Husband's actions in the trial court and not in the appeal.

In re Marriage of Storms, 2017 WL 58817 (Ill.App. 5 Dist.), January 4, 2017*

The appellate court affirmed the trial court's denial of a Father's request to modify child support due to his failure to show a substantial change of circumstances.

The parties entered into a marital settlement agreement where the parties shared joint custody with equal parenting time and Father agreed to pay 28% of the net of his income for the parties' two minor children. Mother filed a petition to modify as Father was no longer self-employed and his income had increased. The trial court granted Mother's request to modify support and set support at Father's current net income. Approximately two months after the court released its ruling with regards to Mother's request to modify, Father filed a petition to modify his support obligation arguing that he had the children for an equal amount of time. The trial court granted Mother's motion to dismiss Father's motion because he failed to prove a substantial change of circumstances since the court's ruling on Mother's request to modify.

On appeal, Father also argued that the trial court failed to consider Mother's income and that the court erred by retroactively ordering 28% of the net of his income based upon the language of the parties' agreement. The appellate court rejected Father's arguments as Father agreed that he had obtained new employment and that Father's support obligation was 28% of the net of his current income, not only self-employment income. Last, the appellate court found that Gather's parenting time had not changed since entry of the marital settlement agreement. As such, the appellate court affirmed the trial court's ruling denying Father's request to modify.

CHILD SUPPORT FOR NON-MINOR CHILD WITH DISABILITIES

In re Marriage of Wolf, 2017 WL 5632854 (Ill.App. 2 Dist.), November 15, 2017*

The parties were married for four years and had two children. One of the parties' children was diagnosed with autism, celiac disease and ulcerative colitis. The parties' marital settlement agreement provided Mother with one year of unallocated, reviewable family support and stated that the issue of child support was reserved even after the parties' disabled child legally emancipated. The parties later entered an agreed order which extended Mother's unallocated family support for an additional two years. Mother continued to file motions to continue unallocated support throughout the child's life, which were granted by the court. Mother then filed a motion to continue the unallocated support after the child turned 18, alleging that she was the child's primary caregiver, the child suffered from severe mental and physical impairments, and was only able to function at the level of a three-year old child. Further, Mother was unable to find work, as a result of caring for the child full-time and lacking sufficient funds to pay for full-time care for the child. The court ordered Father to pay maintenance for a period of five years and to contribute a monthly amount to a special needs trust for the disabled child. Father appealed.

On appeal, Father argued that the court miscalculated child support by setting the amount based on his gross income, rather than his net income. Mother argued that the child support was not ordered pursuant to the Section 505 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), which applies to children as defined by the statute, but under Section 513.5 of the

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IMDMA, which governs the support of non-minor children with disabilities. The court agreed with Mother and found that the trial court properly calculated child support under this statute. Father also appealed two other issues, which were forfeited due to an incomplete record on appeal, failing to cite to proper authority, and failing to submit a statement of the standard of review. Therefore, the court affirmed the trial court's ruling.

COLLEGE EXPENSES

In re Marriage of Newton, 2017 WL 3484950 (Ill.App 4 Dist.), August 14, 2017*

Mother filed a petition pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act. After a trial, the court ordered, the daughter, Mother and Father to each pay one-third of the daughter's college expenses. The child was going to attend University of Illinois to study food science. Mother testified that she earned $74,000 per year. She also testified that daughter is a very good student, and that the cost of University of Illinois was between $33,000 to $34,000 per year. Father testified daughter was accepted to the community college and therefore would have to pay a minimal amount for college courses there. Father further testified that he earned $94,000 per year and that he would have to take a loan for the college expenses. Additionally, he testified his daughter from his current marriage had health issues and that he was in debt because of it. The trial court found that daughter had worked very hard and was an excellent student. The court found it was in her best interest to enroll at University of Illinois and for the parties, and the child, to each contribute to one-third of the expenses. The court found that while this was a burden, it was not an undoable burden on the parties.

On review, the appellate court found that although the community college provided a less expensive option, it was for only two years. Further, the University of Illinois provided immediate opportunities for the daughter in her field of study. The evidence also indicated that Father was employed and earned $94,000. Based on the totality of the evidence, the appellate court affirmed the decision of the trial court.

CONTEMPT

In re Marriage of Ehlers, 2017 WL 4399843 (Ill.App. 1 Dist.), September 29, 2017*

The appellate court affirmed the trial court's judgment for dissolution of marriage and rulings on post-judgment proceedings related to Husband's failure to pay support to Wife, his request for modification and ultimate incarceration. On appeal, Husband argued that his right to represent himself was violated by the trial court, that the property division and maintenance portions of the trial court's judgment were inequitable, his claim for dissipation was improperly denied, the trial court erred in finding impropriety in his business transition and awarding attorney fees to Wife and that the trial court was biased against him. Husband also attacked post-judgment rulings by the trial court by arguing that the trial court erred when it denied his motion for substitution of judge for cause due to the judge's alleged bias, he was not afforded procedural rights before being arrested for his contempt of court, the trial court erred by finding him in contempt and for awarding fees to Wife.

Ultimately, the appellate court found that Husband hired an attorney to represent him on his own behalf approximately three days after the trial had already begun; however, the attorney hired by Husband failed to file an appearance in the matter. The appellate court found that the attorney

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appeared on Husband's behalf, argued, signed motions and conducted himself as Husband's attorney and that the court was never aware that the attorney failed to file an appearance. Further, upon review of Supreme Court Rules the appellate court found that there is no rule that contains sanctions for noncompliance with the rule requiring an attorney to file a written appearance. The appellate court found the trial court did not err by recognizing the attorney as Husband's counsel and did not abuse discretion when it declined to let Husband cross-examine his Wife when the litigant was represented by counsel.

Next, Husband argued that the trial court failed to properly value jewelry awarded to Wife and divide the personal property; however, the appellate court rejected this argument, finding that there is no case law or specific court rule that requires the trial court to assess a specific cash value to each individual piece of property. The appellate court found that the record reflected that Wife had numerous pieces of non-marital property and that the list of assets provided by Husband was not supported by any documents, photographs, receipts or appraisals. Further, the trial court specifically awarded Wife a majority of the personal property within the marital home while Husband was awarded all of the personal property within the vacation home and gave specific factual findings on the record as to why the trial court did this. Husband also made numerous arguments as to why the trial court erred in awarding Wife the marital residence; however, the appellate court found that Husband poured assets into the vacation home instead of maintaining the marital residence or paying support to Wife and that he failed to cooperate with Wife to avoid foreclosure, which resulted in her taking a $155,000 loan from her father to keep possession of the marital residence.

Husband further argued that the trial court erred in awarding permanent maintenance to Wife in the amount of 30% of Husband's gross income and failed to consider Wife's ability to work. The appellate court found that Wife had not worked in approximately 30 years, was a stay-at-home mother and had no income at the time of entry of the judgment other than the temporary support paid by Husband. Further, the appellate court stated that if Wife did become employed, Husband had the right to request a modification as the statute contemplates consideration of 20% of the gross of any income she would earn in the future.

The appellate court also rejected Husband's arguments that the trial court improperly erred when rejecting his dissipation claim, yet Husband filed the notice of dissipation 23 days after the first day of trial and did not follow proper procedure, which barred his claim. In addition, the appellate court found that the trial court properly found that Husband fraudulently transferred marital assets to his girlfriend and a company she registered in Tennessee with the same name as his company in Illinois, Stone Wallace. The appellate court found that Husband testified that he was unaware of Stone Wallace Tennessee, yet Husband testified that he suggested and recommended that clients transition from his company to the girlfriend's company. Moreover, monies were transferred from Husband to his girlfriend and the court found that the court improperly diverted money from the marital estate to the girlfriend for his benefit.

The appellate court rejected Husband's argument that the award of attorney fees was improper or that the trial court was biased against him. The appellate court found no error with the trial court's denial of the motion for substitution of judge and that all proper procedures were followed to hear and rule on such a motion. Further, the appellate court rejected Husband's arguments that he was improperly sworn in because he was practicing law at the time. In addition, the appellate court further rejected Husband's argument that his due process rights were violated

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because he was taken into custody after receiving insufficient notice and service where some exhibits attached to the papers he received were missing. The appellate court found that minimal due process is all that is required and that Husband had full notice of the proceedings and had access to all necessary information to meet his support obligation or defend himself. The appellate court also reviewed the propriety of the contempt order because Husband argued that he did not have an ability to pay his support obligation. As a result, Husband, who was an attorney, was held in contempt and remained in jail for over a year. The appellate court found that Husband had an ability to pay for several reasons – he deposited $99,377.84 into his checking account from July 2014 to March 2015 while the case was pending, his brother was a multimillionaire who made several payments to Husband directly or to the bank for payment of the mortgage of the vacation home, he had two credit cards with a combined limit of over $30,000, his brother established a line of credit for him of up to $300,000 and he received tax refunds of approximately $35,000 just weeks before being found in contempt for willful nonpayment of his support obligations. The appellate court also found that Husband traveled to Tennessee weekly during the proceedings and maintained a rental in Tennessee, paid money to other individuals (not his Wife) during the pending case, and he had not applied for a job since losing his job at Pricewaterhouse in 2014, yet argued he was self-employed by restarting his law practice but failed to establish an IOLTA account or be paid any retainers from clients. In addition, the appellate court found that Husband paid all of his own individual credit cards and personal bills in advance of the court appearance.

In re Marriage of Lewis, 2017 WL 6803355, (Ill. App. 5 Dist.), December 29, 2017*

The parties were divorced in 2002. The MSA provided that the parties would equally share medical expenses and reserved the issues of payment of college expenses. In 2012, after a trial, the court ordered each party to pay 50% of the cost of the children's educational expenses. Father failed to pay, and Mother filed a petition for rule to show cause. Father requested permission to appear at the scheduled hearing by telephone. Father did not file a response to the pleading and he did not attend the hearing. The motion to attend by phone was denied.

On appeal, Father argued that the court's refusal to allow him to participate in the hearing via telephone violated his due process rights. However, the court found that Father was given notice of the hearing and he was given the opportunity to be heard, but failed to file a response. Since he was afforded notice and an opportunity to be heard, the court found he was not denied due process.

Father also argued that Mother violated section 2-606 of the Code of Civil Procedure by not attaching an exhibit referred to in her pleading. The court found that her petition was based on terms contained in the MSA and the order entered in 2012. Therefore, there was no error. Father next argued that the court erred when it ruled that he was to pay 50% of the educational expenses. However, Father did not file a motion to modify nor did he present any evidence to prove that he was unable to pay.

In re Marriage of Mueth, 2017 WL 5629501 (Ill.App. 5 Dist.), November 20, 2017*

Pursuant to the marital settlement agreement, Father was awarded, as custodian, mutual funds invested through Fidelity Funds for the children's college. The marital settlement agreement stated that the funds were to be used for the children's college. Years later, Mother filed a

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contempt petition because Father had used the money to purchase vehicles for the children. He also used the money on gas and insurance, orthodontist costs and a laptop for the children. He took away the oldest child's car, sold the car, and used the money for his attorney fees. The oldest child was now in college, and the youngest child was living with her friend's family. Because the youngest child was no longer living with her Mother, Father filed a petition to terminate child support. After a hearing, the trial court denied the Mother's petition for rule, finding that any cause of action for misuse belongs to the child, not Mother. Further, the court found that Father would pay child support for the youngest child into a segregated trust account, and that the account would be administered by Father.

On review, the appellate court found that Father freely admitted that he converted the funds in the UTMA accounts and that he used the funds for items that were unrelated to college expenses. The appellate court found that while the child had a right to enforce the agreement, Mother also had an interest in ensuring that the children received their money for college. Therefore, the court found that Mother had standing to challenge Father's conversion of college funds. Father's actions were in contradiction to a valid court order and therefore, the trial court erred in denying Mother's petition for rule to show cause.

On appeal, Mother argued that given Father's conversion of funds in the UTMA accounts, the order allowing him to pay child support into an account and administer it to accommodate the child's needs should be reversed. Mother argued that she should be the parent to administer the account. The appellate court found no abuse of discretion as there was no evidence that this was a calculated move by Father or the family with whom the youngest child was now residing.

In re Marriage of Myers, 2017 WL 3105891 (Ill.App 2 Dist.), July 20, 2017*

Wife filed a petition for temporary maintenance. The court ordered temporary maintenance, and Husband failed to pay same. Wife filed a petition for rule to show cause and Husband admitted that he did not pay the maintenance. Husband argued that the court should terminate the maintenance. After hearing, the court found him in indirect civil contempt for his failure to pay the support.

On appeal, Husband argued that the orders were the product of bias and prejudice on the part of the trial court, and that he was denied due process. The appellate court found that there was no evidence of improper questioning by the trial court nor was there any evidence of bias or prejudice.

See also **CHILD SUPPORT** *In re Marriage of Volluz*, 2017 WL 3747730 (Ill.App. 5 Dist.), August 29, 2017*

See also **MARITAL PROPERTY,** *In re Marriage of Miller and Winterkorn*, 2017 WL 1148706 (Ill.App. 1 Dist.), March 24, 2017*

See also **MOTION TO VACATE** *In re Marriage of Benjamin,* 2017 WL 3528948 (Ill.App 1 Dist.), August 14, 2017

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CUSTODY

In re Parentage of I.G. and N.G., 2017 WL 716031 (Ill.App 1 Dist.), February 21, 2017*

On December 3, 2014, the parties entered an agreed order relating to custody. Because there was a criminal proceeding pending against Father, the agreed order stated that if Father "be convicted of any crimes he is charged with, such conviction, regardless of punishment, shall be considered a substantial change in circumstances sufficient to warrant a change in custody upon the filing of a proper pleading." The agreed order went on to say that should Father serve time in prison, Mother shall immediately be named sole custodian and residential parent for the minor children.

On April 23, 2015, Mother filed a petition for modification of custody. In her petition, she alleged that Father had pled guilty to a federal criminal offenses and was scheduled to be sentenced in June 2015. On July 20, 2015, Father was sentenced to one day in prison. On July 24, 2015, Mother filed a petition to terminate her child support obligation on the basis that Father was sentenced to be imprisoned. On July 27, 2015, Father filed an emergency motion for return of the minor children. Mother did not return the children to Father after her two-week vacation with the children. There were several motions filed. A temporary order was entered granting Mother temporary custody of the minor children and allowing her to enroll the children in the school district associated with her residence. After a hearing on all matters, the court entered an order granting Mother's amended petition for modification of the parenting agreement. The court found that a substantial change in circumstances had occurred in that pursuant to the agreed order on December 3, 2014, Father was convicted and incarcerated. Further, the court considered the in-camera interview of the minor child and noted that the child had a preference towards his Mother's home. The court found that Father's testimony was evasive and at times incredible, and that he expressed no remorse and took no responsibility for his involvement in mortgage fraud.

On appeal, Father argued that the court erred when it allowed the agreed custody judgment to govern Mother's custody modification because the judgment violated public policy and was misinterpreted by the court. The court found that Father agreed to the provision that his conviction would lead to a substantial change in circumstances. Because the parties stipulated that it was Father's conviction that triggered a substantial change in circumstances, Mother was not required to prove serious endangerment to the children. Father next argued that the court erred in deciding this case based on facts Mother created by wrongfully retaining the children. Father argued that much of the court's decision was based on the children thriving in their new home and school, and that this environment was only created because Mother wrongfully retained the children. The appellate court found no evidence to suggest that Mother engaged in misconduct or committed fraud or acted in bad faith. Instead, her actions were in conformance with the agreed order.

Jourdan v. Ezeugwu, 2017 WL 2692012 (Ill.App 3 Dist.), June 20, 2017*

In 2008, the court entered an order establishing child custody, visitation and child support. The agreement provided that the parties would share custody of the child and that the child would reside with Mother, subject to Father's parenting time. In 2010, the court entered an order modifying custody, finding that it was in the best interest of the child to award sole custody to Father. Mother was granted parenting time. Several motions were filed, but on January 18, 2017, the court determined that the only remaining motion was Mother's 2013 petition to modify custody and motion regarding visitation. After the hearing, the court entered an order maintaining custody with Father and making some modifications to visitation. Mother argued that the January 2017 order was not fair and she did not have time to prepare for the trial. The appellate court found that

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the trial court was very clear regarding the purpose of the hearing and gave Mother sufficient time to present her arguments. Further, Mother fully participated and did not file any motions to continue the trial date. Therefore, the appellate court affirmed the decision of the trial court.

In re Marriage of Smith, 2017 WL 3174048 (Ill.App 4 Dist.), July 25, 2017

In December 2015, the court entered a judgment for dissolution of marriage and granted the parties joint custody of their four children. On appeal, Mother argues that the trial court abused its discretion in ordering joint custody. Because the custody judgment was entered in 2015, the old statute applied to this case. The court found that both parents were competent and loving parents. They had both been involved in the lives of the children, and they lived in a small town. Further, despite the appointment of a parenting coordinator, the parties could cooperate on matters regarding parenting their children. Because of the parent's close proximity to one another, the children would not need to adjust to different schools, communities or churches. Further, the evidence in this case indicated that the parties had been executing a joint parenting schedule for some time and have abided by it. Nothing indicated that the schedule was not working for the children. When affirming the decision of the trial court, the court put a lot of emphasis on the fact that the parties lived in such a small town.

In re Parentage of T.R, 2017 WL 2954640 (Ill.App 4 Dist.), July 10, 2017*

In November 2014, Father filed a petition to determine the father-child relationship. Mother subsequently filed a petition to relocate to Missouri. Following a hearing, the court entered an order granting Mother the majority of the parenting time and providing for visitation for Father.

During the trial, Mother was allowed to admit into evidence three letters from the child's teachers. The trial court advised that the court would give the letters the appropriate weight. At the conclusion of the trial, the court went through the statutory factors and determined that Mother should have the majority of the parenting time. The court found that she had provided the primary caretaking functions over the past 24 months. The court noted that Father had been more involved over the past 18 months, but that prior to that, the responsibility fell on Mother. The court specifically stated it was not ruling on the petition for removal and noted that it was unlikely to allow the petition based on the evidence and the community support for the child.

On appeal, Father first argued that the court erred in awarding Mother the majority of the parenting time. In this case, the evidence was overwhelming that Mother had provided for the child's emotional, physical and financial needs and performed the major caretaking functions in the 24 months preceding the filing of the petition. Further, Father's regular parenting time and payment of child support were a direct result of a temporary parenting plan entered in 2015. Prior to that, his visits were sporadic. Further, while Mother, at one point had an issue with prescription pain pills, she sought and was receiving treatment for same.

Next, Father argued that the trial court committed reversible error by admitting into evidence the unsigned letters from the child's school. The appellate court found that even if the trial court considered these letters, the remaining evidence support the findings of the trial court.

Finally, Father argued that the court committed reversible error when it refused to consider evidence related to Mother's petition to relocate. The court found that a custodian's petition for removal and a non-custodian's petition to change custody must be decided under different sections of the Act. The allocation of parenting time is unrelated to the petition to relocate. Now

*Rule 23(e)(1) decision.

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that the court made the determination of allocation of parenting time, it is up to Mother to either pursue or abandon her petition to relocate. If the petition is denied, she has the right to decide to remain in the State and retain custody. Therefore, the decision of the lower court was affirmed.

DEFAULT

See also **MAINTENANCE** *In re Marriage of Aronson,* 2017 WL 3149439 (Ill.App 2 Dist.), July 24, 2017

DISGORGEMENT

In re Marriage of Goesel, 2017 WL 355619 (Ill.App 3 Dist.), January 24, 2017

Attorney Laura A. Howell was former counsel for Husband. Wife filed a petition for interim fees and requested that the trial court either order Husband to pay her attorney fees or enter an order disgorging the necessary amount from the money that Husband had paid his former attorney. After a hearing, the court found that neither party had the ability to pay fees, and determined that the total fees paid by the parties was $118,193.31 and each party should be allotted $59,069.65 for their attorney fees. To achieve this, the court ordered that Holwell disgorge $40,952.61 of fees paid to her by Andrew. The attorney refused, and after the proper motions were filed was held in contempt of court. While a court order granting interim attorney fees is not an appealable interlocutory order, an order issuing a contempt sanction for violating an interim fees order, the contempt finding is final and appealable.

Holwell argued that the trial court did not have the authority to order disgorgement of attorney fees that were previously paid to her for services already rendered. On appeal, the court found that trial courts have the authority to enter orders that allocated available funds for each party's counsel. Available funds are those funds that are currently being held for a client that have not yet been earned by the attorney at the time the attorney is given notice of the petition for interim fees and would be "available" to be returned to the client if the attorney was to immediately cease services. The court noted that finding otherwise would render the term "available" superfluous because earned funds paid to the attorney may have already been lawfully spent by the attorney and, thus, not "available" due to no fault of the attorney. The court found that in this case, there was no portion of the retainer paid by Husband that was "available" for disgorgement because the entirety of the retainer had been applied to services rendered or expenses incurred and had already been earned by Holwell.

DISSIPATION

In re Marriage of Covello, 2017 WL 3297998 (Ill.App 1 Dist.), August 1, 2017*

After a 10-year marriage, the parties were divorced in a bifurcated proceeding. Wife filed a dissipation claim against Husband alleging that he dissipated marital assets by failing to account for the sale proceeds of a 2007 home and rent that he received from leasing the marital home. The court dismissed the dissipation claim, finding that the event took place prior to the breakdown of the marriage. The court did not award Wife any of Husband's pension and ordered child support in the amount of $1,076.94 per month. Wife appealed, claiming that the court improperly dismissed her dissipation claim. She also argued that the child support was incorrect because the court failed to include Husband's rental income and that she should have received a portion Husband's pension.

*Rule 23(e)(1) decision.

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On appeal, the court affirmed the trial court's dismissal of the dissipation claim, finding that the marriage was not undergoing an irretrievable breakdown when the claimed dissipation took place. Although Wife had filed for divorce in 2006, that petition was dismissed in 2007. The parties reconciled and did not separate again until 2010. The alleged event took place in 2007. The court remanded the trial court's decision for further clarification on its decision to not award Wife a portion of the pension and to not include Husband's rental income in the calculation for child support.

On remand, the trial court found that at the time of trial, the parties were netting about the same amount of income. Therefore, it would not be equitable to award Wife the marital portion of the pension. The court also found that in calculating the child support, it did not include income from the properties because it found that the net proceeds from the properties, after deducting taxes, insurance, mortgage payments and the cost of upkeep was zero. The appellate court affirmed the decision of the trial court.

See also **MARITAL PROPERTY**, *In re the Marriage of Darst*, 2017 WL 464784 (Ill.App. 4 Dist.), February 2, 2017

DIVISION OF ASSETS

In re Marriage of Field, 2017 WL 3730557 (Ill.App 2 Dist.), August 29, 2017*

After review, the appellate court affirmed the decision of the trial court. On appeal, Wife argued that the trial court erred when it classified a townhome as marital property. There was no dispute that the townhouse was purchased prior to the marriage by Wife. The trial court heard evidence that the parties paid off the mortgage using marital money, that the parties refinanced the townhome with a $75,000 HELOC loan to improve the property. The parties took out another HELOC to improve the marital residence. The parties lived in the residence from 2006 until 2013 when they purchased the marital residence. Even after purchasing the residence, the parties kept the townhome and paid off the HELOC with marital money. Husband testified that Wife had told him that she intended for the parties jointly own the townhome. Wife testified that was not her intent, but the court did not find her to be credible. Therefore, Wife did not present clear and convincing evidence to overcome the presumption that the townhome was marital property.

Wife next argued that the trial court erred when it classified credit card debt incurred by Husband from the date of separation to the trial date as marital property. Here, it was clear that the credit card debt was used for marital expenses such as Guardian ad Litem fees, attorney fees, living expenses and medical expenses. Therefore, the debt was marital debt.

Wife contended that the trial court misclassified the retirement plans of the parties and miscalculated each share. The trial court heard evidence that Husband's retirement account was established prior to the marriage, and that during the marriage, he contributed $9,086.74. The account was valued at $103,801.13. The trial court also heard evidence that prior to the marriage, Wife had $15,147 in her retirement account. The account now has $274,534.67. The trial court classified Husband's account as non-marital with the marriage to receive a credit of $9,086.74, and that Wife's account was marital with Wife to receive a credit of $15,147. The appellate court found that this was not against the manifest weight of the evidence.

*Rule 23(e)(1) decision.

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In re Marriage of Lorusso, 2017 WL 2198199, (Ill.App 2 Dist.), May 17, 2017**

After review, the appellate court found that the court's classifications, valuations and allocations of marital property were not against the manifest weight of the evidence. Therefore, the decision of the trial court was affirmed.

The trial court determined that a "family business" was a marital asset and awarded Wife 55% of the marital estate. Husband argued that from the inception of the business in 1979 through the date of trial, the business was owned by his mother. In the alternative, he argued that the business was gifted by him to his mother. The evidence reflected that the businesses tax returns for 1993 and 2014 indicated that Husband was 100% owner of the business and the tax returns for 2009, 2010, 2011, and 2012 indicated that Wife was 100% owner of the company. Further, the parties' joint tax returns from 2006-2014 indicated that the parties had a shared ownership in the business.

On appeal, the court found the trial court's finding that the company was owned by the parties was not against the manifest weight of the evidence. The court found that it disingenuous for Husband to argue the tax returns should be disregarded because they were never meant to establish that anyone other than Husband's mother owned the company. Further, Husband failed to provide clear and convincing evidence to overcome the presumption that the company was marital property and he presented no evidence that his mother gifted him the business.

See also **DISSIPATION,** *In re Marriage of Covello,* 2017 WL 3297998 (Ill.App 1 Dist.), August 1, 2017*

GRANDPARENTS' RIGHTS/VISITATION

In re Interest of N.D., A.D., and M.D., minors, C.G, 2017 WL 6614467 (Ill.App. 2 Dist.), December 26, 2017*

The circuit court dismissed Grandmother's petition for visitation with her three grandchildren filed pursuant to section 602.9(c) of the IMDMA, finding that she lacked standing.

In her petition for visitation, Grandmother alleged that she had a close and loving relationship with her grandchildren until May of 2015, when their Mother (her daughter) cut off all contact between her and the children. Mother and Father of children filed a motion to dismiss, alleging that Grandmother failed to meet the statutory requirements of standing to petition for visitation. The circuit court granted the motion to dismiss. Grandmother appealed, arguing that the statute's standing requirement was unconstitutional "as applied" to her given the close relationship that she shared with her grandchildren and the undue harm that would result from terminating her visitation.

In this case, there is no dispute that none of the five circumstances delineated in 602.9(c)(1) of the statute exist. That is, the minor children's parents are not missing, deceased, incompetent, incarcerated, divorced, or legally separated. Rather, the parents are married and residing together and have jointly decided to eliminate Grandmother's visitation. The parents have the fundamental constitutionally protected liberty interest to make decisions concerning the care, custody, and control of the children. No such right has been extended to grandparents. Therefore, the appellate court upheld the lower court's decision.

*Rule 23(e)(1) decision.
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Young v. Herman and Herron, 2017 WL 5157767 (Ill.App. 4 Dist.), November 6, 2017

The paternal Grandparents of a minor child filed a petition to establish sole care, custody and control of the minor, alleging that the child had been in their care since the child was two months old and that it was in the child's best interests. The Grandparents then filed an emergency petition for an order of protection, alleging that the child's Mother had recently removed the child from their care. The trial court granted the emergency order of protection and ordered Mother to return the child to Grandparents' care. Mother filed a motion to dismiss, alleging that Grandparents failed to state a cause of action upon which relief could be granted and lacked standing. The court conducted six hearings to resolve the issues, during which the court heard testimony from many members of the parties' community and the guardian ad litem. At the conclusion of the hearings the court found that it was in the minor child's best interests to allocate primary decision-making responsibility and parenting time to the Grandparents and to allocate parenting time every other weekend and one night during the week to Mother. Mother appealed.

On appeal, the court affirmed the trial court's ruling. First, the court found that Grandparents had standing to file the petition because the minor was in the physical custody of the Grandparents when they filed the petition, under the statute. Mother had voluntarily relinquished her parenting responsibilities for the past eight years by inviting the minor's Grandparents to "co-parent" the minor. The court also found that Grandparents were responsible for the child's day-to-day care, medical care, education, extracurricular activities and social life. Further, the court found that it was in the minor's best interests that Grandparents have primary decision-making and parenting time. The court was not persuaded by Mother's argument that the court failed to consider certain evidence, including Grandmother's use of profanity and the violent history of the Grandmother's sons. Further, the court disagreed with Mother that the trail court failed to properly weigh the best interest factors. The court found that the child had wished for her living situation to return to how it was before the court's involvement, that the child was well adjusted to home and school, that Mother consumed alcohol excessively, that Grandparents and Mother could not cooperate with the decision-making for the child, that Grandparents provided stability that the child would otherwise not have, and that it was not in the child's bests interests to move to Florida. Therefore, the court affirmed the trial court's ruling.

See also **GUARDIANSHIP**, *In re Curtis,* 2017 WL 1384410 (Ill.App 5 Dist.), April 13, 2017**

GUARDIANSHIP

In re Curtis, 2017 WL 1384410 (Ill.App 5 Dist.), April 13, 2017**

Mother appealed the trial court's holding that grandparents had standing to proceed with a petition for custody.

After the birth of their first child, Mother and Father moved in with Mother's parents. They remained living at the grandparent's home for two years. Approximately a year after moving out, the family moved back into the grandparent's residence. A second child was born. Mother moved out with the children after Father was arrested and sentenced to jail time. The children lived with their Mother for a few months until she began serving a two- year jail sentence, and thereafter, resided with the grandparents. Prior to her incarceration, Mother executed a short-term guardianship. Grandparents filed a petition for custody of the minor children and Mother filed a motion to strike, alleging that grandparents did not have standing. Both the appellate court and the trial court found that grandparents had standing to seek custody of the minor children. The

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court found that the record indicated that the children were in the physical care of the grandparents at the time the petition for custody was filed. Further, Mother voluntarily relinquished custody of the children by executing the short-term guardianship. Therefore, the grandparents satisfied the statutory standing requirement.

HAGUE CONVENTION

In re Marriage of Roby, 2017 WL 4924488 (Ill.App. 1 Dist.), October 30, 2017*

Father is an American citizen and Mother is a Dutch citizen. The parties were married in a civil ceremony in New York and a religious ceremony in Israel. The parties lived in Israel for a short time period and then moved to Holland. Father moved to New York, but returned to Holland for the birth of the parties' daughter. After the birth of the child, Father moved to Chicago, and Mother and child remained in Holland. Mother and child traveled to Chicago on four occasions. During the final visit, in June 2016, Mother advised Father that she was coming to Chicago to try to work on their marriage. Seventeen days after Mother arrived in Chicago, Father filed for divorce and filed an *ex parte* emergency petition for an order of protection. On July 27, 2016, Mother filed a petition to return the child under the Hague Convention and the UCCJEA. After a hearing, the trial court found that the Netherlands was the child's habitual residence. The court further found that under the Hague Convention and the UCCJEA, Illinois was not the appropriate jurisdiction.

On appeal, the court found that pursuant to section 201 of the UCCJEA, Holland is the child's habitual residence. The child did not spend six consecutive months in Illinois prior to the commencement of the proceeding. The court properly considered evidence that Mother, who was committed to playing her viola and violin, did not bring those instruments to the United States. The court also found that it was reasonable to believe that Mother did not come to the United States with the intent of residing here permanently, but rather, as an attempt to save her marriage. Finally, during the child's 26 months of life, she spent most of her time in Holland and spent only a total of nine weeks in Chicago.

INDIRECT CIVIL CONTEMPT

In re Marriage of Jones, 2017 WL 3000757 (Ill.App. 5 Dist.), July 13, 2017*

Prior to the dissolution of the parties' marriage, the court entered a temporary order requiring Husband to pay all regular household bills and list the marital residence for sale. Six months later, the parties' mortgage lender filed suit to foreclose on the marital residence. Husband was personally served and accepted service on behalf of Wife. Subsequently, the court conducted a 5-day trial on the parties' dissolution of marriage. Wife testified and believed that the home had been listed for sale. Husband testified that he was unable to make mortgage payments and that the home was in foreclosure. No equity remained in the marital residence following the foreclosure sale. The parties' judgment for dissolution of marriage made no mention of the foreclosure but rather ordered the parties to divide the remaining equity in the home, awarding Wife 60% of the equity. Subsequently, Wife filed a petition for indirect civil contempt, requesting the court order her maintenance for the lost equity in the marital home that resulted from the foreclosure. Wife further alleged that Husband violated the judgment by failing to sell all of the farm equipment and vehicles in his possession and failing to equally divide the equity in the farm equipment that he in fact sold.

*Rule 23(e)(1) decision.
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Husband filed a motion to reconsider the judgment for dissolution of marriage, arguing that the it was inequitable to order him to pay all of the mortgage payments and award Wife 60% of the equity in the marital residence, as Wife did not contribute financially to the marital estate and Husband had lost his job. Further, Husband argued that Wife should not have received a disproportionate share of the marital estate because she made only nominal contributions to the marital estate and refused to obtain employment. The circuit court denied Husband's motion to reconsider, in part relying on the fact that Husband paid back two personal loans.

Four years later, Wife filed a fourth petition for indirect civil contempt, claiming that she was entitled to $60,000 in lost equity from the foreclosure of the marital home and that Husband had still not sold all of the farm equipment or divided the equity in the previously sold equipment. In response, Husband filed a motion to dismiss, arguing that he could not be held in contempt for failing to pay 100% of the mortgage payments on the home because it had been foreclosed and sold prior to the entry of the judgment for dissolution of marriage. Further, Husband filed a counterpetition for rule to show cause, alleging that Wife had sold farm equipment and failed to split the proceeds with him. The court denied Husband's motion to dismiss and directed Husband to pay Wife attorneys' fees. Subsequently, the court held a hearing on the various pending pleadings and found Husband in indirect civil contempt and directed him to pay Wife $15,000 for failing to sell all ordered farm equipment and vehicles. Further, the court ordered Husband to pay to Wife $20,000 as compensation for the lost equity in the marital residence and an additional sum for attorneys' fees. Husband appealed.

On appeal, Husband argued that the circuit court abused its discretion in ordering monetary payment as a remedy to purge Husband of indirect civil contempt. The court agreed, finding that ordering Husband to pay Wife compensatory damages for was inappropriate as his purge for the finding of indirect civil contempt. Rather, Husband should have been ordered to sell the remaining equipment or pay wife the value of the property that he intends to keep for his own use. Thus, the court reversed and remanded the order of compensatory damages for Husband's failure to sell the farm equipment. Next, the court found that Husband did not have the ability to comply with the judgment regarding the marital residence because it was foreclosed and no equity remained. Therefore, the finding of indirect civil contempt was an improper remedy. Therefore, the court remanded this cause for a determination of an appropriate remedy for Husband's failure to comply with the judgment. Finally, the court affirmed the award of attorneys' fees.

In re Marriage of Lynch and Lynch, 2017 WL 243393 (Ill.App. 2 Dist.), January 19, 2017*

Husband appealed the trial court's holding finding him in indirect civil contempt for his failure to pay support to Wife in the sum of $168,959 and sentencing him to incarceration. Husband specifically argued on appeal that the trial court erred in disregarding the parties' agreement, including a car allowance in his gross income, failing to give credit for a payment sent to Wife and holding him in contempt prior to determining the amount he owed to Wife.

The appellate court rejected Husband's argument that Wife's acceptance and her act of cashing a check for $21,988.24 constituted an agreement and settlement for all past due unallocated support amounts. Husband wrote "taken in payment of all unallocated maintenance and support due through June 30, 2015" on the back of the check. The appellate court determined that cashing the check was not acceptance of a lesser sum than what Wife was already owed because the parties' never spoke about such an "agreement" previously, Husband was not prejudiced as he already owed at least that sum to Wife, Wife had scratched out the Husband's writing on the

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back of the check before cashing it and there was no good faith negotiation of any instrument. Next, the appellate court rejected Husband's argument that the trial court should not have included a car reimbursement in his gross income for the support calculation because Husband testified that the allowance was equal to his actual car expenses. Specifically, the appellate court found that the marital settlement agreement stated that gross income from employment included all salary and bonuses paid, excluding stock options and proceeds. The appellate court found that based upon the clear language of the parties' agreement, the trial court properly included the car allowance in the support calculation as part of Husband's gross income and that Husband failed to provide any documentation that he had $1,500 per month in car expenses that would justify excluding the allowance in the support calculation. The appellate court also affirmed the trial court's ruling that found Husband in indirect civil contempt. The appellate court found that Husband had the ability to perform the calculation for support set forth in the marital settlement agreement to determine the proper amount owed, he vastly underpaid Wife even considering the $21,988.24 check that he provided and attempted to underpay Wife despite the clear calculation for support set forth in the parties' agreement. Furthermore, the appellate court disagreed with Husband's argument that the trial court should have provided him more time to pay the purge amount because Husband was not diligent in liquidating his retirement fund in a timely fashion to make the purge payment, Husband took $60,000 from his savings account and prepaid the principal on his mortgage and Husband took $30,000 from his savings account to purchase a new car despite receipt of a substantial monthly car allowance of $1,500 per month. For these reason, the appellate court affirmed the trial court's ruling that there was no agreement between the parties that Wife cashed the check for $21,988.24 in full satisfaction of all unallocated support payments owed, including Husband's car allowance in the support calculation and holding Husband in indirect civil contempt.

The appellate court did in fact agree with Husband's argument that the trial court failed to give him credit toward his arrearage for paying the $21,988.24 check that Wife cashed. The appellate court reversed and remanded the case back to the trial court to apply credit for Husband's payment to Wife's arrearage for unallocated support.

INTEREST

In re Marriage of Keller, 2017 WL 3382078 (Ill. App. 4 Dist.), August 4, 2017*

Pursuant to the parties' judgment for dissolution of marriage, Husband was ordered to pay Wife $80,000 for her portion of the marital estate. Wife appealed the court's allocation of the marital estate, but the court affirmed. Thereafter, Wife filed a petition for a finding of indirect civil contempt for Husband's failure to pay Wife the $80,000. Wife also asked for statutory interest from the date of the entry of the Judgment. The court found that Husband was not in contempt and found that Wife was only entitled to interest from the date that the appellate court's decision was entered. Wife appealed, arguing that interest was mandatory. The court disagreed, finding that, except in the case of child support, interest on property distribution judgments is discretionary and should be allowed where warranted by equitable considerations and is disallowed if such an award would not comport with justice and equity.

*Rule 23(e)(1) decision.
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JURISDICTION

In re Marriage Doyle, 2017 WL 4321053 (Ill.App. 2 Dist.), September 26, 2017*

On August 24, 2012, during the pending divorce proceedings, the court ordered Husband to put his terminal vacation leave payment and TSP payout into Wife's attorney's IOLTA account; however, when Husband retired from USPS and received the payments, he chose to deposit the funds into his personal checking account and spend most of the monies. The trial court entered a judgment of dissolution of marriage on May 20, 2014, which found that the payments Husband received for vacation and TSP were marital and that Husband should pay Wife 65% of the current marital value of the TSP account, disregarding any loans taken on the account. In addition, the trial court ordered that no withdrawals of the funds should occur until after Wife received 65% of the funds. Husband then filed a motion to reconsider, arguing that he testified that the current value of the TSP account was $0 after he took a loan in the sum of $17,500 from the account. Further, Husband argued that he should not be solely responsible for the $800 per month payment for the survivor annuity because the court ordered him to designate Wife as the beneficiary of the survivor annuity with USPS. The trial court granted Husband's motion to reconsider the pension and survivor annuity benefit. Subsequently, Wife filed a petition for rule to show cause as to why he should not pay Wife 65% of the value of the account to be calculated as if no loan had been taken out. The court found that Husband had withdrawn all funds from his TSP account prior to the judgment for dissolution of marriage entered and denied the petition for rule. Wife's attorney then filed a motion to reconsider, arguing that the judgment provided payment of 65% of the current marital value of the TSP account, calculated as if no loans had been taken out, and that the court intended for Husband to pay 65% of the value of the TSP account, which was then subsequently deposited into Husband's bank account. The trial court ultimately granted Wife's motion to reconsider and found that Husband should pay 65% of the TSP value at the time the funds were withdrawn, which amounted to $15,313.95.

On appeal, Husband argued that the trial court's order entered on January 22, 2016 ordering him to pay $15,313.95 to Wife was void because the order was entered 20 months after the original judgment was entered on May 20, 2014. The appellate court found that the trial court had both subject matter jurisdiction over the dissolution proceeding and personal jurisdiction over the parties and therefore the court order entered by the trial court was not void. Further, the appellate court found that the trial court retained jurisdiction for more than 30 days after entry of the original judgment because it was enforcing the original judgment and subsequent orders for payment of the TSP funds. Procedurally, the trial court entered a temporary order that required Husband to deposit funds from his TSP plan into Wife's attorney's IOLTA account and when the order was not complied with the court entered a judgment that ordered Husband to pay 65% of the current marital value of the TSP account and Wife subsequently filed a petition for rule to enforce the judgment. As a result, the appellate court affirmed the trial court's entry of an order in January 2016 that directed Husband to pay $15,313.95 to Wife because the trial court retained jurisdiction to enforce the terms of the judgment.

In re Marriage of Robertson, 2017 WL 2784210 (Ill.App 1 Dist.), June 23, 2017*

The appellate court found that it lacked jurisdiction to hear an appeal from an order denying relief from judgment where the judgment or order at issue is not final. Following a number of abuse allegations, the court entered two orders suspending Father's parenting time. On April 26, 2013,

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the court entered an order "suspending, temporarily," Father's parenting time pending an interview of the minor child and the parties by a child representative and investigation by DCFS. On March 12, 2014, the court entered an order that the suspension of Father's parenting time would continue until he attended coaching classes. Father filed a number of other motions, but the two that matter are the July 2015 motion to reinstate visitation and the September 2015 petition for relief from judgment. The court denied the motions as Father had not attended parenting coaching classes.

On appeal, Father contends that the court erred in denying these two motions. The appellate court found that they did not have jurisdiction as both orders were temporary orders, and that there was a precondition set in the orders for reinstatement of the parenting time.

Strauss v. Dowd, 2017 WL 3135041 (Ill.App. 1 Dist.), July 21, 2017*

Following the dissolution of the parties' marriage, Mother was granted sole custody of the parties' three minor children and ultimate decision-making regarding their health and education. Two years later, Father filed a petition to modify custody. The court granted Father's petition and awarded him sole custody of the children, subject to Mother's parenting time, and further ordered that "prior to either parent filing a motion or petition in court regarding custody or visitation, the party shall submit a written report from [the parties' psychiatrist] at their expense confirming that court intervention is required to protect the health, safety or welfare of the children." Mother appealed the order and also filed motions in the circuit court regarding allocation of parental responsibilities. Mother withdrew the motions, as she did not have a report from her psychologist. Mother filed two subsequent motions, which sought revisions to the custody order regarding parenting time. The court denied these motions due to Mother's failure to consult with the parties' psychologist. Mother appealed. On appeal, the court vacated the trial court's denial of Mother's motions, on the basis that the trial court lacked jurisdiction to adjudicate these motions while Mother's appeal was still pending.

In re Marriage of Fouad Teymour, 2017 WL 3927100 (Ill.App. 1 Dist.), September 6, 2017**

The case was appealed following the trial court's ruling to continue maintenance payments from former Husband to former Wife, the imposition of sanctions, a contempt finding and failure to dismiss the former Wife's request for support for a child of the marriage. The appellate court dismissed the appeal for lack of jurisdiction because post-dissolution claims remained pending and there was no finding pursuant to 304(a) that would allow the appellate court to hear the appeal.

Here, the appellate court found that Supreme Court Rule 301 allows an appeal as of right where a final judgment is entered. Under Supreme Court Rule 304(a), if multiple parties or claims for relief are pending, an appeal may be taken from a final judgment as to one or more but fewer than all of the claims *only if* the trial court makes an express written finding that there is no just reason for delaying either enforcement or appeal or both. The appellate court found that Rule 304(a) specifically applies to cases where the parties present multiple claims, the trial court enters a judgment on at least one of those claims and that judgment is final; however, the trial court must specifically make an express written finding that there is no just cause for delay of enforcement or appeal or both. The district courts were divided as to whether unrelated, pending post-dissolution matters constituted separate claims or actions that could be appealed absent a Rule 304(a) finding. If post-dissolution matters are separate actions, then Rule 301 would confer

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jurisdiction on appeal; however, if post-dissolution matters are related, then a Rule 304(a) finding would be necessary to confer appellate jurisdiction.

Typically, in pre-dissolution cases Rule 304(a) would not apply because there may be multiple issues within a single dissolution case that are subject to change but are not final orders subject to appeal. For example, in *In re Marriage of Leopando,* 96 Ill.2d 114 (1983), a final custody order was not an appealable order because there were still several issues remaining that were related to one claim (i.e., dissolution claim). In that case, a custody order was found to be an interlocutory order that was not final for purposes of Rule 304(a) but could only be appealed under Rule 306(a)(1)(v). However, a post-dissolution case can involve numerous or multiple claims, and the Illinois Supreme Court reiterated that in *In re Custody of Purdy,* 112 Ill.2d 1 (1986). In that case, the Illinois Supreme Court found the appellate court had jurisdiction over an appeal from a post-dissolution order that modified custody/allocation of parental responsibilities and contained a finding pursuant to Rule 304(a), but reserved summer parenting time. The court found that a final decree is an order that resolved an entire claim and was a final judgment on that particular claim, which contrasts with an order that disposes of one ancillary issue within a pre-dissolution claim.

Thereafter, confusion arose in the district courts, and some districts found that separate claims were separate post-dissolution actions and questioned whether a finding pursuant to 304(a) was required to appeal if the matter pending in the trial court was unrelated to the matter on appeal. The First and Third District courts decided cases that represented the position that a Rule 304(a) finding was not necessary in post-dissolution actions that involved separate and unrelated "claims." The Second District disagreed with these findings in *In re Marriage of Alyassir* and the Fourth District followed that reasoning. In *Alyassir,* the Second District found there was a lack of jurisdiction where a Rule 304(a) finding was not made after the trial court modified child support on a post-dissolution case and a rule to show cause was still pending. Last, the appellate court found that the Illinois Supreme Court did not directly address the split in *In re Marriage of Gutman*. In *Gutman*, the trial court granted an ex-Husband's motion to terminate maintenance and dismissed ex-Wife's motion to increase maintenance; however, the trial court did not rule on the ex-Wife's petition for contempt or make a specific Rule 304(a) finding. The Illinois Supreme Court found that absent a Rule 304(a) finding, a final order resolving less than all claims was not appealable until all claims have been resolved at the trial court level. Ultimately, the appellate court reiterated the Illinois Supreme Court's ruling in *Gutman* and favored the Second and Fourth District positions with regards to jurisdiction on appeal that separate claims, not separate actions, *and* a Rule 304(a) finding is required where only one of several pending post-dissolution petitions have been resolved. The appellate court found that parties should not participate in piecemeal litigation, which should be discouraged in the absence of just cause, and appeals after each post-dissolution claim would result in an unnecessary burden on the appellate court's docket. In a situation where the trial court finds that justice requires an immediate appeal, a finding pursuant to Rule 304(a) may be utilized in a post-dissolution case.

In this case, the appellate court found that the trial court found ex-Husband in indirect civil contempt and granted sanctions but did not address a modification of child support, which was still pending. The trial court did not make a Rule 304(a) finding and therefore the appellate court lacked jurisdiction and the appeal was ultimately dismissed.

*Rule 23(e)(1) decision.

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In re Marriage of Wenzel, 2017 WL 4764916 (Ill.App. 4 Dist.), October 19, 2017*

Father appealed the trial court's judgment allocating a majority of parenting time to Mother and Father having only weekends and vacation time with the minor child, and argued that the trial court mistakenly entered the judgment and it should have been vacated. The trial court ordered the parties and child's representative to submit to the court proposals for allocation of parental responsibilities after hearing on the matter. The deadline to do so was set forth as February 14, 2017 and Mother submitted her proposed judgment on February 8, 2017; however, on February 8, 2017, the trial court entered the Mother's submitted proposed judgment. Father's attorney filed an emergency motion to vacate the judgment and argued the issue to the trial court but at the end of the hearing on the emergency motion to vacate the trial court indicated that no order would be entered on the matter. A notice of appeal was filed by Father's attorney the following day.

The appellate court found that it had jurisdiction over the appeal because Father did not seek a ruling from the trial court on the motion to vacate as no order had been entered and had sufficient evidence of abandonment as Father immediately sought appellate review of the issue. However, the appellate court found both parties agreed that the trial court mistakenly entered the judgment and was confused on the matter. As a result, the appellate court did not consider the merits of Father's arguments and vacated the trial court's judgment allocating parental responsibilities due to the error and remanded the case to the trial court for a new hearing.

See also **HAGUE CONVENTION** *In re Marriage of Roby,* 2017 WL 4924488 (Ill.App. 1 Dist.), October 30, 2017*

MAINTENANCE

In re Marriage of Aronson, 2017 WL 3149439 (Ill.App 2 Dist.), July 24, 2017

Husband failed to appear at trial. The trial court ordered him to pay monthly maintenance in the amount of $2,214.50 and entered a default judgment. Husband moved to vacate the judgment, explaining that he was hospitalized. The court vacated the judgment and later conducted a trial where both parties were present. The trial court heard evidence with regards to a marital settlement agreement that the parties had entered into in 2012. The parties had agreed that Wife would receive $400 per month as and for maintenance for 60 months. After trial, the court entered the marital settlement agreement.

Wife appealed the decision of the trial court, first contending that the trial court erred by vacating the default judgment. The appellate court found that a default judgment is a drastic measure. It was undisputed that Husband was in the hospital. The penalty to Husband would have been quite severe, as it would have resulted in nearly three times as much maintenance as provided for in the marital settlement agreement. Wife also appealed the entry of the marital settlement agreement. Wife argued that she was extremely stressed by the break-up of the marriage, and that Husband had threatened that she would receive nothing if she did not sign the agreement. The court noted that stress is typical in a divorce proceeding. The court also found that there was evidence that she had rejected a previous proposal. The court found that the agreement was not unconscionable as Wife did receive more of the assets and Husband was paying for most of her attorney fees. Based on the totality of the circumstances, it was not an unconscionable agreement. Therefore, the appellate court affirmed the decision of the lower court.

*Rule 23(e)(1) decision.
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In re Marriage of Bernard, 2017 WL 3105892 (Ill. App. 2 Dist.), July 20, 2017*

Following the dissolution of the parties' eight-year marriage, Wife was awarded monthly "reviewable, modifiable" maintenance for a period of 18 months. The judgment qualified Wife's maintenance by stating "All payments remain modifiable by either party upon the granting of a petition to modify. In the event the respondent fails to file a Petition to Extend the Maintenance Payments, then the parties hereby stipulate that [Wife] is able to be self-supporting through appropriate employment and/or through property ownership, including marital and nonmarital property apportioned to her pursuant to the Agreement, and to provide for her reasonable needs for maintenance and support." Wife filed a petition to extend maintenance on the basis that her poor mental health prevented her from becoming self-supportive. Wife alleged that she had depression and anxiety and had attempted suicide. Wife's therapist testified that she was able to keep up with her activities of daily living but was permanently disabled. Wife had applied for two jobs, but was unable to obtain employment. However, Wife also testified that she completed court-ordered volunteer work for two different organizations, which consisted of 40 hours of class work and 10 hours of volunteering. Further, Wife received a substantial sum of money after the parties divorced and from her father after her parents divorced. In total, wife had $1.9 million in assets that she could invest to support herself. Wife alleged that managing her assets caused her anxiety, despite having met with financial planners who could manage her money for her. Finally, Wife alleged that she didn't apply for Social Security benefits because she believes that she is not disabled. The court conducted a general review of maintenance and terminated Wife's maintenance.

On appeal, Wife argued that the parties' judgment provided for a limited review of maintenance rather than general, as it stated that Wife would continue to remain under the treatment of her therapist with the intention of returning to the previous level of functioning before the parties' divorce. Wife interpreted this language to mean that she should continue to receive maintenance as long as she continued to seek treatment for her mental health issues. However, the court determined that this language did not limit the scope of the maintenance review and that other language in the Judgment clearly required evidence of changed economic circumstances in order to modify Wife's maintenance. Further, Wife argued that the court made erroneous factual findings regarding her ability to support herself. The appellate court upheld the court's determination that wife's mental health did not prevent her from obtaining employment or managing her money and that her family could appoint a financial guardian to oversee her investments. Finally, the court found that the court did not abuse its discretion when it terminated Wife's maintenance because Wife could support herself with her investments for the rest of her life.

In re Marriage of Bernay, 2017 WL 3084086 (Ill.App 2 Dist.), July 19, 2017

The parties were divorced in 1995. Husband was ordered to pay Wife $4,150 per month in unallocated support for 36 months. In August 1999, the court reviewed the maintenance award and ordered Husband to pay $6,000 per month, reviewable in 60 months. In 2004, Wife petitioned for an extension of maintenance. In March 2006, the court awarded permanent maintenance in the amount of $3,600 per month. At that time, Wife was in her fifties and employed as a nurse earning $42,000 per year. The husband was earning $225,000 per year and had over a million dollars in assets. In 2014, Husband petitioned the court to terminate maintenance. He alleged that his salary had decreased and that he wished to retire in 12 months. He had also been diagnosed with lymphoma. The trial court found that there had been a substantial change in circumstances, due to Husband's illness, his reduced salary and his imminent retirement. Wife

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was now working part-time and only earning $27,000 per year. The court found that she failed to obtain further education or training to advance her career, and she failed to seek full-time employment. Therefore, the trial court terminated Wife's permanent maintenance.

Wife appealed, and the appellate court found an abuse of discretion and reversed the trial court's judgment. The trial court failed to give any deference to the 2006 order awarding Wife permanent maintenance. The court found that the trial court did not consider the standard of living during the marriage. The court also found that while a spouse awarded indefinite maintenance has a good-faith obligation to work toward becoming self-sufficient, that spouse is entitled to maintain a "reasonable approximation of the standard of living established during the marriage." In this case, Husband was required to show that Wife's financial needs sufficiently decreased or that he was no longer able to pay maintenance. Although Husband planned to retire, the court found that his retirement was contemplated when the court awarded permanent maintenance in 2006. Moreover, the evidence demonstrated that Husband had sufficient assets to continue to satisfy the maintenance obligation. Also, Husband's lymphoma diagnoses did not substitute a change in circumstances because he did not present evidence as to how his treatment would deplete his assets. The court found that a petition to modify or terminate maintenance does not permit a court to revisit and determine the entirety of the parties' finances *de novo*.

In re Marriage of Brill, 2017 WL 2982510 (Ill.App 2 Dist.), July 13, 2017

At the time of dissolution of marriage, the parties were married for more than 20 years and had two adult children. Wife testified that she suffered from many health problems she earned $23,000 per year. She had previously been earned $40,000 but was terminated after a two-week stay in the hospital. Husband testified that he earned $91,000 per year. He also testified that he and his girlfriend closed on a house, that his girlfriend provided the down payment, and that if they sold the house, the girlfriend would receive her down payment and the remaining equity would be split equally. The trial court found that Husband's undivided one-half interest was marital property. The court did not give any credit to the girlfriend's down payment and found that Husband's share of the equity was $13,500. The trial court awarded Wife half of that equity. Further, the court ordered statutory maintenance in the amount of $1,840 per month. Instead of awarding Wife 270 months of maintenance per the statute, the court deviated and awarded Wife 96 months of reviewable maintenance. This was based on the ages of the parties, assets awarded, and incomes of the party.

On appeal, Husband argued that the amount of maintenance was an abuse of discretion. He argued that the court miscalculated Wife's wages and failed to include more than $15,000 per year that Wife received from her parents. The court found that it was not an abuse of discretion to hold that the money from her parents were loans. Both Wife and her Father testified as to the nature of the loans and the court found them to be credible. While the amount of maintenance was correct pursuant to the formula, the court failed to apply the 40% cap. The trial court found no evidence to support a deviation from the guidelines as to the amount. Therefore, the award was reduced to $1,727 per month.

With regard to the house, Husband argued that the trial court erred by classifying the house as marital property. Husband contends that his interest in the house was a gift because it was purchased with his girlfriend's assets. The court found that this was not a gift as Husband testified that he would receive 50% of the equity after the repayment of the down payment. Because the girlfriend did not absolutely and irrevocably relinquish future dominion over the 401(k) money

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used to purchase the house, the money was not a gift to Husband. Neither the girlfriend or Husband testified that the money was a gift to him.

In re Marriage of Casey, 2017 WL 3294420 (Ill.App. 1 Dist.), July 31, 2017*

Upon the dissolution of the parties' 18-year marriage, Wife was awarded $12,000 per month in unallocated family support for 60 months, predicated on Husband's then represented annual base income of $300,000. Further, Wife was awarded a portion of Husband's bonus income as additional unallocated support. The parties' marital settlement agreement provided that Wife must petition the court in order to extend maintenance, that Husband must disclose any bonus within seven days of his receipt of same, and that the issue of contribution to college expenses was reserved.

Four years after the parties' divorce, Husband filed a petition for contribution to college expenses, to which Wife responded that her finances were "dwarfed" by Husband's and that she had already contributed her proportionate share to the child's college costs. That same year, Wife filed a petition to extend unallocated support for an additional five years, or, in the alternative, to set maintenance and child support. Wife was employed, earning $10,000 annually and Husband was earning $600,000 annually. Husband argued that Wife was not eligible for an extension due to her failure to become self-supporting. Wife also filed a petition for rule to show cause, as Husband had not paid the entire portion of his bonus received in 2014, on the basis that his unallocated support obligation ended in February 2014.

The court conducted a three-day hearing on the issues of maintenance, college contribution and Husband's failure to pay Wife the entire portion of his bonus pursuant to their agreement. The court granted Wife's motion to extend unallocated support but denied her request for increased support based on Husband's higher income. Wife's support was extended until all three of the parties' children were emancipated and allowed Wife to further petition for a review at that time. The court found Husband in indirect civil contempt for his failure to pay Wife the entire portion of the bonus. The court also ordered Wife to contribute 25% of the cost of the child's first $32,000 of college costs but denied Husband's request for retroactive contribution. Husband appealed each issue.

On appeal, the court upheld the trial court's extension of maintenance after considering the statutory factors. Namely, the parties had agreed during their 18-year marriage that Wife would not work outside the home in order to care for the parties' children, which Wife was still doing at the time of the review of her support award. Further, the parties' agreement did not create an affirmative obligation for Wife to obtain full-time employment. Finally, subsequent to the divorce, Husband earned substantially more income and acquired substantial property. Next, the court upheld the finding of indirect civil contempt for Husband's failure to pay the entire amount of his bonus, as the parties had not modified their Agreement. Finally, the court denied Husband's request for retroactive college contribution due to Husband's failure to present the complete record for the appeal.

In re Marriage of Chervak, 2017 WL 6803360 (Ill.App. 1 Dist.), December 29, 2017**

The parties were married in 1971. In 2001, the circuit court entered a judgment for dissolution of marriage and marital settlement agreement (MSA). The MSA provided that Husband would pay Wife maintenance in the amount of $25,000 per year until the death of either party, Wife's

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remarriage, or Wife's resident, continuing, conjugal cohabitation. The MSA further provided that Husband would pay past due maintenance in the amount of $44,000, and should place the Florida residence for sale with the proceeds going to Wife. Two years later, the circuit court found Husband in civil contempt for failing to comply with those specific terms of the MSA. In 2013, Wife filed a petition for judgment, contending that Husband failed to fulfill his maintenance obligations under the MSA. Husband filed a petition for termination of maintenance stating that he had since retired at age 63 as he could no longer physically perform his job. Husband also filed a petition to purge the contempt order on the basis he has already complied or that compliance was impossible. Husband further argued that per the MSA, he had the right to request a review of his maintenance obligations forty-two months from the entry of same, as Wife's receipt of maintenance was premised upon her applying for social security benefits, which she failed to do. Husband also argued that a mutual mistake of fact existed, as the Florida residence was actually owned by his mother, and that the parties were not joint title owners. The court noted that Wife's monthly expenses were zero, as she lived with her son who paid rent, received a portion of Husband's pension monthly, and received public aid/food stamps. Wife also failed to include her social security benefits of $1,250 per month. The trial court granted Husband's motion to purge the contempt order and Husband's petition for termination of maintenance retroactive to the date of filing. Wife appealed.

The appellate court affirmed the decision of the trial court. The appellate court found that the trial court's order suggests it found Wife's maintenance should be terminated where Husband's retirement consisted of a substantial change in circumstances considering his age, health, and motives, and where Wife had the ability to provide for herself.

In re Marriage of Cincinello, 2017 WL 2829819 (Ill.App 2 Dist.), June 29, 2017*

The parties were divorced in June of 2013. Pursuant to the marital settlement agreement, Husband was ordered to pay permanent, reviewable, periodic maintenance in the amount of $37,167 per month and child support in the amount of $5,239 per month. Pursuant to the marital settlement agreement, the amount of maintenance was 45% of the Husband's gross income. Child support represented a downward deviation from statutory guidelines. In December 2013, Husband filed a motion to modify maintenance. Husband owned a minority interest in a business and had been earning just under a million dollars per year. Husband claimed that the major shareholder of the business unilaterally reduced his income by $150,000. He further alleged that the shareholder was motivated by Husband filing a lawsuit against him, and that Husband had incurred substantial legal fees in that case. In April 2014, Husband filed a motion to modify child support and to reduce his life insurance obligation. That motion alleged that he was forced to resign his position. Further, he alleged that he began his own business and his salary was $70,000 per year. At trial, Husband testified that he received $1.5 million for his interest in the business to settle the suit and that $500,000 went to attorney fees. Husband testified that he had to resign from his job because it was a toxic environment and he had to seek the help of a psychologist to deal with the stress and anxiety. The trial court noted that the maintenance was awarded on the premise that Husband was earning $1,054,000 per year. The court found that it would be unconscionable to have the Husband continue to pay maintenance and child support off of that amount. Therefore, the court modified his maintenance obligation to $0 (maintenance was not terminated) and modified child support.

On appeal, Wife challenged the trial court's decision to modify maintenance and child support. The court found that it was uncontroverted that Husband's income no longer included a large,

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annual distribution from his former employer. Further, while the litigation between Husband and his former employer were pending at the time of dissolution of marriage, Husband no longer having his job was not contemplated at the time that the judgment was entered. The outcome of the litigation was unknown and uncertain at the time of the dissolution of marriage. Therefore, the court found that this was not a contemplated issue at the time of the dissolution of marriage. Further, the court found that Husband did not voluntarily resign from his position. His resignation resulted from a series of events that included litigation that led him to seek psychological assistance. The court found that there was ample evidence in the record to support the trial court's conclusion that Husband was acting in good faith when he left his employment.

In re Marriage of Cozadd, 2017 WL 3309914 (Ill.App 5 Dist.), August 1, 2017*

After conducting a trial, the court awarded Wife $2,000 per month for maintenance. Wife requested the amount so that she could live a "comparable lifestyle." She also testified that it was less than she would have received under the guidelines. The court held, "After application of the guidelines, respondent is awarded her requested $2,000 per month, a downward deviation, by consent."

On appeal, Husband argued that the trial court erred when it failed to make specific findings regarding his income, failed to identify reasoning for the award of maintenance with citation to relevant statutory factors, and failed to calculate the amount and duration of maintenance under the guidelines. The appellate court found that section 504(b-2) provides that "the court shall make specific findings of fact" regarding its reasoning for awarding or not awarding maintenance or its reasoning for any deviation from the guidelines in its award of maintenance. The omission of same is reversible error. Therefore, the appellate court vacated the trial court's judgment of dissolution of marriage and remanded same.

In re Marriage of Chapa, 2017 WL 729132 (Ill.App. 2 Dist.), February 23, 2017**

The appellate court affirmed the trial court's order offsetting a monetary judgment owed by Wife to Husband against Husband's payment to Wife for maintenance but reversed the trial court's calculation of mortgage debt on the marital residence and award of post-decree attorney fees. The appellate court corrected the calculation by shortening the maintenance offset period from 43 months to 29 months and the trial court's order was affirmed as modified by the appellate court.

The trial court enforced a judgment owed by Wife of $101,361 by reducing Wife's monthly maintenance award by $2,357 per month for a period of 43 months and offsetting any bonus funds received by Husband during that same period. On appeal, the appellate court affirmed the trial court's judgment consisting of $13,787 in dissipation by Wife and $20,000 in pre-decree attorney fees, which were both requirements specifically set forth in the marital settlement agreement. However, the appellate court reduced the judgment amount from $101,361 to $68,715 by reducing Wife's obligation to pay the remaining mortgage of $82,777 that was paid in advance by Husband from 60% to 50% of the total mortgage and denied the award of post-decree attorney fees of $24,368.

On appeal, Wife argued that the trial court exceeded its authority by reducing her maintenance award to enforce the judgment owed from her to Husband because such a ruling imposed a new obligation. The appellate court rejected Wife's argument and found that the trial court properly

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enforced the judgment by temporarily reducing the maintenance award to Wife and that was not considered a new obligation as the trial court enforced the specific terms set forth in the judgment and prior orders entered against Wife. The appellate court also rejected Wife's argument that she should not be liable for payment of dissipation or the pre-decree attorney fees because there were in fact no proceeds from the sale of the marital residence. The marital settlement agreement provided Wife was to pay the dissipation amount and pre-decree reimbursement from her share of the proceeds from the sale of the marital residence "or as agreed upon by the parties from another source(s)." The appellate court found it was within the discretion of the trial court to choose a source for Wife to pay the dissipation amount and pre-decree sums owed by her where she failed to reach agreement as payment from another source.

The appellate court agreed with Wife's argument that the trial court erred in making her responsible for 60% of the mortgage reimbursement to Husband. Instead, the appellate court found the language of the agreement was clear that the parties intended for an equal division of the marital estate except for the proceeds from the sale of the marital residence which were to be allocated 60% to Wife and 40% to Husband. The intent behind such a provision was to either result in a neutral or favorable result to Wife; however, the trial court could not have predicted that the sale of the house would result in no sale proceeds to either party and instead a remaining mortgage liability of $82,777 at time of sale. As such, the appellate court found that Wife should be 50% responsible for the mortgage based upon the intent of the judgment at the time of entry. The appellate court also denied Husband's argument that any misinterpretation of the real estate section of the parties' judgment was harmless because of Wife's misconduct surrounding the sale of the residence. The appellate court confirmed that a trial court may not be permitted to consider a party's misconduct when allocating property. Last, the appellate court agreed with Wife's argument that the post-decree attorney fee award was improper because the evidence was insufficient as to the services rendered and the fees associated with the services. Specifically, the appellate court found Wife was obligated to pay for attorney fees and costs incurred with regards to lifting the stay on the marital residence through bankruptcy court. However, the appellate court found that either there were no statements providing a description of legal services rendered or many of the services awarded were for work performed *after* the stay on the house was lifted through bankruptcy court and improper based upon an order previously entered holding Wife responsible for post-decree fees associated with lifting the stay.

In re Marriage of Croninger, 2017 WL 887158 (Ill.App. 4 Dist.), March 3, 2017*

The parties divorced in November 2014 and Husband was ordered to pay maintenance and child support to Wife. In May 2015, Husband filed a motion to modify, alleging that he was terminated from his employment as a police officer and was unable to work part-time as a security guard at a hospital. In August 2015, this request was denied by the trial court as Husband was forced to resign or be terminated due to his own actions and repeated suspensions and disciplinary actions. In November 2015, Husband filed another motion to modify, alleging that he had obtained new employment and his income was substantially lower than previously earned when he was a police officer. The trial court denied this request in April 2016, and Husband appealed that order.

On appeal, the appellate court found that the trial court did not err in denying Husband's modification request because the trial court previously denied his request at a time that he went from earning $82,000 to nothing after his resignation as a police officer. The appellate court found that Husband failed to appeal that order and the $82,000 income figure could not be used as a benchmark because he was in a better financial position earning $32,892.60 per year than he

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was at the time the trial court denied his request to modify in August 2015 when he was not employed. Further, the appellate court found that the requirement for Husband to contribute to Wife's attorney fees was warranted where he was holding funds in an IRA and Wife had not received her 50% awarded portion of said funds because Husband had not yet transferred or released the funds to her.

In re Marriage Heinlein, 2017 WL 1423579 (Ill.App. 2 Dist.), April 20, 2017**

Pro se Father filed three petitions pursuant to 2-1401 to vacate a post-judgment order that set forth a child support arrearage and payment for marital debt. The trial court denied the first 2-1401 petition and Father failed to appeal that order. The second 2-1401 petition was still pending and the third 2-1401 petition was denied by the trial court on the grounds of res judicata.

On appeal, the appellate court found that res judicata barred Father's repeated attempts to vacate the post judgment order entered by the court due to his failure to appeal the order previously entered that denied his first 2-1401 petition. Further, the appellate court stated that there is no statutory bar to filing successive 2-1401 petitions, except res judicata, which applied here because the order entered denying his 2-1401 petition to vacate the post judgment order was a final order, the petitions filed by Father consisted of the same cause of action and the parties in both actions were identical. Thus, the appellate court affirmed the trial court's order denying Father's 2-1401 petition on the grounds of res judicata and the order setting forth the post judgment arrearage calculation was affirmed.

In re Marriage of Hobby, 2017 WL 945263 (Ill.App 3 Dist.), March 8, 2017*

Wife appealed the trial court's ruling reducing the maintenance obligation of her former Husband. The parties were divorced in 2005. At the time of judgment, Wife was awarded maintenance in the amount of $3,000 per month. In 2014, Husband filed a motion to terminate or modify his maintenance obligation. Wife was now 62 years of age, and she lived in a 4-bedroom home in Tennessee. She also owned a second home in Georgia. Wife testified that at the time of dissolution of marriage, she was unemployed and shortly thereafter began working at a flower shop. In the past two years, she worked sporadically at different flower shops. She testified that her net monthly income, including the maintenance, was $5,916.56 and that her expenses equaled $5,340.21 per month. She also had been gambling frequently.

Husband was 63 years old and retired. He was also remarried and paying college expenses for his step-children. He testified that his monthly income was $6,691 and that his expenses were $15,519.27 per month. He testified that $5,000 of those expenses were related to the college for his step-children. After reviewing the evidence, the trial court found that over the course of 14 months, $72,634 had been deposited into Wife's account. While the court entered an order that maintenance would not be terminated, after a series of corrected opinions and orders, the court found that $48,546 of the deposits were gifts from Wife's aunt. The court counted this as income to Wife and found that the gifts, in conjunction with her income received from Husband's pension, gave her a monthly income of $5,578. The court found Wife's monthly expenses totaled $5,840, thus leaving her with a deficit of $262 per month. Therefore, Husband was ordered to pay her $262 per month in maintenance.

On appeal, the court found that the cash gifts received by Wife were properly computed as income. The court found that the money came in at various increments and represented a valuable benefit to Wife. There was no evidence presented that these cash gifts had to be paid

*Rule 23(e)(1) decision.

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back. Further, the court found that Wife, while awarded more of the marital estate at the time of dissolution, had nothing to show for it. The court found that she spent a substantial amount of time traveling to, and gambling at, various casinos.

In re Marriage of Micheli, 2017 WL 1426646 (Ill.App. 2 Dist.), April 20, 2017*

The case on appeal was the second appeal and cross-appeal from the parties' judgment for dissolution of marriage. Pursuant to the judgment, Wife was awarded temporary maintenance in the amount of $3,700 per month with a 7-year review, plus 20% of future bonuses, with no cap on the amount of Husband's income. On the first appeal, the court affirmed the duration of maintenance but remanded the case, instructing the trial court to cap Husband's income. On remand, the court capped Husband's income at $320,00. On cross-appeal, Wife asserted that the court misapplied the court's mandate by calculating the maintenance award based on Husband's income rather than Wife's needs. Further, the court originally divided Husband's vested stock equally but awarded Husband all his unvested stock and RSUs. On cross appeal, Wife argued that she was entitled to half of the unvested stock and RSUs and the appellate court agreed. On remand, the trial court found that the unvested stock and RSUs were marital property and divided them equally. Husband appealed, arguing that the trial court failed to consider the assets' vesting schedules according to *In re Marriage of Hunt*.

On appeal, the court affirmed the trial court's decision to cap Husband's maintenance, finding that this would remove the risk of a windfall for Wife, while allowing her to maintain the standard of living that she enjoyed during the marriage. Further, the court affirmed the trial court's decision to equally divide Husband's unvested stock and RSUs, finding that Husband failed to cite case law that overcomes the presumption that all stock options granted during the marriage are marital property. Thus, the court found that the restricted stock was to be treated the same as stock options.

In re Marriage of Nurczyk, 2017 WL 2212173 (Ill.App. 3 Dist.), May 19, 2017*

The judgment for dissolution of marriage awarded maintenance from Husband to Wife and a qualified domestic relations order (QDRO) was entered to allow Wife to receive periodic payments from Husband's disability pension. After entry of the judgment, the trial court found that Husband was $103,732 in arrears for maintenance and a judgment was entered against him. The trial court entered an order thereafter awarding Wife 100% of Husband's social security benefits and disability pension until the judgment was paid in full, plus interest, and awarded attorney fees on Wife's behalf. An amended QDRO was entered directing Husband's disability pension to pay 100% of Husband's pension payments to Wife to satisfy the judgment. Husband filed a notice of appeal of the trial court's order. Thereafter, Wife filed a request for contribution to her appellate fees, which the court granted in the sum of $6,000. Husband failed to pay the appellate fee award and Wife filed a motion for sanctions against Husband for his failure to pay said fees.

The appellate court found that the record did not reflect a completion of the purge hearing and the issue of Husband's failure to pay the appellate fees was not properly before the appellate court. Next, the appellate court found that the trial court erred in garnishing 100% of Husband's social security benefits and disability pension because Illinois adopted the garnishment limits as expressed in federal law where the most that can be garnished to satisfy a judgment for family support is 55% of weekly earnings. In addition, for maintenance the appellate court found that the garnishment was also controlled and could not be more than the Consumer Credit Protection

*Rule 23(e)(1) decision.
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Act, which is 55% if disposable earnings for a workweek are subject to garnishment for arrears more than 12 weeks overdue. The appellate court found that the parties did not dispute that Husband is supporting another spouse and is more than 12 months in arrears; however, the applicable limitation for garnishment is 55% of Husband's disposable earnings per week. The appellate court also rejected Husband's argument that the trial court could only garnish either 15% of his gross pay or the amount by which his disposable earnings exceed 45 times the minimum wage set by section 12-803 of the Code of Civil Procedure. The appellate court specifically found that this section of the code does not apply to support and maintenance situations and Illinois has specifically adopted the limits set forth by the federal Consumer Credit Protection Act instead. The appellate court also rejected Wife's argument that the Social Security and pension benefits were not "earnings" and instead should qualify as marital property not subject to garnishment limitations. The appellate court found that the benefits involved in this specific case were not considered property and instead involved a garnishment proceeding to satisfy a support arrearage and therefore the garnishment limitations applied. Ultimately, the appellate court reversed and remanded the case.

In re Marriage of Perlman, 2017 WL 4280622 (Ill.App. 2 Dist.), September 25, 2017*

The parties were married for 21 years and had two children. Husband was awarded the majority of the parenting time and was ordered to pay Wife maintenance in the amount of $6,250 per month based on his income of $356,134 and Wife's income of $10,000. Husband's maintenance obligation was reviewable after seven years. Three years after the parties dissolved their marriage, Husband petitioned to modify his maintenance obligation based on a reduction of his income, which the trial court granted. However, Wife successfully appealed the modification. Thereafter, the parties filed simultaneous motions to terminate and extend maintenance. After reviewing the statutory factors, the court found that maintenance was appropriate and should be set at $5,180 to meet Wife's needs. Specifically, the court found that Wife was 62 years old, had a high school degree, a two-year cosmetology degree, and was treated for ADD and anxiety. Therefore, the court found that considering Wife's age, education, work history and health, there is no amount of time in which she could acquire appropriate education, training and employment to support herself. Husband filed a motion to reconsider, alleging that the court miscalculated Wife's monthly needs, Wife's investment income, failed to impute employment or disability income and should have included Wife's Social Security income in the calculation. The court granted Husband's motion and reduced his maintenance obligation to $2,129.50. Wife filed a motion for clarification, which was denied. Wife appealed.

On appeal, the court found that the trial court inaccurately calculated Husband's maintenance obligation and that his obligation should be $5,180. The court found that although Wife may be able to secure employment at some point in the future, she has been unsuccessful in finding employment and she did not have great prospects of doing so, considering her age and health. Further, the court agreed with Wife that the trial court improperly calculated Wife's investment income and improperly imputed employment or disability income to her. Wife's disability benefits application was denied and Wife had not found employment. Therefore, the court found that Wife should be awarded $5,180 in monthly maintenance, which would reduce to $4,059 when she is eligible to receive monthly Social Security benefits at age 66.

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In re Marriage of Sottile, 2017 WL 3149440 (Ill.App. 2 Dist.), July 24, 2017*

The parties' judgment for dissolution of marriage did not award either party maintenance, but reserved Wife's right to seek future maintenance from Husband, "after the marital residence is sold to see what net proceeds share [Wife] receives and to see the future income of [Husband], including any Social Security benefits he may receive from a lifetime of employment and when he becomes eligible for same, and to see sworn certified financial statements from both parties at such time as [Wife] may petition for a review of maintenance." Three years later, Wife filed a petition seeking temporary and permanent maintenance. In response, Husband filed motion for summary judgment, alleging that Wife's petition was premature, as all of the conditions of review of maintenance in the parties' agreement had not been met. Husband testified that although the marital residence had been sold, he was not yet receiving Social Security benefits. The court granted Husband's motion.

On appeal, Wife argued that the parties' judgment does not specifically state that Husband's receipt of Social Security benefits was a prerequisite for her seeking maintenance, pursuant to their judgment or the Illinois Marriage and Dissolution of Marriage Act. The court reversed the trial court's decision to grant Husband's motion for summary judgment, finding that the parties' judgment merely required the sale of the marital residence and did not require Husband to receive Social Security benefits before Wife could file for maintenance.

In re Marriage of Walker, 2017 WL 462542 (Ill.App. 4 Dist.), February 2, 2017*

The parties entered a marital settlement agreement where Husband was to pay maintenance to Wife in the amount of $6,000 per month for no more than 120 months. The marital settlement agreement provided later in the document that the agreement "may only be amended or modified by mutual agreement of the parties." Husband filed a petition to modify the maintenance and alleged that his income had decreased and Wife's income had increased since entry of the agreement. Wife argued that the trial court was barred from modifying the maintenance due to the language in the marital settlement agreement. The trial court ultimately modified the maintenance and rejected Wife's argument.

On appeal, Wife argued that the trial court erred by modifying the maintenance without the mutual agreement of the parties. The appellate court found that the parties could in fact enter an agreement which could limit the court's ability to terminate and/or modify maintenance and that the language of the agreement as to modification only by mutual agreement was express and clear. The appellate court rejected Husband's arguments that if the parties intended to limit modification of maintenance that such a provision would be included in the same section as the maintenance provision and not later in the agreement set forth in a separate section. The appellate court also rejected that Husband's argument that the trial court retained jurisdiction to modify maintenance because the language in the maintenance section stated that Husband would pay Wife "no more than" 120 months of maintenance. The appellate court found that there was no legal basis to require that a limitation on maintenance must appear in the same section of the agreement that sets forth the maintenance award. The appellate court further noted that the maintenance section adopted the statutory requirements for termination of maintenance but did not adopt the statutory provision for modification. Ultimately, the appellate court reversed the trial court's modification of maintenance and found that the trial court did not have authority to modify the parties' agreement absent mutual agreement of the parties.

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See also **ATTORNEY FEES**, *In re Marriage of Heroy,* 2017 WL 1090568 (Ill.), March 23, 2017**

See also **CHILD SUPPORT** *In re Marriage of Volluz*, 2017 WL 3747730 (Ill.App. 5 Dist.), August 29, 2017*

See also **CHILD SUPPORT** *In re Marriage of Woolsey,* 2017 WL 5969230 (Ill.App. 3 Dist.), December 1, 2017*

See also **MARITAL PROPERTY**, *In re Marriage of Bacon*, 2017 WL 664230 (Ill.App. 4 Dist.), February 17, 2017*

See also **RESTRICTED PARENTING TIME**, *In re Marriage of Jason S.,* 2017 WL 2124350 (Ill.App. 1 Dist.), May 12, 2017*

MARITAL PROPERTY

In re Marriage of Bacon, 2017 WL 664230 (Ill.App. 4 Dist.), February 17, 2017*

The parties' marital settlement agreement divided the parties' property such that the marital residence was characterized as entirely marital property, the $14,200 deposit into Husband's retirement account during the marriage was considered marital property, Wife was granted permanent maintenance and Husband was obligated to pay part of Wife's attorney's fees. Husband appealed the foregoing aspects of the parties' marital settlement agreement. Husband alleged that the down payment on the marital residence was comprised of his nonmarital funds and requested that his nonmarital estate be reimbursed for the amount. Further, Husband alleged that the $14,200 that he deposited into his retirement account during the marriage was his nonmarital property, as it was a gift from his mother for the sale of his late father's guns. Husband also contested the court's award of permanent maintenance to Wife, although the parties were married for twenty-nine years, Wife did not work from 1989 to 1996 to raise the parties' children, and at the time of the dissolution, Husband earned approximately twice as much income as Wife. Husband claimed that Wife exaggerated her monthly expenses on her Financial Affidavit, whereas the parties lived frugally during the marriage, which he believed should negate the need for maintenance. Further, Husband claimed that he anticipated that his income would decrease due to expectant, substantial medical costs. Finally, Husband appealed the award of attorneys' fees to Wife.

On appeal, the court found that Husband's nonmarital funds were transmuted to marital property, finding that Husband failed to prove by clear and convincing evidence that Husband's intent was for the nonmarital property to retains its nonmarital status, despite being comingled with marital property. Husband failed to overcome the presumption that the contribution to the marital residence was not intended to be a gift to the marital estate. Regarding the award of permanent maintenance, the court found that the trial court did not abuse its discretion, but rather considered the statutory factors listed in Section 504 of the Illinois Marriage and Dissolution of Marriage Act. The court noted that while the couple lived frugally during the marriage, they lived independently and Wife would be unable to do so without an award of maintenance. Also, the court was not willing to consider Husband's anticipated medical expenses due to Husband's testimony that they were a mere possibility. The court also affirmed the trial court's characterization of the $14,200 deposit into the marital retirement account as marital property, as Husband presented conflicting evidence of his mother's intent to gift him the funds. Finally, the court affirmed the award of a

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sum of money to Wife for the payment of her attorneys' fees. The court found that the funds were not an award for attorneys' fees, but an equalization of the marital funds that both parties used to pay their attorneys.

In re Marriage of Bracken, 2017 WL 5443166 (Ill.App. 4 Dist.) November 13, 2017*

After a four-year marriage, Wife filed a petition for dissolution of marriage. Husband filed a request for temporary maintenance and for a reimbursement to his nonmarital estate. During the marriage, Husband had sold a home that he acquired prior to the marriage, and received approximately $51,000 in net proceeds from the sale. Husband and Wife agreed that the parties would use the money to build an outbuilding on the parties' property, where Husband could store his equipment for his disc-jockey business. After a hearing on the issues, the court denied Husband's request for maintenance and a reimbursement to his nonmarital estate. Husband appealed. On appeal, the court affirmed the trial court's denial of Husband's request for maintenance. The court found that the evidence supported that both parties earned steady incomes, that Husband received a larger share of the marital property, that Wife's needs increased since she moved to New York, that the duration of the parties' marriage was short, and that there was little evidence in the record of the parties' marital life style. The court further affirmed the trial court's denial of Husband's request for a reimbursement of his nonmarital estate. The court noted that Husband's decision to use the funds to enhance the marital estate was presumed to be a gift, such that the contribution was transmuted into marital property. The court found that Husband failed to rebut this presumption by testifying that he never communicated a request that he be reimbursed for his contribution.

In re Marriage of Brown, 2017 WL 4772590 (Ill.App. 1 Dist.), October 20, 2017*

According to the parties' marital settlement agreement, Husband conveyed his interest in the marital residence to Wife and Wife agreed to refinance the mortgage, if possible, and subsequently compensate Husband for half of the equity in the home. Further, if Wife was unable to refinance the mortgage within one year of the dissolution of marriage, Wife would immediately place the home on the market for sale and the parties would divide the net proceeds of the sale of the home. Wife alleged that she attempted to refinance the mortgage but was denied. Additionally, Husband had failed to comply with the marital settlement agreement by paying his portion of a marital debt that was owed to Wells Fargo. As a result, Wife was unable to modify the existing mortgage loan on the property. Thus, Wife had not compensated Husband for any portion of the equity in the marital residence and Husband filed a petition to enforce the parties' judgment.

The trial court denied Husband's petition, finding that Wife's inability to refinance the loan on the home resulted from an impossibility beyond her control. Further the court found that the amount that husband owed to Wells Fargo pursuant to the parties' judgment was approximately equal to his portion of the equity in the marital residence. Husband appealed. The appellate court found that the trial court accurately determined that each party had a valid claim to enforce the judgment and that because both claims were for similar amounts, the court was conserving limited judicial resources by offsetting the obligations and denying Husband's petition.

In re the Marriage of Darst, 2017 WL 464784 (Ill.App. 4 Dist.), February 2, 2017

During the parties' dissolution of marriage proceedings, the court addressed several contested issues concerning the marital assets, debts and obligations. First, the court considered how to

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divide the parties' interest in the asphalt company, Allied Asphalt. During the marriage, Husband bought the company and Wife was responsible for the paperwork and record keeping. At the conclusion of trial, the court gave Wife the option to buy out Husband's interest in Allied Asphalt. Second, the court considered whether Husband dissipated the marital estate. Wife contended that Husband withdrew large sums of money from the marital bank accounts for personal purchases rather than for business, including the purchase of three vehicles and real property. While Wife gathered evidence and reports from a forensic accountant, she did not properly account for her information during the discovery phase of the litigation. Wife did not adequately account for the dissipation claim in her Answers to Marital Interrogatories. While Wife learned more information about the alleged dissipation, she did not update her Answers to Interrogatories. Further, while Wife served Husband a claim for dissipation, she provided notice past the discovery deadline agreed to by the parties in a court order. Thus, the court sustained the objection by Husband's attorney to any testimony or questions or any assertions about dissipation of assets. Finally, the court found that husband's purchase of the vehicles did not necessitate a credit to the marital estate because there was not an account of the equity in each vehicle.

The appellate court affirmed the trial court's rulings on all matters. The court found that it would have been equally difficult for either party to run the business without the other and for either party to find a new source of income. Further, the court found that Wife's disclosure of her claim of dissipation was inadequate. The court recognized the importance of Wife's complete disclosure, as Husband would have had to rebut the assertion by clear and convincing evidence. Finally, the court found that there was a lack of evidence that husband's purchase of the vehicles was dissipation. Once of the vehicles was for a third party, which the couple supported during their marriage. Another vehicle was considered in the parties' marital estate and thus was already accounted for. The final vehicle was impounded and neither party offered proof of any funds that Husband used to purchase the vehicle. For these reasons, the appellate court affirmed the trial court's ruling.

In re Marriage of Ghatan, 2017 WL 1684097 (Ill.App. 5 Dist.), May 1, 2017*

During the marriage, Wife was a realtor and Husband was self-employed and managed the real estate owned by the parties. During the divorce proceedings, the parties were both represented by counsel during a two-day hearing on the remaining issues of their case. Subsequently, Husband's attorney withdrew, despite the parties scheduling two days of post-trial hearings. At the hearings, Husband represented himself. Husband appealed based on the following grounds: a. the trial court errored by failing to reopen proofs to allow him to present evidence that his attorney failed to present during the hearings; b. the trial court errored by finding two parcels of real estate as Wife's nonmarital property; c. the trial court errored in determining the value of certain real estate; d. the trial court errored in failing to consider the disparity in income when dividing the parties' retirement accounts; e. the trial court failed to compel Wife to produce documents requested by Husband.

On appeal, the appellate court affirmed the trial court's ruling for the following reasons. First, the court found that Husband's request to reopen proofs was improper, as it was made four months after the hearing with evidence that was available to him during the hearing. Second, the court found that the determination that two parcels of property were Wife's nonmarital property was not against the manifest weight of the evidence, as the trial court ascertained that the property was purchased with funds that were gifted to Wife and that Husband lacked credibility throughout the hearings. Third, the court found that the trial court did not error when valuing a parcel of real

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property and properly weighed the evidence and credibility of the parties, as Wife presented adequate sales on the property whereas Husband presented speculative opinion evidence, not based on any objective criteria. Fourth, the court found that when dividing the parties' retirement benefits, the trial court equalized the assets and while it did not note a consideration of the parties' incomes in doing so, Husband forfeited this argument by failing to cite to any authority on the issue. Fifth and finally, the court affirmed the trial court's decision to deny Husband's request to compel Wife to produce documents four months after the hearing, which were available at the time of the hearing.

In re Marriage of Johnson, 2017 WL 4342073 (Ill.App. 2 Dist.), September 28, 2017*

Prior to the parties' marriage, Husband had acquired retirement benefits in his sole name in the amount of approximately $50,000 through his employment. Twenty years later, while the parties were married, Husband was laid off by his employer. He rolled his retirement benefits into five different Individual Retirement Accounts (IRAs) in his sole name. Some of the IRAs were used for investment purposes and others maintained their identity as retirement assets. Additionally, the parties had two other retirement accounts. At the trial, Husband's counsel argued that all five IRAs should be equally divided between the parties via a QDRO and did not clarify whether any portion of the retirement assets was Husband's nonmarital property. However, the marital settlement agreement stated that the parties should divide only the marital portion of the retirement accounts. Husband filed a motion for clarification of the division of the marital retirement accounts. Husband alleged that 37% of the retirement accounts in his sole name are his nonmarital property. The court denied the contention that any portion of the retirement benefits were Husband's nonmarital property. Husband appealed, and the appellate court reversed the trial court's order denying Husband's motion for clarification and directed the trial court to, "decide, based on a proper consideration of the evidence, the amount of Husband's IRAs that represents his nonmarital property."

On remand, Husband moved to admit a large amount of documentary evidence that was not presented at the first trial. Wife argued that this would give Husband a second bite at the apple and should be denied. The trial court agreed with Wife and denied the new evidence, finding that it would only consider the evidence that was available at the time of trial. The court then assessed the evidence and determined that Husband had never listed any nonmarital assets on his pretrial memorandum or Financial Affidavit. Further, Husband never testified to the specific amount of money that was transferred into each of the five IRAs. Thus, the court concluded that all of the funds in the IRAs were marital assets. Husband appealed the finding that the retirement accounts were marital and the court's decision to bar the evidence that corroborated his argument that a portion of the accounts were his nonmarital assets.

On appeal, the court found that the trial court properly concluded that Husband failed to establish the present value of the nonmarital portion of his retirement assets. The court noted that it did not intend to allow the parties to relitigate the issue by presenting evidence that could have been presented at the first trial.

In re Marriage of Mandell, 2017 WL 576099 (Ill.App 1 Dist.), February 9, 2017*

The parties owned several income-generating rental properties. Wife was the property manager for the properties and Husband testified that at the trial he was earning $8,333 gross per month. Previously, Husband's income ranged from $280,000 to $22,949. Wife testified that in lieu of

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maintenance, she wanted to receive the majority of the income-generating properties since Husband had a history of not following court orders and changing jobs. Further, she wanted to be self-sufficient. The parties testified as to the values of the properties, but they assigned different values to the properties. Husband argued that the properties should be divided 50/50 and that he should pay maintenance. After trial, the court awarded the Wife $1,621,407.85 in assets and Husband was awarded $1,080,938.57 in assets. The court used Wife's numbers for the value of the properties. The court noted that Wife was awarded 60% of the marital estate. The court further ordered that the parties were each responsible for their own attorney fees.

On appeal, Husband disputed the trial court's valuation of the couple's marital property and the court's distribution of marital property. Husband argued that the court should not have relied on Wife's testimony, as it was incompetent because it was based solely on what an unnamed appraiser allegedly told her the values of the properties were. The court found that Husband never demonstrated that Wife was unaware of how her home compared to other neighborhood homes. The court found that she relied on her own experience in owning and managing the properties when determining the validity of the appraisal values and whether to rely on them.

Husband next challenged the distribution of the property. The appellate court found no abuse of discretion as Wife was not earning an income. The evidence showed that Husband had a far greater earning capacity and was capable of earning significant sums of money in addition to the income from the rental properties. Further, the rental properties awarded to Wife would allow her to be self-sufficient as they were income generating assets.

In re Marriage of Miller and Winterkorn, 2017 WL 1148706 (Ill.App. 1 Dist.), March 24, 2017*

During the parties' dissolution of marriage proceedings, Husband, who was Vice President of Asian Operations for SRAM, LLC was *pro se*, while Wife was represented by counsel. The parties' marital settlement agreement divided Husband's interest in his SRAM shares of stock and his SRAM incentive units, stating, "[Husband] shall pay to [Wife] all *gross* profits received by [Husband] for exercising 5,181.5 of the 2008 Incentive Units and 5,181.5 of the 2009 Incentive Units upon his receipt of same." Subsequent to the parties' divorce, SRAM offered to buy back Wife's interest in Husband's SRAM shares of stock and his SRAM incentive units. Wife indicated that she would accept the offer and requested the net profits from the sale of the shares and the *gross* profits from the sale of the 2008 and 2009 incentive units. Husband retained counsel and responded by denying that Wife should receive the gross profits from the sale of the incentive units, due to the significant tax burden that Husband would shoulder due to the sale. Husband argued that the marital settlement agreement clearly contained a typo as to the amount due to Wife and informed Wife that he would not accept her buy-back offer. Thereafter, Wife filed a Petition for Indirect Civil Contempt, for Husband's failure to abide by the terms of the marital settlement agreement. Husband filed a motion for judgment *nunc pro tunc*, claiming that the parties' marital settlement agreement did not reflect the true intentions of the parties. Of note, Husband's motion for judgment *nunc pro tunc* was merely a request to correct a clerical error and not a judicial error. At the hearing, Wife testified that Husband agreed to this amount in exchange for her waiving any interest in Husband's 401(k). Husband, on the other hand, testified that he did not read the marital settlement agreement before signing it. Ultimately, the court found that the language of the marital settlement agreement was unambiguous and that the difference between "net" and "gross" was not a typo or a clerical error by the court. Thus, the court found Husband in indirect civil contempt.

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On appeal, the court first addressed Husband's request that the court interpret the marital settlement agreement as a whole and in light of the fact that the rest of the agreement divided the assets evenly between the parties. The court found that it did not have authority to interpret the agreement and that this argument was forfeited because Husband never requested the trial court do so, but rather filed a motion for judgment *nunc pro tunc*. Thus, the court addressed whether the word "gross" was a clerical error and concluded that the trial court properly denied this contention. Finally, the court addressed whether Husband was properly held in indirect civil contempt. The court found that Husband was solely at fault for violating the marital settlement agreement, despite Husband's argument that Wife delayed the buy-back transaction. Thus, the court affirmed the trial court's judgment in its entirety.

In re Marriage of Staker, 2017 WL 5865231 (Ill.App. 3 Dist.), October 26, 2017*

The parties were married for 28 years. Before the marriage and during the entire course of the marriage, Husband worked as a farmhand for his family's farm corporation. Husband also had a one-third interest in the company stock, which was his nonmarital property. During the divorce proceedings, the parties disputed the value of Husband's fringe benefits and whether the marital estate should be reimbursed for Husband's personal efforts towards increasing the value of the company, which was his nonmarital property, and for the below market rent paid by the company for farmland that the couple rented to the company. Husband only received approximately $15,948 in annual wages over the entire course of time that he worked for the company. Husband testified that he accepted lower wages so that it would allow the company to grow in the long run. Husband also accepted compensation in the form of fringe benefits, including the company's payment of his mortgage, the families' vehicles, gas, home and auto repairs, cell phones, health insurance and butchered meat. For 11 years during the marriage, Husband also worked part-time for a concrete company. During this time, Husband stopped accepting income from the farm, although he was still working there, in order to increase the value of the corporation. At trial, the court found that Husband had been underpaid for his work as a farmhand in an effort to increase the value of the company, in the amount of $450,962. Further, the parties owned farmland which they rented to the company for discounted rent. The court found that the parties had been undercompensated by $133,776 for the rent for the farmland. Therefore, the court ordered Husband to pay Wife $272,074.34 for her one-half interest in the farm, after considering other property that Wife was retaining. Husband appealed.

On appeal, the court agreed with Wife that Husband was undercompensated for his personal efforts, which resulted in a substantial appreciation of the value of the corporation. However, the court did not agree with the valuation of the reimbursement. Therefore, the court reversed and remanded for a recalculation of the reimbursement for Husband's personal efforts.

See also **ALLOCATION OF PARENTAL RESPONSIBLITIES** *In re Marriage of Koza*, 2017 WL 4843016 (Ill.App. 2 Dist.), October 24, 2017*

See also **MAINTENANCE**, *In re Marriage of Micheli,* 2017 WL 1426646 (Ill.App. 2 Dist.), April 20, 2017*

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MOTION TO VACATE

In re Marriage of Andrews, 2017 WL 902198 (Ill.App 2 Dist.), March 6, 2017*

Wife sought to re-valuate stock options that had been awarded to Husband and to redistribute the proceeds of the exercised options. The parties were divorced in 2009. During the proceedings Wife learned that Husband held 300,000 non-transferable stock options in his employer. Wife was advised by Husband's counsel that the stock options were worth $36,000 or $0.12 per option. In 2012, Wife filed a petition to vacate pursuant to Section 2-1401 of the Civil Practice Act (735 ILCS 5/2-1401). Wife learned five months after the dissolution, Husband's employer was acquired by General Electric and the negotiations for the acquisition were ongoing during the dissolution proceeding. Further, Husband was aware of the negotiations. Husband exercised the stock options at $.52 a share, resulting in a profit of $1,620,000 after the exercise price of $36,000.

At trial, evidence was presented that during the dissolution proceeding, the company had received offers up to $2.00 per share for the company. The company turned down those offers, believing that the shares were worth more. During the divorce proceedings, Husband's attorney advised Wife that there was no market to either buy or sell the options. These statements created the impression of a static situation in which the value of the options had no present possibility of greater than $0.12 per option. The court found that Husband wrongfully withheld information regarding the creation of the market and value of the option. Therefore, it was not an abuse of discretion for the trial court to value the options at $2.00 each and to distribute same pursuant to the marital settlement agreement.

In re Marriage of Benjamin, 2017 WL 3528948 (Ill.App 1 Dist.), August 14, 2017

In January 2009, the parties entered into an agreed order modifying the judgment for dissolution of marriage. Husband agreed to make payments to Wife in the amount of $500,000. In December 2013, Husband filed a petition under section 2-1401 to vacate the agreed judgment based on Wife's alleged concealment of assets. The trial court denied the petition and granted Wife leave to file a motion for attorney fees. Further, the court found Husband in contempt for failing to pay $150,000 of the $500,000.

On appeal, the court found that Husband failed to establish fraudulent concealment because the record established that Husband had the Wife's bank records in his possession. Those records show withdrawals ranging from $1000 to $10,000. Further, the parties attended mediation and the mediation disclosure stated that Wife was borrowing money from her son to meet her expenses. The court properly classified money from the son to Wife as loans. There was ample evidence to find that the money in question were not Wife's assets but loans from the son that would be repaid on her death.

Husband next argued that the court erred in holding him in contempt of court. The record reflects that the Husband paid the amount owed and purged his contempt. Therefore, the issue is moot.

Husband argued that the court erred in awarding attorney fees to Wife in the amount of $88,781.22. The court did not find an abuse of discretion. The proceedings lasted three years and there was three days of testimony. Husband initiated the proceedings in an attempt to void an agreed judgment, and in doing so, refused to make the final payment of $150,000.

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In re Marriage of Faletti v. Kasher, 2017 WL 1512199 (Ill.App. 3 Dist.), April 27, 2017**

Appellate court reversed and remanded the case to the trial court following the trial court's denial of a motion to vacate a bifurcated judgment for dissolution of marriage, which was filed by guardians of the estate of Wife.

There was a hearing on grounds for divorce and neither party objected to the grounds presented at hearing. After the hearing, Husband's attorney wished to enter a judgment for dissolution of marriage to bifurcate the divorce given the fact that Husband was living at a care facility and was disabled and unable to receive Medicaid assistance while married. Wife's attorney requested several continuances of Husband's attorney's request to enter a judgment based upon Wife's decline in cognitive function and allegations that she was mentally unable to agree whether to enter a judgment or not. The court continued the case several times for guardianship proceedings to begin on behalf of Wife. The record was not clear as to how a judgment was entered; however, at some point in the case a judgment was submitted and filed with the court by Husband's attorney. Wife's guardian and attorneys filed a motion to vacate the judgment, arguing that the judgment was inadvertently entered and the guardian stated that she did not personally consent to entry of the judgment and it was against Wife's wishes due to her religious beliefs. Husband's attorney argued that he had no way of knowing whether the guardian consented to the entry of the judgment or not but that Wife's attorneys consented to entry of the judgment.

The trial court denied Wife's request to vacate on the basis that there was a hearing on grounds for divorce and neither party objected to the grounds put on the record and that any delay in entry of the judgment was the fault of Wife's adult children who had a desire to delay the case to gain an advantage.

The appellate court reversed and remanded the case because Wife's attorneys had not consented to entry of the judgment and had expressly stated on the record that they needed to wait to enter the judgment until consent from a guardian appointed on the Wife's behalf was obtained. Appellate court held that while Wife's attorney offered no objection when the judgment was offered previously in the case, the attorney never consented to entry and specifically stated on the record that the guardian would have to make the decision as to whether to enter the judgment or not.

NON-MINOR CHILD SUPPORT

In re Marriage of Hemphill, 2017 WL 3057671 (Ill.App. 2 Dist.), July 17, 2017*

One child was born to the parties as a result of their marriage. The child was diagnosed with schizoaffective disorder (bipolar type), anxiety and seizures. Pursuant to the parties' judgment for dissolution of marriage, Father was ordered to pay Mother monthly child support until the later of the following: child turning 18, graduating high school or becoming self-sufficient, defined as living outside the parent's residence and sustaining more than part-time work. Father filed to terminate child support on the basis that the child was over 18 and had graduated from high school. Mother argued that the child continued to rely on the Father for financial support, due to her disability and lack of independence. The non-minor child was 20 years old, had signed up for community college, but was not able to complete any classes, applied for several jobs, but was never hired, was unable to obtain a driver's license, did not have many friends and rarely left the house. The court awarded Mother child support pursuant to Section 513.5 of the Illinois Marriage and

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Dissolution of Marriage Act, finding that the non-minor child was disabled. The court further ordered Father to provide medical insurance for the child and pay all of the child's uncovered medical expenses. Father appealed.

On appeal, the court found that Father did not properly dispute either components necessary for the finding of 'disabled', which are that the individual has a physical or mental impairment that substantially limits a major life activity. Therefore, the court upheld the finding that the non-minor child was disabled and the court's award of child support and contribution to medical expenses.

ORAL AGREEMENTS

Greco v. Greco, 2017 WL 3612288 (Ill.App. 1 Dist.), August 21, 2017*

During the parties' dissolution proceedings, the attorneys conducted a pretrial conference regarding various unresolved issues. Thereafter, the attorneys discussed the court's recommendations with the parties and the parties consented to the recommendations. That same day, the partied swore under oath on the record that they understood and consented to the court's recommendations, but no written agreement was entered. Husband's attorney subsequently incorporated the terms of the oral agreement into the marital settlement agreement and sent it to Wife's attorney. However, the court granted Wife's attorney's motion to withdraw before the parties' case was scheduled for prove-up. Wife filed a pro se motion for temporary maintenance and child support and fired new counsel. Wife refused to sign the agreement, which incorporated the terms reached by the parties following the pretrial conference. Wife alleged that she did not understand the terms of the agreement and that therefore there was no meeting of the minds when the agreement was reached. Wife also argued that her former attorney sent her a letter after the pretrial conference stating in relevant part, "[I]n the event you do not wish to accept this proposal which, of course, is your decision, we will not be able to proceed." Wife alleged that she was stressed at the time that she accepted the terms of the agreement. Wife also testified that she did not enter into the agreement freely and voluntarily. Wife appealed the judgment for dissolution of marriage.

The court upheld the finding that the parties entered into a valid settlement agreement. First, the court noted that although the parties did not reduce their agreement to writing at the time that they gave oral consent, that the judge had recorded the agreement in her notes. Further, the court was not persuaded by the letter sent to Wife by her former attorney, finding the letter self-serving. The court found that the parties entered into a comprehensive agreement while under oath and in open court. The court noted that to hold otherwise would dilute the binding effect of oral compromises and settlement agreements and permit parties to change their minds at their pleasure. Finally, the court held that Wife failed to prove, by clear and convincing evidence, that she entered the agreement due to duress, as stress alone is insufficient evidence of duress.

PARENTING TIME

In re Marriage of Dunning, 2017 WL 2197984 (Ill.App. 4 Dist.), May 17, 2017*

During the dissolution proceedings, Mother petitioned the court to relocate with the parties' minor child to allow her to accept a job with a substantially higher income. After a hearing on the issue of allocation of parental responsibility, parenting time and Mother's relocation, the court granted Mother majority of the parenting time, significant decision- making responsibility and allowed her to relocate. Father appealed.

*Rule 23(e)(1) decision.
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On appeal, the court found that the trial court properly allowed Mother to relocate and allocated parenting time and parental responsibilities according to the child's best interests. First, the court found that the allocation of parenting time was not against the manifest weight of the evidence, as the court took many statutory factors into consideration. That is, the court considered the child's and Mother's testimony that the child was primarily attached to Mother, that Mother's new location was only 90 minutes from Father, which would allow a reasonable parenting time schedule and that Mother's work schedule allowed her to take primary care of the child and take her to her doctor's appointments. Second, the court found that the trial court's allocation of parental responsibilities was not against the manifest weight of the evidence, as the court properly considered the relevant factors, including that Father had been banned from the child's preschool, Father's demeanor and temperament, Mother's historic role in making good parenting decisions and the child's in camera interview responses. Third, the court found that the trial court properly granted Mother's relocation by considering that Mother's new job provided a substantial increase in income, that the move would allow the child to avoid witnessing Mother and Father's acrimonious relationship and that child's new school would be similar, if not better, than her present school. Finally, the court found that the trial court properly considered Father's prior misconduct in making the foregoing decisions, as the allocation of parental responsibilities often rests on the parents' temperaments, personalities and capabilities. Thus, the court correctly considered Father's past bad behavior, as it was relevant to his supervision and care of his daughter. Thus, the appellate court affirmed the trial court's decisions regarding parenting time, parental responsibilities and relocation.

In re Marriage of Metzger, 2017 WL 218794 (Ill.App 3 Dist.), January 17, 2017*

Mother appealed the trial court's decision modifying that modified the parenting schedule, and the trial court's decision terminating Father's obligation to contribute to private school.

After a hearing, the trial court granted Father's request to modify the parenting schedule so that he would have overnight parenting on Tuesdays and Wednesdays. On appeal, Mother argued that Father's petition to modify specifically sought to modify visitation but that he was actually seeking a modification of custody. Therefore, Mother argued that Father could not succeed on a theory that was not contained in his petition. The appellate court found that the order did not changed the classification of custody. The parties still had joint legal custody and Mother was still named as the primary custodian. Therefore, the appellate court found no abuse of discretion.

Further, the child was two years old when the parties were divorced. The judgment contained an agreement to equally split the cost of school registration and other school fees. Father testified that when the child was three years old, she should attend private school as it was less expensive than daycare. However, the child was now in fourth grade, and the public school in the area was very good. The court found that Father demonstrated a substantial change in circumstances and it was appropriate for an order to be entered terminating his obligation to contribute to private school.

In re Marriage of O'Hare and Stradt, 2017 WL 1881021 (Ill.App 4 Dist.), May 9, 2017

The parties divorced in 2010. The judgment for dissolution of marriage allocated 56% of the parenting time of the minor child to Mother and 44% to Father. In August 2016, Father filed a motion to modify parenting time. He sought a schedule that would allocate the parenting time 50/50 between the parents. Father alleged that increasing his parenting time by six percent constituted a minor change under 610.5 of the dissolution act. Mother filed a motion to dismiss

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and the trial court granted the motion, finding that "an additional overnight every 14 days is not a minor modification as contemplated by 750 ILCS 5/610(e)."

The appellate court affirmed the decision of the lower court, finding that Father failed to allege any specific facts supporting his motion. Further, the appellate court found that Father's request would change the parenting plan from one parent serving as the primary custodial parent to both parents having equal parenting time. This was more than a minor change. Further, excepting 610.5(e), a party seeking a modification must still show a substantial change in circumstances to request a modification pursuant to section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act.

POSTNUPTIAL AGREEMENT

In re Marriage of Schmidt, 2017 WL 4708061 (Ill.App. 2 Dist.), October 17, 2017*

When the parties' marriage began to deteriorate, the parties entered a postnuptial agreement, to allegedly safeguard the marital estate after the Husband spent large amounts of money on extramarital affairs. About a year after entering the agreement, the parties' reconciliation failed and Wife filed a petition for dissolution of marriage. Wife also filed a motion for declaratory judgment to enforce the postnuptial agreement. Husband responded by alleging that it was premature to enforce the agreement, due to ongoing discovery, that the pending dissolution proceedings prevent the parties from terminating the controversy, that the agreement was executed for estate planning purposes and Husband did not have donative intent, and that Husband was under duress at the time that he entered the agreement. Husband later filed an additional defense to the agreement, entitled "equity", in which Husband argued that after the parties entered the agreement, Wife paid all of the marital expenses from the assets allocated to Husband under the agreement and had preserved and increased the assets allocated to her. Thus, Husband argued that Wife's use of the assets was unfair, unjust and contrary to right dealing.

At the hearing on the matter, Husband's attorney argued that Wife had skewed the percentages so much that the agreement was wholly one-sided, but did not argue that the parties' post agreement conduct established the claim of rescission of the agreement. The court denied Wife's motion for declaratory judgment, finding that while Husband's defenses did not prove procedural unconscionability, that substantive unconscionability was an extremely close call, but unnecessary to resolve the issue, as Husband had successfully pled rescission. Wife appealed, arguing that Husband had never raised rescission as an affirmative defense and that the court committed reversible error when it *sua sponte* raised the argument for him.

On appeal, the court found that Husband was required to specifically plead any affirmative defenses, including rescission, and that failure to do so precludes the trial court form granting such relief. The court noted that Husband's equity argument could have support a claim for rescission, but that Husband had not proposed the theory of rescission to the court. As a result, Wife was denied the opportunity to respond the argument. Therefore, the court vacated the trial court's denial of Wife's motion for declaratory judgment and remanded for further proceeding regarding unconscionability.

*Rule 23(e)(1) decision.

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PROPERTY

In re Marriage of Phillips, 2017 WL 4127466 (Ill.App. 6 Dist.), September 15, 2017*

The parties divorced in 2010. On October 20, 2011, the court entered an "Agreed Order for Modification and Termination of Maintenance and Support." The order specifically modified Paragraph 4 of the marital settlement agreement. In September 2013, Wife filed a petition for adjudication of indirect civil contempt, alleging that Husband failed to comport with paragraph 11 of the marital settlement agreement, which provided that she would receive $200,000 as a property distribution. Wife received $100,000 in April of 2011. Husband argued that the agreed order entered in 2011 settled all the parties' financial issues, not just the maintenance as set forth in Paragraph 4 of the marital settlement agreement. The court denied Wife's contempt petition and ruled that the agreed order settled all financial issues between the parties, including Husband's additional $100,000 obligation under paragraph 11 of the marital settlement agreement. Wife filed a motion to reconsider, and the court entered an order granting the motion to reconsider and found that Husband owed the $100,000.

On review, Husband argued that the court relied on language that was in the preamble of the 2011 agreement and not its decretal portion. The court found that even if that argument were to be correct, the agreed order is not ambiguous, and the agreed order did not settle the issue of the remaining $100,000 that Husband owed under paragraph 11 of the marital settlement agreement. Further, the court went on to say that an agreed order must be interpreted in its entirety.

In re Marriage of Biedermann, 2017 WL 2819972 (Ill.App. 2 Dist.) June 28, 2017*

Shortly after the parties were married, Husband consulted an estate planning attorney, who advised him to set up a trust and open two, separate trust accounts, one in Wife's name and one in his own name. Husband subsequently opened a separate investment account titled in Wife's sole name. Between 2003 and 2007, Husband received various gift funds from his father in the form of checks payable to Husband, totaling at least $400,000. He deposited most of the checks into the investment account in Wife's name. Husband also conducted stock trades with the funds held in the investment account. Husband opened monthly investment account statements and met with a stockbroker four or five times, who assisted him with trades. The monthly statements were emailed to Husband directly and, although Wife had access to the email account, she did not check it regularly. Husband never intended to gift Wife the funds in the investment account. Neither party discussed whether the funds were a gift to Wife. After Husband filed for divorce, Wife changed the password on the investment account and denied Husband access to the account. Nevertheless, Husband continued to make trades with the funds by emailing Wife regarding what stocks he wanted to buy or sell. Wife generally followed Husband's instructions. Wife argued that the funds were her non-marital property, claiming that when Husband opened the investment account, he told her that the he was setting up an account for her that would be a gift to her. She testified that Husband again referred to the account as a gift to her about a year later. However, Wife never asked Husband why he was giving her a gift and she didn't recall if he ever explained why he was giving the gift. Wife speculated that the gift was for prior marital misconduct that Wife caught Husband engaging in. The parties' estate planning attorney testified that he prepared a will and living revocable trust for each party. Each party was the beneficiary and trustee of their respective trust. It was the attorney's impression that Husband knew how to transfer title of assets into the trust's name and he did not assist Husband with transferring any funds. He would not have advised Husband to transfer assets into Wife's sole name. Ultimately,

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both Husband and Wife argued that the investment account was their non-marital property. The trial court found that the funds were the parties' marital property, to be divided consistent with the other marital assets, 55% to Wife and 45% to Husband. The trial court characterized Wife's testimony regarding the conversations with Husband as "vague and not reliable." Further the court found that Husband had transmuted the funds into the marital estate by placing the funds in an account in Wife's name.

On appeal, the court upheld the trial court's classification of the investment account as marital property. The court determined that Husband's affirmative act of placing the funds into an account bearing Wife's name raised the presumption that he made a gift to the marital estate. Further, Husband failed to present clear and convincing evidence that he did not intend the monies to be a gift to the marital estate. Husband's actions indicated that he intended Wife to have a shared, present interest in the funds and that he did not preserve the non-marital status of the gifts. Husband did not limit Wife's access to the funds and Husband's trial testimony indicated that he did not consider the account his non-marital property. Further, the court was not persuaded by Wife's arguments. The case law is well established that the titling of property in one spouse's name is insufficient to establish a gift to that spouse's non-marital estate. Rather, the court agreed with Husband, who argued that the account was titled in Wife's name for estate planning purposes only and Husband never relinquished control over the property, despite the fact that Wife denied his access to the account following the initiation of the divorce case.

In re Marriage of White and Cipriani, 2017 WL 6554302 (Ill.App. 2 Dist.), December 22, 2017*

The parties were married in December 2011 and physically separated in October 2014. During the trial, the court ordered each party to reimburse the marital estate for "pre-distribution" of marital assets. Husband's pre-distribution consisted of payments that he made toward a non-marital asset, namely a condo that he owned with his brother. Wife's pre-distribution consisted of payments she made toward alleged personal loans she received from her parents for her higher education expenses. Wife argued that she borrowed $300,000 from her parents for her graduate degree and medical degree. According to the promissory note, she was to begin repaying her parents one year after acquiring a full-time position in the medical field. She argued that when the parties married, they retained separate accounts and credit cards. Expenses that were deemed joint expenses were paid from a joint account. The court found that the payments Wife made to her parents (paying back $277,000) were contributions of the marital estate to Wife's personal estate. Wife appealed.

On appeal, the court upheld the trial court's finding that the education payments made on Wife's behalf were not loans. The appellate court found that Wife and her mother lacked credibility in claiming that the education payments were loans. While claiming to owe her parents $300,000, Wife never told Husband until they were in the middle of the divorce. During the marriage, the parties were looking for a home, and Wife co-signed on a piece of property with Husband. Wife did not disclose the loans at that time. Also, Wife's began making the alleged loan repayments in the same month that the parties separated. Wife failed to establish by clear and convincing evidence that the education payments made on her behalf were loans.

See also **MAINTENANCE** *In re Marriage of Brill,* 2017 WL 2982510 (Ill.App 2 Dist.), July 13, 2017

See also **DISSIPATION** *In re Marriage of Covello,* 2017 WL 3297998 (Ill.App 1 Dist.), August 1, 2017*

*Rule 23(e)(1) decision.
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REAL PROPERTY

In re Marriage of Campbell, 2017 WL 4857016 (Ill.App. 2 Dist.), October 27, 2017**

Mother was granted the majority of parenting time for the parties' two children and Father was ordered to pay unallocated child support and maintenance. Pursuant to the judgment for dissolution of marriage, Father's support obligation was reduced two years later, to child support for the youngest child only. One year later, Mother filed a petition for rule to show cause, alleging that Father had failed to pay Mother child support in the amount of $15,005.42, among other issues that were later remedied. Mother then sought a temporary restraining order to restrain Father from withdrawing funds from his retirement account. Father was ordered to rollover certain investments to Mother pursuant to the marital settlement agreement and the court found that Father owed Mother $15,005.42 in past-due child support. Subsequently, Mother recorded a lien on Father's home in the amount of $24,530 for the unpaid child support, including the amount that accrued from the date the court found Father in arrears. Wife sent Husband a copy of the lien claim by certified mail. The next month, Husband passed away. Father's mother then attempted to sell the property but discovered Wife's lien. Father's mother alleged that there was no court order in the amount that Wife's lien claimed. Further, Father's mother had evidence that according to the DuPage County Circuit Clerk's records, Father did not owe an arrearage. Father's mother requested the court enter an order releasing the lien on Father's property. At the hearing, Mother failed to appear and the court entered a default order in favor of the Father's mother. However, Mother subsequently requested the court vacate the default order and allow her time to respond, which the court granted. In the subsequent hearing on the issue, Father's mother argued that the lien on the home was improper because Father only had a beneficial interest in the property, rather than an ownership interest, thus making it his personal property and not his real property. Father's mother argued that the only way to perfect the lien on the personal property was to serve a citation to discover assets. The trial court granted Father's mother's motion, finding that Mother should have filed a citation to discover assets to apply the lien to Father's beneficial interest in the land trust. Mother filed a motion to reconsider but the judge granted Father's mother's motion to strike and dismiss same. Mother appealed.

On appeal, the court found that the trial court erred in granting Father's mother's motion to release the lien on the property. The court found that the classification of Father's interest in the property was irrelevant, as a lien arose against all of Father's property each time he missed a child support payment. Therefore, no further action was required to perfect, or impose, the lien on Father's property. Although it was not relevant, the court noted that because Father was the sole beneficiary of the land trust, he was considered the owner of the property for the purposes of the case. Therefore, the court found that Mother had placed a valid lien on Father's property, which was still valid at the time Father's mother attempted to sell the property. The court reversed the case and remanded it to the trial court for a further calculation of the total amount of unpaid child support.

RELOCATION

In re Parentage of P.D., 2017 WL 4586135 (Ill.App. 2 Dist.), Oct.13, 2017**

The parties entered a custody and parenting judgment in 2013. In 2017, Mother filed a petition seeking leave to relocate with the child from Illinois to New Jersey. After hearing the evidence, the trial court denied Mother's petition for relocation.

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On review, the appellate court found that the trial court properly weighed each factor of section 609.2 of the Illinois Marriage and Dissolution of Marriage Act. Mother testified that her current Husband was employed by a company located in New York. Mother's husband's employer testified that he considered it a requirement of his employment to relocate to New York. However, he did not indicate that Mother's husband would be fired if he did not relocate. In fact, Mother's husband was able to work from home and had met the expectations of his employer. Father argued that there were no family connections to New York City or to New Jersey. All of the grandparents (Father's parents, Mother's parent's and Mother's husband's parents) lived in Illinois. Further, Father had never missed his parenting time and was actively involved in the child's life. He had specifically changed his work schedule as a car salesman to coincide with his parenting schedule. The court specifically noted that Mother's quality of life would be enhanced. However, while this is an important factor under the *Eckert* factors, this factor was specifically omitted from 609.2(g). The factors only mention the best interest of the child, and does not mention the custodial parent. The court also expressed concern that the relocation would adversely affect Father's ability to fulfill his parental responsibilities, given the historically poor communication between the parties. Specifically, Mother often seemed annoyed by Father's presence, and her communication with Father had only improved because her current husband acts as a buffer. Despite the fact that the GAL supported the relocation the appellate court affirmed the decision of the trial court.

In re Marriage of Serapin, 2017 WL 4158637 (Ill.App. 4 Dist.), September 18, 2017*

The parties were divorced in 2013 and Mother was awarded sole custody of the parties' minor child. Several years later, Mother filed a petition to relocate to Dallas, Texas. Mother argued that she secured a position in Dallas with higher pay, better earning potential, more opportunities for advancement and a generous relocation package from her employer. Mother also argued that the school options and extracurricular activities for the minor child were superior in Texas than in Illinois. Father argued that he was a very involved, loving parent who would have drastically less time with the child if she relocated to Texas. Further, Father argued that the child would miss out on time with Father's extended family, who was very involved in the child's life. After a hearing, the court granted the petition to relocate, and Father appealed.

On appeal, the court upheld the trial court's findings. The court found that Mother was pursuing career advancement, which would be beneficial over the long term. Further the court considered the history and quality of each parent's relationship with the child, finding that both parents were good, loving and involved parents. Therefore, the history and quality of their relationships did not weigh against relocation. The court found that the educational and extra-curricular activities weighed in favor of relocation. The court found that the direct benefits of relocation, including living closer to a major city with better cultural opportunities, balanced out the detriments of missing out on family gatherings if the child did not relocate. The court was not persuaded by the argument that the relocation would disrupt Father's regular parenting time schedule, would cause the child to miss out on interactions with her friends and extended family, and would not allow to continue her extracurricular activities in Illinois. Therefore, the court affirmed the trial court's decision.

See also **PARENTING TIME**, *In re Marriage of Dunning*, 2017 WL 2197984 (Ill.App. 4 Dist.), May 17, 2017*

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REMOVAL

In re Marriage of Parr, 2017 WL 1049620 (Ill.App. 2 Dist.), March 17, 2017**

The trial court granted Mother's request as the primary residential parent to remove the parties' three children from Illinois to Michigan and found that removal was in the best interests of the children. Father appealed, arguing that the removal was improper as it was against the manifest weight of the evidence, but the appellate court rejected his arguments and affirmed the trial court's order for removal.

On appeal, the appellate court found that the trial court appropriately weighed all of the evidence and that the evidence presented favored removal. Specifically, the appellate court found that the move would enhance Mother's quality of life due to a higher paying job, lower cost of living, removal from daily conflict and stress with Father would make her happier, she had a stable relationship with a significant other there as well as the proximity of both parent's family and friends within the area. The appellate court found that these factors would benefit the children either directly or indirectly and were sufficient to support removal. Further, the appellate court found that the strained relationship between Father and the parties' daughters, which caused him not to exercise weekday parenting time with the daughters, favored relocation with Mother as she was the primary care-taker of the children for most of the parties' marriage. The appellate court also noted that Mother's motivation to relocate to Michigan was not improper and that the educational opportunities in Michigan would be better, if not comparable, to the educational opportunities in Illinois. The appellate court rejected Father's arguments that the trial court erred in reviewing the evidence and deferred to the trial court finding that Mother's testimony that the distance would improve the relationship between the children and Father was persuasive due to the ongoing verbal abuse that occurred between her and Father.

RESTRICTED PARENTING TIME

In re Marriage of Jason S., 2017 WL 2124350 (Ill.App.1 Dist.), May 12, 2017**

The appellate court affirmed in part and reversed in part the trial court's judgment after trial.

On appeal, Mother argues that the court erred in restricting her parenting time and that any restriction was against the manifest weight of the evidence. Mother also argued that the court erred in allowing expert witnesses, including a 604(b) and 215 evaluator, to testify to opinions that were previously undisclosed to her and the court allowed Father's inadmissible hearsay and opinion testimony at trial. Mother argued on appeal that the trial court's evidentiary errors and judicial bias prevented a fair trial. Mother also argued that the trial court erred in calculating maintenance by giving credit for temporary support payments while the case was pending and omitting Father's cash bonus and annual retention bonus of stock shares, and in using an improper valuation of the parties second home in California.

Mother argued that the court erred in restricting her parenting time because Father never filed a specific petition requesting to restrict her parenting time and therefore she had no notice that her parenting time would be restricted by the court. The appellate court denied this argument and indicated that counsel for Mother should have made her fully aware of the court's discretion and ability to restrict parenting time after a hearing if the court finds by a preponderance of the

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evidence that a parent engaged in any conduct that seriously endangered the child. Here, the appellate court found that Mother was endangering the child based upon the evidence presented at trial which included limiting the child's food intake, restricting independent activities between the child and Father, having the child use diapers through an inappropriate age, breastfeeding the child through the age of 5, helping the child bathe through an inappropriate age, co-sleeping and behavioral issues. Based upon the feedback from the 215 evaluator and 604(b) report, the appellate court found that a restriction of parenting time was appropriate and supported by the evidence as Mother was unable to put the child's needs above her own.

The appellate court rejected Mother's argument that the court erred by allowing the expert witnesses to testify as to opinions that were previously undisclosed because neither party issued written interrogatories that would have required the experts to disclose the subject matter of their opinions or testimony. Further, the appellate court held that an expert's testimony does not constitute surprise or violate Rule 213 if the opinion provided is "an elaboration on, or a logical corollary to, the originally revealed opinion", which was the case here. The appellate court also held that none of Rule 213 disclosure requirements apply when cross examining a witness at trial. The appellate court further stated that Mother failed to establish any prejudice resulting from the evidentiary rulings and testimony provided by the experts. The appellate court also rejected Mother's argument that the trial court erred by allowing Father to testify as to her mental condition because a lay witness can testify as to an opinion related to mental condition if based upon personal knowledge and observation, which was the case here. As such, the appellate court found that the trial court did not err in its evidentiary findings at trial. Next, Mother argued that the court erred in valuing the parties' second home in California by using Father's appraised value instead of the fair market value standard. Here, the appellate court reasoned that Father submitted an appraisal that was closer to the date of trial than Mother. Mother failed to resubmit an updated appraisal of the property and Father's appraisal occurred closest to the trial date. The appellate court found that the trial court's use of Father's appraised value of the residence was proper pursuant to section 503(k) of the Illinois Marriage and Dissolution of Marriage Act.

The appellate court vacated the trial court's ruling as it related to maintenance. Specifically, the appellate court found that there was no basis to give a two-year credit for temporary maintenance payments to Mother because there was never a temporary maintenance order entered during the pendency of the case. The appellate court found that the record did not have any testimony or other evidence that Mother received maintenance during the two-year period preceding trial and that Mother was therefore entitled to the full statutory term of maintenance, which was three years and 10 months. The appellate court also reversed and remanded the trial court's calculation of maintenance because the trial court failed to include Father's discretionary cash bonus of $43,370 or Father's retention bonus of 1,145 shares of stock valued at $20,421.56 for tax purposes. The appellate court found that the trial court erred by not including all of Father's gross income when applying the statutory guidelines or in the alternative failing to state its reasoning and findings for not awarding maintenance pursuant to the guidelines. The case was remanded on this issue for further proceedings to determine whether additional maintenance should be awarded consistent with Father's total gross, including his discretionary bonus and stock award.

*Rule 23(e)(1) decision.

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SANCTIONS

In re Marriage of Kroczek, 2017 WL 3878333 (Ill.App. 1 Dist.), August 31, 2017*

Wife filed a petition to dissolve the parties' marriage and initiated the discovery process by serving a notice to produce and matrimonial interrogatories on Husband. In addition to dividing the parties' marital assets, Wife sought reimbursement from Husband for several loans made to the parties from Wife's sister. Wife filed a petition to join her sister as a necessary third-party and the sister filed a petition to intervene, both of which were granted. Husband's response to the discovery requests were severely incomplete. Therefore, Wife issued a subpoena for records and a deposition to Husband's business and a subpoena for a deposition to Husband's paramour. Neither party complied with the subpoenas or attended the depositions, so Wife filed a petition for rule to show cause, which was issued. Husband responded by alleging that his corporation fully complied with the document request, that certain documents were available to Wife and that he did not have any tax returns to tender because he was granted an extension to file them. The court entered an order stating that if each party appears for their depositions or the parties resolve the issue amicably, the parties will not be held in contempt. Husband appeared for the deposition of his corporation, but when his paramour appeared for her deposition, she did not bring all requested documents. After Wife filed a motion to compel, the court ordered the continued deposition of the paramour. Husband was also requested for a deposition. The night before the deposition, Husband fired his attorney and asked him to withdraw immediately. Husband failed to appear for his deposition and Wife filed a motion for sanctions for Husband's failure to appear. Wife argued that Husband's deposition is relevant for the trial, that there should not be any further delay, as the case was three years old, and that Husband was being a willful obstructionist. Wife requested that Husband not be allowed to present any evidence, claims or defenses at the trial as a result. The court granted Wife's request, barring Husband from presenting any evidence, claims or defenses at trial and not granting a continuance of the trial. The court conducted the trial and ordered both parties to submit proposed judgments. The court entered Wife's judgment.

Husband appealed, arguing that the court's sanction was an abuse of discretion because he did not violate a court order and the sanction was too severe under the circumstances. Wife argued that the sanction was the only appropriate remedy based on the entirety of Husband's conduct during the case and his deliberate disregard for the legal system. The court reversed the trial court's order and remanded the case for a new trial, finding that the discovery sanctions were too severe under the circumstances. The court found that the only discovery matter that remained unresolved when the court sanctioned Husband was Husband's deposition, that Wife's deposition had not been taken yet and was scheduled for five days before the trial, there was not a court order mandating that Husband appear for the deposition and warning him of the consequences if he did not attend. The court noted that the trial court exceeded the scope of the sanctions recommended by the statute and abused its discretion by imposing such a harsh sanction prior to giving Husband any advanced warning.

In re Marriage of Mensah, 2017 WL 4014984 (Ill.App. 2 Dist.), September 11, 2017*

Husband refused to comply with discovery requests. Wife filed multiple motions asking for various sanctions under Supreme Court Rule 210(c). Wife filed a motion seeking the entry of default judgment against Husband. The trial court granted the motion. The court later entered an order finding Husband in default, "for failure to provide documentation responsive to Motion to Compel and per order of 9/7/16." At trial, Husband was not allowed to testify or cross-examine Wife. Wife

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was the only person to testify. The court found an average gross income for Husband of $406,704. The court also ordered maintenance and child support to Wife.

On appeal, Husband argued the trial court abused its discretion by finding him in to be in default. The court found that the record supports the imposition of serious sanctions. The court found that Wife was diligent in pursuing discovery but her efforts were fruitless. Further, Husband provided no justification for his noncompliance, and the discovery requested was material to the case on hand.

Husband next argued that the trial court erred in failing to address his business expenses in determining the maintenance award. Where a party owing support is self-employed, a trial court must calculate the amount of that party's income for the purpose of setting support payments by starting with the party's gross income and then deducting "reasonable and necessary expenses for the production of income." Because Husband failed to comply with discovery and sanctions were imposed, Husband could not show his reasonable and necessary expenses. However, because the sanction was not an abuse of discretion, the trial court did not err in determining Husband's income for support purposes.

SETTLEMENT AGREEMENTS

In re Marriage of Klein, 2017 WL 1084728 (Ill.App. 1 Dist.), March 17, 2017**

The parties scheduled a deposition prior to trial; however, in lieu of the deposition the parties participated in a settlement conference, which was recorded by the court reporter present. At this settlement conference, both attorneys present asked questions of their clients and detailed settlement terms were set forth on the record. The parties were asked whether they intended to be bound by the terms of settlement and responded yes. At a court date that same day for pre-trial conference, both parties appeared with their attorneys and indicated to the judge that the pre-trial conference need not occur because they had reached an agreement. The court entered an order that providing the terms of financial settlement as indicated in the deposition transcript were to be incorporated into a marital settlement agreement and a prove-up date was scheduled.

Husband later filed an emergency motion for substitution of attorneys and requested to strike the prove-up date, extend discovery and set the case for trial. The trial court allowed the attorney to substitute into the case, but denied the remaining requests, indicating that the oral settlement agreement set forth in the recorded transcript was a binding contractual agreement. Husband subsequently filed an emergency motion to disqualify the trial court judge and motion to reconsider the order denying Husband's requests. Husband argued that Wife's attorney provided the transcript to the court that included unsworn testimony from the settlement meeting, "off-the-record private conversations" about questions of fact and hearsay communications between the parties, and argued that the parties did not sign an uncontested case stipulation as required by local court rule in Cook County. The trial court denied Husband's motions, and the Husband appealed.

The appellate court found that amended Section 502 of the Illinois Marriage and Dissolution of Marriage Act (the "Act"), which specifically stated that any agreement must be in writing except for good cause shown with the approval of the court before proceeding to an oral prove-up, was enacted after the parties entered into the oral settlement agreement and did not apply retroactively to the case. Therefore, the original language in Section 502 of the Act provided that the parties may enter into a written or oral agreement containing provisions of settlement. The appellate

*Rule 23(e)(1) decision.
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court further denied Husband's arguments on appeal that there was no meeting of the minds, the terms of the agreement were not definite, and the transcript represented unsworn and private conversations and did not represent the intent of the parties or terms of an agreement. The appellate court found that the transcript specifically stated that Husband participated in negotiations for settlement, understood the terms of the parties' agreement, intended to be bound by those terms, and only minor details needed to be worked out later. Further, the appellate court found that the parties appeared before the trial court to advise that a pre-trial conference was no longer needed that same day because the parties reached an agreement and the trial court entered an order that the terms of the financial settlement as set forth in the transcript were to be incorporated into a marital settlement agreement. Moreover, the appellate court also found that the trial court noted a history of Husband hiring and firing attorneys and a perceived desire to avoid the payment of maintenance to Wife. Husband never objected to the terms of the settlement at the time and the trial court's order specifically provided that the transcript would be incorporated into a marital settlement agreement. The Husband never objected to the substance of the transcript, denied the transcript's accuracy or indicated that the transcript contained mistakes of fact.

Husband further argued that the judgment for dissolution of marriage was unenforceable because the trial court did not have a signed stipulation of an uncontested cause as required in Cook County, refused to allow Husband to make an offer of proof and the trial judge should have disqualified himself after reading the transcript between the parties at a settlement conference. The appellate court rejected these arguments as well. Specifically, the appellate court found that a signed stipulation for an uncontested cause form was inconsequential to the proceedings where both parties appeared and indicated to the trial court that they had reached and entered into an oral settlement agreement and the trial court scheduled the prove-up as a result of same. The appellate court further found that on appeal the Husband failed to offer any argument regarding the substance of the attempted offer of proof and therefore the court had no method to assess whether the trial court abused its discretion due to Husband's general statement and Husband's failure to establish any prejudice as a result. Last, the appellate court found that the trial court judge did not need to recuse himself because the trial judge did not personally observe the settlement negotiations and the mere fact that the judge read the transcript would not establish a basis that the judge was not impartial. Ultimately, the appellate court affirmed the trial court's judgment and finding that the oral settlement agreement was a binding contract that was enforceable by the trial court through entry of a judgment for dissolution of marriage.

TAX EXEMPTIONS

See also **CHILD SUPPORT** *In re Marriage of Watkins*, 2017 WL 5472588 (Ill.App. 3 Dist.), November 14, 2017*

VENUE

In re Marriage of Kasper, 2017 WL 3948284 (Ill.App. 3 Dist.), September 6, 2017*

Mother moved from Jo Daviess County to Grundy County with the parties' two minor children on the same day that she filed a petition for dissolution of marriage in Grundy County. Three days later, Father filed a motion to transfer venue, which was denied. Father then filed a motion to vacate or reconsider, alleging the following: Mother had only lived in Grundy County for a few

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hours before filing the petition; prior to filing, both parties were employed in Jo Daviess County; Father owned a business in Jo Daviess County; the two minor children attended school in Jo Daviess County for more than six years; the children's doctors were located in Jo Daviess County; the marital residence was located in Jo Daviess County; the parties' assets were located in Jo Daviess County; Jo Daviess County is more than 50 miles from Grundy County; and the parties only connection to Jo Daviess County was family members. Father further filed a motion to dismiss and/or transfer venue based on *forum non conveniens*, arguing that Mother had not changed her residence to Grundy County when she filed the petition, he did not consent to the relocation of the children, he was unaware that the children were transferred to a school in Morris, the children's doctors were in Galena, and the children's friends and activities were in Jo Daviess County. The court conducted a hearing and found Mother's testimony to be credible, including her allegation that she did not feel comfortable in the community that she lived in Galena, that she intended to move to Grundy County permanently, that she had changed her driver's license and that she was seeking employment in Grundy County. Therefore, the court denied Father's request to transfer venue and motion to reconsider. Finally, the court denied Father's motion to dismiss and/or transfer venue on the following basis: both courts were able to provide a fair trial; Mother would be inconvenienced if the case was transferred to Jo Daviess and Father would be inconvenienced if the case was transferred to Grundy County; no evidence was presented that the children had medical issues that would require testimony from their doctors; evidence from the children's teachers mitigated in favor of venue in Jo Daviess County; the court was unaware of the court congestion in Jo Daviess County; there was similar process for unwilling witnesses in both counties; Mother was entitled to the priority of choice of venue as the plaintiff; and the factors did not strongly weigh in favor of transferring venue. Father appealed.

On appeal, the court affirmed the trial court's dismissal of Father's motion to dismiss and/or transfer venue based on *forum non conveniens*. The court noted that the doctrine of *forum non conveniens* was only to be exercised in exceptional circumstances when the interests of justice require a trial in a more convenient forum. The court found that the trial court had accurately determined that Mother had changed her residence to Grundy County and should be given great deference as the plaintiff. The court noted that Father did not refute the facts that Mother had moved, changed her address, was seeking employment, moved due to emotional concerns and moved to live closer to her support system. Further, the court determined that Mother's choice of forum was not outweighed by the private and public interest factors. The court found that the majority of the factors favored venue in Grundy County and there were only two public interest factors that weighed in favor of transferring venue. Further, the court found that the public interest factors were not implicated because Mother intended to remain in Grundy County and Father intended to remain in Jo Daviess County, making the dispute local to each forum. Therefore, the court upheld the trial court's decision.

WAGE GARNISHMENT

See also **MAINTENANCE**, *In re Marriage of Nurczyk,* 2017 WL 2212173 (Ill.App. 3 Dist.), May 19, 2017*

*Rule 23(e)(1) decision.
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