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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

GREGG A. LINE,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellee,)	
)	
v.)	No. 10-MR-688
)	
DEBRA L. LINE,)	Honorable
)	Rodney W. Equi,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: The trial court properly found that petitioner was not in contempt of court for miscalculating his net income for purposes of child support payments by deducting the full amount of the health insurance premium paid rather than a proportionate amount attributable to his son's coverage; the trial court properly denied respondent's petition for attorney fees; pursuant to statute, interest should be paid to respondent on the amount of petitioner's arrearage from the time it accrued until satisfied.

¶ 1 Respondent, Debra L. Line, appeals the trial court's order entered on June 8, 2011, denying her motion for reconsideration of a March 22, 2011, order that awarded her \$1,729.89 in unpaid child support for the years 2007 through 2009, but declining to find petitioner, Gregg A. Line, in

contempt of court for underpayment of child support. We vacate in part, affirm in part, and remand for the determination of accrued interest on the judgment.

¶ 2

I. BACKGROUND

¶ 3 Gregg and Debra were married in 1991, and the marriage was dissolved in 1996 in the circuit court of Cook County. They were awarded joint custody of their son, Andrew, who was born in 1993, with Debra named as the primary residential parent. Article III of the parties' Marital Settlement Agreement (MSA) awarded child support to Debra. On August 3, 2005, the Cook County circuit court issued an order obligating Gregg to pay Debra child support in the amount of \$420 per month, or 20% of Gregg's net income, whichever was greater.

¶ 4 On May 4, 2010, Debra enrolled the parties' Cook County judgment, including the MSA and Joint Parenting Agreement, in the Du Page County circuit court. On the same date, Debra filed a multi-count petition for a rule to show cause, alleging that Gregg should be held in indirect civil contempt of court for his failure to: (1) pay the proper amount of child support; (2) make child support payments through the State Disbursement Unit; (3) inform the court of his change of employer; and (4) provide life insurance.

¶ 5 A hearing was held on February 16, 2011.¹ On March 22, 2011, the trial court granted Debra's petition in part and denied it in part. In its order, the trial court found that Gregg's underpayment of child support was not willful or contumacious and, accordingly, "decline[d] to find Gregg A. Line to be in contempt." The trial court then found that Gregg had underpaid his child

¹Although both parties have cited to a record in their briefs, we have not been provided with a report of proceedings of this or any other hearing. The entire record consists of a two-volume common law record and one envelope containing exhibits.

support for the years 2007 through 2009 and entered judgment against him and in favor of Debra in the amount of \$1,729.89.

¶ 6 Debra filed a motion for reconsideration on April 18, 2011, and a hearing was held on June 8. On that date, the trial court denied Debra's motion for reconsideration. Debra then timely filed this appeal from that order.

¶ 7 II. ANALYSIS

¶ 8 Determination of Gregg's Net Income

¶ 9 As we have already noted, the entire record on review consists of a two-volume common law record and an evidence envelope. Debra, as appellant, has failed to include a transcript or report of the hearing in the record on appeal. We have the assertions of Debra and Gregg, and the written orders entered by the trial court. We cannot tell, based on this record, what steps were followed or on what grounds the trial court based its ruling. Therefore, we assume that the evidence presented at the hearing justified the findings made by the trial court. See *In re Marriage of Schweih's*, 272 Ill. App. 3d 653, 660 (1995). Any doubts resulting from the incompleteness of the record will be resolved against the appellant. *In re Marriage of Naylor*, 220 Ill. App. 3d 366, 371 (1991).

¶ 10 On appeal, Debra argues that the trial court's determination of Gregg's net income was against the manifest weight of the evidence and not in accordance with statute and that the trial court's allowance of a deduction for medicare taxes in 2006 was against the manifest weight of the evidence. Additionally, Debra argues that the trial court abused its discretion: (1) "by overstating [Gregg's] additional 2008 child support payments"; (2) by not allowing into evidence a "Notice to Withhold," issued by Cook County in 2005; and (3) by not awarding attorney fees to Debra pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750

ILCS 5/505 (West 2010)). These arguments mirror the assertions presented in Debra's motion for reconsideration, filed April 19, 2011.

¶ 11 “The decision to grant or deny a motion for reconsideration is within the discretion of the circuit court and will not be reversed absent an abuse of that discretion. [Citation.] In determining whether the trial court abused its discretion, ‘the question is not whether the reviewing court agrees with the trial court, but whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted.’ [Citation.]” *In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 307 (2004).

¶ 12 The issue before us is whether the trial court properly denied the motion for reconsideration. The failure to pay child support under a court order or judgment is *prima facie* evidence of indirect, civil contempt. *In re Marriage of Kolessar*, 2012 (1st) 204101, ¶ 23. Where the evidence establishes that the payor-parent has failed to make support payments as required, the burden shifts to the payor-parent to show that the noncompliance was not willful. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 62 (2008). Whether noncompliance is willful is a question of fact for the trial court. *Kolessar*, 2012 (1st) 204101, ¶ 23. We, as the reviewing court, will not overturn the trial court's determination unless it is against the manifest weight of the evidence or the record reveals an abuse of discretion. *Id.*

¶ 13 Once the trial court concluded that the amount of child support was underpaid, the question became whether that underpayment was “willful or contumacious.” Because we have no record from the hearing, we presume that the trial court correctly allowed Gregg's deduction for medicare taxes in 2006, correctly stated Gregg's additional 2008 child support payments, and did not err by

excluding the “Notice to Withhold,” issued by Cook County in 2005.² See *Schweihl*, 272 Ill. App. 3d at 660. The trial court determined that Gregg’s underpayment was not willful, and we will not disturb this decision absent an abuse of discretion. See *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984) (based on the evidence presented, the trial court neither abused its discretion nor reached a decision contrary to the manifest weight of the evidence when it rejected appellant’s defense of inability to pay maintenance and found him in willful contempt of court).

¶ 14 Based on the scant record provided, we find that the trial court did not abuse its discretion in refusing to hold Gregg in contempt, nor was this finding against the manifest weight of the evidence. See *Schweihl*, 272 Ill. App. 3d at 660.

¶ 15 We note that Gregg’s current wife’s medical insurance provides family coverage for herself, Gregg, their daughter, and also includes Gregg and Debra’s son. Debra seems to ignore the reality that since Gregg is obligated to provide medical insurance for their son, Gregg would have to purchase insurance either through his own employer, or, if his job ceased, in the market place. We note that those premiums, which would likely be more expensive than the amount of the current premium allowed by the trial court as the cost of covering their son, would be deductible by Gregg for purposes of computing his net income. We agree with Gregg’s statement that procuring separate medical insurance for his and Debra’s son could prove more expensive and, possibly, create an incentive to procure a cheaper policy with less coverage.

¶ 16 Attorney Fees

¶ 17 Generally, it is the responsibility of the party who incurred attorney fees to pay those fees. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. We will not reverse a trial court's decision

²We address the issue of attorney fees below.

to deny attorney fees unless the trial court abused its discretion. See *In re Marriage of Schurtz*, 382 Ill.App.3d 1123, 1127 (2008). However, section 508(b) of the Act provides:

“In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party.” 750 ILCS 5/508(b) (West 2004).

¶ 18 Debra re-argues her case, asserting that Gregg should have been found in contempt because he deducted his wife's medical insurance premiums from his gross income to arrive at a net income figure for purposes of child support. Debra asserts that Gregg knew, or should have known, that this deduction was improper, and this proved that Gregg “did not make a good faith effort to satisfy his child support obligations.” Debra concludes this portion of her argument by stating that the trial court abused its discretion when it found that Gregg's underpayment was not willful or contumacious.

¶ 19 Debra then argues that, even though the trial court declined to hold Gregg in contempt, she should still be awarded section 508(b) attorney fees. She relies on *In re Marriage of Berto*, 344 Ill. App. 3d 705 (2003); *In re Marriage of Baggett*, 281 Ill. App. 3d 34 (1996); *In re Marriage of Roach*, 245 Ill. App. 3d 742 (1993); and *In re Marriage of Fowler*, 197 Ill. App. 3d 95 (1990). In each of these cases, the trial court declined to find the payor in contempt, and also denied attorney fees. In each case, the appellate court reversed the trial court as to the denial of attorney fees. However, while Debra argues that “the facts at hand are more egregious” than the facts in any of these cases,

we agree with Gregg's analysis; in none of these cases was there any support in the record to justify the failure to pay.

¶ 20 In *Fowler*, the \$750 arrearage was paid just prior to the hearing. *Fowler*, 197 Ill. App. 3d at 97-98. The *Fowler* court reasoned: “[a]s a result of respondent’s unjustified inattentiveness toward his child support obligations, petitioner incurred the expense of legal action.” *Fowler*, 197 Ill. App. 3d at 98. The reviewing court held that, pursuant to section 508(b) of the Act, petitioner should be reimbursed for her costs and fees in connection with her petition for rule to show cause.

¶ 21 In *Roach*, monthly maintenance payments from the ex-husband to the ex-wife had accrued for some time, and, although the rule to show cause was discharged, “there was nothing in the record from which the trial court could have concluded that failure to make payments was due to some cause or justification.” *Roach*, 245 Ill. App. 3d at 748. The appellate court reversed the trial court and remanded the case for the trial court to determine the proper amount of attorney fees, pursuant to section 508(b) of the Act.

¶ 22 *Baggett* specifically held that when a party’s failure to comply with an order is without cause or justification, an award of reasonable attorney fees and costs is mandatory under section 508(b) of the Act, and the court’s discretion is limited to a determination of the amount of reasonable fees. *Baggett*, 281 Ill.App.3d at 40. In such a case, the “party not in compliance has the burden to produce evidence of his cause or justification.” *Id.* In *Baggett*, the appellate court found that the record was devoid of any evidence of cause or justification for not complying with the court order. *Id.*

¶ 23 In *Berto* this court discussed the two provisions of the Act that apply to enforcement proceedings. Section 508(a) is discretionary with the trial court and is made after considering the relative financial resources of the parties; section 508(b) is a mandatory provision by which the trial

court must order the delinquent respondent to pay attorney fees and costs “when the failure to comply with the order or judgment was without compelling cause or justification.” *Berto*, 344 Ill. App. 3d at 716. In *Berto*, the \$30,000 support arrearage was paid on the date of the hearing. *Id.* at 709. Nevertheless, we found “nothing in the record from which the trial court could have reasonably concluded that respondent’s failure to make timely and complete payments to petitioner *** was due to some compelling cause or justification.” *Id.* at 719. Therefore, the appellate court remanded for a determination of the proper amount of fees and costs.

¶ 24 These cases are inapposite. Although the trial court found Gregg to be in arrears, there is no evidence that he acted in bad faith, or without compelling cause or justification. Moreover, due to the absence of a report of proceedings, we assume that the evidence presented at the hearing justified the findings made by the trial court. See *Schweihs*, 272 Ill. App. 3d at 660. Therefore, we find that the trial court did not abuse its discretion in denying Debra attorney fees.

¶ 25 Interest on the Judgment

¶ 26 Finally, Debra argues that the trial court should have awarded her interest on the child support arrearage in accordance with section 12-109 of the Code of Civil Procedure (Code) (750 ILCS 5/12-109 (West 2010)). We agree.

¶ 27 The pertinent child support section of the Dissolution Act provides:

“A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure.” 750 ILCS 5/505(b)(2) (West 2010).

Section 12-109(b) of the Code provides that:

“(b) Every judgment arising by operation of law from a child support order shall bear interest as provided in this subsection. The interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month.” 735 ILCS 5/12-109(b) (West 2010).

Finally, section 2-1303 of the Code provides for an interest rate of 9% per annum. 735 ILCS 5/2-1303 (West 2010).

¶ 28 In stating that unpaid child support payments “shall” be deemed judgments and that these judgments “shall” bear interest, the statute indicates a “mandatory requirement.” *Illinois Dept. of Healthcare and Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 487 (2011) *Wiszowaty* held that under the plain language of amendments to the Dissolution Act, interest payments on child support payments became mandatory effective May 1, 1987, when the legislature changed the law by providing that each unpaid child support installment is an actual “judgment” that arises by operation of law, and that each such judgment “shall bear interest.” *Id.* at 487-88. Therefore, the Dissolution Act provides a statutory right to interest on judgments arising from orders for payment of child support. *Kolessar*, 2012 IL App (1st) 102448, ¶ 18. Under section 2-1303 of the Code, petitioner should have been awarded interest accruing at the rate of 9% per annum “from the date of the judgment until satisfied.” 735 ILCS 5/2–1303 (West 2010)). See *Wiszowaty*, 239 Ill. 2d at 487-88.

¶ 29 Accordingly, we hold that Debra is entitled to interest on the judgment. Therefore, we remand this cause to the trial court for a hearing to determine the appropriate amount of interest accrued.

¶ 30

III. CONCLUSION

¶ 31 For these reasons, we vacate in part and affirm in part the judgment of circuit court of Du Page County; we remand for a determination of accrued interest on the judgment.

¶ 32 Vacated in part, affirmed in part, and cause remanded for the determination of accrued interest on the judgment.