

No. 1-13-3873

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

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARTHA ZURITA, on behalf of MARINA ALICIA ZURITA-SPILLER, a minor,) Appeal from the
) Circuit Court
) of Cook County
Petitioner-Appellee,)
) No. 11 D 080242
v.)
) Honorable
MARWIN JEROME SPILLER,) Daniel R. Miranda,
) Judge Presiding.
Respondent-Appellant.	

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

- ¶1 **Held:** The circuit court's order finding respondent in civil contempt for failure to pay child support and for failure to comply with discovery is vacated. The cause is remanded to the circuit court for recalculation of child support arrearage.
- ¶2 This action was commenced when petitioner, Martha Zurita on behalf of Marina Alicia Zurita Spiller, a minor, filed a complaint against respondent, Marwin Spiller, to determine the existence of a parent child relationship pursuant to the Illinois Parentage Act of 1984 (the Parentage Act) (750 ILCS 45/1 *et seq.* (West 2010)). Zurita alleged that she and Spiller were not

married but had a relationship that produced one child, the minor in this case. After numerous proceedings in the trial court, Spiller was found in indirect civil contempt for failure to comply with the court's orders and also ordered to pay attorney fees to Zurita. Spiller appeals, contending that he was improperly found in contempt and that the award of attorney fees to Zurita was an abuse of discretion. For the reasons that follow, we vacate the judgment of the circuit court and remand the case with directions.

¶3 The record shows that on September 26, 2011, Zurita filed a petition for temporary custody and child support. On October 7, 2011, Zurita served Spiller with a request to produce certain financial documents pursuant to Supreme Court Rule 214. On October 17, Spiller provided Zurita's counsel with his asset disclosure statement. October 28, 2011, Spiller served a 201(k) notice to Zurita requesting her asset disclosure statement and proof of income by November 1. On October 28, 2011, Zurita's counsel sent to Spiller Zurita's asset disclosure statement and a Supreme Court Rule 201(k) request to comply with Zurita's October 7, 2011, request to produce documents. On November 9, 2011, Spiller filed motion to compel Zurita to produce her proof of income documents. The motion acknowledged that Spiller had received Zurita's asset disclosure statement.

¶4 On November 22, 2011, Zurita filed a petition to compel Spiller to comply with her request to produce documents. The petition stated that the request to produce documents was served upon Spiller on October 7, 2011, that Spiller had refused to comply with the request, and that Zurita's counsel had attempted to resolve any differences concerning compliance with Zurita's request to produce. On November 22, Zurita also filed a motion for child support and a Supreme Court Rule 237 notice asking for various financial documents, including Spiller's 2009 and 2010 tax returns and pay stubs., prior to the hearing on the motion for child support. On

November 22, Zurita also filed a notice of motion indicating that at 9:30 a.m. on December 6, 2011, she was going to present the circuit court with the motion for child support and the motion to compel Spiller's compliance with Zurita's request to produce documents.¹

¶5 On December 6, 2011, Spiller filed a motion to strike the petition for child support, claiming that a motion for support had already been filed and that the parties were waiting for a court-ordered mediation date. Spiller also filed a motion to strike Zurita's Rule 237 notice. Spiller claimed that he had not produced the documents requested by Zurita because she had failed to follow proper discovery rules. Specifically, Spiller claimed Zurita's discovery request was void because it was filed before she served Spiller with her disclosure statement. Further, Spiller noted that, as of December 6, Zurita had still not provided Spiller with her proof of income document, which was required before she could request discovery from him.

¶6 Also on December 6, the court entered an order of default against Spiller after he failed to appear at the December 6 hearing on Zurita's petition for child support and her petition to compel compliance with her request to produce. The court ordered Spiller to pay \$761.43 per month in child support and ordered him to respond to Zurita's discovery requests by January 3, 2012. The court also ordered Spiller to place the minor on his health insurance plan.

¶7 On December 12, 2011, Spiller filed a motion to vacate the court's order of December 6, in which he made the following assertions. Spiller claimed that he was unable to attend the December 6 hearing because he was a professor and the hearing took place during his students' final examinations week. Spiller asserted that he called the circuit court clerk's office on November 30 and informed them that he would be unable to attend the December 6 hearing. Spiller was told to fill out a "Notice of Hearing form" and to "call them back for a date and

¹ The written notice of motion was typed as December 6, but then scratched out in pen and written as December 7, 2011.

time." Spiller did so, called the clerk's office and received a hearing date of December 19, 2011. On November 30, 2011, Spiller mailed to the circuit court clerk's office a notice of hearing on December 19, 2011, along with his motion to strike Zurita's Rule 237 notice, his opposition to Zurita's petition to compel production of documents and the motion to strike the petition for child support. Spiller also served these documents by mail on Zurita's counsel. After filing the above documents, Spiller "genuinely believed" that the December 6 hearing had been moved to December 19. However, on December 6, Spiller received a voicemail from Zurita's attorney stating that the court had granted the petition for child support and ordered that the minor be placed on Spiller's insurance plan. Spiller called the circuit court clerk's office and, after initially being told that they had no record of the documents he filed, he was told that those documents would be filed immediately and that Spiller should file a motion to vacate the December 6 order. Spiller also asserted in the motion that at the October 17, 2011, hearing, it was determined that his insurance coverage would cost less and therefore the parties agreed that Spiller would pay for the minor's insurance coverage.

¶8 On January 24, 2012, the circuit court entered a written order denying Spiller's motion to vacate and ordering Spiller to comply with Zurita's discovery within 7 days. The court also sent the parties to mediation.

¶9 On March 26, 2012, Zurita filed a petition for rule to show cause. Zurita asserted that she had filed a request to produce documents pursuant to Supreme Court Rule 214 and that Spiller had refused all Supreme Court Rule 201(k) requests for discovery compliance. Zurita further asserted that Spiller had intentionally refused to comply with the court's December 6, 2011, order that he pay \$761.43 in monthly child support commencing on December 15, 2011. Zurita also asserted that Spiller had intentionally refused to comply with the court's December 6 order that

he comply with Zurita's discovery requests by January 3, 2012, and the court's January 24, 2012 order that he comply with the discovery requests by January 31, 2012. Zurita asked that a rule to show cause be issued against Spiller to show why he should not be held in indirect civil contempt for his intentional refusal to comply with the court's orders of December 6, 2011, and January 24, 2012. Zurita further asked that Spiller be required to pay past-due and current child support and to comply with her discovery requests. Finally, Zurita asked that Spiller be required to pay the attorney fees she incurred in connection with the preparation and presentation of the petition for rule to show cause.

¶10 In his response to Zurita's motion, Spiller claimed that he did not receive a copy of the December 6 order and that, after the court denied his motion to vacate, he calculated twenty percent of his gross income and sent Zurita a child support payment of \$740 in February and March of 2012. Spiller further claimed that he received the December 6 order at the hearing on March 30 and realized he had been paying \$21.43 less than the required amount. Spiller stated that he would send Zurita two payments of \$21.43 along with his regular child support payment by April 15. As to the discovery issues, Spiller reiterated that he had not complied with Zurita's request to produce because she was in violation of the rules of the circuit court of Cook County in that Zurita had not yet sent Spiller her proof of income document and was precluded from seeking discovery before she did so.

¶11 On May 18, 2012, Zurita filed a "Rule 237 Notice," requesting copies of Spiller's tax returns, pay stubs, bank statements and other related matters. On May 24, 2012, following a hearing at which both parties were present, the court ordered Spiller to bring his child support payments current and to furnish Zurita's attorney with his financial documents, including tax returns and pay stubs, by June 14, 2012. The court set a hearing on Zurita's petition for rule to

show cause and a pretrial conference for July 10.

¶12 On July 10, following a hearing at which Spiller and Zurita's counsel were present, the court ordered Spiller to provide to Zurita all of his 2012 paystubs within seven days. The order also stated that Spiller was responsible for all medical insurance premiums for the minor paid by Zurita retroactive to December 6, 2011, until the minor was covered under Spiller's medical insurance and that Spiller was liable for eyeglass bills and braces for the minor.

¶13 On August 28, the court entered an order finding Spiller in "civil contempt." The court granted Zurita leave to file a petition for attorney fees incurred as a result of "respondent's failure to comply with court orders and discovery requests." The court further ordered that by September 27, 2012, Spiller was to pay Zurita \$7,442.36, representing \$322.86 for child support arrearage, \$3,660.40 for insurance premiums, \$512.25 for one-half of "swimming" costs and \$3,027.16 for miscellaneous bills. The court continued the cause "for compliance" to October 18, 2012. Counsel for Zurita subsequently filed a petition for attorney fees seeking reimbursement from Spiller in the amount of \$11,932.00. An attorney entered an appearance on behalf of Spiller on September 26, 2014.

¶14 On September 26, Spiller filed a motion asking the court to reconsider its order entered on August 28, 2012. The motion argued that civil contempt was not an appropriate remedy for failure to comply with discovery requests and that the petition for a rule to show cause was defective because it sought a contempt finding based upon the alleged failure to make certain contributions to the minor's expenses despite the fact that no orders had been entered ordering Spiller to make those contributions to the child's expenses. Spiller further asserted that the orders of December 6, 2011 and January 24, 2012, were not sufficiently specific as to what discovery requests were to be answered. The petition also did not seek a specific dollar amount of claimed

arrearage and the first notice Spiller received was at the August 28 hearing, when Zurita's counsel gave him a "multi-page accounting." Spiller claimed he was not given a chance to dispute any of the amounts on that accounting. Spiller further claimed that the contempt order did not set an amount that he was required to pay in order to purge the contempt finding and that it did not provide Spiller the opportunity to seek a hearing on his ability to pay. Spiller attached his Rule 13.3.1 "Financial Affidavit" to the motion and argued that it demonstrated that he was unable to pay the amount ordered by the court.

¶15 On October 9, 2012, Spiller filed a petition for modification of temporary child support. Spiller argued that his monthly child support obligation should be reduced to account for his health insurance premiums and that he should receive a credit for overpayment of child support retroactive to December 6, 2011, because his insurance premiums were not deducted from his net income when the December 6 child support order was entered. Spiller attached to his petition what he claimed was his paystub from December of 2011 showing an insurance premium of \$179.43. Spiller further argued that the December 6 order required him to put the minor on his health insurance plan but that he was told by his employer that enrollment was closed and would not open again until August of 2012. Spiller asserted that he put the minor on his health insurance plan in August of 2012 and attached to his petition his most recent paystub which he claimed showed that his monthly payment for insurance coverage for himself and the minor was \$330.94. Spiller asserted that because he was ordered to pay the minor's insurance premiums retroactive to December 6, 2011, he was entitled to deduct that amount from his net income for child support purposes retroactive to December 6, 2011.

¶16 On December 7, 2012, Zurita filed another "Rule 237 Notice" requesting that Spiller produce tax returns, pay stubs and other financial documents. On April 11, 2013, Zurita filed

another motion to compel his compliance with her "Rule 237" request to produce documents.

¶17 On June 18, 2013, the circuit court denied Zurita's second motion to compel and also denied Spiller's motion to reconsider. The court granted Spiller's motion for modification of child support. The court ordered the parties to "figure amount due and owing" from Spiller to Zurita "based upon the court order of 8/28/12 and credits allowed [to Spiller] based upon today's order" and "payments, if any, made by [Spiller]."

¶18 On July 30, 2013, Zurita filed a petition for attorney fees seeking \$11,932 in fees that she claimed to have incurred as a result of Spiller's intentional refusal to comply with the court's orders regarding discovery, child support and child-related expenses. On July 30, Spiller's attorney filed a motion to withdraw as his counsel.

¶19 On August 6, 2013, with leave of court, Zurita filed a motion to compel Spiller to pay the amount he was in arrearage for child support and child-related expenses. On September 5, Zurita filed a petition for rule to show cause against Spiller for his failure to comply with the court's orders regarding braces and other orthodontic needs of the minor (citing the July 10, 2012 order that Spiller was liable for those expenses). Spiller filed a motion to strike the petition for rule to show cause.

¶20 On October 3, 2013, Zurita filed motion for entry of judgment. She claimed that Spiller's current monthly net income was \$3,607.90 and that his guideline child support payment should be \$721.58. On October 10, following a hearing at which both parties were represented by counsel, the court entered judgment against Spiller and awarded Zurita attorney fees of \$4,110, payable by Spiller at \$300 per month. The court granted Spiller's attorney's motion to withdraw. The court granted Spiller's motion to strike Zurita's petition for rule to show cause filed on September 5, 2013, on the ground that the amount for braces was already included in the August

28, 2012 judgment of \$7442.36, which the court noted "has been reduced by respondent's payments." The court ordered Spiller to pay \$125 per month toward the remaining balance of that judgment. The court continued Zurita's motion to compel payment of arrears.

¶21 On November 19, Spiller filed a motion asking the court to reconsider its order of October 10, 2013, awarding Zurita attorney fees of \$4,110. Spiller argued that Zurita was not entitled to attorney fees related to the civil contempt order because the underlying petition for rule to show cause was "fatally defective." Specifically, the contempt finding was based in part of Spiller's alleged failure to make contribution to the minor's expenses despite the fact that the court had never order Spiller to make those contributions. Further, the court's orders requiring Spiller to respond to Zurita's discovery requests were not sufficiently detailed as to what discovery was to be answered. Spiller further argued that the contempt order was defective because it did not state the amount Spiller was required to pay in order to purge the finding of civil contempt. On November 19, Spiller filed a response to Zurita's motion for entry of judgment. Spiller claimed that, based upon his current monthly income and the allowable statutory deductions, his statutory guideline support should be \$680 per month.

¶22 On November 25, Zurita filed a petition for rule to show cause based upon Spiller's "willful and wanton" refusal to pay the attorney fees ordered by the court. On December 3, 2013, following a hearing, the court entered a modified order of support. The court ordered Spiller to pay 721.58 in monthly child support. The court further ordered Spiller to pay \$7,110.75 in child support arrearage, payable at \$125 per month. Finally, the court order Spiller to pay the \$4,110 in attorney fees in three installments of \$1370, each installment being due on January 3, February 3 and March 3 of 2014. The court awarded permanent custody of the minor to Zurita and ordered Spiller to provide medical insurance for the minor. The court entered an amended order of

support on December 17, in which the court entered judgment against Spiller in the amount of \$4,110 in attorney fees and judgment against Spiller in the amount of \$7,110.75, representing child support arrearage. The order reiterated the same payment plan as was indicated in the court's order of December 3. This appeal followed.

¶23 Before reviewing Spiller's contentions on appeal, we note that our review of the issues Spiller raises on appeal is constrained by the fact that we have not been provided with a transcript of any of the hearings before the trial court. This is particularly problematic because the disputed orders in this appeal were issued after a hearing and involve factual findings by the trial court. To support a claim of error, Spiller, as appellant, has the burden of providing a sufficiently complete record of the proceedings below. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Absent a complete record, a reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis, and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Therefore, we will review Spiller's claims of error to the extent possible and we will resolve any doubts arising from the incompleteness of the record against Spiller.

¶24 Spiller first contends that the civil contempt order must be reversed because the underlying child support and discovery orders upon which the contempt finding was based are void as a matter of law. Specifically, Spiller claims that the underlying discovery orders were void because Zurita did not comply with Circuit Court of Cook County Rules 13.3.1 and 13.3.2 and Illinois Supreme Court Rule 201(k) and 237. Spiller further asserts that the temporary child support order underlying the contempt finding is also void because it did not deduct his insurance premiums from his net income.

¶25 In this case, the trial court entered an order of "civil contempt" against Spiller.

"Generally, civil contempt occurs when a party fails to do something ordered by the trial court, resulting in the loss of a benefit or advantage to the opposing party." *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 20. Civil contempt is coercive in nature in that the civil contempt procedure is designed to compel the contemnor to perform a specific act. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43 (1990). "Civil contempt proceedings have two fundamental attributes: (1) the contemnor must be capable of taking the action sought to be coerced, and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order." *In re Marriage of Sharp*, 369 Ill.App.3d 271, 279 (2006).

"Contemptuous conduct is also categorized on the basis of whether it is direct or indirect. Direct contempt is contemptuous conduct which occurs in the presence of a judge. It is strictly limited to actions seen and known by the judge." *Betts*, 200 Ill. App. 3d at 47. On other hand, indirect contempt is contempt which is committed outside the presence of the court. *Id.* at 48.

¶26 We note that in this case, the trial court's contempt order does not specifically state whether Spiller was found in direct or indirect civil contempt. In the briefs submitted to this court, Spiller states that he was found in "indirect civil contempt" while Zurita states that Spiller was found in "civil contempt." Although we do not have a transcript of the contempt hearing, the contempt finding was clearly based upon Spiller's failure to comply with the court's orders regarding Zurita's request for child support and her request to produce documents. Additionally, Zurita's petition for rule to show cause asked the court to find Spiller in "indirect civil contempt." Based upon the above, we believe that Spiller was found in indirect civil contempt.

¶27 Whether a party is guilty of indirect civil contempt is a question for the trial court, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence

or the record reflects an abuse of discretion." (Internal quotation marks omitted.) *Bank of America, N.A.*, 2012 IL App (1st) 113178 at ¶ 20. Further, when a party appeals contempt sanctions for refusing to comply with a discovery order, the underlying discovery order itself is subject to review. *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 458 (2006). A contempt citation is an appropriate method for testing the propriety of a discovery order and if the discovery order is found to be invalid, a contempt judgment for failure to comply with that discovery must be reversed. *Flannery v. Lin*, 176 Ill. App. 3d 652, 655 (1988). Moreover, Spiller's contention regarding the court's discovery orders requires this court to interpret the Circuit Court of Cook County Rules of the Court. The interpretation of statutes, regulations, and rules of the court is a question of law, which we review *de novo*. See *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002). With rules, as with statutes, our goal is to ascertain and give effect to the drafters' intention. See *In re Storment*, 203 Ill. 2d 378, 390 (2002). The most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning. *Robidoux*, 201 Ill. 2d at 332. A court may not depart from the plain language of the rule and read into it exceptions, limitations, or conditions that are not expressed. See *Gaffney v. Board of Trustees of the Orlando Fire Protection District*, 2012 IL 110012, ¶ 56.

¶28 With respect to the contempt finding based upon the underlying child support orders, we note that generally the award of child support lies within the court's discretion and we will not disturb its decision absent an abuse of that discretion, *i.e.*, unless the trial court's ruling is arbitrary, fanciful, or unreasonable or no reasonable person would take the view of the trial court. *In re Marriage of Lindman*, 356 Ill.App.3d 462, 467 (2005). We allow a trial court's factual findings to stand unless they are contrary to the manifest weight of the evidence, *i.e.*, when they are unreasonable or not based on the evidence. *In re Marriage of Eberhardt*, 387 Ill.App.3d 226,

233 (2008).

¶29 Spiller's first argument is that the court's orders that Spiller respond to Zurita's discovery requests were improper because Zurita failed to serve her proof of income document and thus failed to comply with the Circuit Court of Cook County Rules of the Court 13.3.1 and 13.3.2.

Circuit Court Rule 13.3.1, entitled "Mandatory Disclosure," provides:

"(a) Pre-Judgment Disclosure - In all pre-judgment proceedings in which a party is seeking division of the marital estate, to establish, modify or enforce an order for maintenance, child support or educational expenses pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act, disposition of property in a civil union, retroactive child support in parentage matters, or an award of fees and costs against the other party, each party shall serve a completed disclosure statement of incomes, expenses, and assets ("Disclosure Statement") upon the other party on forms approved by the court.

(e) Discovery -In pre-judgment and post-judgment proceedings, *a party shall serve the other party with a completed "Disclosure Statement" before seeking discovery pursuant to Supreme Court Rule 201 unless otherwise ordered by the court for good cause shown.*"

(Emphasis added.) Circuit Court of Cook County Rule 13.3.1.

Rule 13.3.2, entitled "Proof of Income," states:

"(a) In all proceedings where a Rule 13.3.1 Disclosure Statement is required, each party shall serve upon the other party, together with the Disclosure Statement, copies of the party's last two (2) calendar years' filed individual, partnership and corporate federal and state income tax returns, the most recent pay stub showing year-to-date earnings and

deductions therefrom, or if the year-to-date information is not provided by the employer, the five (5) most recent pay stubs, and records of any year-to-date additional income and compensation (paid and deferred) not reflected in the pay stubs. Where a party has not yet filed a federal or state income tax return for the prior calendar year, the last filed year's return shall be served upon the opposing parties as well as all W-2's, 1099's and K-1's received necessary for preparation of the prior year's return." Circuit Court of Cook County Rule 13.3.2.

¶30 Spiller essentially reads these two rules together to require that a party serve upon the other party both a Circuit Court Rule 13.3.1 disclosure statement and the Circuit Court Rule 13.3.2 proof of income documents before that party may seek discovery. Spiller notes that Zurita served him with a request to produce documents on or about October 7, 2011, before she served him with her disclosure statement on October 28, 2011. Further, Spiller notes that as of the date of the contempt order, August 28, 2012, Zurita had still not served him with her proof of income documents despite his "multiple requests" that she do so. Therefore, Spiller concludes, Zurita was not entitled to seek discovery until she served him with her proof of income documents and, because she did not, the trial court's orders that Spiller respond to Zurita's discovery requests were improper and the contempt finding upon which those orders was based must be reversed.

¶31 We disagree with Spiller's interpretation of the circuit court rules. It is true that pursuant to Circuit Court Rule 13.3.1(e), a party is required to serve the other party with a disclosure statement before seeking discovery. It is also true that under Circuit Court Rule 13.3.2, in all proceedings where a disclosure statement is required, each party must also serve the other party with the enumerated proof of income documents. The flaw in Spiller's argument is that while Circuit Court Rule 13.3.1 contains the limitation on discovery before a disclosure statement has

been served, there is no such limitation found in Circuit Court Rule 13.3.2. The discovery limitation is contained in Rule 13.3.1 and if the same limitation was intended to apply to the proof of income documents, the drafters of the circuit court rules could have included the same type of limiting language in Circuit Court Rule 13.3.2. The discovery limitation was not included in Rule 13.3.2 and we will not read into the rule a limitation not expressed. See *Gaffney*, 2012 IL 110012, ¶ 56.

¶32 Therefore, it is of no consequence that Zurita served her request to produce before she served Spiller with her disclosure statement. Once Zurita served Spiller with her disclosure, she was in compliance with Circuit Court Rule 13.3.1. After she was in compliance with Circuit Court Rule 13.3.1, Zurita filed multiple motions seeking to compel Spiller to comply with her request to produce and the trial court repeatedly ordered Spiller to so comply. Those orders were properly entered and Spiller's contention that they were void and that the contempt finding must be reversed for failure to comply with the circuit court rules is without merit.

¶33 In a related argument, Spiller claims that the trial court erred in ordering him to comply with Zurita's Supreme Court Rule 237 notice requesting that he produce certain financial documents. Spiller argues that at Rule 237 notice should not be used as a substitute for Supreme Court Rule 214, and that the trial court should have stricken the Rule 237 notice and required Zurita to file a discovery request pursuant to Rule 214. We disagree. Zurita's original request to produce documents was filed pursuant to Rule 214. Spiller did not comply with that request and Zurita's subsequent Rule 237 notice seeking financial documents from Spiller was filed in anticipation of the hearing on Zurita's petition for child support. Therefore, we reject Spiller's claim that the trial court should have struck Zurita's Rule 237 notice.

¶34 Spiller next claims that Zurita failed to comply with Supreme Court Rule 201(k). That

rule, entitled "Reasonable Attempt to Resolve Differences" states:

"The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences." Ill. S. Ct. R. 201(k) (eff. July 1, 2014).

Spiller claims that the "record reveals" that Zurita failed to meet the "personal conference" and reasonable efforts requirement and that Zurita's motion to compel Spiller's compliance was therefore premature.

¶35 Contrary to Spiller's claim, Zurita's motion to compel contains a statement that reasonable efforts were made to resolve the parties' differences over the discovery request. Attached to that motion was a letter from Zurita's counsel enclosing Zurita's disclosure statement and reiterating Zurita's request to produce documents. Moreover, this is an instance where the lack of transcript hinders our review of this claim because we do not know if the issue of reasonable efforts was discussed at a hearing and, if so, whether the trial court made an express finding that reasonable efforts had been made. Regardless, it is apparent from the record that the parties were unable to reach an agreement and that the trial court therefore ordered Spiller to comply with Zurita's discovery requests. We find nothing in the record upon which to conclude that the trial court abused its discretion by ordering Spiller to comply with the discovery request.

¶36 Spiller next contends that the contempt order must be reversed because the underlying temporary child support order did not deduct his health insurance premiums from his net income.

¶37 We initially note that although this case was filed pursuant to the (the Parentage Act), the parties agree that the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/501 *et seq.* (West 2010)) are applicable to this issue. Pursuant to section 505(a)(1) of the Marriage Act, the court must impose a minimum amount of 20% of an obligor/non-custodial parent's net income as child support for one minor child. 750 ILCS 5/505(a)(1) (West 2010). The court's findings regarding net income and the award of child support lie within the court's discretion and we will not disturb its decision absent an abuse of that discretion, *i.e.*, unless the trial court's ruling is arbitrary, fanciful, or unreasonable or no reasonable person would take the view of the trial court. *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005); *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103 (1995). We allow a trial court's factual findings to stand unless they are contrary to the manifest weight of the evidence, *i.e.*, when they are unreasonable or not based on the evidence. *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 233 (2008).

¶38 In determining the proper amount of child support, the court must first determine the noncustodial parent's net income. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). The Act defines "net income" as the total of all income from all sources, minus certain deductions such as "[d]ependent and individual health/hospitalization insurance premiums." 750 ILCS 5/505(a)(3) (West 2010). This section has been interpreted to allow for "all" health insurance premiums being paid by the supporting parent, including the premiums that the supporting parent pays for him or herself. See *In re Marriage of Stone*, 191 Ill. App. 3d 172, 175 (1989). Therefore, Spiller was entitled to have his health insurance premiums, if any, deducted from his net income when baseline child support was being determined.

¶39 Spiller's temporary child support was set at \$761.43. It appears that Spiller's premiums

for his own health insurance were not deducted when his net income was calculated. The source of the error is understandable because in his disclosure statement, under the "Required Monthly Deductions" section, Spiller listed "0" for "Health/Hospitalization" Premiums." Spiller instead listed a health insurance premium for himself of \$179.43 on the last page of his disclosure statement under the section entitled "Statement of Health Insurance Coverage." This amount should have been deducted when determining Spiller's net income and child support. Spiller raised this issue in his motion to modify the child support payment, filed on October 9, 2012. At that point, the portion of the contempt order based upon Spiller's refusal to pay the ordered child support payment of \$761.43 should have been vacated. We therefore reverse that portion of the contempt finding based upon Spiller's failure to pay \$761.43 in monthly child support.

¶40 Spiller next contends that the contempt order also improperly included reimbursement for expenses for extra-curricular activities, miscellaneous expenses such as school registration, school uniforms and before-school care, an estimate for braces for the minor and an eye exam and eyeglasses. Spiller further claims that the contempt order improperly required him to pay Zurita \$3,660.40, representing what she had paid for health insurance premiums for the minor.

¶41 In the contempt order, Spiller was required to pay Zurita \$7,442.36, representing \$322.86 for child support arrearage, \$3,660.40 for insurance premiums, \$512.25 for one-half of "swimming" costs and \$3,027.16 for miscellaneous bills. It also appears that the \$3,027.16 includes a physical examination and medication for the minor, school registration fees and a school uniform, an estimate for braces, before-school care and an eye exam and glasses.

¶42 We note again that our review of this issue is limited by the absence of a transcript of the hearing in which Spiller was found in contempt. Nevertheless, we reverse the finding that Spiller was in contempt for failure to pay these amounts. First, as noted, the petition for rule to show

cause did not seek a contempt finding for these expenses. See *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 665 (2006) ("A petition for a rule to show cause initiates the contempt proceedings [citation], and the notice must adequately describe the facts on which the contempt charge is based [citation]"). We note that to comport with due process, a new petition for rule to show cause would have had to have been filed seeking a contempt finding for Spiller's failure to pay these expenses. In fact, in September of 2013, Zurita filed a petition for rule to show cause based upon Spiller's failure to comply with court's July 10, 2012 order and a hearing was held on that petition. Second, the court's July 10, 2012 order that Spiller pay these expenses lacked specificity. After Zurita filed her petition for rule to show cause, a hearing was held on that motion on July 10, 2012. The court entered an order requiring Spiller to pay medical insurance premiums for the minor that had been paid by Zurita, retroactive to December 6, 2011, until the minor was covered under Spiller's insurance and that Spiller was liable for eyeglass bills and braces for the minor. However, that order did not indicate the amounts that Spiller was required to pay or the date by which he was required to make those payments.

¶43 Spiller further claims that the contempt order requiring him to pay \$322.86 in child support arrearage was improper. Spiller asserts that because his health insurance premiums were not deducted from the amount of child support he was ordered to pay on December 6, 2011, he had been paying \$761.43 in monthly child support from December 6, 2011, through August 28, 2012, which was \$35.89 more than required. Spiller claims that these overpayments total \$323.01 and that therefore no amount of arrearage should have been included in the contempt order.

¶44 It is unclear from the record how much Spiller was paying in child support during this period. In his response to Zurita's March 26, 2012 petition for rule to show cause, Spiller claimed

that after the court denied his motion to vacate on January 24, 2012, he sent Zurita child support payments of \$740 in February and March of 2012. Spiller also claimed that he learned the proper amount at the hearing on March 30, 2012, and that he would send Zurita two payments of \$21.43 in addition to his ordered \$761.43. However, we do agree that any amount Spiller was overpaying should be credited against the amount, if any, of child support arrearage.

¶45 Spiller next contends that the contempt order is defective because Zurita's petition for rule to show cause did not set forth the amount that was owed so that Spiller could "purge the amount of the return day." We note that Spiller does not contend that the contempt order is not sufficiently specific with respect to the contempt finding based upon his failure to comply with the court's orders regarding discovery. However, we find that the contempt order with regard to both the discovery violation and child support does not comport with the requirements of contempt law and is therefore void.

¶46 The well-settled principles underlying civil contempt have been set forth as follows:

"In general, civil contempt is 'a sanction or penalty designed to compel future compliance with a court order.' *People v. Warren*, 173 Ill. 2d 348, 368 (1996). Civil contempt is a coercive sanction rather than a punishment for past contumacious conduct. *Id.* at 368. For this reason, a valid purge condition is a necessary part of an indirect civil contempt order. *In re Marriage of Logston*, 103 Ill. 2d 266, 289 (1984). A contemnor must be able to purge the civil contempt by doing that which the court has ordered him to do. *Id.* at 289 ('the civil contemnor must be provided with the "keys to his cell" ')."
Felzak v. Hruby, 226 Ill. 2d 382, 391 (2007).

¶47 The contempt order in this case provides as follows:

"This cause coming on to be heard upon the continued petition of Petitioner, a

rule to show cause order having been issued on March 30, 2012 and thereafter continued, and for proveup, Petitioner, Petitioner's counsel, and Respondent being present in court, it is hereby ordered

1) That an order of civil contempt is hereby entered against Respondent Marwin Spiller and counsel for Petitioner is granted leave to file his petition for attorney fees against Respondent for attorney fees incurred by Petitioner as a result of Respondent's failure to comply with court orders and discovery requests;

2) That within 30 days on or before September 7, 2012 Respondent Marwin Spiller pay to Petitioner Martha Zurita the sum of \$7,442.36 (322.86 for child support arrearage; \$3,660.40 insurance premiums; \$512.25 for 1 /2 swimming; \$3,027.16 for miscellaneous fees).

3) That this cause is continue for compliance to October 18, 2012 at 9:30 a.m."

¶48 An examination of the August 28, 2012, contempt order reveals that it fails to impose a sanction that is coercive in nature. That is, there is no sanction imposed that would force the contemnor to comply with the court's orders. Further, there is no provision in the contempt order that instructs the contemnor how he may purge himself of contempt and thus cause the sanctions to be lifted. As is often stated, he was not "given the keys to his cell." Specifically with respect to the contempt order, while there was a provision allowing the filing of a fee petition, there was no provision for a coercive sanction that could be lifted upon compliance. As such, this order fails to satisfy the above legal requirements and must be vacated.

¶49 In summary, we vacate the finding of contempt entered on August 28, 2012. However, as we have found that the arrearage of child support was improperly calculated, we remand this case for a hearing to determine, consistent with this order, the appropriate amount of temporary

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child support that should have been ordered and the amount of arrearage, if any, given the temporary amount of child support that should have been ordered and the payments made by Spiller.

¶50 Circuit court judgment vacated; cause remanded with directions.