2014 IL App (2d) 131278-U
No. 2-13-1278
Order filed December 1, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DAVID W. LOERZEL, Petitioner-Appellant, and FRANCES M. LOERZEL, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 99-D-2623 Honorable Brian R. McKillip, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: In its orders on postdissolution matters, the trial court acted within its discretion in: (1) finding that reasonable living expenses for the parties' daughter were $900 per month while she was enrolled in college; (2) ordering David to pay $750 per month toward these expenses, to be credited toward the 60% of college expenses that he was required to pay; (3) not requiring that Frances pay 40% of the daughter's living expenses while she was still a minor and enrolled in college; (4) denying David's motion to reconsider; and (5) ordering David to contribute to Frances's attorney fees. Therefore, we affirmed.

¶ 2 The marriage of petitioner, David W. Loerzel, and respondent, Frances M. Loerzel, was dissolved on August 8, 2000. The parties have two children: Andrew, born September 28, 1992 (now age 22), and Emily, born March 14, 1994 (now age 20). In September 2011, Frances filed

a petition for an adjudication of indirect civil contempt and a petition for contribution to college expenses. She later filed a petition for contribution to attorney fees and costs. David appeals from the trial court's rulings on these issues, arguing that the trial court erred in: (1) determining that Emily's living expenses were $900 per month; (2) ordering him to pay $750 per month towards those expenses, to be credited toward his 60% share of college costs; (3) failing to allocate Frances 40% of Emily's expenses from August 2011 to March 2012, while Emily was still a minor and enrolled at Elmhurst College; (4) denying his motion to reconsider; and (5) ordering him to contribute to Frances's attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The August 2000 dissolution judgment originally provided Frances with unallocated support of $2,000 for 36 months, at which point it would be reviewable. On December 4, 2003, the trial court extended the unallocated maintenance for an additional 12 months. At the conclusion of that period, David was ordered to pay 28% of his net income per month in child support ($1,550), plus 28% of the net of any bonuses. Andrew began residing with David in the summer of 2009. On June 30, 2010, the trial court ordered that David pay monthly child support of $925.39 to Frances until May 2011, when Andrew became emancipated. David was to then pay $1,757.91 in monthly child support from June 2011 to the end of May 2012, when Emily became emancipated. The trial court also entered judgment against Frances in favor of David for $12,739.47 for a child support surplus that Frances had apparently accumulated based on custody of Andrew being changed to David.

¶ 5 A. Parties' Petitions

¶ 6 On September 6, 2011, Frances filed a petition seeking to have David found in indirect civil contempt. She alleged that David: (1) owed her $6,313.07 for unreimbursed medical and

dental expenses for the children; (2) failed to pay the child support provided for in the June 2010 order; and (3) failed to provide her proof of life insurance and disability insurance, as required under the dissolution judgment.

¶ 7 Also on September 6, 2011, Frances filed a petition for contribution to Emily's college expenses. She alleged that Emily was 17 years old, had graduated from high school, had been accepted by Elmhurst College, and was scheduled to begin her studies there on August 20, 2011.[1] She alleged that Emily would reside on campus and contribute to her own educational expenses through part-time employment and the receipt of grants and aid. Frances alleged that she earned about $50,000 as compared to petitioner's annual earnings of about $140,000, and that they had been unable to agree upon each party's contribution to Emily's college expenses.

¶ 8 On October 5, 2011, David filed a petition to modify the requirement to maintain life insurance. He also filed a petition to terminate child support, stating that Emily would be emancipated as of March 14, 2012. David further filed a motion for contribution to Andrew's college expenses.

¶ 9 B. Witness Testimony

¶ 10 Testimony was heard on six dates from January 2012 to October 2012. We summarize the testimony relevant to the issues on appeal.

¶ 11 1. Emily

¶ 12 Emily testified as follows. She was 18 years old and currently a student at Elmhurst College. She started attending the college in fall 2011, when she was 17 years old. She was studying pre-occupational therapy. After grants and aid, the total due for fall semester was $6,746. The cost for the spring semester was the same. Emily lived at home while attending the

[1] Several of the allegations seem to predate the petition's filing date.

college. Over the summer, Emily was attending the College of Du Page at a cost of about $1,400. She had received a certificate for nursing assistance in August 2010, and during the summer she was working as a "supportive living assist" with Clearbrook, earning $15 per hour. During the school year, she worked about 10 hours per week. She used the money for gas and miscellaneous expenses like going out with friends. Emily planned to return to Elmhurst college in fall 2012. She would receive less financial assistance, making the cost for that semester $12,500, excluding about another $1,500 for lab fees and books. She planned to transfer to University of Iowa for spring semester 2013, and the cost for tuition and board would be about $20,000 per semester.

¶ 13 Emily had a prepaid tuition plan, but she did not know the balance. She did not discuss what college she was going to attend with David before she applied. Emily had options for student loans but had not taken any.

¶ 14 Frances primarily took Emily to her medical visits, but David had taken her to the doctor as well. In 2011, Emily had two conversations with David about her taking a skin medication. He asked why she needed it and complained about Frances attempting to get payments from him for it. David did not say that the medicine had unhealthy side effects, such as suicidal ideation. Emily had suicidal ideation after taking the medication but did not believe that they were linked. Emily took the medication because she had "painful and scarring pusticular and cystic acne[.]"

¶ 15 2. Frances

¶ 16 Frances testified as follows. The dissolution judgment provided that the parties would equally split the children's medical and dental expenses. She took Andrew and Emily to the dermatologist on various dates from 2008 to 2011, as shown in receipts. Frances sent copies of the bills to David about five times. Frances also took the children to the dentist. Andrew got

braces in 2005, and David sometimes took him to appointments. The kids also went to their primary care doctor and had optical expenses. Emily received a chest x-ray in 2007, and she saw a counselor from 2010 on. Emily also had to go to the hospital for psychiatric treatment in 2011, and the amount that was going to be owed was about $5,100. Frances further paid ambulance bills for Emily of $301 and $287.60. Frances sent copies of such expenses to David, though she could not recall how many times. Frances made all of the payments not covered by insurance, and she never received any payments from David.

¶ 17 Frances agreed that the dissolution judgment stated that she would "consult" David "in the event of serious illness [of] a child, or the need for hospital, surgical, optical or orthodontia or extraordinary medical expense or dental care[.]" Frances agreed that she did not personally consult with David before incurring the charges. She attempted to communicate with him about the children's need through them and through letters, but David never responded. She had not spoken directly to David since the dissolution judgment was entered. Andrew's braces were visible, but David never said anything about them. She would also instruct the children to take their medication while they were at David's house.

¶ 18 Regarding college expenses, Frances had set up a "College Illinois" plan around 2001, after the divorce, and had made monthly contributions to it of about $93 per child per month. No one else contributed to the plans. Frances used funds from the plan to pay for Emily's tuition at Elmhurst College and College of Du Page. The total costs for books had been under $500 for Elmhurst College because Emily had bought used books on-line; books at College of Du Page cost $155. Frances paid for Emily's car insurance, clothing, and grooming expenses.

¶ 19 Frances originally had College Illinois accounts for both children, but in August 2011 she transferred some of the funds from Andrew's account to Emily's account because Andrew had

many Fs his senior year of high school and did not seem to be headed to college. Frances also received a check from the State for $7,332.24 for the remaining funds in Andrew's account, which she used to pay attorney fees. Frances was essentially estranged from her son and did not know that he was attending college. Emily's plan would cover four years of an Illinois state university plus an additional semester; the "total benefit" that she would receive "would be $25,958 for the four years of university[.]"

¶ 20 Frances worked as a registered nurse for Loyola, and her gross monthly income was $4,351.76. She agreed that on her comprehensive financial statement, she deducted $749.48 for taxes based on her pay stub, even though she received a tax refund of $4,623 in 2011. There was also $925.59 listed as a support expense, whereas it should have been listed as child support income that she was receiving from David. The $250 she listed for her car insurance covered both her and Emily, and there was not an additional $175 for Emily's car insurance as listed in Emily's expenses. Frances also had her own health insurance cost of $138.60 per month listed twice. She had listed $350 per month in entertainment, which would cover movies and dinner for herself. Regardless of the numbers on her statement, she earned $54,598 in 2010 and $54,766 in 2011, and she paid her bills from those amounts.

¶ 21 3. David

¶ 22 David provided the following testimony. He worked as a supervisor for a heating/air conditioning company. In 2011, his base salary was $134,940, he had a bonus of $13,200, and he had over $500 in commissions, so he earned at least $148,640 that year. David had taken a $36,000 loan against his 401(k) for attorney fees. He also had a small credit card debt, a car loan, a $1,800 monthly mortgage payment, and a $120 monthly payment for his purchase of a

new bed. He also paid expenses for Andrew of about $716.67 per month and paid for Emily's cell phone.

¶ 23 David had not made any payments to Elmhurst College or College of Du Page on Emily's behalf. He believed that Emily's tuition should be paid from the College Illinois plan. Although he did not directly contribute to the plan, he paid "$2,200" a month in child support and thought that Frances should have segregated some of that money for college. Andrew enrolled at the College of Du Page in July 2011. David did not contact Frances to let her know. David had paid all of Andrew's bills for college tuition and books.

¶ 24 David obtained a life insurance policy in December 2011, after Frances had filed a petition regarding life insurance, in order to comply with the dissolution judgment. He had not previously been aware that the insurance term of the prior insurance had expired. David later agreed that the policy had not expired, but rather he had terminated it. David had a $150,000 insurance policy through his employer that was effective from about 2005 to early 2010, when it ran out.

¶ 25 Frances spoke to David about having Andrew get braces around spring 2005. David said that he could not afford the expense at that time. Therefore, and because Andrew's teeth were not "horrible," he did not think he should have to pay the orthodontist bills. David did not receive copies of the orthodontist bills until 2011. David first found out that Emily was seeing a psychiatrist when he received an "explanation of benefits" in fall 2011. He did not believe that he should have to pay the psychiatrist bills because he was not consulted about it and did not agree with the course of treatment. David was never notified that Emily was also seeing a psychologist and believed that he should not have to pay for that, either, because he did not even know that she needed mental healthcare when she began the visits. About three years before,

David had a conversation with Emily where he told her that he did not agree with her taking the skin medication because it had bad side effects. David agreed that he received insurance statements showing what healthcare claims for the children were being processed.

¶ 26 David had paid pharmacy costs, doctor's bills, eyeglass bills, and dental bills for the children in the past, including taking Emily to the hospital in October 2007, and he never sought reimbursement for half of those amounts from Frances. David had also paid collection notices that he had received for medical bills, and he had been paying all of Andrew's medical bills since Andrew came to live with him. He found bills totaling $3,199.76, but he had paid additional bills for which he no longer had receipts.

¶ 27 4. Andrew

¶ 28 Andrew testified that he graduated in June 2011 and began attending College of Du Page that fall. He took four classes that semester but only completed one of them, in which he received an F, because of "stuff going on in [his] life." Andrew received a C, two Ds, and an F in his classes the second semester. He received a C in a class he took over the summer. David paid for all of Andrew's college expenses. Andrew was currently also working at Denny's and earning about $200 per week, which he used for gas and his monthly car payment of $253.99. David paid for Andrew's remaining expenses. Andrew planned to continue taking classes at the College of Du Page and wanted to transfer to a university the next fall.

¶ 29 C. Petition for Contribution to Attorney Fees

¶ 30 On October 11, 2012, Frances filed a petition for contribution to attorney fees and costs, alleging that David had failed to comply with the dissolution judgment's provisions and subsequent orders. She alleged that she had incurred $18,617.50 in attorney fees and costs and that David had sufficient income to pay this amount while she did not. Frances requested that

David pay for all or part of these expenses. Frances filed an amended petition for contribution in May 2013 in which she sought $23,862.50. Her petition stated that she had paid $12,165.70, leaving a remaining balance due of $12,317.09.[2] In an addendum filed in July 2013, Frances filed an affidavit from her attorney indicating that she had incurred an additional $1,362.36 in attorney fees.

¶ 31 D. Trial Court's Ruling on Initial Petitions

¶ 32 The trial court issued a written memorandum ruling on January 25, 2013. It entered an order on its ruling on March 7, 2013. The trial court stated as follows in its written memorandum. As an overall observation, even though the parties were originally given joint custody of their children, they were either unable or unwilling to jointly parent, in that they were either unable or unwilling to communicate with each other.

¶ 33 Turning to the medical, dental, and related expenses of the children, Frances's testimony that she demanded that David fulfill his obligation under the dissolution judgment by paying for half of the bills was more credible than David's testimony that he did not receive the demands. Also, David could not deny that he knew that the children were receiving various medical and orthodontia care. Therefore, David was in contempt of court for his willful failure to comply with the judgment. It found that $8,500.02 of medical expenses submitted by Frances should be shared by the parties; it did not include costs for the skin medication because David's testimony that he objected to the drug was credible. It found that the parties should also share $2,741 of medical expenses submitted by David. Therefore, David could purge himself of the contempt by paying Frances his remaining share of the medical expenses, $2,879.51, within 30 days.

[2] These sums include interest and costs not included in the $23,862.50.

¶ 34 On the subject of child support arrearage, it was undisputed that David did not timely pay the full amount of child support. David was obligated to pay $1,757.91 a month from June 2011 until March 2012, but apparently only $925.39 was being withheld from his paychecks those months, creating a monthly deficiency of over $800. David made additional payments in September and December 2011 to bring child support up to the full amount. However, the evidence showed that David was fully aware that he was not meeting his monthly obligation as it was accruing. Therefore, David was in contempt for failing to timely pay the full amount due; David was not allowed to " 'borrow' " money from Frances, in violation of a court order, and pay it back at his convenience.

¶ 35 Regarding life insurance, the testimony was clear that for a period of time David did not have a policy in the amount required by the dissolution judgment.

¶ 36 As for college contributions, each party had filed a petition asking the other to contribute to the college education of the two children. Andrew's academic performance was at such a level that the trial court could not justify obligating either parent to contribute to his education, unless and until Andrew could obtain a C average for one full-time term at the College of Du Page.

¶ 37 David raised the issue of child support payments that he made during the time that Emily was attending Elmhurst College and was still a minor. "Those payments were child support and cannot be considered a contribution to college expenses." However, "the statute" provided that in addition to tuition, room and board, and books, college education expenses could include living expenses during the school year and in period of recess. "Child support would be in payment of those expenses during the period of time that Emily was a minor and attending college while living at home with her mother." Following her 18th birthday and continuing

during the time that Emily lived at home and attended either Elmhurst College or College of Du Page, David should contribute to her living expenses. Frances's comprehensive statement showed total monthly living expenses of almost $7,000, and it specifically allocated $680 to Emily. Emily's listed expenses did not include any allocation of a portion of the rent, utilities, food, or other common expenses. It did include medical costs of $210, which should be shared with David because each of the parties was required to pay one-half of the unreimbursed medical expenses of the child while she is a full-time student. The trial court stated:

> "Based upon the Comprehensive Financial Statement, I find that reasonable living expenses for Emily while she is a commuter student at COD or Elmhurst College, for reasonable allocation of rent, utilities, food etc., to her would be approximately $900 per month. Emily should be responsible for her automobile expenses including insurance and fuel and any personal expenses. Accordingly, [David] shall be required to pay [Frances] the sum of $750 per month during those periods of time that Emily is a full-time student and living at home. It would include, however, summer periods in between college terms."

¶ 38 As for the College Illinois Plan, there was certainly confusion as to what it covered. However, Frances should receive credit for contributing the value of the plan. Although David argued that Frances's contribution to the plan should be measured by the cost Frances paid for the plan rather than the plan's value as recognized by the university, that would be contrary to what should be a policy of encouraging parties to plan for their children's education.

¶ 39 Based upon the parties' needs, expenses, age, and other factors, David should contribute 60% of Emily's educational expenses and Frances should contribute 40%. Those expenses would consist of tuition, fees, books, and other " 'hard' " costs of college. For the period of time

that Emily lived at home, the $750 David had been ordered to pay would be credited to his 60%. The tuition satisfied by the College Illinois Plan would be credited to Frances's 40%. If Emily began attending a college where she was a resident student, the room and board would be included in the " 'hard' " cost to be divided between the parties 60% and 40%, again with credit being given to Frances for tuition satisfied by the College Illinois plan.

¶ 40 D. Motions to Reconsider

¶ 41 On April 5, 2013, David filed a motion to reconsider. He argued in a memorandum supporting the motion that: (1) the trial court failed to consider that the child support he paid from fall 2011 to March 2012, when Emily turned 18, greatly exceeded tuition expenses, so Frances should be responsible for 40% of that amount; (2) the $900 per month found to be Emily's living expenses was excessive; (3) the requirement that David pay Frances $750 per month for Emily's living expenses, to be credited toward his 60% of college expenses, was excessive; and (4) the trial court should have set conditions precedent for the payment of college expenses for Emily, including a C average. David filed an amended motion to reconsider on May 9, 2013, seeking the same general relief.

¶ 42 Frances also filed a motion to reconsider the same day. She argued that the trial court: (1) miscalculated that David owed $2,879.51 in medical expenses for the children, rather than $5,759.02; (2) failed to specifically allocate Emily's college expenses prior to her turning 18; (3) incorrectly listed that David's income was over $48,000, rather than over $148,000; and (4) should have divided college expenses such that David paid 70% rather than 60%.

¶ 43 D. Trial Court's Rulings on Attorney Fees and Motions to Reconsider

¶ 44 The trial court issued a memorandum order on the parties' motions to reconsider on July 31, 2013. It denied David's motion, stating as follows. David sought a reallocation of the child

support amounts he paid while Emily was a minor and attending Elmhurst College. However, during that time child support was appropriate because Emily was a minor, regardless of whether she was attending high school, college, or no school. David further sought a reduction of the $750 per month that he was ordered to pay while Emily was living at home and attending college, but the trial court found no basis to modify its original order in this regard. In addition, David requested that the conditions placed on Andrew before the court would consider a motion to contribute to college expenses also be applied to Emily. However, those conditions were based on Andrew's previous performance. The trial court granted Frances's motion in part, amending its March 7, 2013, order to state that David's income was over $148,000, and that the purge amount to be paid by David for medical expenses was $3,074.51. The trial court entered an order incorporating the memorandum ruling on November 4, 2013.

¶ 45 The trial court issued a memorandum ruling on Frances's amended petition for contribution to attorney fees on October 16, 2013. The trial court stated as follows. The basis of the request for relief was the finding that David was in indirect civil contempt for his failure to comply with previous court orders relating to the payment of child support and medical expenses, and the requirement to maintain life insurance. However, some of the fees sought by Frances related to services performed for the cross-petitions for contribution to college expenses. The fees reasonably related to the finding of indirect civil contempt totaled $6,615, and it awarded Frances this amount. Frances also sought contribution for her remaining fees. Fees of $17,613 were reasonably related to the petitions for contribution to college. Frances earned about $54,000 per year, and David earned over $148,000 per year. Based on the parties' financial circumstances and the factors to be considered under section 508(a), it awarded Frances

$4,500, which represented about 25% of the balance of the fees. The trial court entered a written order on November 4, 2013. David timely appealed.

¶ 46 II. ANALYSIS

¶ 47 We initially note that Frances has not filed a brief in this case. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), our supreme court provided three possible approaches to such a situation. First, we may serve as advocate for the appellee and search the record for purposes of sustaining the trial court's judgment if justice requires. Second, we should decide the merits of the appeal if the record is simple and the claimed errors are such that we can easily decide them without the aid of an appellee's brief. Third, if the appellant's brief demonstrates *prima facie* reversible error, as supported by the record, we may reverse the trial court's judgment. *Id.* Here, the second option applies, as the issues David raises on appeal require a relatively straightforward analysis.

¶ 48 A. Emily's Living Expenses

¶ 49 David first argues that the trial court erred in determining that Emily's living expenses totaled $900 per month. Under section 513(a)(2) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/513(a)(2) (West 2012)), the trial court may make provision for educational expenses, including but not limited to "room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, *and living expenses during the school year and periods of recess*[.]" (Emphasis added.) Section 513 expenses are a form of child support. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 13. In making an award of educational expenses, the trial court should consider all relevant factors, including both parents' financial resources; the standard of living the child would have enjoyed had the marriage not been dissolved; the child's financial

resources; and the child's academic performance. 750 ILCS 5/513(b) (West 2012). We review a trial court's factual findings under the manifest-weight-of-the-evidence standard, but we review a trial court's ultimate decision on whether to award educational expenses under an abuse-of-discretion standard. *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877-78 (2008). A trial court abuses its discretion only if its ruling is arbitrary, fanciful, or unreasonable, or no reasonable person would take the trial court's view. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22.

¶ 50 Frances listed Emily's monthly living expenses as follows: clothing ($50); grooming ($50); doctor ($45); dentist ($15); medication ($150); clubs/summer camps ($65); vacation ($100); entertainment ($30); and car insurance ($175). These expenses totaled $680. The trial court noted that the expenses did not include an allocation of a portion of the rent, utilities, and food, and it found that Emily's reasonable monthly expenses were $900 per month including such an allocation.

¶ 51 David argues that the trial court based Emily's monthly expenses on Frances's comprehensive financial statement, but Frances had exaggerated monthly expenses. David argues that Frances's statement would total $83,433 in expenses per year, but the evidence showed that Frances had a gross annual income of $54,766. David argues that even if his child support payments were included, that would equal only $75,860.92 annually. David also points out that Frances admitted to inaccuracies in her statement, in that she listed child support of $925.39 as an expense rather than income. David argues that maid services of $175 per month, for which Frances did not have documentation, and a second mortgage of $1,000 per month, for which Frances also did not have documentation and did not know the outstanding balance, should not be considered, either. David cites *Best v. Best*, 358 Ill. App. 3d 1046 (2005), for the

proposition that when a witness testifies falsely as to one material point, the trier of fact may disregard the uncorroborated testimony of that witness regarding other points. David argues that, therefore, the trial court's determination that Frances's expenses totaled $7,000 per month was unreasonable.

¶ 52 David's statement that the trial court made a factual finding that Frances's expenses were $7,000 per month is inaccurate. Rather, the trial court found that it had examined Frances's comprehensive financial statement, and that the statement showed total monthly expenses of almost $7,000 per month. The trial court did not find that this amount was accurate or reasonable. Instead, the trial court focused on the expenses attributed to Emily. As far as David's citation to *Best*, that case actually states that when a witness testifies falsely as to one material point, the trier of fact "may" disregard the witness's uncorroborated testimony on other points. *Best*, 358 Ill. App. 3d 1046, 1055 (2005). Here, Frances admitted that there were mistakes in her financial statement, so her testimony itself was not false. Even otherwise, the trial court was not required to disregard all of Frances's testimony, and it could assess the expenses listed for Emily independently.

¶ 53 David argues that the monthly expenses Frances listed for Emily were also exaggerated. David argues that Frances included health insurance premiums of $138.60 for herself both on her total required deductions and as a child-related expense. While we agree with David that Frances admittedly listed her health insurance premiums on her financial statement twice, they were included under the categories of required deductions and miscellaneous expenses. In other words, this number was not included at all in the $680 Frances listed for Emily's monthly expenses.

¶ 54 David additionally argues that Frances testified at trial that she paid a single car insurance premium of $250 that included herself and Emily, and that she did not pay an additional $175 for Emily as listed in Emily's monthly expenses. David argues that this amount should therefore be deducted from Emily's expenses. However, David ignores the trial court's finding that Emily should be responsible for her own car insurance. Therefore, it was not in error for the trial court to attribute the $175 to Emily's monthly expenses. In other words, while we recognize that car insurance is "double-counted" in Frances's total monthly expenses, our review, as stated, is focused on Emily's monthly expenses.

¶ 55 David also argues that Frances failed to provide evidence of the costs for room and board at Elmhurst College, and the $900 per month likely exceeds that amount. However, the $680 Frances listed as Emily's monthly expenses did not include either room or board, so this figure would not change if Emily had lived on campus. The trial court did add $220 to the $680, with the total of $900 including an allocation for Emily's rent, utilities, and food. Still, room and board at a private college would presumably cost significantly more than $220 per month. Therefore, David's argument is without merit.

¶ 56 In the end, considering the factors under section 513(b) of the Marriage Act, the trial court's finding that reasonable living expenses for Emily were $900 per month, including car insurance and an allocation for room and board, was not against the manifest weight of the evidence.

¶ 57 B. David's Share of Emily's Living and College Expenses

¶ 58 David next argues that the trial court erred in directing him to pay $750 per month toward Emily's living expenses, to be credited towards his 60% share of the hard costs of college. The

trial court's allocation of educational expenses between the parties is reviewed for an abuse of discretion. See *Street v. Street*, 325 Ill. App. 3d 108, 115 (2001).

¶ 59 David argues as follows. A payment of $750 totals more than 83% of the living expenses and is contrary to the trial court's ruling that he should contribute 60% of Emily's educational expenses. When Emily's living expenses are properly reduced to $586.40 based on the deductions he argued earlier, David's payments create a monthly surplus to Frances of $313.60. The surplus to Frances is further augmented by the fact that Frances has not incurred educational expenses other than the payment of $15,788 to the College Illinois prepaid tuition plan. Frances testified that Emily's account covered four years of a university plus an additional semester, and Frances did not know what, if any, out-of-pocket costs she would incur for Emily over and above what the prepaid plan provided. Because of the lack of such out-of-pocket expenses, Emily did not even apply for scholarships or grants for the 2012-13 school year and did not apply to Loyola University, Frances's employer, where tuition would have been discounted. Emily's prepaid college fund is part of the financial resources of the child under section 513, and it is also analogous to scholarship money. Emily should be required to use all of the money in the plan before the trial court required a parent to contribute. Reimbursing Frances for 60% of college expenses that she herself did not incur, along with paying for more than 100% of Emily's living expenses, creates a financial windfall for Frances.

¶ 60 We reject David's argument that Emily's living expenses are $586.40, for the reasons stated earlier. As for potential reduced tuition at Loyola for children of employees, Frances testified that the university used to have such a plan but did not know if it was still in effect. Therefore, while the trial court could consider that Frances did not fully investigate this option, there was no evidence that Loyola actually offered such a discount, or that Emily would have

been accepted at that university. The trial court acted within its discretion by not treating the money in the prepaid tuition plan the same as scholarship money, because scholarship money comes from a third party whereas Emily's prepaid plan was funded entirely by Frances. While David argues that the plan will cover all of Emily's education, Frances actually testified that it would cover four years of an Illinois state university plus an additional semester. In other words, it was unclear how much of a private or out-of-state university tuition the plan would cover. Regardless, the trial court did not abuse its discretion in allowing the entire plan amount to be credited towards Frances's share of tuition, because as the trial court pointed out, an opposite result would be contrary to encouraging parties to plan for their children's education. That is, Frances was under no court-ordered obligation to set aside money for the children's college education, and her decision to do so could properly be credited to her share of tuition by the trial court, as such a ruling was not arbitrary, fanciful, or unreasonable. This is especially true given that the trial court did not require David to pay $750 per month for living expenses in addition to 60% of the "hard" costs of education, but rather ordered that the $750 be credited towards David's 60% of such costs.

¶ 61 C. Frances's Share of Emily's Living Expenses from August 2011 to March 2012

¶ 62 David points out that Emily began attending Elmhurst College in August 2011, when she was 17 years old, and that from that time until she turned 18 in March 14, 2012, he continued to pay child support. He argues that according to the trial court's ruling, Emily's living expenses were $900 per month, equaling $7,650 for 8½ months, but he paid $14,942.33 in child support during this time. David argues that Frances therefore received a substantial surplus. David cites *In re Marriage of Mulry*, 314 Ill. App. 3d 756 (2000), for the proposition that a parent's obligation to provide child support generally terminates when the obligation to provide

educational support begins. He argues that his child support payments for this period therefore should have satisfied his college contribution requirements for those months, or he should have received a credit for future years. He also argues that Frances should have been responsible for 40% of Emily's living expenses during this time.

¶ 63 As stated, we review the trial court's allocation of educational expenses for an abuse of discretion. See *Street*, 325 Ill. App. 3d at 115. In *In re Marriage of Mulry*, 314 Ill. App. 3d at 758, the case David cites, the appellate court actually stated that a parent's obligation to support a child generally terminates when the child reaches majority. Here, Emily did not turn 18 until March 2012, making child support payments appropriate until that time. Under section 510(d) of the Marriage Act (750 ILCS 5/510(d) (West 2012)), child support is terminated upon the child's emancipation, with some exceptions not pertinent here. Whether a child is emancipated is a question of fact, depending on factors such as whether the minor has left the protection and influence of the parental home and whether the minor has assumed responsibility for his or her own care. *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 486 (2010). Here, David did not seek a finding that Emily was emancipated before she turned 18, nor could the facts support such a finding, as Emily continued to live at home while she attended college and was financially supported by the parties. Therefore, David was obligated to provide child support until Emily turned 18. See also *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 476 (extraordinary circumstances must be present before allowing child support to terminate before emancipation by reaching the age of majority); *In re Marriage of Smith*, 100 Ill. App. 3d 1126, 1132-33 (1981) (vacating portion of judgment that terminated child support upon graduation from high school, without regard to child's age).

¶ 64 While David emphasizes that the amount he paid in child support was much greater than the $900 per month the trial court found to be reasonable living expenses for Emily, the child support guidelines are intended to protect children's rights to be support by their parents in an amount commensurate with the parents' income (*In re Marriage of Turk*, 2014 IL 11673, ¶ 25), rather than a strict application of "reasonable" living expenses. Here, under the June 2010 order, David was obligated to pay monthly child support of $1,757.91 until Emily's emancipation, which was later determined to be in mid-March 2012 when she turned 18. This obligation was David's, not Frances's, so Frances was not responsible for 40% of Emily's living expenses during that time. Although the trial court could have arguably reduced David's obligation for his share of college tuition during this time, its decision not to do so was not an abuse of discretion, as the trial court may award educational expenses even when the child is a minor (750 ILCS 5/513(a)(2) (West 2012)), and the tuition expenses were in addition to the expenses Emily previously had when she was still in high school and the same amount of child support was being paid.

¶ 65 D. Motion to Reconsider

¶ 66 David's fourth argument on appeal is that the trial court erred in denying his motion to reconsider. David argues that although he sought "clarification" of the trial court's January 24, 2013, ruling, the trial court denied his motion without providing any such clarification. David maintains that in the absence of such clarification, the parties have differing interpretations of the court's March 7, 2013, order incorporating the January 14, 2013, ruling. David argues that he interprets the March 2013 order to require that the payment of $750 per month be applied toward his 60% share of college expenses, whereas Frances interprets the same requirement as the payment of 60% of all college expenses in addition to the $750 per month. David argues that as

a result of the ambiguity, the parties have been unable to implement the terms of the March 2013 order. David contends that, accordingly, the trial court erred in not providing the requested clarification.

¶ 67 The January 2013 ruling states in relevant part:

> "I believe that [David] should contribute 60% of Emily's educational expenses and [Frances] contribute 40%. Those expenses will include tuition, fees[,] books and other 'hard' costs of college. *For the period of time that Emily lives at home, the $750 ordered to be paid by [David] will be credited towards his 60%*. The tuition satisfied by the College Illinois Plan will be credited to [France's] 40%." (Emphasis added.)

The March 2013 order states that the findings and comments in the January 2013 letter memorandum are "specifically incorporated into and made a part of this Order." It further states that David shall contribute 60% of Emily's educational expenses and Frances shall contribute 40%. It goes on to state: "[David] shall receive credit for monthly contribution to the child's living expenses and [Frances] shall receive credit for the amount of tuition satisfied by the College Illinois Plan."

¶ 68 A trial court's decision to grant or deny a motion to reconsider will generally not be reversed absent an abuse of discretion, but we will review the decision *de novo* where the motion is based on only the trial court's application of existing law rather than on new facts or legal theories not presented at trial. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 55. Here, under either standard of review, we find no error, because David did not directly raise this issue in his amended motion to reconsider. Moreover, language in an order will be deemed ambiguous where it can reasonably be interpreted in two different ways. *People v. Davit*, 366 Ill. App. 3d 522, 527 (2006). That is not the situation here, as the memorandum ruling specifically

states that the $750 David pays for Emily's monthly living expenses while she is living at home and attending college "will be credited towards his 60%" of college expenses. The written order incorporates the memorandum ruling and likewise states that David "shall receive credit for monthly contribution to the child's living expenses." Accordingly, the trial court did not err by not providing further clarification.

¶ 69 E. Attorney Fees Under Section 508(b) for Contempt

¶ 70 We next address David's argument that the trial court erred by ordering him to pay attorney fees under section 508(b) of the Marriage Act (750 ILCS 5/508 (West 2012)), which provides that the trial court may award such fees if a party fails to comply with an order without compelling cause or justification. David notes that the trial court ordered him to pay Frances's attorney fees of $6,615 under section 508(b). David notes that the award was based on the trial court's January 24, 2013, ruling, holding him in contempt of court.

¶ 71 David challenges the trial court's finding of contempt for his failure to pay the children's medical expenses. To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving, by a preponderance of the evidence, that the other party has violated a court order. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010). The burden next shifts to the alleged contemnor to prove that he did not willfully or contumaciously fail to comply with the court order, and that he has a valid excuse. *Cetera*, 404 Ill. App. 3d at 41. A trial court's determination that a party has engaged in indirect civil contempt will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984); *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 20.[3]

[3]In *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 n.3 (2008), this court noted that

¶ 72 David argues that under the terms of the dissolution judgment, Frances was required to consult with him about medical expenses incurred on the children's behalf, and that this consultation was a condition precedent to any required payments. David argues that Frances testified that she did not remember how many times she forwarded copies of medical bills to David. He argues that she also admitted that she did not provide him with any advance notice before incurring dental bills and admitted that she did not consult with him about Emily's psychiatrist appointments. David argues that the evidence and the testimony therefore do not support the position that he willfully failed to comply with the dissolution judgment.

¶ 73 The dissolution judgment required consultation "in the event of serious illness [of] a child, or the need for hospital, surgical, optical or orthodontia or extraordinary medical expense or dental care[.]" Therefore, ordinary medical and dental expenses would not require advance consultation. As for orthodontia, David admitted that Frances spoke to him about Andrew's braces before Andrew got them. Frances testified that she attempted to communicate with David about medical expenses, but he was not responsive. The trial court found that Frances's testimony that she demanded that David pay half of the medical bills was more credible than David's testimony that he did not receive the demands, and that David could not deny that he knew that the children were receiving various medical and orthodontia care. As the trial court is in the best position to judge witness credibility and resolve conflicts in the evidence (*In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 35), its finding that David willfully failed to

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the supreme court has cautioned against using an abuse-of-discretion standard for factual findings. However, we stated that we would adhere to the standard set forth in *Longston* because the supreme court had not specifically altered its standard of review for contempt petitions. *Id.*

pay the medical bills was not against the manifest weight of the evidence or an abuse of discretion. Further, although David directly challenges the finding of contempt for failure to pay the medical expenses, the trial court also found David in contempt for failing to timely pay child support and not maintaining life insurance in the required amount.

¶ 74 David also argues that the majority of fees incurred by Frances related to the issue of college education expenses and not contempt. However, the trial court specifically stated in its October 16, 2013, ruling that some of the fees that Frances sought related to the cross-petitions for college expenses, and that the fees reasonably related to the findings of indirect civil contempt totaled $6,615. Therefore, David's argument is without merit.

¶ 75 B. Attorney Fees Under Section 508(a)

¶ 76 Last, we address David's argument that the trial court erred in awarding Frances attorney fees under section 508(a) of the Marriage Act (750 ILCS 5/508(a) (West 2012)). David cites a series of cases for the proposition that the greater ability of the opposing party to pay the movant's attorney fees does not necessarily mean that the movant has an inability to pay her own attorney fees. David argues that Frances has the ability to pay her own attorney fees because she had a gross annual income of $54,766; she owed less than $100,000 on her mortgage; she has only one credit card with a balance of about $1,000; she canceled Andrew's prepaid college account and has not contributed toward his college expenses; and she received a $7,322.24 refund when she canceled the prepaid tuition plan, which she used to pay her attorney fees.

¶ 77 We will not disturb a trial court's award of attorney fees under section 508(a) absent an abuse of discretion. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 58. Section 508 of the Marriage Act states:

> "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** At the conclusion of the case, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503." 750 ILCS 5/508(a) (West 2012).

Section 503(j)(2) of the Act (750 ILCS 5/503(j)(2) (West 2012)) states that "[a]ny award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504." The criteria for division of marital property include the contribution of each party to the acquisition of marital property, including, but not limited to, the contribution of a spouse as a homemaker; dissipation; the value of the property assigned to each spouse; the marriage's duration; each spouse's economic circumstances; the age, health, occupation, sources of income, and employability of each party; the custodial provisions for the children; and the reasonable opportunity of each spouse for future acquisition of capital assets and income. 750 ILCS 5/503(d) (West 2012). The criteria for maintenance include many overlapping criteria, as well as, among other things, impairment of present and future earning capacity due to devoting time to domestic duties or having forgone education or career opportunities due to marriage; the standard of living established during the marriage; and contributions and services to the education or career of the other spouse. 750 ILCS 5/504(a) (West 2012). "Together, sections 504(a) and 503(d) provide the framework to determine whether the relative financial situations of the parties warrant a contribution to the attorney fees of one party." *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 41. Thus, whether a party is able to pay his or her own fees is viewed in the larger framework of the statutory factors.

Id. ¶ 49; see also *In re Marriage of Carr*, 221 Ill. App. 3d 609, 612 (1991) (" '[I]nability to pay' must be determined relative to the party's standard of living, employment abilities, allocated capital assets, existing indebtedness, and income available from investments and maintenance.").

¶ 78 Here, the trial court stated that it considered that David earned over $148,000 per year and that Frances earned about $54,000. It also stated that it considered all of the factors under section 508(a) in concluding that David should pay $4,500, representing about 25% of the fees for the cross-petitions related to college contributions. Considering the evidence of the parties' respective financial positions and the fact that Frances had already paid over $12,000 of her fees, we cannot say that the trial court abused its discretion by ordering David to pay about 25% of the remaining balance.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 81 Affirmed.