FOURTH DIVISION
September 1, 2016

No. 1-15-2115

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF CARLOS VILLELA,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
and	)	No. 10 D 9098
	)	
MARTHA VILLELA,	)	Honorable
	)	Raul Vega
Respondent-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Petitioner failed to establish that trial court abused its discretion in finding him in indirect civil contempt for failing to comply with marital settlement agreement and court order requiring petitioner to keep student loan payments current. Petitioner failed to establish that sanction requiring him to pay off student loans was abuse of discretion.

¶ 2 Petitioner Carlos Villela, appeals from the trial court's order holding him in indirect civil contempt and ordering him to pay off certain student loans for which he was responsible as part of a marital settlement agreement, and its order denying his motion for reconsideration. We conclude that the trial court did not abuse its discretion and affirm the circuit court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 Petitioner, Carlos Villela and respondent, Martha Villela, were divorced in 2013. The judgment for dissolution of marriage, entered on January 24, 2013, incorporated the parties' marital settlement agreement. Article X of the agreement provided as follows:

> "Student Loan Debts. The parties acknowledge that student loans have been incurred by Andres Villela [the parties' son] and Martha Villela (on behalf of Andres Villela). *CARLOS agrees to pay the total amount of these loans* and any processing fees associated with same. *CARLOS agrees to keep the payments current and not in default. If possible CARLOS will refinance the loan in order to remove the name of MARTHA VILLELA from the loans*. CARLOS agrees to hold harmless and indemnify MARTHA on said loans. Carlos, however, reserves the right to obtain a discounted payoff, or any other workout plans with the student loan holders." (Emphasis added.)

¶ 5 On January 3, 2014, Martha filed a petition for rule to show cause seeking indirect civil contempt against Carlos. Among other things, Martha alleged that Carlos, with the exception of one payment of $150 in July 2013, had failed to make any student loan payments, in violation of the marital settlement agreement. She further alleged that the total outstanding balance exceeded $120,000 and that $16,374.57 was delinquent. She also alleged that Carlos had failed to provide her with any documentation showing that her name had been removed from any of the student loans. Martha attached a summary of the student loans to her petition as an exhibit.[1]

[1] We also note that the record shows that, throughout 2013, the trial court entertained petitions and motions by both parties regarding the other's noncompliance with the marital settlement agreement. On July 10, 2013, Martha, *pro se*, filed a motion claiming that Carlos had, among other things, failed to make payments on student loan debts that he had agreed to pay, and allowed the student loans to default. It appears that, after several continuances, Martha obtained

¶ 6 Carlos fails to address the full, relevant procedural history of this case. But the record on appeal contains various orders pertaining to the issue on appeal that provide a chronological history of this case and additionally show the trial court's familiarity and involvement with the issues here. We provide a summary of the relevant orders below.

¶ 7 On February 11, 2014, the trial court ordered counsel for both parties to exchange all evidence of student loan payment history and exhibits relevant to Martha's petition for a rule to show cause. On February 27, 2014, the trial court entered an order that, among other things, required Martha to provide Carlos with current loan statements and to contact loan providers to authorize then to deal directly with Carlos. The case was continued to April 14, 2014. Martha states in her response brief that, to further facilitate Carlos's loan payments between February 2014 and September 2014, her counsel gave Carlos's counsel "payment histories and authorizations, monthly statements, default notices and institutional contact information."

¶ 8 On April 14, 2014, the court entered an order continuing Martha's petition until July 1. In the interim, the court ordered Martha to provide Carlos "with a list of all outstanding loans, account [numbers], [and] loan ID's" within 14 days. The order also required Martha, within 14 days, to provide Carlos with a "written authorization letter, authorizing Carlos to handle the student loans directly, be responsible for them [and] be fully authorized by Martha [and her son] to pay for, refinance, [and] modify any of the student loans."

¶ 9 Martha tells us that the court heard sworn testimony at this April 14 hearing, but we lack a transcript of proceedings or bystander's report.

¶ 10 Following another continuance, on September 30, 2014, the court entered an agreed order which provided, in pertinent part, with student loan account numbers redacted, as follows:

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counsel, who filed the petition at issue in this appeal, as well as a response to Carlos's petition.

> "Carlos Villela shall pay monthly payments towards the following student lo*an accounts: Sallie Mae acc. # [redacted] in the amount of $568.97; Conserve Acc. # [redacted] in the am*ount of $194.86; Wyndham Professionals Acc. # *[redacted]* in the amount of $5, and agrees to keep the payments current and not in default.
>
> All of the above-mentioned payments shall continue to be made until said loans are fully paid off."

The court set the case for compliance on December 2, 2014. On December 2, 2014, the trial court entered an order scheduling the hearing/trial on Martha's petition for rule to show cause for January 14, 2015.

¶ 11 On January 14, 2015, after the hearing, the court ordered that Carlos "shall attempt to refinance and consolidate the thirteen student loans" and that Martha and Andres "shall provide Carlos with full and unfettered cooperation in his refinance efforts." The matter was set for status on March 25, 2015.

¶ 12 Martha says that, during the January 14 hearing, the court heard sworn testimony from both parties. The record, however, contains neither a transcript of proceedings nor a bystander's report.

¶ 13 On March 25, 2015, with both parties appearing though counsel, and with Carlos personally present, the trial court ruled on Martha's petition for rule to show cause. The court found that "a *prima facie* case of indirect civil contempt [had] been shown by *** the petition [and] *** sworn testimony." The court therefore ordered that a rule would issue against Carlos "to show why he should not be held in contempt of Court for failure to comply with Article X of the [marital settlement agreement] *** in that he has not kept loans current, or refinanced as

ordered by the Court on January 24, 2013." (Emphasis added.) Carlos was ordered to appear on May 11, 2015 to respond to the rule.

¶ 14 Again, though the order reflects that the court heard sworn testimony, the record contains neither a transcript of proceedings nor a bystander's report.

¶ 15 On April 15, 2015, Carlos filed a petition for rule to show cause to issue against Martha.

¶ 16 On May 11, 2015, the court held a hearing on both parties' petitions and held both parties in indirect civil contempt. Relevant to Martha's petition—the only issue under review on appeal—the court ordered that

> "[Carlos] shall *** within 45 days, pay off the student loans, as tendered by Martha through account statements, by cash, or any other viable mortgage/HELOC financing source, or *** Carlos shall provide this Court with documented proof of his financing efforts to show an anticipated closing date, on reasonable notice to Martha."

¶ 17 Martha informs us, again, that the trial court heard sworn testimony from each party. But once again, the record does not contain a transcript of proceedings or a bystander's report—and this is the proceeding that produced one of the orders under review in this appeal.

¶ 18 On July 17, 2015, the trial court denied Carlos's motion to reconsider. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 We first clarify our standard of review. Carlos has appealed from the trial court's July 17, 2015 order denying his motion to reconsider the court's May 11, 2015 order. Thus, the order at issue in this appeal concerns Martha's petition for rule to issue for Carlos to show why he should

not be held in indirect civil contempt (which had been pending before the trial court since January 3, 2014, approximately 16 months).

¶ 21 Carlos contends that our standard of review is *de novo* because it involves the interpretation of a marital settlement agreement. Carlos claims that the trial court "injected new terms and conditions" into the marital settlement agreement.

¶ 22 Martha, citing *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984), argues that whether a party is guilty of civil contempt is a question of fact 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. And in *In re Marriage of Barile*, 385 Ill. App. 3d 752 (2008), this court adhered to the standard of review as stated by the court in *Logston*, but noted variations in the standard of review invoked in other decisions—sometimes using a manifest-weight standard, sometimes an abuse-of-discretion standard, and sometimes both. *Id*. at 759 n.3. But none of those cases supported a *de novo* review of a trial court's order of contempt.

¶ 23 To clarify, to the extent it would be necessary for this court to interpret the terms of the marital settlement agreement, we would do so as a pure question of law, like we would any other contract, without deference to any interpretation by the trial court—a *de novo* review. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). But we see no dispute over the meaning of the terms of this marital settlement agreement. The pertinent portion of the relevant provision of the agreement required Carlos to do two things: (1) keep the payments on the student loans "current and not in default;" and (2) "[i]f possible *** refinance the loan in order to remove the name of [Martha] from the loans." The parties agree that Carlos had these obligations.

¶ 24 But Martha alleged, in her petition for a rule to show cause, that Carlos had done neither of these things—he had allowed the loans to lapse into default, and he had made no effort to

refinance the loans into his name. It was these allegations that the trial court took up. And it was the court's determination, after apparently hearing testimony and evidence from the parties, that Carlos was in breach of these obligations, and thus it was necessary to issue a contempt finding against Carlos.

¶ 25 Our review of *those* determinations is not *de novo*. Those are factual findings, and discretionary decisions by the trial court, which we review under the standard (or standards) set forth in *Logston*, 103 Ill. 2d at 286-87—we will reverse the trial court's judgment only if it is against the manifest weight of the evidence or the record reflects an abuse of discretion.

¶ 26 We now turn to the merits of the claims.

¶ 27 "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." *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2006). Contempt that occurs outside the presence of the court is indirect contempt. *Id*. In its order of March 25, 2015, the trial court found that, based on the petition and sworn testimony, Martha had established a *prima facie* case of indirect civil contempt on the part of Carlos. "When a party establishes a *prima facie* case of contempt, the burden shifts to the contemnor to show cause why he should not be held in contempt." *In re Marriage of Ray*, 2014 IL App (4th) 130326, ¶ 15.

¶ 28 As we noted in our recitation of the procedural background, we lack any relevant transcript of proceedings in the trial court, not a single transcript regarding a single hearing related to Martha's petition seeking indirect civil contempt against Carlos which, after all, is the issue on review here. To support a claim of error, an appellant has the burden to present a sufficiently complete record. *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d 414, 422 (2009). "From the very nature of an appeal it is evident that the court of review must have before it the

record to review in order to determine whether there was the error claimed by the appellant." (Internal quotation marks omitted.) *Id.* (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984)). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." (Internal quotation marks omitted.) *Id*. (quoting *Corral v. Mervis Industries, Inc*., 217 Ill. 2d 144, 156 (2005). "Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." *Id*.

¶ 29 Carlos claims, without citing to the record, that he "is now, and has been since September 2014, making payments on all of the student loan accounts, making several monthly payments totaling $709.91 for loans in Martha's and Andres' names and $58.92 for a student loan in Carlos' name that was incurred by Andres." Though we have no basis to credit that assurance from Carlos, having no support in the record to do so, we would note that Carlos pegs this compliance to the date of September 2014—and Martha's petition was filed nine months earlier, on January 3, 2014, in which she claimed that Carlos had paid almost nothing on the loans since *January 2013* when the marital settlement agreement was entered. She also included an exhibit showing the loans to be delinquent in the amount of $16,374.57.

¶ 30 So while Carlos claims that he is now in compliance, he has provided us no reason to think that he had previously been in compliance and had *not* breached the marital settlement agreement by allowing the loans to go into default. He has provided no basis to challenge the trial court's finding of contempt—its finding that he breached a previous court order and the marital settlement agreement.

¶ 31 As for the remedy, the trial court ordered Carlos, within 45 days, to either pay off the loans or prove that he had made efforts toward financing to accomplish that goal. Carlos claims

that the order is in contravention of the marital settlement agreement because that agreement did not require *immediate* payment of the loans, but we could certainly see a reasonable basis for the trial court's decision.

¶ 32 The trial court could have concluded that Carlos's previous breach of the agreement left the loans in severe delinquency—while under Martha's name, not his—and that the appropriate remedy to avoid any further problems was to order an accelerated payoff of those loans. Martha has taken the position that Carlos was in the financial position to pay off those loans all at once, and we can only assume the circuit court, before entering the order that it did, took that into account. We assume, in light of the numerous hearings that took place, at least one of which involved sworn testimony according to the order itself, that Martha is correct when she says that "the trial court was afforded abundant opportunity to hear evidence of Carlos's finances, examine his credibility and financial records, and consider the risk of harm of future delinquency in payment." Certainly, if nothing else, Carlos had plenty of time during these proceedings to demonstrate his *inability* to pay them all at once.

¶ 33 We are not saying that this is exactly how things transpired in the circuit court. We only discuss that possible reasoning because it demonstrates a reasonable path that the circuit court could have taken toward the ultimate judgment it rendered. The truth is that we do not and cannot know exactly which arguments prevailed, which points carried the day, precisely why the trial court did what it did, because we lack any meaningful manner to review the court's decision without transcripts, and without even very much written argument in the trial court. Absent such evidence, we must presume that the trial court acted in accordance with the facts and the law. *Foutch*, 99 Ill. 2d at 392-93; *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d at 422.

¶ 34 Our best efforts to understand the merits of this appeal tell us that the trial court acted reasonably in finding Carlos in contempt and in fashioning an appropriate remedy for Carlos's breach of the marital settlement agreement. But at a minimum, we have no basis for holding that the trial court's judgment was against the manifest weight of the evidence or constituted an abuse of discretion.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.