2016 IL App (3d) 150020-U

Order filed August 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
MICHAEL E. ANDERSON,	)	Tazewell County, Illinois.
	)	
Petitioner-Appellant and	)	
Cross-Appellee,	)	Appeal Nos. 3-15-0020
	)	3-15-0420
and	)	Circuit No. 01-D-428
	)	
MOLLY A. MURPHY, f/k/a ANDERSON,	)	
	)	Honorable Michael E. Brandt and
Respondent-Appellee and	)	Honorable Richard D. McCoy,
Cross-Appellant.	)	Judges, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Carter concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in determining awards of child support, education expenses, maintenance, attorney fees, and interest.

¶ 2 This appeal involves a dissolution action between the parties, Michael Anderson and Molly Murphy, f/k/a Molly Anderson, which is now before this court for the second time. Both parties have appealed the judgment entered below that addressed both remanded and novel issues

of child support, maintenance, education expenses for the parties' twin daughters, and attorney fees.

¶ 3 In 2010, this court entered an opinion (*In re Marriage of Anderson & Murphy*, 405 Ill. App. 3d 1129 (2010)), remanding the case to the trial court to, *inter alia*: (1) modify its order to include all gifts Michael receives from his family as income for the purpose of calculating child support; (2) consider all statutory factors in deciding whether to terminate Molly's maintenance award in 2009; and (3) hold a hearing on the issue of awarding Molly attorney fees pursuant to section 508(b) of the Illinois Marriage & Dissolution of Marriage Act (Act) (750 ILCS 5/508(b) (West 2008)).

¶ 4 Molly thereafter filed a petition for an increase in child support and various other pleadings seeking education expenses for the parties' daughters to attend college. On October 7, 2014, the trial court entered its final order on all pending issues; both parties appealed.

¶ 5 For his appeal, Michael argues the trial court erred when it: (1) concluded that his mother's payment of his attorney fees and the gift of a car were income for purposes of calculating child support; (2) ordered him to pay 100% of the twins' final three years of college expenses; (3) failed to credit him $25,000 for a prior payment toward Molly's attorney fees; (4) awarded Molly maintenance for the years 2009 through 2014; and (5) ordered him to pay an additional portion of Molly's attorney fees.

¶ 6 In response, Molly argues the trial court correctly ordered additional child support, payment of the twins' college expenses, maintenance, and attorney fees. However, for her cross-appeal, Molly argues the court awarded her a significantly lower amount than that to which she was entitled. Specifically, she claims the court erred when it: (1) excluded certain additional gifts Michael had received from its income calculation; (2) vacated its initial ruling that Michael

owed additional child support as a result of his increase in income; (3) failed to order Michael to pay for the twins' first-year college expenses; (4) failed to increase maintenance in 2009 and then terminated maintenance in 2014; (5) failed to award her the full amount of attorney fees; and (6) failed to award interest on the judgment. In addition and for her second appeal stemming from her motion to enforce the college education payment order, Molly argues that the trial court either did not, or should not have, allowed Michael to use money from the twins' custodial accounts to fulfill his college payment obligation. We affirm.

¶ 7 FACTS

¶ 8 As stated in our previous opinion, Michael and Molly were married in January 1993. On December 27, 1994, Molly gave birth to twin daughters, Janelle and Kaleigh. During the marriage, Michael worked in the financial industry making approximately $61,000 per year. He also received a significant yearly dividend from stock he owned in his family's closely held corporation, AEC Holding Company. Molly, who had been diagnosed with fibromyalgia in 1990, worked for Caterpillar until December 1995, when she was placed on disability due to her illness. At that time, she was earning $52,000 per year, plus incentives. Molly currently receives a disability payment from Caterpillar, as well as social security benefits.

¶ 9 In July 2001, Michael petitioned for dissolution of marriage. Three years later, in August 2004, the trial court entered an order dissolving the parties' marriage. In September 2004, the court entered a supplemental judgment that awarded Michael his AEC stock as nonmarital property, but directed him to pay 28% of his net dividends as child support.

¶ 10 In December 2006, the trial court, Judge Galley, entered an order addressing child support and maintenance. In the order, the court directed Michael to pay $206 per week in child support (28% of his net income) and $900 per month in reviewable maintenance. At that time,

Michael was employed by Nextel, earning a salary of approximately $50,000 per year. The court's order stated that barring a substantial change in circumstances, the obligation to pay maintenance could not be reviewed earlier than September 2008.

¶ 11 During the next two years, the parties filed numerous petitions for rule to show cause and motions to modify the terms of the previous orders. In September 2008, Michael filed a motion for review of Molly's $900 monthly maintenance award. In response, in February 2009, Molly filed a petition to modify child support and maintenance, seeking an increase in both based on Michael's new position with Habegger Corporation where he was earning approximately $62,500 per year. In addition, Molly sought $74,547 in attorney fees for the legal expenses she incurred seeking to enforce previous court orders and responding to Michael's petition to terminate maintenance.

¶ 12 The trial court consolidated all of the motions and petitions and conducted a hearing that spanned several days. At the hearing, Michael testified that on December 31, 2008, his family's company purchased his shares of AEC stock as part of a reverse stock split in an attempt to reduce the number of outstanding shares. Testimony and exhibits established that the income generated by Michael's shares of the AEC stock had been substantial. Michael received dividend income of $171,760, $197,887, $190,845 in 2005, 2006, and 2007, respectively. As a result of the split, Michael received a lump sum of $192,780, which amounted to a capital loss of $65,743. Michael testified that he used the proceeds from the stock sale to purchase gold coins.

¶ 13 Both parties filed financial affidavits in addition to their testimony. Michael's affidavit, dated December 1, 2008 (prior to the stock sale), indicated that he was a territory manager for Habegger, earning a monthly salary of $5,100. Minus deductions for state and federal taxes, social security, and child support, Michael reported a net monthly earned income of $1,510. He

also reported monthly dividend income of $1,966 from his AEC stock, for a total income of $3,476. His monthly expenses totaled $3,673. Michael listed $314,578 in nonmarital assets, $43,470 in marital assets, and no marital debt.

¶ 14 Molly's 2008 financial affidavit reported a net monthly earned income of $3,356, plus additional income from maintenance and child support, for a total monthly income of $7,024. Molly's monthly expenses totaled $8,279. She listed more than $676,500 in nonmarital assets, $42,000 in marital assets, $161,725 in nonmarital debt, and no marital debt.

¶ 15 In May 2009, the trial court, Judge Ault, issued a written order addressing all of the post-dissolution motions. In its order, the court noted that neither party had made a good faith effort to comply with the orders of the original judgment. It stated that since the parties could not cooperate as mature adults, any issue which requires cooperation was bound to fail. Relevant to the issues involved in the current appeal, the court's order declined to treat the sale of Michael's AEC stock as income, directed Michael to pay $25,000 of Molly's attorney fees, increased Michael's child support obligation effective June 1, 2009, and terminated maintenance effective June 1, 2009. Michael thereafter paid $25,000 toward Molly's attorney fees.

¶ 16 In June 2009, Molly filed a notice of appeal, arguing, among other things, that the trial court: (1) erred in calculating Michael's net income for purposes of child support; (2) erred and abused its discretion in terminating her maintenance award; and (3) abused its discretion in awarding attorney fees.

¶ 17 In November 2010, this court issued an opinion remanding to the trial court to: (1) modify its support order to include as income any employment bonuses and gifts Michael receives from his parents, retroactive to the date of the order; (2) reconsider the issue of maintenance in light of all enumerated factors, including the proceeds Michael received from the

reverse stock split; and (3) conduct a separate hearing to determine the amount of mandatory attorney fees Michael should pay as a result of Molly's petitions for rules to show cause.

¶ 18 In September 2011, Molly filed a petition to increase Michael's child support obligation as a result of the twins having reached driving age. She claimed there had been a substantial increase in monthly expenses due to automobile insurance, vehicle expenses, maintenance, and other matters. Molly also petitioned for a determination of percentage responsibility for the twins' impending college expenses. In September 2013 and January 2014, the trial court entered temporary orders finding that each party had sufficient assets to help with the twins' education. The orders directed Michael to pay 60% and Molly to pay 40% of the twins' first-year college expenses.

¶ 19 In May 2014, the trial court, Judge Brandt, entered an order addressing the remanded maintenance issue. Reviewing all of the enumerated factors and considering the proceeds Michael received from the reverse stock split, the court determined that Molly was entitled to continued maintenance beginning June 1, 2009. The court additionally determined that maintenance was reviewable as of June 1, 2012, and ordered that a hearing on whether maintenance should be modified or terminated at that time was to take place in conjunction with the upcoming hearing for calculating child support and education expenses.

¶ 20 Later that month, the trial court held a hearing on the remanded attorney fees issue. In conjunction with the hearing, Molly submitted affidavits from each of her four previous attorneys and detailed billing sheets showing the work each of them had performed. Following the hearing, the court awarded Molly $24,169.90 in mandatory attorney fees pursuant to section 508(b) of the Act (750 ILCS 5/508(b) (West 2008)). In its written order, the court detailed the specific monetary amounts it was awarding in relation to the specific attorneys and the work they

had performed. The court did not revisit the issue of discretionary fees. 750 ILCS 5/508(a) (West 2008).

¶ 21 In September 2014, the trial court conducted a hearing on all remaining issues. At the hearing, Molly presented evidence of $78,000 in gifts Michael had received from his parents prior to June 2009, $107,400 in gifts Michael had received from his parents since June 2009, two financial accounts (National Financial and Mid Atlantic) in Michael's name containing $52,210, and a $19,833 judgment Michael obtained against his former girlfriend in 2014.

¶ 22 In October 2014, the trial court, Judge Brandt, entered its final omnibus order on all remaining matters. At the onset, the court noted that June 1, 2009, was the date the prior trial court selected for child support modification in its May 2009 order. Because the order was not made retroactive and the issue was not raised until the instant proceedings, the court deemed it not appropriate to adjust support prior to June 1, 2009.

¶ 23 Looking to gifts Michael received from his parents during the relevant time period, the trial court concluded that there was clearly documented evidence of gifts totaling $114,400. As a result, the court awarded child support in the amount of $32,032. Approximately $59,000 of the total gifted money came from checks Michael's mother had written toward payment of Michael's attorney fees. With regard to the National Financial and Mid Atlantic accounts, the court held that Molly's documentation merely showed that the accounts existed, not that there was a gift from Michael's parents during the relevant time period. In addition, the court did not consider the judgment Michael obtained against his former girlfriend to be income, as there was no showing that the amount was for lost wages or other income.

¶ 24 Looking to bonuses and commissions, the trial court determined that Michael had paid the appropriate percentages toward child support during the relevant time period, with the

exception of 2013. The court ordered Michael to pay an additional $784. The court also found that there had been a substantial increase in Michael's net income according to his tax returns. As a result, the court increased Michael's child support obligation and awarded $7,793.28, which represented 28% of the increase in Michael's income during the relevant time period.

¶ 25 With regard to education expenses, the trial court concluded that had the marriage not been dissolved, based on the history of gift giving and the generosity of Michael's parents, the twins would have received college educations without having to contribute any substantial amounts on their own. The court found its conclusion to be supported by Michael's on-the-record statement that he (or his mother as custodian of the twins' accounts) would be "more than willing to pay 100% of the 'hard costs' " of the twins' college expenses.

¶ 26 The trial court then noted that Michael's employment had advanced and the accounts listed in his affidavit contained almost half a million dollars. However, the court found that this estimate was likely very conservative, given Michael's "propensity to omit/hide/have no knowledge of assets." The court also considered that Molly's resources had remained relatively constant. The stock and investment accounts listed in her affidavit are valued at over $1.5 million.

¶ 27 In balancing the equities as required by law, including Michael's "pledge" to provide the "hard costs" of education, and considering the maintenance awarded, and not awarded, to Molly below, the court ordered Michael to pay 100% of the twins' college expenses.

¶ 28 In considering whether to modify or terminate maintenance in either 2012 or at present, the trial court considered all statutory factors. It noted that the parties' marriage was brief. Michael's employment status improves year by year, and Molly receives a significant amount ($4,150.85 gross per month) from Caterpillar and social security. In 2012, Molly was still

receiving child support, as she was the twins' primary caretaker. Testimony and evidence presented at trial indicated that during the years Molly was not receiving maintenance (June 2009 through June 2014), she was able to maintain an upper middle class standard of living looking at her purchases and expenditures in her credit card accounts, which are all paid off on a monthly basis. The court also noted that Michael's income had substantially decreased in December 2008 due to the AEC stock buyout. Although his proceeds from the reverse stock split were $192,000, only $60,000 in gold remains.

¶ 29 Based on the foregoing, the trial court concluded that maintenance was to be continued at the rate of $900 per month for an additional 24 months (June 2012 through May 2014). However, considering Molly's ability to support herself with sufficient income and assets, the twins being of legal age and substantially away from home for most of the school year, Michael's obligation to pay a substantially higher percentage of the twins' college costs (70%), Michael's very substantial loss of AEC dividend income ($170,000 to $190,000 per year), Michael's nonmarital assets, and all of the other factors, the court terminated maintenance, effective June 1, 2014.

¶ 30 With regard to attorney fees for the new proceedings, the trial court awarded Molly discretionary fees in the amount of $17,422 pursuant to section 508(a) of the Act (750 ILCS 5/508(a) (West 2014)). The court then awarded Molly mandatory fees in the amount of $1,300 pursuant to section 508(a) of the Act (750 ILCS 5/508(b) (West 2014)). Of the $1,300 in mandatory fees, $900 was for Michael instituting proceedings to substitute Judge Galley, which the court found to be frivolous and completely without merit. The remaining $400 was for unnecessary additional discovery to locate Michael's hidden accounts, which could have been avoided had Michael complied with the local rule affidavit requirement. The court noted,

however, that the record is replete with discovery avoidance by both parties. Although both parties had filed various other petitions to compel, the court concluded that no additional section 508(b) fees were warranted, as there had been no findings of willful contempt.

¶ 31 Both parties filed motions to reconsider the trial court's omnibus final order. In December 2014, the court entered an order on the parties' motions, holding: (1) payments by a third party toward any of Michael's financial obligations should be credited to him; (2) the additional child support award of $7,793.28 should be stricken on account of accidental double-counting of Michael's bonuses; (3) additional child support in the amount of $3,360 should be awarded on the basis of a $12,000 attorney fee payment that had been overlooked; and (4) additional child support in the amount of $4,480 should be awarded on the basis of a $16,000 car Michael admitted was a gift from his parents during the relevant time period.

¶ 32 In January 2015, the parties filed cross-appeals. Thereafter, Michael's mother used the funds from the twins' custodial accounts to pay a portion of Michael's college expense obligation. In February 2015, Molly filed a motion for enforcement of the college education payment order. In the motion, Molly asked the trial court to: (1) clarify that Michael had to use his own money to fulfill his obligation; and (2) order Michael to return the money taken out of the twins' custodial accounts. She also filed a petition for rule to show cause regarding income tax consequences associated with withdrawing the twins' custodial money.

¶ 33 In June 2015, the trial court, Judge McCoy, entered an order denying Molly's motion for enforcement of college education payment order, holding that it was an appealable issue, not an enforcement issue. In addition, the court held that income tax consequences for income or gains realized within the custodial accounts was a matter between the twins and their paternal grandmother.

¶ 34 Molly filed a second notice of appeal, and the appeals were consolidated.

¶ 35 ANALYSIS

¶ 36 I. Child Support

¶ 37 A. Michael's Arguments

¶ 38 On appeal for the second time, we are tasked with determining whether the trial court should have included gifts of $59,000 toward payment of Michael's attorney fees and a car in its income determination under section 505(a)(3) of the Act. 750 ILCS 505(a)(3) (West 2008). Whether a specific gift qualifies as income for purposes of calculating child support is a matter of statutory interpretation, which we review *de novo*. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135-36 (2004).

¶ 39 Under section 505(a)(3) of the Act, "net income" is defined as "the total of all income from all sources," minus certain specified deductions. 750 ILCS 505(a)(3) (West 2008). In *In re Marriage of Rogers*, the Illinois Supreme Court observed that, given its plain and ordinary meaning, "income" is simply:

> "[S]omething that comes in as an increment or addition ***: a gain or recurrent benefit that is usu[ually] measured in money ***: the value of goods and services received by an individual in a given period of time. [Citation.] It has likewise been defined as [t]he money or other form of payment that one receives, usu[ually] periodically, from employment, business, investments, royalties, gifts and the like. [Citation.]." (Internal quotation marks omitted.) *Rogers*, 213 Ill. 2d at 136-37.

¶ 40 The *Rogers* court concluded that the circuit court was correct to include as income the annual gifts the noncustodial parent received from his parents. *Id.* at 137. It explained, "[t]hat the gifts may not have been subject to taxation by the federal government is of no consequence. They represented a valuable benefit to the father that enhanced his wealth and facilitated his ability to support [his child]." *Id.*

¶ 41 Following the supreme court's decision in *Rogers*, this court held that the trial court in the instant matter should have included as income the annual gifts Michael receives from his family, "including substantial 'loans' without repayment and a vehicle." *Anderson*, 405 Ill. App. 3d at 1137. As such, we remanded the matter for the trial court to enter a modified child support order. *Id.* at 1137-38.

¶ 42 On remand, the trial court conducted a hearing and awarded Molly $32,032, which represented 28% of all gift income Michael received from his parents after June 1, 2009. On appeal, Michael claims the court should not have included payments toward his attorney fees and the gift of a car as income because they did not enhance his wealth, nor did they facilitate his ability to support his daughters. See *Mayfield v. Mayfield*, 2013 IL 114655, ¶ 16 (quoting *Rogers*, 213 Ill. 2d at 136-37). We disagree.

¶ 43 With regard to the gift of a car, our prior order specifically directed the trial court to include vehicles as gifts for purposes of determining Michael's income, making it the law of the case. *Anderson*, 405 Ill. App. 3d at 1137; see also *People v. Patterson*, 154 Ill. 2d 414, 468 (1992).

¶ 44 We also conclude that the trial court was correct to include as income the payments Michael's parents made toward the outstanding balance of his legal fees. While payments toward Michael's attorney fees may not have enhanced Michael's wealth in the literal sense, they

certainly kept Michael's wealth from decreasing. By freeing up assets and income that Michael otherwise would have had to use to pay his legal fees, Michael's parents helped facilitate his ability to support his daughters. To hold otherwise would allow noncustodial parents to avoid claiming gift income by making sure their benefactors sent checks directly to their creditors. This simply cannot be the law in Illinois.

¶ 45 Next, Michael argues that the trial court's addition of $3,360 to the child support judgment (an August 22, 2012, $12,000 payment reflected in Michael's attorney's ledger) was erroneous and not supported by the evidence. In adding the amount to the judgment, the trial court did not rely on any direct evidence of payment; it simply found it "more probably true than not true" that the amount was a gift from Michael's parents based on "the pattern of gift giving" by Michael's parents for his attorney fees obligations. We agree with the trial court's determination. At trial, Molly presented evidence of six checks Michael's mother had written to pay portions of Michael's attorney fees. Of those six checks, two were written for exactly $12,000. This evidence, though circumstantial, overwhelmingly supports the trial court's conclusion that the additional payment was a gift from Michael's family.

¶ 46 B. Molly's Arguments

¶ 47 On cross-appeal, Molly argues that the trial court erred in excluding certain income from its child support calculations. Specifically, Molly contends the court should have included the following gifts from Michael's parents, which occurred prior to May 27, 2009: (1) a Heartland Bank account containing $78,000; (2) a $20,000 check from Michael's parents to lawyer Steve Morris dated October 31, 2006; (3) two bank accounts (one National Financial and one Mid Atlantic) containing a collective $52,210; and (3) $20,000 toward a down payment on a house. In addition, Molly argues the court should have included as income a $19,833 judgment Michael

received from his former girlfriend in 2014. She claims the judgment was the functional equivalent of a "payback" for the $20,000 down payment on the house.

¶ 48 Michael responds that the trial court correctly excluded the above gifts, as this court's previous order explicitly stated that it was remanding the case "for modification of the May 27, 2009 support order regarding any gifts and bonuses Michael receives, retroactive to the date of the order." He claims that had the trial court considered any alleged gifts prior to the May 27, 2009, date, it would have been doing so in direct dereliction of the order handed down by this court in the previous appeal. As for the judgment against his former girlfriend, Michael claims the judgment was repayment for a gift from prior to the order date (the $20,000 toward the down payment on a house) and, therefore, the court properly excluded it from his income. For the following reasons, we agree with Michael.

¶ 49 It is well-settled that a trial court is required to obey the clear and unambiguous directions in a mandate issued by a reviewing court. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982). Where the directions of the appellate court are specific, a positive duty devolves upon the trial court to act in accordance with the directions contained in the mandate. *Id.*

¶ 50 Here, in May 2009, Molly asked the trial court to consider any gifts Michael may receive from his family as income for purposes of child support. The court denied Molly's request. Molly appealed, and this court agreed that future gifts from Michael's family should be included in the court's income determination. *Anderson*, 405 Ill. App. 3d at 1136-37. As such, we remanded to the trial court for modification of its support order, retroactive to the date of the order. *Id.* at 1138. On remand, the trial court followed our direction, as it was required to do, and deemed it not appropriate to consider gifts Michael received earlier than June 1, 2009. Thus, we find no error in the trial court's decision to disregard gifts Michael received from his parents

prior to that date. This includes the judgment Michael received in 2014 against his former girlfriend, as both parties admit the judgment was essentially a "payback" for a gift from Michael's parents prior to 2009.

¶ 51 Molly's final argument with regard to child support is that the trial court erred in striking its October 2014 order directing Michael to pay $7,793.28 as a result of his increase in net income. We disagree. As Michael correctly pointed out in his motion to reconsider, the court based the increase in income off of Michael's tax returns, which also included amounts he made in bonuses and commissions. As demonstrated by the court's original order, Michael had been paying 28% of his bonuses and commissions toward his child support obligation since 2009, with the exception of 2013, for which he still owed $784. Although the entirety of the increase in Michael's income may not have been attributable to bonuses and commissions, Molly has failed to provide this court with any further argument on the issue. With nothing before us to calculate how much of the increase in Michael's income was attributable to his bonuses and commissions, the trial court's ruling stands.

¶ 52 II. College Expenses

¶ 53 A. Michael's Appeal

¶ 54 Michael next argues that the record does not support the trial court's determination that he pledged to pay 100% of his daughters' college expenses. He claims the only statement ever made to this effect was that his mother, as custodian of the twins' custodial accounts, would be willing to use the custodial funds to pay a portion of the "hard costs" of college. Accordingly, he asserts that the court misunderstood his position, and, therefore, failed to exercise proper discretion in resolving the issue. See *Street v. Street*, 325 Ill. App. 3d 108, 115 (2001) (rulings regarding educational expenses will not be overturned absent an abuse of discretion).

¶ 55 In response, Molly argues Michael has waived any argument that the record did not support the trial court's judgment by only claiming the court misunderstood his statement regarding the custodial accounts. Nevertheless, she claims, even if Michael had made the argument, the record is clear that the court considered and weighed all of the statutory factors in making its decision. We agree. Even assuming the trial court "misunderstood" Michael's position regarding payment of college expenses, the error was harmless.

¶ 56 Section 513 of the Act provides that in making awards for educational expenses, the trial court must consider all relevant factors that appear reasonable and necessary, including: (1) the financial resources of both parents; (2) the standard of living the child would have enjoyed had the marriage not been dissolved; (3) the financial resources of the child; and (4) the child's academic performance. 750 ILCS 5/513(b) (West 2014).

¶ 57 Here, the trial court's ruling as a whole makes it clear that Michael's financial resources were more than sufficient to cover his daughters' college expenses, whether those resources were in the form of disclosed accounts, gifts from his parents, or undisclosed accounts. In addition to noting Michael's "pledge" to pay the hard costs of college, the trial court methodically considered each statutory factor listed above. It noted that Michael's employment income had advanced and that he had substantial investment/retirement income nearing $1 million, and a "pile of gold." Moreover, the court specifically found that Michael's $1 million asset estimate was "very conservative," and that his propensity to omit, hide, and have no knowledge of assets had been "painfully prevalent" throughout the litigation. Based on the history of Michael's parents' propensity for gift-giving, the court concluded that, had the marriage not been dissolved, the twins would have received a college education without having to contribute any substantial amounts of their own.

¶ 58 The trial court also considered both Molly and the twins' income, noting that Molly's income was steady, but that she had "substantial stock, investment, and retirement accounts," while the twins had minimal assets. Finally, the court noted that each twin's academic performance had been impeccable. When we couple the trial court's detailed analysis and ruling on college expenses with the fact that the court chose to terminate, rather than extend, maintenance (which we will discuss in detail below), we find no abuse of discretion in the trial court's determination that Michael would be responsible for the expenses associated with the twins' final three years of college.

¶ 59 B. Molly's Cross-Appeal and Second Appeal

¶ 60 For Molly's cross-appeal, she argues that the basis the trial court used to order Michael to pay for the second, third, and fourth years of college should also apply to the first year. She claims the orders Judge Galley entered regarding the twins' first year of college were both temporary, and she should not lose her claim merely because the previous judge, with no discovery or an evidentiary hearing, arrived at a 60/40 split, based upon brief arguments and discussion of only hard college costs. She also asks this court for various extra tuition costs, and to add a provision for vehicles, as they are required as part of the twins' mandatory progression toward their degrees and are a contractually required part of the curriculum.

¶ 61 We reject Molly's argument. It is clear from Judge Brandt's omnibus final order that Molly did not "lose her claim" based on Judge Galley's prior orders. At several points, the trial court considered and made reference to the fact that Michael was ultimately responsible for 70% of the twins' college expenses, despite the fact that he sustained a significant decrease in income as a result of the AEC stock sale. Given the record before us, we cannot say the trial court

abused its discretion in not allocating all of the educational debt to Michael. The record and issues in this case were extensive, and college expenses were just one piece of the puzzle.

¶ 62 For Molly's second appeal, she argues it was error for the trial court to allow Michael to satisfy his college obligation via the twins' custodial accounts. She asks this court to clarify that Michael was to pay 100% of hard costs, without access to the twins' custodial accounts. We refuse to do so. At no time did Michael have access to his daughters' custodial accounts; only his mother did. Use of the twins' custodial money is a matter between the twins and their paternal grandmother. It was not a proper matter for either the trial court or this court to address in conjunction with the dissolution action.

¶ 63 III. Maintenance

¶ 64 Michael next argues the trial court abused its discretion when it extended maintenance beyond May 2009. He claims the net effect of such a decision was to award Molly 28% of the AEC nonmarital stock when the dissolution judgment had awarded it entirely to him, and the stock sale had caused him to suffer a capital loss of more than $65,000. He reiterates that the cash proceeds from the stock sale were not income.

¶ 65 In response, Molly argues the trial court should have increased her maintenance award to $2,000 a month and made the award permanent. She claims this court's remand order evinces our belief that the trial court should not have terminated maintenance in 2009. Molly misconstrues our prior ruling. In remanding the case to reconsider the maintenance issue, this court stated that it was error for the court to *only* consider the loss of dividends. Our remand was for the trial court to consider all of the section 510(a-5) factors, including the change in status of Michael's nonmarital property (the AEC stock).

¶ 66 Next, Molly asserts the trial court erred in reviewing maintenance at all, as the 2006 order provided that maintenance was only reviewable during the first three years. Molly is mistaken about the language in the trial court's initial order. Judge Galley's initial maintenance order specifically stated: "barring a substantial change in circumstances under 750 ILCS 5/510[,] the obligation to pay maintenance many not be reviewed earlier than September 27, 2008." In other words, the initial order provided that Michael must show a substantial change in circumstances if he sought to modify maintenance within the first three years, not that maintenance was only reviewable during that time. No error here.

¶ 67 Moving to the merits of the parties' arguments, we will not reverse a trial court's ruling on the modification or termination of maintenance absent an abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). A court abuses its discretion where no reasonable person would have taken the view adopted by the trial court. *Id.* It is not our job to reweigh the statutory factors, and absent an abuse of discretion, we will not substitute our judgment for that of the trial court. *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1064 (2005).

¶ 68 A court may modify maintenance "only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2012). When determining whether a modification is appropriate, a court shall consider the following factors:

> "(1) any change in the employment status of either party and whether the change has been made in good faith;
>
> (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

(9) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5) (West 2012).

¶ 69 In addition, the court shall consider the factors set forth in section 504(a) of the Act, including:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2012).

¶ 70 Here, in determining whether to terminate maintenance in 2009, the trial court considered all statutory factors in making its decision. Although the proceeds from the AEC stock sale were not income for purposes of awarding maintenance, they did still represent a significant asset and major portion of Michael's nonmarital property, which the court was bound to consider in making its maintenance determination. As a reviewing court, we cannot say that no reasonable person would have chosen to continue maintenance under those circumstances. Accordingly, we find no abuse of discretion in the trial court's decision to continue Molly's maintenance award in 2009.

¶ 71 For her cross-appeal, Molly argues the trial court improperly terminated maintenance in 2014 when it brought Michael's loss of AEC dividends back into the equation after specifically holding that the loss of dividends was insufficient to terminate maintenance in 2009. She claims there is no reason to let the same factor be a substantial basis for termination in 2014. We disagree. When the trial court continued maintenance in 2009, Michael had lost his AEC dividends, but he had received a large sum of cash ($192,780) in trade. At the time the trial court terminated maintenance in 2014, however, the $192,780 payout had diminished to being only a "pile of gold" worth approximately $60,000.

¶ 72 In addition to considering the status of Michael's nonmarital property, the trial court noted that Molly had been able to support herself during the years maintenance had been wrongfully discontinued, that the marriage was brief, that Molly was no longer a custodial parent, that the twins were away from home and attending college, and that Molly herself had over $1.5 million in assets. Given the foregoing, we find no abuse of discretion in the trial court's termination of maintenance in 2014.

¶ 73 IV. Attorney Fees

¶ 74 A. Remanded Attorney Fees

¶ 75 Michael next argues the trial court erred on remand in awarding Molly an additional $24,169.90 in attorney fees under section 508(b) of the Act. 750 ILCS 5/508(a) (West 2008). Michael claims that because he paid the court's original $25,000 award, his debt should be satisfied. Molly disagrees, and claims that the original $25,000 award was for fees pursuant to section 508(a) of the Act. 750 ILCS 5/508(a) (West 2008).

¶ 76 Generally, attorney fees are the responsibility of the party for whom the services are rendered. *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1100 (1992). However, section 508(a) of the Act allows the trial court, after considering the financial resources of the parties, to order one spouse to pay the fees necessarily incurred by the other party. 750 ILCS 5/508(a) (West 2008). In addition, section 508(b) of the Act provides:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to

> pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2008).

¶ 77 Here, the trial court's original order directed Michael to pay $25,000 toward Molly's attorney fees. Molly appealed the order, arguing the court erred in not *also* awarding her mandatory fees under section 508(b). Michael did not cross-appeal the issue. In addressing Molly's attorney fee argument, this court concluded, "In light of the parties' financial resources, the trial court did not abuse its discretion in balancing their attorney fees and determining that Michael had the ability to pay $25,000 of Molly's fees under section 508(a)." However, we also concluded that the court erred in not conducting a separate section 508(b) hearing to determine the amount of fees Molly incurred in pursuing petitions to enforce court orders. We therefore reversed for the court to conduct such a hearing. On remand, the court conducted the hearing, and awarded Molly $24,169.90 pursuant to section 508(b). Accordingly, we reject Michael's argument that this court reversed the original $25,000 award.

¶ 78 Notwithstanding his first argument, Michael also contends the trial court abused its discretion in awarding Molly any section 508(b) fees on remand. He claims the court awarded this amount based solely on the fact that "unspecified parts of the litigation reflected badly on both parties and Michael for the most part." Molly responds that not only was the trial court correct in awarding section 508(b) fees, but it should have awarded a significantly higher amount of section 508(b) fees. She claims the legal work performed was all interrelated, and requests this court award her $85,949.48. For the following reasons, we reject both parties' arguments.

¶ 79 As stated above, section 508(b) is mandatory, and requires the trial court to award attorney fees for time spent seeking to enforce orders or judgments. Here, the trial court conducted an extensive section 508(b) hearing in May 2014. In making its determination,

contrary to Michael's assertion, the court provided a detailed analysis of both the fees it was awarding and its reasons for doing so. In addition, the court pointed out that section 508(b) does not cover much of what Molly was asking for in mandatory fees. Specifically, mandatory fees are not required for legal work relating to nonrule, noncontempt charges, or for legal fees relating to petitions to modify or defending the other party's petitions for rule or to compel. Nor are mandatory fees appropriate for charges relating to seeking a new lawyer, or for time spent having the new lawyer review the case.

¶ 80 Here, the vast majority of fees the trial court awarded pursuant to section 508(b) ($21,209.90) were for work performed by attorney Wakeman, Molly's eventual trial counsel. Wakeman represented Molly from early 2009 through trial, and submitted a final bill for $42,886.70. Molly claims the court should have awarded her $40,536, as Wakeman's invoices showed that only $2,350 of the total bill was for work performed in relation to noncovered issues. However, as the trial court properly noted, Wakeman testified he spent several hours getting "up-to-speed" on the litigation, and a significant portion of both trial and discovery dealt with the AEC stock-sale issue and Michael's petition to terminate maintenance, none of which related to violation of court orders. Therefore, we find no error in the court's award of $21,209.90.

¶ 81 With regard to fees for attorney Zuckerman's work, Molly claims the trial court properly awarded $2,960, but requests an addition $14,160 for work performed on child support and maintenance issues. In doing so, however, Molly specifically admits both that this work was unrelated to the rules to show cause, and that Judge Ault considered it in his initial $25,000 section 508(a) award. Thus, we find no error in the court's award of $2,960.

¶ 82 Concerning Molly's final two attorneys, attorney Rock and attorney Serritella, Molly claims that all of their work involved rules to show cause, and that the trial court should have awarded her $5,569.68, and $4,973.80, for their work respectively. In so arguing, we conclude that Molly misinterprets the scope of section 508(b). As the trial court aptly pointed out and the statute specifically states, section 508(b) only requires payment of attorney fees "when the court finds that the failure to comply with the order or judgment was without compelling cause or justification." 705 ILCS 5/508(b) (West 2008). Here, Judge Brandt specifically noted that the trial court had not entered any orders in favor of Molly during the time when Rock and Serritella were representing her. Both were interim counsel whose work did not involve the prosecution of successful contempt petitions. In fact, the court specifically pointed to an order entered in October 2008 (during Serritella's representation), where it had denied one of Molly's motions to compel for failure to comply with supreme court rules. Accordingly, we find no error in the court's section 508(b) award on remand.

¶ 83 As a final matter, Molly requests that this court add $17,750 to the fee award for work performed by present counsel in moving to reconsider and successfully appealing the Judge Ault fee order. We refuse to do so. Work performed by Molly's present counsel in appealing the court's original fee order was entirely outside the scope of section 508(b).

¶ 84 B. New Attorney Fees

¶ 85 On cross-appeal, Molly argues the trial court erred in awarding significantly less than she requested in both section 508(a) and section 508(b) fees concerning postappeal litigation. With regard to section 508(a) fees, Molly asks this court to "carefully study the history of the matter in terms of fees incurred and award an additional amount of discretionary fees." We refuse to do so. A reviewing court is not "a repository into which an appellant may foist the burden of

argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Moreover, the awarding of attorney fees pursuant to section 508(a) is within the trial court's discretion. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 44. Absent a specific showing that the court abused such discretion, we will not intervene.

¶ 86 With regard to section 508(b) fees, Molly claims the trial court's $1,300 award was insufficient. She requests $15,000 for Michael's hiding of assets, $4,500 for Michael naming a witness who had threatened the twins' lives, an additional $1,000 for the proceedings to substitute Judge Galley, and $16,967 for litigation in Pennsylvania seeking to uncover Michael's hidden accounts. However, Molly fails to provide any record citation for these conclusory figures, claiming only that the trial court should have awarded them. As stated above, we refuse to scour the record to develop Molly's arguments for her. The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *People v. Campbell*, 224 Ill. 2d 80, 87 (2006). Accordingly the trial court's attorney fee award stands.

¶ 87 V. Interest

¶ 88 Finally, Molly asks this court to reverse the trial court's ruling on interest. She argues Michael should be required to pay 9% postjudgment interest (735 ILCS 5/2-1303 (2008)) on the amount of child support and attorney fees that this court mandated in its November 2010 Opinion. Section 2-1303 of the Code of Civil Procedure (Code) provides:

> "Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied[.] *** When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when

made or rendered to the time of entering judgment upon the same, and included in the judgment." 735 ILCS 5/2-1303 (West 2008).

¶ 89 Relying on the language of section 2-1303, Molly asserts that this court's prior order is an "award, report or verdict" on which 9% postjudgment interest should be awarded. She claims that the vast majority of the gifts that generated the judgment for back support occurred after Michael knew, from this court's order, that he should have been paying support calculated to include gifts from his parents. We disagree that our order had such an effect.

¶ 90 In November 2010, we remanded for modification of the child support order to include gifts Michael receives from his family, for reconsideration of the maintenance issue, and for a hearing on whether the trial court should award Molly attorney fees under section 508(b) of the Act. In doing so, we did not calculate any monetary amount Michael would be required to pay with regard to any of the remanded issues. Rather, the first time a specific monetary amount was calculated was the trial court's October 2014 omnibus final order. Because there was no amount on which interest could be calculated until that time, we find no error in the trial court's determination that Michael was not required to pay interest pursuant to section 2-1303 of the Code.

¶ 91 Finally and in the alternative, Molly requests 5% prejudgment interest on the basis of equitable considerations. See *In re Marriage of Blinderman*, 283 Ill. App. 3d 26 (1996) (Prejudgment interest is proper when specifically authorized by statute, by agreement, or "where warranted by equitable considerations."). She claims Michael knew he owed this money and the record shows an "unreasonable and vexatious delay of payment." The award of interest based on equitable considerations is matter which rests entirely within the trial court's discretion. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 257-58 (2006). Here, the issue of which

gifts constituted income for purposes of calculating child support was a legitimate issue before the trial court. After hearing evidence and the arguments of the parties, the court decided not to award interest based on the fact that it had not calculated the amount Michael would be required to pay until the date of its order. We find no abuse of discretion in this determination.

¶ 92 CONCLUSION

¶ 93 For the forgoing reasons, we affirm the judgment of the circuit court of Tazewell County.

¶ 94 Affirmed.