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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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JAMES JOHNSON,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 90 D 6260
	)	
PAMELA JOHNSON,	)	The Honorable
	)	Mark Joseph Lopez,
Defendant-Appellee.	)	Judge, presiding.
	)	

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Pierce concur in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion when it held ex-husband in indirect civil contempt for noncompliance with a court order requiring him to repay part of a loan his ex-wife obtained to help pay for college tuition for the couple's children; under the marital settlement agreement, ex-husband was responsible for all college expenses for their five children.

¶ 2 **BACKGROUND**

¶ 3 Plaintiff James Johnson appeals an indirect civil contempt order entered against him for failing to comply with orders requiring him to repay loans obtained by his ex-wife to pay college tuition for three of their five children. The trial court ordered James to repay \$42,910 directly to

the lender. We affirm the trial court; James did not meet his burden to prove nonpayment was not willful or contumacious nor did he demonstrate inability to pay.

¶ 4 Background

¶ 5 James' statement of facts was deficient so the relevant facts were gleaned from the record.

¶ 6 When the Johnsons' marriage was dissolved in 1992, James was earning over \$1,000,000 yearly as a securities trader. Under the marital settlement agreement, Pamela was the primary caregiver and James was solely responsible for "all reasonable and necessary incidental college expenses" for their five children.

¶ 7 In 2001, James' income decreased significantly due to changes in his business. James continued to pay child support and maintenance until 2007 when he stopped making payments. After 2006 James did not file income tax returns because his income was below the filing threshold. In November 2007, James petitioned the trial court to modify his maintenance obligation under the marital settlement agreement (MSA). Pamela responded with a petition for rule to show cause and an amended petition in April 2009. In March 2012, James sold his condominium on North Dearborn in Chicago for \$452,000 with a net profit of \$18,618.

¶ 8 On November 2012, after several years of court proceedings, the trial court terminated maintenance and child support. The trial court ordered James to pay \$43,000 directly to the lenders of outstanding college loans. Pamela moved to reconsider or clarify in November 2012, to which James responded in February 2013. The trial court, on March 25, 2014, issued an order modifying and superseding the November 2012 order, dismissing Pamela's petition for a rule to show cause and finding James overpaid his support obligations (reviewable maintenance, non-modifiable maintenance-in-gross, and child support) by \$143,810 between 2001 and 2006. From

the overpayment the trial court credited \$44,080 toward the unpaid amount claimed by Patricia, thus satisfying in full his maintenance obligation with no further obligation to pay maintenance.

¶ 9 The trial court then found that James, as agreed in Article 10 of the MSA, should pay outstanding parent loans and college expenses for three of the Johnson's five children. James' obligation included late charges, interest, and penalties until paid in full.

¶ 10 In April 2014, James moved to reconsider, to which Pamela filed a response. In July 2014, the trial court denied James' motion to reconsider. In the interim between the March 2014 order and Pamela's petition for a rule, she filed for bankruptcy in federal court. In October 2014, Pamela filed a petition for rule to show cause and an adjudication of indirect civil contempt, alleging that James willfully failed to comply with the March order because James had not paid any of the children's college expenses and failed to reimburse her.

¶ 11 James' response to Pamela's petition asserted that she did not show that he was capable of making the payments, and this inability to pay "preempt[ed] and void[ed] the question of willingness." James further argued a finding of contempt required extrinsic evidence but Pamela's petition "simply state[d] as facts what needs to be legally proven." James included his financial disclosure statement, 2010 tax return (he did not file federal returns after 2010 on the basis that his income was below the filing threshold), and closing documents for the sale of his condominium in Chicago.

¶ 12 The trial court found James in indirect contempt, and on September 10 denied James's motion to reconsider. The trial court also ordered James to "seek and obtain a full-time, W2, wage earning job." A status hearing on whether James purged his contempt was set for December 10. James filed his notice of appeal on October 6.

¶ 13 Jurisdiction

¶ 14 We have a duty to consider our jurisdiction *sua sponte*. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009). Here, the order appealed determined James’ past and ongoing obligations to pay college expenses and fixed the rights and obligations of both parties in this regard. The trial court applied varying amounts of James’ previous payments to Pamela’s maintenance and child support claims. After satisfying those claims, James was ordered to repay the outstanding balance of loans Pamela secured for college tuition for two of the children. See *In re Marriage of Troske*, 2015 IL App (5th) 120448, ¶ 22 (order fixing past and ongoing child support and maintenance obligations held final and appealable even though amount of past payments not determined). Accordingly, we have jurisdiction over this appeal.

¶ 15 Standard Of Review

¶ 16 We defer to the trial court and apply the manifest weight of the evidence standard as the trial court was the finder of fact and in the best position to observe the conduct and determine the credibility of the witnesses. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). A finding is against the manifest weight of the evidence if the opposite conclusion is evident or the finding itself is unreasonable, arbitrary, or not based on the evidence. *Best v. Best*, 223 Ill.2d 342, 350 (2006).

¶ 17 We will reverse a contempt finding only if the trial court abused its discretion. *In re Marriage of O’Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 25. A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court. *Id.*

¶ 18 ANALYSIS

¶ 19 As a preliminary matter, Pamela filed no brief responding to James’s argument. Nevertheless, we may decide this appeal on its merits as the record and claimed error is straightforward and can be determined without the aid of an appellee’s brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133 (1976) (“[I]f the record is

simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal.”).

¶ 20

Appellant's Brief

¶ 21

James's brief violates the mandatory provisions in Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016). James did not provide any citations to authority for the standard of review nor did he include a statement of the facts “necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal.” James' entire statement of facts consists of one paragraph (seven sentences) with two citations to the record directing us to the trial court's March 25, 2014 amended order finding him in indirect civil contempt. James does not cite any testimony or evidence presented at any hearings. See Ill. S. Ct. R. 341(h) (7) (eff. July 1, 2008) (party's argument “shall contain the contentions of the [party] \*\*\* with citation of the authorities and pages of the record relied on”); *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25 (observing, “bare contentions that fail to cite any authority do not merit consideration on appeal).

¶ 22

James also failed to include (i) a complete table of contents to the appellate record; (ii) the notice of appeal in the appendix of the appellate brief; and (iii) a statement of the applicable standard of review for each issue in his brief, violating Illinois Supreme Court Rules 341 (eff. Jan. 1, 2016) and 342(a) (eff. Jan. 1, 2005). These rules are mandatory, not suggestions. *Doe v. Township High School Dist. 211*, 2015 IL App (1st) 140857, ¶ 84. A party's brief may be stricken for failure to comply with these rules. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). And James's *pro se* status does not excuse him from complying with established appellate procedures. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001); *Lill Coal Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975) (while some deference

is afforded to *pro se* litigants, the orderly administration of the appellate court requires that the rules of appellate procedure be followed).

¶ 23 James’s failure to comply with the rules hinders our review, but as we are still able to understand the issues raised on appeal, it does not deprive this court of jurisdiction. *Twardowski*, 321 Ill. App. 3d at 511. Therefore, we will consider the merits of the issue raised despite the multiple deficiencies.

¶ 24 Indirect Civil Contempt

¶ 25 Civil contempt is designed to compel future compliance with a court order and can be avoided through obedience. *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 977 (2007). An indirect contempt occurs out of the presence of the judge and is dependent for its proof on some sort of evidence or facts of which the court has no judicial notice. *In re Marriage of McCormick*, 2013 Ill App (2d) 120100, ¶ 17.

¶ 26 “Whether a contempt finding should be vacated is a question to be determined on the individual facts of the particular appeal.” *O’Malley*, 2016 IL App (1st) 151118, ¶ 25 (quoting *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶ 121). The petitioner bears the initial burden to establish by a preponderance of the evidence that the alleged contemnor has violated a court order. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 50. Once that burden is satisfied, the burden shifts to the contemnor to establish that the violation was not willful and contumacious and that he or she had a valid excuse for failing to follow the order. *Id.* A violation is not willful if a “valid excuse” exists. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107-108 (2006). Contumacious conduct is “ ‘conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or lessening the authority

and dignity of the court.’ ” *Id.* at 108 (quoting *In re Marriage of Fuesting*, 228 Ill. App. 3d 339, 349 (1992)).

¶ 27 Under Article 10 of the MSA, James was required to pay for all the children’s college-related expenses. The only amount outstanding was the balance owed to lenders for loans Pamela took out for college expenses after James stopped paying the college expenses as he agreed in the MSA. The trial court issued a lengthy ruling that disposed of all the parties’ claims. Only one section of the order required James to contribute anything beyond what he already paid to Pamela; the trial court ordered James to pay \$42,910.09 toward loans Pamela secured for college expenses. After James failed to pay, Pamela filed a Rule to Show Cause alleging non-compliance with the court’s order.

¶ 28 James complains that the findings by the trial court “are not findings in the sense of what is normally viewed as specific findings of fact because no extrinsic evidence exists.” In his “Summary” at the end of his brief, James states that Pamela submitted “zero items of evidence” against him. James’ position is not supported by any authority and, in any case, is meritless. The trial court found two outstanding loans as of December 8, 2014, based on documentation by the lenders. James did not deny his non-payment; the burden then shifted to him to demonstrate that his failure to pay was not willful or contumacious and that he had the ability to pay. *Charous*, 368 Ill. App. 3d at 107-08. The contempt order was based on a violation of the trial court’s order that James repay loans Pamela secured for college expenses for two of the couple’s children.

¶ 29 Ability to Comply

¶ 30 “A valid contempt order must contain a purge provision, which lifts the sanction when the contemnor complies with the order.” *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 42. But a person held in civil contempt must have the ability to purge the contempt by

complying with the court order. *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 633, (1991). When a court order cannot be complied with, there cannot be a finding of civil contempt. *In re Marriage of O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 26.

¶ 31 James asserted in his response to Pamela's petition that she did not show that he was capable of making the payments, and this inability to pay "preempt[ed] and void[ed] the question of willingness." This line of argument ignores that the burden to demonstrate inability to pay was on James. In his brief, James claims he presented "sound evidence" of his inability to comply with the court order. James does not direct us, however, to any evidence in the record to support these contentions nor does he develop any argument in support of that statement. Thus, we will not consider it. See *Hall*, 2012 IL App (2d) 111151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal."). A reviewing court is not "a repository into which an appellant may 'dump the burden of argument and research,' " and we need not search the record to find support for a party's argument. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)).

¶ 32 James claims that he paid Pamela more than what was required by the marital settlement agreement. Not only is overpayment of maintenance and child support irrelevant to the issue before us, the trial court applied those overpayments to James' other obligations. The parties agreed in the MSA that James was responsible for tuition at a private school, all special lessons, summer camp, as well as all college expenses. The trial court computed the amounts owed to Pamela and found that James satisfied his "maintenance in gross" obligation and all other outstanding balances for various child expenses. James now complains that he was still held responsible for anything, in direct contradiction to his express agreement in the MSA about college expenses. The trial court presided over years of post-judgment litigation involving issues



regarding the MSA provisions. Finally, after carefully setting out all of James' liabilities and credits, the trial court terminated his child support and maintenance obligations. Neither party prevailed on all requests, and we find the trial court did not abuse its discretion by reaching this conclusion as to the final amounts due on the now-emancipated children.

¶ 33 Unquestionably, James did not fulfill the requirement of the MSA regarding college expenses. Neither did he comply with the March 2015 order to repay the loan. The trial court's findings of fact were not against the manifest weight of the evidence. We find no abuse of discretion in the trial court's order holding James in indirect civil contempt.

¶ 34 Affirmed.