



the dissolution judgment, the parties entered into a Marital Settlement Agreement (Settlement Agreement), which concerned the maintenance for Petitioner and the rights of each party with regard to the division of all marital and non-marital property. The Settlement Agreement provided, *inter alia*, that Respondent would pay Petitioner maintenance in the amount of \$25,000 per year until the death of either party or until Petitioner's remarriage, or resident, continuing, conjugal cohabitation. The Settlement Agreement further provided that Respondent would pay past due maintenance in the amount of \$44,000 and shall place for sale a property the parties owned in Florida and pay the net proceeds to Petitioner. Two years later, the circuit court entered an order finding Respondent in civil contempt for failure to pay maintenance, failure to make payments toward his arrearage, and failure to sell the Florida property and pay the net proceeds to Petitioner, as well as his failure to perform other obligations under the Settlement Agreement. The court held that he could purge the arrearage by selling the property and making the mandated payments.

¶ 3 On March 11, 2013, Petitioner filed a petition for judgment contending that Respondent had failed to fulfill his maintenance obligations under the Settlement Agreement. In response, Respondent filed a petition for the termination of maintenance contending that he had retired from his employment, which resulted in a substantial change in his financial circumstances, warranting a termination of his maintenance obligation. Respondent also filed a petition to purge the contempt order on the basis that he had already complied with its provisions or that compliance was impossible. The court granted Respondent's motion to purge the contempt order finding that Respondent's obligations under the contempt order had been purged or were impossible to perform. After an evidentiary hearing, the transcript of which is not included in the record filed on appeal, the court entered an order granting Respondent's motion to terminate

maintenance payments finding that there had been a substantial change in Respondent's circumstances warranting termination.

¶ 4 On appeal, Petitioner first contends that the record shows that the court abused its discretion in granting Respondent's motion to terminate maintenance where Respondent's change in circumstances did not warrant the termination and the court considered improper factors in deciding to terminate maintenance. Petitioner further contends that the circuit court lacked jurisdiction to purge the contempt order. Petitioner maintains that despite the absence of a transcript from the evidentiary hearing on Respondent's petition, there is sufficient documentation in the record to allow this court to review her claims. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 5 I. BACKGROUND

¶ 6 Petitioner and Respondent were married in Michigan on December 3, 1971. One child, Shawn, was born to the parties on August 25, 1975. On March 26, 2001, the circuit court entered a judgment of dissolution of marriage dissolving the parties' marriage. The judgment provided that the parties entered into a Settlement Agreement "concerning the questions of maintenance for the petitioner, the respective rights of each party in and to the property, income or estate \*\*\*, including a division of all marital and non-marital property \*\*\*."

¶ 7 A. The Settlement Agreement

¶ 8 As part of the Settlement Agreement, the parties agreed that Respondent's annual gross income was \$67,400, and that Petitioner was currently unable to work due to medical disability, and had no income independent of the maintenance she received from Respondent. The Settlement Agreement provided that Respondent shall pay Petitioner \$25,000 per year in weekly installments of \$481 until one of the following events occurred: Respondent's death, Petitioner's

death, Petitioner's remarriage, or Petitioner's cohabitation on a resident, continuing conjugal basis. The Settlement Agreement further provided that Respondent had the right to request a review of his maintenance obligations "42 months from the effective date" of the Settlement Agreement. The review period was based on the petitioner's "alleged disability," and Petitioner agreed that she would apply for social security disability benefits with the Social Security Administration within 30 days from the date of the Settlement Agreement.

¶ 9 The Settlement Agreement further provided that Respondent had a past due maintenance obligation of \$44,000, and provided for certain credits to be made against the maintenance arrearage. One such credit provided that the parties owned a property in Florida with an approximate value of \$2000. The Settlement Agreement provided that the parties should immediately list the property for sale, and that the proceeds would be applied the arrearage. The other credits included the funds available in Respondent's life insurance policy, which Respondent was directed to withdraw and pay to Petitioner, and Respondent's payment of the parties' Unipac debt. The remaining arrearage would be paid by Respondent in annual payments of \$2000. The Settlement Agreement also provided that Respondent would name Petitioner as the beneficiary on his Group Life Insurance Policy and other survivor benefits with his employer, and granted Petitioner a 55% interest in the marital portion of Respondent's pension plan.

¶ 10 B. Rule to Show Cause and Contempt Order

¶ 11 On October 21, 2002, Petitioner filed a petition for a rule to show cause and enforcement of judgment. In her petition, Petitioner contended that Respondent had failed to pay maintenance to her as outlined in the Settlement Agreement. Petitioner requested an order directing Respondent to pay her the maintenance due and owing at the time she filed her petition.

Petitioner also contended that Respondent had failed to sell the Florida property, and transfer the proceeds to her, and had failed to withdraw and transfer to her the cash value of his life insurance policy. Petitioner contended that Respondent should be held in contempt of court for his willful refusal to abide by the Settlement Agreement.

¶ 12 On November 14, 2002, Respondent filed a petition to reduce maintenance. In his petition, Respondent contended that he had a substantial change in circumstances and his earnings had substantially decreased since the Judgment for Dissolution and Marriage and Settlement Agreement were entered. Respondent attached to his petition two Comprehensive Financial Statements, which showed his gross income for 2001 as \$59,446.49 and his gross income for 2002 up to the date of the filing of the petition as \$61,131.03. Respondent also filed a response to Petitioner's petition for rule to show cause, in which he denied the allegations of the petition, and asserted that Petitioner came before the court with "unclean hands" because she had failed to apply for social security disability benefits as required in the Settlement Agreement.

¶ 13 On February 18, 2003, the circuit court entered an order finding that there was sufficient evidence to support a finding of contempt for Respondent's failure to pay maintenance and make payments toward his maintenance arrearage. The court further found that Respondent should be held in contempt for his failure to list for sale the Florida property and pay Petitioner the proceeds, and for his failure to withdraw the funds available from his life insurance policy and pay those funds to Petitioner as required by the Settlement Agreement.

¶ 14 The court held that Respondent could purge himself of the contempt by paying the total arrearage of \$17,575.67, by listing the Florida property for sale within seven days, and by withdrawing the funds available in his life insurance policy and paying them to Petitioner within seven days. The court also ordered Respondent to pay Petitioner's attorney fees in the amount of

\$6,500 pursuant to Section 5/508(b) of the Illinois Marriage and Dissolution Act (IMDMA) (750 ILCS 5/508(b) (West 2000)).

¶ 15

C. The Current Litigation

¶ 16 On March 11, 2013, Petitioner filed a petition for judgment and attorney fees. In her petition, Petitioner contended that although Respondent had sold the Florida property, he had not paid the proceeds to Petitioner. Petitioner further contended that Respondent also failed to pay her the cash value of his life insurance policy, the Unipac debt, and “much of” the \$44,000 arrearage stipulated in the parties’ Settlement Agreement. Petitioner asserted that Respondent also failed to pay all the maintenance due, and currently owed her approximately \$147,743 for maintenance he was obligated to pay under the terms of the Settlement Agreement. Petitioner also requested that the court award her attorney fees in connection with the petition to enforce Respondent’s obligations under the Settlement Agreement. On April 1, 2013, Petitioner filed a Petition for Injunction asking the court to enjoin Respondent from “selling, giving, transferring \*\*\* or disposing of real estate, accounts, monies and all other assets in which he has an interest or of which he has control” during the pendency of Petitioner’s petition for judgment and attorney fees.

¶ 17 In his response to Petitioner’s petition, Respondent denied the allegations in the petition and raised several affirmative defenses. Respondent contended that Petitioner’s claims were barred by *res judicata* because she had already obtained a judgment regarding the arrearage amount, and that Petitioner was not entitled to receive maintenance because her receipt of maintenance was premised on her applying for social security benefits, which she failed to do. Respondent therefore contended that his obligation to pay maintenance expired 42 months after the entry of the judgment because of Petitioner’s failure to satisfy this condition precedent.

¶ 18 Respondent also filed a petition for review and termination of maintenance. In his petition, Respondent contended that he paid Petitioner maintenance in accordance with the Settlement Agreement from March 2001 through February 2013. Respondent asserted that although 42 months had elapsed since the entry of the Judgment for Dissolution, the court had never reviewed the maintenance award and Petitioner never provided any proof that she applied for social security disability benefits, which was a condition precedent for her continued receipt of maintenance. Respondent contended that since Petitioner had failed to satisfy this condition precedent, his maintenance obligation terminated in August 2004, and any payments he made after that date should have been applied to his maintenance arrearage.

¶ 19 Respondent further contended that since the entry of the March 2001 Judgment for Dissolution, there had been a substantial change in circumstances necessitating a review of his maintenance obligation. Respondent asserted that on January 31, 2013, he retired from his employment at the age of 63 because he was no longer physically capable of performing the job at a satisfactory level. Respondent contended that as a result of his retirement, his income had substantially decreased and his only sources of income were his retirement benefits from his former employer for \$1,293.49 per month and his Social Security Retirement Income of \$2,094 per month. Respondent also contended that Petitioner had sufficient time to rehabilitate herself and obtain gainful employment given her educational background. Respondent asserted that his maintenance obligation should therefore be terminated.

¶ 20 Petitioner filed a response to Respondent's petition in which she contended that although Respondent paid some maintenance from March 2001 through February 2013, he failed to pay all of the maintenance that he was obligated to pay under the Settlement Agreement. She further asserted that she suffered from serious illnesses and injuries and was unable to be employed. She

maintained that her sole income was the maintenance she received from Respondent, and she has not been eligible for social security income benefits because of the amount of maintenance she receives. She contended that Respondent unilaterally stopped paying maintenance in February 2013 without an order of the court and is currently in arrears on his maintenance obligation. Petitioner also filed a Rule to Show Cause alleging that Respondent failed to pay her the funds he received after the sale of the Florida property.

¶ 21 In response, Respondent contended that at the time of the entry of the Judgment for Dissolution “[a] mutual mistake of fact existed” with regard to the ownership of the Florida property. Respondent asserted that the property was actually owned by his mother, and that the parties were not the joint title owners. Upon his mother’s death, he had to file an application to obtain the surplus funds resulting from the sale of the property at a tax sale. Respondent acknowledged that he did not transfer the funds he received as a result of his mother’s ownership in the Florida property to Petitioner. Respondent also filed a 13.3.1 Disclosure Statement showing his gross annual income from 2012 as \$125,410 and his gross monthly income following his retirement in January 2013, was \$3,387.49 per month, or \$40,649.88 annually.

¶ 22 Respondent also filed a motion for a finding that the contempt finding of February 18, 2003, was purged. Respondent contended that the acts required to purge himself of the contempt finding had been performed, can no longer be performed, or will be performed. Respondent asserted that in accordance with the contempt finding, he had paid the then-unpaid maintenance and maintenance arrearage amounts. He also contended that because the Florida property was sold at a tax sale, the purge order to list the property for sale is moot and can no longer be performed. He further asserted that he withdrew the cash value of his life insurance policy and paid the sum to Petitioner’s attorney. Respondent acknowledged that he had no documentation



showing that he paid the cash value of his life insurance to Petitioner's attorney, so he provided the same amount to his attorney to hold in the firm's trust account in the event Petitioner denied receiving such funds. Respondent asserted that the contempt order should therefore be purged.

¶ 23

1. *The Circuit Court's Order*

¶ 24 On January 2, 2014, the circuit court entered an order granting Respondent's petition to purge the contempt finding of February 18, 2003. The court found that Respondent had met the purge requirements with regard to the maintenance payments and maintenance arrearage payments, and with regard to withdrawing the cash value from his life insurance policy and paying it to Petitioner. The court found that although Respondent had not met the purge requirements with regard to listing the Florida property for sale, that section of the purge order was impossible to perform.

¶ 25 On September 6, 2016, the circuit court entered its final judgment in a five-page written order. In its order, the court recounted the procedural history of the parties' dissolution, the contentions in the parties' pleadings, and the evidence adduced at the evidentiary hearing.<sup>1</sup> The court noted that Petitioner lives in California with her son who pays her rent. Petitioner receives \$403 monthly from Respondent's pension from his former employer, as a result of the terms of the Settlement Agreement, and \$1250 in social security disability income that she began to receive in 1992. The court also noted that Petitioner was last employed in 1992 as a school psychologist and claimed to have stopped working because she had "repetitive arm injury," chronic strep throat infections, and "low auto immune system." The court observed that no medical doctor testified on behalf of Petitioner at the hearing. The court found that Petitioner's testimony regarding the maintenance payments she received from Respondent between 2001 and

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<sup>1</sup>The transcript of the evidentiary hearing is not included in the record filed on appeal.

2003 was not “clear or reliable.” The court observed that an exhibit prepared by her son “impeach[ed] and contradict[ed] her testimony” regarding her receipt of maintenance.

¶ 26 With regard to Respondent, the court found that he received \$2,071 monthly in social security benefits and \$1,538.79 monthly from his pension. The court believed that, despite his testimony to the contrary, Respondent continued to pay maintenance after the 42-month review period because he was working, and earning sufficient income to pay the maintenance. The court noted that it was not until he retired that Respondent filed a petition to terminate maintenance. The court found that Respondent’s income between 2001 and 2013 ranged from as low as \$59,000 in 2001 to as high as \$125,584.00 in 2011 and \$101,286 of joint income in 2013. The court noted that his joint tax return from 2014 showed a joint income of \$23,682.

¶ 27 The court therefore found that there had been a substantial change in circumstances and that Respondent’s maintenance obligation should be terminated retroactive to the date he filed his petition on April 25, 2013. The court noted that Petitioner’s monthly expenses were “ZERO,” and she had a monthly pension income of \$402.20 and “public aid/food stamps” of \$200. The court also noted that “she failed to include [in her income] the social security benefits of \$1,250 per month which she testified to during the hearing.” The court held that the only maintenance Respondent owed to Petitioner was the stipulated arrearage amount of \$41,000. The court also denied all of the attorney fee petitions filed throughout the proceedings and held that each party shall pay its own attorney fees. The court subsequently denied Petitioner’s motion to vacate the judgment and this appeal followed.

¶ 28

## II. ANALYSIS

¶ 29 On appeal, Petitioner contends that the circuit court’s termination of maintenance was an abuse of discretion and against the manifest weight of the evidence. Petitioner contends that the

court's judgment was based almost entirely on Respondent's voluntary retirement, which was insufficient alone to warrant a termination of maintenance. Petitioner further contends that the court's order purging the contempt order should be reversed for lack of jurisdiction. Petitioner contends that Respondent never appealed the contempt judgment and thus the trial court had no jurisdiction to address it.

¶ 30 A. Standard of Review

¶ 31 Section 510(a) of the IMDMA permits the modification of maintenance upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2014). On a review of the circuit court's decision to modify or terminate a maintenance order, we will not disturb the court's judgment absent an abuse of discretion. *In re Marriage of Schrimpf*, 293 Ill. App. 3d 246, 252 (1997). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113 (2004).

¶ 32 B. Incomplete Record on Appeal

¶ 33 We initially observe that there is no report of proceedings or bystander's report from the evidentiary hearing held in the circuit court in the record filed on appeal. Petitioner concedes that it was her burden, as the appellant, to provide a sufficiently complete record to allow meaningful review of the claims raised on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994) provides that "[t]he record on appeal shall also include any report of proceedings or bystander's report prepared in accordance with Rule 323." Under Rule 323(c), "[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection." Ill. S. Ct. R. 323(c) (eff. Sept. 23, 1996).

¶ 34 Here, as Petitioner acknowledges, she has failed to provide the court with a report of proceedings, bystander's report, or other agreed statement of facts of the evidentiary hearing in the circuit court. Nonetheless, Petitioner contends that our review of her claims is not precluded where the circuit court set forth in its written order the factual and legal bases for its ruling, including the evidence presented at the evidentiary hearing.

¶ 35 Although we observe that the circuit court's order contains a recitation of the facts and pleadings, it is impossible for us to determine, without the benefit of a transcript, whether the circuit court's order contains all of the evidence presented at the hearing and all of the evidence it considered in rendering its judgment. We find, however, that there is adequate documentation in the record filed on appeal such that our review of the issues raised by Petitioner is not precluded. We recognize, however, that any doubts which may arise from the incompleteness of the record will be resolved against the Petitioner, as the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 36 C. Termination of Maintenance

¶ 37 Petitioner first contends that the circuit court's termination of maintenance was an abuse of discretion and against the manifest weight of the evidence. Petitioner maintains that the court's termination of her maintenance relied "almost exclusively" on Respondent's voluntary retirement, which is insufficient, by itself, to warrant a termination of maintenance. Petitioner further asserts that the court erred in considering her social security income as a basis for terminating maintenance, and in rejecting her health claims despite the lack of medical evidence.

¶ 38 1. *Respondent's Change in Circumstances*

¶ 39 "Whether a spouse may rely on his retirement as a change in circumstances to justify the modification of maintenance depends on the circumstances of each case." *In re Marriage of Schrimpf*, 293 Ill. App. 3d at 251-52. In determining whether the retirement constitutes a change

in circumstances sufficient to warrant the modification of maintenance, the court may consider the spouse's age, health, and motives, the timing of the retirement, and his ability to pay maintenance after retirement, as well as the former spouse's ability to provide for herself. *In re Marriage of Colombo*, 197 Ill App. 3d 767, 768-69 (1990) (citing *In re Marriage of Smith*, 77 Ill. App. 3d 858, 863 (1979)).

¶ 40 Here, Respondent showed a substantial change in his financial circumstances after his retirement. Respondent filed his petition for termination of maintenance after his retirement and the court observed that his joint income dropped from \$101,286 in 2013 to \$23,682 in 2014. That income level represented a substantial decrease from the \$67,400 annual income upon which maintenance was originally determined.

¶ 41 Further, the evidence regarding the circumstances of Respondent's retirement did not suggest that the court's termination of maintenance was improper. The husband presented evidence that he retired at 63 years old because he was physically unable to perform his job after 33 years of service. There was no suggestion of any malicious motive associated with Respondent's retirement. *In re Marriage of Colombo*, 197 Ill. App. 3d at 769. The court also observed that Petitioner had monthly pension income of \$402.20, "public aid/food stamps" of \$200, and social security benefits income of \$1,250 per month, while her monthly expenses were "ZERO." Accordingly, the circuit court's written order suggests that it considered Respondent's age, health, and motives, the timing of his retirement, his ability to pay maintenance after retirement, as well as the Petitioner's ability to provide for herself, in determining that Respondent's retirement constituted a substantial change in circumstances sufficient to justify a termination of maintenance. Therefore, we cannot say that the circuit court's judgment was against the manifest weight of the evidence, or an abuse of discretion.

¶ 42 We further find Petitioner’s reliance on *Schrimpf* and *In re Marriage of Waller*, 253 Ill. App. 3d 360 (1993) unpersuasive. Petitioner contends that these cases stand for the proposition that retirement by itself is not sufficient to terminate maintenance. As discussed, however, the court in *Schrimpf* recognized that whether retirement constitutes a substantial change in circumstances justifying a modification of the maintenance award depends on the factual circumstances of each case. *In re Marriage of Schrimpf*, 293 Ill. App. 3d at 251-52. In *Schrimpf*, the court noted that the husband had “substantial assets” from which to pay his maintenance obligation and that “[a]fter reviewing the record as a whole and taking into consideration the financial resources and status of both parties, we cannot say that the denial of a termination or reduction in respondent’s maintenance payments was an abuse of discretion or against the manifest weight of the evidence.” *Id.* at 252-53. Importantly, this holding recognizes the circuit court’s ability to consider the “record as a whole” and defers to the trial court’s discretion regarding whether to modify maintenance. We believe the same deference is warranted here where the record shows that the court considered the parties’ expenses, income, and circumstances, and did not rely “exclusively” on Respondent’s retirement. Although, as discussed, we are unable to consider the record as a whole, the circuit court’s order shows that the court’s holding had a sufficient factual basis and nothing in the record suggests that the court abused its discretion in entering its judgment.

¶ 43 Moreover, we find *Waller* distinguishable where, in that case, the court observed that although the husband had a right, at some point, to retire or reduce his working hours, he had not reached the customary retirement age and was in good health. *In re Marriage of Waller*, 253 Ill. App. 3d at 362. The court also found that the husband’s retirement was under his control because he was offered another job his employer. *Id.* Here, by contrast, Respondent contended that he

retired after 33 years of employment because he was physically unable to perform his job. In line with the analysis in *Waller* and *Schrimpf*, the circuit court here “weighed the proper factors” (*id.*) in determining whether a reduction or termination of the maintenance award was warranted following Respondent’s retirement, and we cannot say that its decision was against the manifest weight of the evidence or an abuse of discretion.

¶ 44 *2. Petitioner’s Social Security Benefits*

¶ 45 Petitioner also contends that the court erred in considering her social security income in granting Respondent’s petition to terminate maintenance. Petitioner contends that, in *Schrimpf*, this court held that the ex-husband should not be entitled to a credit toward his maintenance obligation for social security benefits received by the ex-wife. *In re Marriage of Schrimpf*, 293 Ill. App. 3d at 255. We find Petitioner’s reliance on *Schrimpf* misplaced.

¶ 46 Initially, we observe that there is no clear indication in the record that the court relied on Petitioner’s social security benefits income in granting Respondent’s petition. The court’s order states that “[t]his Court finds that there has been a substantial change in circumstance and that [Respondent’s] obligation should be terminated retroactive to the date of filing his Petition.” The court reached this conclusion before any discussion of Petitioner’s finances, including her social security benefits.

¶ 47 In addition, we do not believe the reasoning in *Schrimpf* supports Petitioner’s contention. The court in *Schrimpf* determined that “respondent [was not] entitled to a credit toward his maintenance obligation for social security benefits received by petitioner by virtue of contributions made by respondent.” *Id.* at 255. Here, Respondent was not seeking a credit toward his maintenance obligation, nor did the court apply Petitioner’s social security benefits in that manner. Rather, the record suggests that the court reviewed Petitioner’s finances in determining

Petitioner's ability to provide for herself. *Id.* at 252 (citing *In re Marriage of Waller*, 253 Ill. App. 3d at 362). The court observed that Petitioner received income from her interest in Respondent's pension, public aid, and social security benefits, while she had no monthly expenses. The court's order thus suggests that it found that Petitioner's maintenance should be terminated where Respondent's retirement consisted of a substantial change in circumstances considering his age, health, and motives, and where Petitioner had the ability to provide for herself, and does not suggest that the circuit court gave Respondent a "credit" toward his maintenance obligation as this court found improper in *Schrimpf*.

¶ 48

### 3. *Petitioner's Health Claims*

¶ 49 Petitioner next contends that the court "inappropriately rejected her health claims as a basis for terminating her maintenance." Petitioner asserts that this court held in *In re Marriage of Johnson*, 2016 IL App (1st) 140479, ¶ 103, that a witness' testimony with regard to her own health condition is appropriate absent supporting medical testimony.

¶ 50 In rendering its decision, the court stated that:

"[Petitioner] claimed to have stopped working because she had repetitive arm injury, chronic strep throat infections, a low auto immune system, and that she had to avoid everyone; she claims that these diagnoses were made in California 5 years ago; the Court notes that no medical doctor testified on behalf of Linda at the time of this hearing." (Internal quotation marks omitted.)

We fail to see how the court's comments on her testimony regarding her health suggest that the court relied on her unsubstantiated health claims as a basis for terminating her maintenance. The court's comments merely reflect its recitation of the evidence and its notation that no medical doctor testified at the hearing regarding her claims. We find no support for Petitioner's claims



that the court rejected her health claims in deciding to terminate her maintenance where the court's order explicitly demonstrates that its decision was based on Respondent's change in circumstances following his retirement. As noted, any doubts which may arise from the incompleteness of the record will be resolved against the Petitioner, as the appellant. *Foutch*, 99 Ill. 2d at 392. Accordingly, we cannot say that the circuit court abused its discretion in terminating Petitioner's maintenance or that its decision was against the manifest weight of the evidence.

¶ 51

#### D. The Purge Order

¶ 52 Petitioner next contends that the circuit court's order purging the contempt order entered on February 18, 2003, should be reversed for lack of jurisdiction. Petitioner contends that the circuit court lacked jurisdiction to purge the contempt order where Respondent failed to appeal the contempt order, and the circuit court could do "nothing [] concerning the contempt against [Respondent] except enforce its judgment."

¶ 53 "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. Here, the contempt order of February 18, 2003, provided that Respondent could purge himself of the contempt by (1) paying the total maintenance arrearage of \$17,575.67; (2) listing the Florida property for sale within seven days of the order; and (3) withdrawing the funds available in his life insurance policy and paying them to Petitioner within seven days. As Petitioner points out, and Respondent concedes, Respondent never appealed from this order within the 30-day time period set out in Supreme Court Rule 304(b)(5) (eff. Feb. 1, 1994)). Petitioner contends that the circuit court therefore lacked jurisdiction to find that Respondent had

purged himself of the contempt by complying with provisions (1) and (3), and finding an impossibility of performance existed with regard to provision (2).

¶ 54 In support of her contention that the circuit court lacked the jurisdiction to purge the contempt order, Petitioner relies on *Anderson Dundee 53, LLC v. Terzakis*, 363 Ill. App. 3d 145 (2005) and *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028 (2001). In *Anderson*, the court rejected the appellants' argument that their oral motion to purge the contempt extended the time for appeal from the contempt judgment. *Anderson Dundee*, 363 Ill. App. 3d at 154. The court found that the appellants' failure to file a timely appeal from the contempt order deprived it of jurisdiction to review the merits of that order. *Id.* at 155. The court found that "[n]othing remains for the trial court to do concerning the contempt against appellants except enforce its judgment." *Id.* The court found, however, that the appellants did file notice of appeal within 30 days of the order in which the circuit court found that appellants failed to purge the contempt, which qualified as a final judgment concluding the separate contempt proceedings, which it had jurisdiction to review. *Id.*

¶ 55 We fail to see how *Anderson* supports Petitioner's contention. Petitioner repeatedly cites the court's language that "[n]othing remains for the trial court to do concerning the contempt against appellants except enforce its judgment," but Petitioner uses that statement out of context, and to support a proposition that is not evidenced by the *Anderson* court's analysis. In fact, the factual background of *Anderson* supports the circuit court's actions here. In *Anderson*, the contempt order was entered on March 31, 2003. *Id.* at 149. Appellants initially appealed, but then voluntarily dismissed their notice of appeal and filed a motion to vacate the contempt order in the trial court. *Id.* On November 26, 2003, more than 30 days after the contempt order was entered,

and after the time to appeal the contempt order had elapsed, the court entered an order finding that the appellants failed to purge the contempt. *Id.* at 150.

¶ 56 On appeal, this court did not take issue with the trial court's ruling on the motion to vacate, despite the fact that the appellants in *Anderson* never filed an appeal from the contempt order. Under Petitioner's interpretation of *Anderson*, the circuit court would have lacked jurisdiction to consider the appellants' motion to vacate. No such issue was raised on appeal. Rather, the appellate court found that *it* lacked jurisdiction to consider appellants' contentions concerning the contempt order because appellants failed to file a timely appeal, while taking no issue with the trial court's continued jurisdiction over the matter. *Id.* at 154-55. The court correctly concluded that there was nothing more that the appellants could do to challenge the contempt order, and that "[n]othing remains for the trial court to do concerning the contempt against appellants except enforce its judgment." *Id.* at 155. Accordingly, we find that *Anderson* undermines Petitioner's argument rather than supports it.

¶ 57 We likewise find that *Longo* fails to support Petitioner's contention. In *Longo*, on October 8, 1998, the court granted plaintiff's motion for attorney fees and, in a separate order, entered a finding of contempt against defendants. *Longo*, 318 Ill. App. 3d at 1032. Defendants did not appeal those orders within the 30-day time period of Rule 304(b)(5), but filed their notice of appeal on December 4, 1998. *Id.* The appeal did not mention the October 8, 1998, orders and the appeal was eventually dismissed by this court on March 24, 1999. *Id.* See *Longo v. Globe Auto Recycling, Inc.*, No. 1-99-0333 (March 24, 1999) (unpublished order under Supreme Court Rule 23). On May 19, 1999, defendants presented an emergency motion in the circuit court to vacate the October 8, 1998, orders under the principles of *res judicata* because the amounts awarded in those orders were the same amounts awarded in a prior judgment of the circuit court.

*Longo*, 318 Ill. App. 3d at 1032. On May 21, 1999, the circuit court granted defendants' emergency motion to vacate the orders. *Id.* at 1032-33.

¶ 58 On appeal, this court found that “a posttrial motion directed at the judgment in the case in which the contempt arose does not serve to extend the trial court’s jurisdiction over the contempt order or delay the time in which a party must appeal the contempt order.” *Id.* at 1036. Accordingly, the court determined that the circuit court did not have jurisdiction on May 21, 1999, to reverse contempt order. *Id.*

¶ 59 Here, the case before us is factually distinguishable from the circumstances in *Longo*. In *Longo*, the defendants had already appealed the circuit court’s order, but neglected to include the October 8, 1998, orders in their notice of appeal and failed to comply with the 30-day time limit of Rule 304(b)(5). “Once the notice of appeal is filed, the appellate court has jurisdiction and the circuit court no longer has jurisdiction.” *Naperville South Commons, LLC v. Nguyen*, 2013 IL App (3d) 120382, ¶ 13 (citing *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173-74 (2011)). However, after defendants in *Longo* filed their notice of appeal, and, in fact, after this court dismissed defendants’ appeal, the circuit court granted their motion to vacate the October 8, 1998, finding of contempt. This was clearly improper and the appellate court correctly noted that the circuit court no longer had jurisdiction to make such a ruling. Here, by contrast, there was no intervening notice of appeal and appeal process, which divested the circuit court of jurisdiction to rule on Respondent’s motion and purge the contempt order. Moreover, Respondent was not challenging the validity of the contempt order, as were defendants in *Longo*, an issue which should have been raised on appeal, but was seeking to enforce the contempt order’s purge provision, a matter over which the circuit court unquestionably had jurisdiction. Accordingly, we find that the court had jurisdiction to purge the contempt order in this case.

¶ 60

III. CONCLUSION

¶ 61 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 62 Affirmed.