2017 IL App (2d) 160238-U
No. 2-16-0238
Order filed January 19, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF	)	Appeal from the Circuit Court
	)	of Lake County.
GREGORY T. LYNCH	)	
	)	
Petitioner-Appellant	)	
	)	No. 06 D 545
and	)	
	)	Honorable
MICHELE LYNCH,	)	Patricia S. Fix
	)	Judge, Presiding.
Respondent-Appellee	)	

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found that there was no agreement between the parties that ex-wife's act of cashing a check from ex-husband for past due unallocated maintenance and child support constituted an agreement to relieve ex-husband of paying any additional arrearage simply because ex-husband wrote words to that effect on the back of the check. Ex-husband was not entitled to have his $18,000 yearly automobile allowance deducted from his gross pay for purposes of calculating unallocated support when he did not demonstrate that those funds were used to cover actual expenses. Ex-husband forfeited the issue of whether the trial court erred in using the gross pay on his ADP earning summary sheets instead of the gross pay listed on his W-2 forms and tax returns. The trial court erred in not giving ex-husband credit for the amount of the check he sent to ex-wife and that she cashed when it calculated ex-husband's total arrearage. The trial court properly held ex-husband in indirect civil contempt for violating the

> clear terms of the parties' marriage settlement agreement. It also properly sentenced ex-husband to incarceration when he failed to pay ex-wife the purge amount by the day the court ordered it be paid. We affirmed the judgment in part, vacated it in part, and remanded the case to the trial court with directions.

¶ 2 The petitioner, Gregory T. Lynch, appeals from an order of the trial court holding him in indirect civil contempt for his failure to pay unallocated maintenance and child support to respondent, Michele Lynch, and sentencing him to incarceration for his failure to pay the purge amount by the court-ordered date. On appeal, Gregory argues that the trial court erred in : (1) disregarding the undisputed settlement of the parties; (2) using his 2011 W-2 form to determine his gross income for that year when that figure included a $1,500 monthly car allowance; (3) failing to give him a credit for a settlement check that he sent to Michelle for unallocated support and that she cashed; and (4) holding him in contempt before it had first determined the amount that he owed Michele, and then not giving him a reasonable time within which to pay that amount. For the following reasons, we affirm in part, vacate in part, and remand for proceedings consistent with this order.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that the parties' marriage dissolved on June 1, 2009, in a judgment that contained their marital settlement agreement (MSA). At that time, the parties had three children, Jennifer, age 18, Cara, age 16, and Daniel, age 14. Article III of the MSA was entitled "Support of Children and Related Matters." Paragraph 4 of that article provided:

> "The parties recognize that Jennifer has and will have special needs in the future. The parties also recognize that the minor child, Cara, has emotional problems now and may have special needs in the future. The parties acknowledge that even after Jennifer and Cara reach age eighteen (18) and graduate from high school that the obligation of the parties for the child support, education and welfare of Jennifer and/or Cara shall continue

> in full force and effect for Jennifer and/or Cara until Order of the Court declaring that a child is not a special needs child and is emancipated for the purposes of child support. Neither parties' obligation to support Jennifer and/or Cara shall terminate until an Order of Court as set forth above, whether or not that child has reached the age of eighteen (18) and neither Jennifer or Cara will be considered emancipated at any age, until so ordered by the Court."

¶ 5 Article VI of the MSA, entitled "Unallocated Maintenance and Child Support (Family Support) For Wife" required that Gregory pay $135,000 per year in unallocated maintenance and child support to Michele until June 30, 2015. This amount was listed as being 45 percent of Gregory's gross income of $300,000 per year. If Gregory made more than $300,000 per year he was required to pay 28 percent of his gross income if three children were living with and supported by Michele, 23 percent for two children and 18 percent for one child.

¶ 6 Upon the termination of Gregory's obligation to pay unallocated maintenance and child support on June 30, 2015, Gregory was required to pay 32 percent of his net pay from all sources if three children were still living with and supported by Michele, 28 percent if two children lived with Michele, and 20 percent if only one child lived with her. Both Michele and Greg were allowed to seek a modification of the MSA if there was a continuing obligation for support under the agreement or if there was a material change in circumstances. "Gross income from employment" was defined as "all salary and bonuses paid to the husband by said employer and shall specifically exclude any stock options including the proceeds from same." Both parties were required to exchange federal and state income tax returns within 15 days of filing such returns while either party had any duty to pay support or maintenance.

¶ 7 On June 1, 2009, the court conducted a prove-up hearing of the MSA. Gregory testified

that Jennifer would in all likelihood remain a special needs child and that Cara may be a special needs child. He understood that even when Jennifer and Cara graduated from high school there was no automatic reduction in the amount of support he owed to Michele until a further order of court. Gregory acknowledged his obligation to pay 45 percent of his gross income until the term of unallocated payments ended, whether his income went up or down.

¶ 8 On July 21, 2015, Gregory filed a pleading entitled "Motion." In the motion he noted that all of the children had graduated from high school, and he claimed that Jennifer was the only child with special needs. Therefore, he requested that the trial court modify Article III of the MSA to provide that his sole further obligation as to the children shall be to pay an equitable portion of the cost of Jennifer's part-time residence at the Center for Enriched Living.

¶ 9 On August 17, 2015, Michele filed a verified petition for rule to show cause and for an adjudication of indirect civil contempt. In count I Michele alleged that Gregory unilaterally, willfully and contumaciously reduced his unallocated payments as of January 1, 2014, and he therefore owed her $67,500. In count II Michele alleged that Gregory had violated his obligation in the MSA to provide his tax returns to her from 2010 to 2014.

¶ 10 On September 18, 2015, Gregory filed his response to Michele's petition along with a cross-petition. He alleged that he had paid 45 percent of his gross income as required, but that he had made less than $300,000. He also denied that he had failed to turn his tax returns over to Michele for the years 2010 to 2014.

¶ 11 On December 10, 2015, Michele filed an amended petition for rule to show cause and for an adjudication of indirect civil contempt. Count I was entitled "Failure to Pay Unallocated Family Support Payment Pursuant to Article VI of the Judgment of Dissolution of Marriage." In it, Michelle alleged, in pertinent part:

"4. Beginning on or about January 1, 2014, GREGORY unilaterally reduced his unallocated family support to MICHELE and began paying less than the required $11,250.00 per month (or $5,625.00 twice a month) to MICHELE.

5. Beginning on June 1, 2015, GREGORY unilaterally terminated his unallocated family support without court order and stopped paying MICHELE any support.

6. Pursuant to the Judgment, between January 1, 2014 and June 30, 2015, GREGORY was obligated to make eighteen (18) payments of $11,250.00 to MICHELE totaling $202,500.00.

7. However, despite the unambiguous terms of the Judgment, GREGORY has only made payments to MICHELE in the following amounts:

a. 2014 payments totaling $93,600.00;

b. January 1, 2015 through June 30, 2015—payments totaling $45,000.00; and

c. September 11, 2015 – one payment of $21,988.24.

8. Accordingly, GREGORY owes MICHELE $41,000.00 in past due unallocated family support for 2014 pursuant to the terms of the Judgment.

9. In addition to the $41,400.00 that GREGORY owes MICHELE for 2014 and providing credit to GREGORY for his payment of $21,988.24 to MICHELE on September 11, 2015, GREGORY owes MICHELE an additional $511.76 in past due unallocated family support for the period of January 1, 2015 through June 30, 2015."

¶ 12 Count II of the amended petition was entitled "Failure to Pay Additional Unallocated Family Support Over and Above $300,000.00 Pursuant to Article VI of the Judgment for Dissolution of Marriage." In that count Michele alleged: (1) in 2010 Gregory earned

$312,718.78; (2) in 2011, he earned $392,840.92; (3) in 2012 he earned $581,005.30; (4) in 2013 he earned $480,744.00; and (5) in 2014 he earned $324,722.

¶ 13 Michelle contended that in 2010 Gregory paid no additional unallocated family support above $300,000, and he only paid $20,779 in 2011 for additional unallocated support. He also failed to pay additional unallocated support from the year 2012 through June 30, 2015. From 2010 through August 1, 2013, there were three children living with Michele that required support pursuant to the terms of the MSA. She alleged that in March 2013 Gregory received his bonus income of approximately $180,000 while there were three children residing with her. Therefore, Michelle claimed that Gregory owed her $138,067.52 (or 28 percent of Gregory's gross income over $300,000) in past due unallocated family support from 2010 through August 1, 2013.

¶ 14 Michelle also alleged that from August 1, 2013, through the time the amended petition was filed there had been and presently were two children living with her that required Gregory's support pursuant to the MSA. Therefore, she claimed that Gregory owed her $5,686.06 (or 23 percent of Gregory's gross income over $300,000) in past due additional unallocated support for the period beginning January 1, 2014, through December 31, 2014. She alleged that Gregory's refusal to pay additional unallocated family support from 2010 through the present in a timely fashion was a willful and contumacious violation of the trial court's order. Therefore, Michelle requested that Gregory be ordered to pay her $143,753.58 plus statutory interest representing the outstanding additional unallocated family support amount from January 1, 2010, to December 31, 2014, and any additional amounts found to be due for 2015.

¶ 15 Count III is not relevant to this appeal. In count IV Michelle alleged that Gregory had paid no support since June 30, 2015, and that since two children were still living with her, he owed Michelle 28 percent of his net income for the subsequent months.

¶ 16 On January 4, 2016, Gregory filed a response to Michelle's amended petition. In it, he either admitted, denied or did not respond to what he characterized were legal conclusions or unclear paragraphs. His admissions included acknowledging the amount of income Michelle had alleged that he earned and his denials included Michelle's claims that he owed additional monies beyond what he had already paid Michelle. He also noted that he had filed a pending petition for modification of support in July 2015.

¶ 17 On March 14, 2016, a hearing was held on Michelle's petition. At the beginning of the hearing the trial court issued a rule to show cause as to counts I, II and III of Michelle's petition and found that it was returnable instanter. Specifically, the court held:

> "Count I is I am issuing the rule regarding failure to pay unallocated support and what I will call a reduced amount from January 1st of 2014 to June 1st of 2015. I'll issue the rule as to that count one with the deficiency in the amount of $41,400.
>
> As to count II, I am going to issue the rule regarding what I will entitle failure to pay unallocated support in an amount over gross income of $300,000 from a period of 2012 through June 30 of 2015 in an amount of $138,067.52 as is alleged in paragraph 28."

¶ 18 The court then noted that the burden had shifted to Gregory. At the hearing, Gregory testified that at the time the judgment of dissolution was entered he was earning around $500,000 per year, of which $300,000 was his base salary. His present base salary was $200,000. The reduction in salary had occurred because of his work performance. He had been on probation at his employment for the past two years. Gregory's financial affidavit was identified and admitted into evidence.

¶ 19 Gregory said that the previous fall he had done a calculation of what he thought he owed Michele in back unallocated support and that figure was $21,988.24. On September 11, 2015, he sent Michele a check for that amount and the check cleared his bank. He also testified that he received a $1,500 per month automobile allowance from his employer and that amount was approximately equal to his costs. The automobile allowance was included in his W-2 forms as income. Finally, Gregory had not received a bonus for the year 2016 and his 2015 bonus was $50,000.

¶ 20 Exhibits 2 through 11 were admitted by agreement of the parties. Those exhibits were copies of Gregory's W-2 forms and his federal and state income tax returns from the years 2010 to 2014. On the exhibits that contained a W-2 form, another form alongside it was entitled, "W-2 and Earnings Summary." Those documents had a company named ADP stamped on them (ADP form). The gross income listed on the ADP forms was slightly higher than the gross income listed on the W-2 forms and the tax returns.

¶ 21 On cross-examination Gregory admitted that he has a minority interest in a piece of property in Wisconsin with his boss, Michelle Casey. He had a personal account with Casey's name on the account as well. However, Casey was only listed as a signee in case he died so that the money could go to his daughter Jennifer. He admitted that exhibit 20, documents containing statements from a Village Bank & Trust in Arlington Heights, were entitled "Greg Lynch and Michelle Casey, 13 Beaconsfield Court, Linconshire, Illinois." That was Gregory's address. When asked whether he removed $251,234 from this account between March 22, 2013 and April 15, 2014, Gregory said that he would have to go back though the bank statements and "figure it out." Michele's counsel then asked him that if he did remove that sum, what he did with it. Gregory said he invested it in the property in Wisconsin. His boss Michelle did not put any

money into that account; she was a signatory on the account and took $103,000 out at one time for the Wisconsin property when he was out of town. That money also went into the Wisconsin property.

¶ 22 Gregory admitted that since he had received Michele's initial petition for rule to show cause in August 2015 he had taken out $60,000 from his savings account to make a payment on his mortgage toward the principal. He also took out $30,000 from his savings account to buy a new car. After these amounts were removed Gregory had around $20,000 in the account, and he then paid his attorney $10 to $15,000.

¶ 23 In September 2015 Gregory sent a check to Michele with the following words written on the back of the check: "[t]aken as payment in full of all unallocated support due through June 2015." That language was scratched out when he received the cancelled check. He speculated that it was probably Michelle who scratched it out. He testified that he never talked to Michelle or sent her an email regarding whether she accepted the terms of the endorsement.

¶ 24 Trial Court's Findings

¶ 25 After the court heard arguments from both parties' counsel, it made its oral findings:

¶ 26 "THE COURT: All right, folks. Thank you for your time.

And the Court had an opportunity to go through my notes regarding all the testimony of Mr. Lynch as well as all the evidence that was introduced including, specifically admitted by stipulation, the income tax returns and the W-2 earnings summaries form 2010, 2011, 2012 and 2013 and I will draw this out for the record.

And I also have had an opportunity to look at what I will call the original W-2 from 2014 and the original tax return from 2014. And based only on the originals and I am going to break it out."

¶ 27 The court then went on to make its calculations:

¶ 28 Year 2010

¶ 29 The court said that it was undisputed that in 2010 Gregory's gross income was $313,813. Since the MSA required him to give Michele 45 percent of the first $300,000, that amount came to $135,000. Then, since three children were living with Michele in 2010, under the MSA she should have received 28 percent of $13,813, which was $3,867.64. Therefore, Michele should have received a total of $138,864.64 in unallocated support in 2010. The record reflected that Gregory paid Michele $137,741. Therefore Gregory was only short $1,123.64. For that reason, the trial court found Gregory not in contempt for the 2010 payments.

¶ 30 Year 2011

¶ 31 Based upon Michele's exhibits number 4 and 5 as well as Gregory's W-2 form, the trial court found that Gregory's gross salary for 2011 was $394,103. Therefore, $135,000 (45 percent of the first $300,000) plus $26,320 ($94,000 x .28)[1] equaled $161,320. Since Gregory only paid Michele $155,799 in 2011, the court found that he was short by $5,541.

¶ 32 Year 2012

¶ 33 Next, the court said that based upon the evidence it heard and what was admitted by stipulation of the parties, as well as Michele's exhibits 6 and 7, Gregory's gross income was $589,103 in 2012. Therefore, $135,000 (45 percent of the first $300,000) plus $80,920 ($289,000 x .28)[2] equaled $215,920. Gregory paid only $143,518 in unallocated support that year, so the court found him in arrears $72,402 for 2012.

[1] The trial court dropped $103 from Gregory's gross income in making this calculation.

[2] The court again dropped $103 from Gregory's gross income in making this calculation.

¶ 34 Year 2013

¶ 35 The court then found that based upon the stipulated admission of Michele's exhibits 8 and 9 Gregory's gross salary in 2013 was $499,611.97. It noted that again the first figure represented 45 percent of the first $300,000 Gregory earned, or $135,000. The additional amounts of support depended upon whether there were two or three children living in the house in 2013. The court noted that the parties' son went to college half way through 2013, so it split the difference between 28 percent (the percent used for three children) and 23 percent (the percent for two children), and used 25 percent as the proper percentage. Twenty-five percent of $199,611.97 was $49,902. So, the total Gregory owed Michele that year was $184,902 ($135,000 plus $49,902). Since Gregory paid Michele $139,656, he was in arrears $45,246 for the year 2013. The court then added the arrearages for the years 2011, 2012 and 2013 and found that there was a shortage of $123,189.[3]

¶ 36 The court noted that it had also heard evidence about Gregory's expenditures that he chose to make as recently as within the last year for a second home or business partnership, a motor vehicle, and other financial obligations that were not imposed by the court. For example, paying $30,000 on a motor vehicle to drive when Gregory received an $18,000 annual allowance for vehicle expenses. It reviewed that evidence when determining whether Gregory had the ability to pay the total amount of the unallocated support in greater amounts than he made them.

¶ 37 The court said it heard evidence that after Michele had filed her first petition for rule to show cause Gregory pre-paid portions on his home mortgage by taking $60,000 out of his savings account to reduce the principal on his mortgage. It also referred to Michele's exhibit

[3] The trial court actually said it was adding up the years 2010, 2011 and 2013, but it is clear from the math that it was adding up the years 2011, 2012 and 2013.

number 20, a Village Bank and Trust account that was jointly titled between Gregory and his boss, and that between March 15, 2013 and April 15, 2014, Gregory removed $251,189 for a non-court obligated business venture. Based upon all those factors, the court held that there was no just cause for Gregory not to pay Michelle the $123,189 he owed her for the years 2011, 2012 and 2013. Accordingly, the court found Gregory in contempt for his failure to pay those amounts in those years.

¶ 38 Year 2014

¶ 39 Regarding 2014, the court found that Gregory had no justification for not paying the support arrearage for the same reasons it found no reason why Gregory did not pay the arrearages for the years 2011, 2012 and 2013. The court noted that Gregory might be filing an amended 2014 tax return; however, based upon his original tax returns, the minimum shortage he owed Michele for 2014 was $45,770. It found that there was no dispute that Gregory's original 2014 tax returns, based upon his W-2 form that was entered into evidence as Michele's exhibits 10 and 11 and Gregory's original federal and state tax returns, indicated that his gross income was $319,611 in 2014. Again, the court found that Gregory owed $135,000 on the first $300,000, and then said, "[o]n the original additional $19,611 at 23 percent, his additional unallocated obligation would be $4,370." The court noted that in 2014 Gregory only paid, $93,600; he did not even pay the full amount that he was obligated to under the original gross income calculation in the MSA. Again, the court noted that the shortage for the year 2014 was $45,770[4].

[4] Our calculations indicate that Gregory was actually in arrearage $45,910.53 ($19,611 x .23 = $4,510.53, not $4,370). Then $135,000 + $4,510.53 = $139,510.53, and $139,510.53 - $93,600 = $45,910.53. However, Michele has not cross-appealed and raised the issue of the trial

¶ 40 The court was unmoved by Gregory's argument that the record showed that the parties made a settlement for all past due unallocated support when Michele cashed Gregory's check for $21,988.24 where he had written the words "[t]aken in payment of all unallocated maintenance and support due through June 30, 2015."

¶ 41 The court concluded by saying that it found Gregory had willfully violated the terms of the MSA by failing to pay a total amount of $168,959. That amount represented the underpayment of unallocated support from the years 2011, 2012, 2013 and the arrears calculated by using Gregory's original tax returns from 2014. Therefore, a judgment against Gregory for $168,959 was entered.

¶ 42 The court held Gregory in contempt of court with a purge amount of $160,000. However, it stayed the sentence until April 7, 2016, and noted that if he did not pay the purge amount on that day he would be incarcerated.

¶ 43 Gregory's counsel then informed the court that its numbers did not include the $21,988.24 that Gregory paid to Michele "after these numbers were prepared." Counsel stated that he did not believe there would be a disagreement that the "160 whatever ought to be reduced by the 23 whatever payment that was made." Michele's counsel asked the court if he could respond to Gregory's counsel's comments, and the trial court said, "[y]ou may, but my ruling is what my ruling is." Michele's counsel then said, "[v]ery good, Judge. I need not respond."

¶ 44 On April 7, 2016, Gregory's counsel informed the court that Gregory had not paid the purge amount yet, but that he had a cashier's check for a little over $10,000 and Gregory had ordered the remaining funds from a broker who had failed to wire transfer the balance in time.

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court's miscalculations.

¶ 45 Counsel made an order of proof to the trial court and stated that on March 21, 2016, Gregory ordered the liquidation of approximately $150,000 from a retirement account at Edward Jones. He gave instructions that a check for the proceeds of that account be mailed to him, and he expected that the proceeds would be received. On March 23, 2016, the trade was executed. On April 6, 2016, counsel spoke to Gregory and Gregory told him that the check had not come, but he expected it to be in his mailbox that day. Counsel advised Gregory to call Edward Jones to confirm that the check had been mailed. Gregory then called Edward Jones, and that company informed him that there had been a mistake and it had failed to mail the check. Edward Jones then said that it would wire the money. According to counsel, the wire was supposed to have been sent the morning of the hearing. Gregory then called his bank, and the bank told him that if the money was wired tomorrow it still would not be available for release until the next day.

¶ 46 The court ordered Gregory into custody and set another status date the next day on the purge. On April 8, 2016, Gregory produced the remaining balance on the purge and he was released from custody.

¶ 47 II. ANALYSIS

¶ 48 On appeal, Gregory argues that the trial court erred in the following ways: (1) disregarding the undisputed settlement of the parties; (2) using his W-2 form to determine his gross income for the year 2011 when that figure included a $1,500 monthly car allowance;[5] (3) failing to give him a credit for the $21,988.24 check that he sent to Michelle for unallocated support and that she cashed; and (4) holding him in contempt before it had determined the amount due, and then not giving him a reasonable time within which to pay it.

[5] Gregory only limits this argument to the year 2011 and not the other years' tax returns that are at issue in this case.

¶ 49 A. The Parties' Alleged Settlement

¶ 50 Gregory first argues that the trial court erred when it held that Michele's action of cashing the check for $21,988.24 made out to her with the words "[t]aken in payment of all unallocated maintenance and support due through June 30, 2015" written on the back of the check did not constitute a settlement of all past due unallocated support. Specifically, he claims: (1) as a matter of contract law, the parties reached an accord and satisfaction when Michelle cashed the check; and (2) as a matter of family law, that settlement is enforceable.

¶ 51 In response, among other arguments, Michele contends that Gregory's contract law issue is frivolous because the parties never had an agreement to compromise his arrearage at $21,988.24.

¶ 52 The defense of accord and satisfaction is a contractual method of discharging a debt or claim. *Auto-Owners Insurance Company v. Konow*, 2016 IL App (2d) 150860, ¶9. A creditor's acceptance of less than the amount claimed "will not constitute an accord and satisfaction of the entire claim unless it can be demonstrated that the creditor intended to accept it as full satisfaction." *Id*. (quoting *State Farm Automobile Insurance Company v. Easterling*, 2014 IL App (1st) 133225, ¶ 36). Under traditional contract principles, where a claim is the subject of dispute, the tender to the creditor of a check that is designated in writing as payment in full constitutes an offer to settle the claim. *Auto Owners Insurance Company*, 2016 IL App (2d), ¶ 9. "If the creditor takes and keeps the payment with actual or constructive knowledge of the condition, he has accepted the offer and the original debt is settled for the reduced amount." *Id*. (quoting *Shea, Rogal & Associates, Ltd. V. Leslie Volkswagen, Inc.*, 216 Ill. App. 3d 66, 71 (1991)).

¶ 53 This district has recently reviewed the principle of accord and satisfaction and discussed what a court needs to focus on in order to determine whether an accord and satisfaction had been met:

> "The 'accord' itself is the actual agreement between the parties while the 'satisfaction' is its execution or performance. As in all contracts, *courts must look to the parties' intent* to determine whether or not the transaction constitutes an accord and satisfaction. [Citation.] Such intent is often reflected in the good-faith negotiation of an instrument." (Emphasis added.) *Auto Owners Insurance Co.*, 2016 IL App (2d), ¶ 9 (quoting *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1071 (1995))."

Whether an agreement exists is a question of fact which will be upheld on review unless it is against the manifest weight of the evidence. *Melrose Park National Bank v. Carr*, 249 Ill. App. 3d 9, 14 (1993).

¶ 54 Before addressing this issue we initially note that in her brief, Michele points out that Gregory's brief violates the mandatory provisions in Illinois Supreme Court Rule 341(h)(3) (eff. Jan. 1, 2016), in that he has failed to set forth the standard of review for any of the issues he has raised on appeal. We agree that this is a clear violation of Illinois Supreme Court Rule 341(h)(3) ("[t]he appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.) Although our supreme court rules are mandatory and a party's brief may be stricken for the failure to comply with these rules (see *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008)), we nevertheless will consider

Gregory's claims on appeal. However, we caution Gregory's counsel to strictly comply with all Illinois supreme court rules in the future.

¶ 55 We now turn to the issue of whether there was an agreement between the parties such that Michele's action in cashing Gregory's check for $21,988.24 constituted a satisfaction of the unallocated support that Gregory had failed to pay Michele for several years.

¶ 56 We agree with Michele that Gregory's accord and satisfaction argument is frivolous. At the hearing on Michele's petition for rule to show cause Gregory testified that he had never discussed with Michele that her action of cashing the check at issue would constitute full satisfaction of any incurred debt that he owed her. He also testified that he did not scratch out the wording on the back of the check, and he presumed that Michele had scratched out the wording. The trial court could have drawn a reasonable inference that it was Michele who crossed out the language on the back of the check before she cashed it. It is very clear that there was no "accord" here, just as there was also no good faith negotiation of any instrument.

¶ 57 Within this argument, Gregory also briefly argues: (1) Michele is estopped from claiming that her action of cashing the check was not an accord and satisfaction because he detrimentally relied on her action of cashing the check; and (2) where a percentage decree is involved, what the parties may be doing is simply applying the percentages to disputed facts and therefore they are not modifying the MSA but acting under the direction of the trial court's order.

¶ 58 First, it is clear from the record that Gregory owed Michele at least the amount he wrote on the check at issue. The record is also clear that Michele never agreed to compromise Gregory's arrearage for $21,988.24, and there is no evidence that she did anything to induce Gregory to write a check for that amount. He also cannot prove detrimental reliance because he was not prejudiced by being forced to pay what he in fact owed to Michele under the clear terms

of the MSA. See *Sampson v. Cape Industries, Ltd.*, 185 Ill. App. 3d 83, 88 (1989) ("[t]he most important element necessary to create an estoppel is conduct attributable to the party to be estopped which deceives the other party causing a detrimental reliance on the existence of the subject matter of the deceit).

¶ 59 Second, Gregory has forfeited his argument that where a percentage decree is involved, what the parties may be doing is simply applying the percentages to disputed facts and therefore they are not modifying the MSA but acting under the direction of the trial court's order. To support this contention, Gregory cites to *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 47 (2008). However, he does not discuss the facts of *Baumgartner*, nor does he explain why *Baumgartner* supports his position here. "The appellate court is not a depository into which a party may dump the burden of research." *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 13 (quoting *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046 (2005)). Therefore, we will not address the merits of this argument. For all these reasons, we hold that the trial court's ruling rejecting Gregory's argument that the parties made a settlement for all past due unallocated support when Michele cashed Gregory's check for $21,988.24 was not against the manifest weight of the evidence.

¶ 60 B. Computational Matters

¶ 61 Gregory's second and third arguments on appeal are referred to as "computational matters" in his brief. In that section he argues that the trial court erred by: (1) using his W-2 form to determine his gross income for the year 2011 when that figure included a $1,500 monthly car allowance;[6] and (2) failing to give him a credit for the $21,988.24 check that he sent to Michelle for unallocated support and that she cashed

[6] Gregory only limits this argument to the year 2011 and not the other years' tax returns

¶ 62 Within these arguments, Gregory also notes that at the hearing on Michele's Rule to Show Cause, Michele "chose to argue for a number *greater* than [Gregory's] W-2 income, and therefore *greater* than what [Michele] alleged in her petition for a rule." (Emphasis in original.) Specifically, Gregory alleges that his ADP forms list a number for gross pay that includes not only the gross pay listed on his W-2 form, but also cafeteria benefits pursuant to section 125 of the Internal Revenue Code. Although Gregory does not assert that the *trial court* erred on this ground, we will review this argument as Gregory's third computational issue on appeal.

¶ 63 1. Gross Compensation for the Year 2011

¶ 64 Gregory argues that the trial court erred in using the gross pay listed on his 2011 W-2 form when that amount included a car allowance of $1,500 per month. He claims that the car allowance was a reimbursement to him from his employer and not compensation, and he testified to that effect at the hearing on Michele's amended petition. He also testified he had to pay automobile expenses from that allowance, which he said were approximately the same amount as his car allowance. As support for this argument Gregory relies on *In re Marriage of Worrall*, 334 Ill. App. 3d 550 (2002);

¶ 65 A marriage settlement agreement is construed like any other contract. *In re Marriage of Turell*, 335 Ill. App. 3d 297, 304 (2002). Where the terms are unambiguous, the parties' intent is determined solely from the language of the document. *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 714 (2005). The determination of a support arrearage is a factual one and it will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399 (2004).

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that are at issue in this case.

¶ 66 Here, the MSA stated that gross income from employment "shall include *all salary* and bonuses paid to the Husband by any employer and shall specifically exclude any stock options including the proceeds from same." (Emphasis added.) The terms of the MSA make it quite clear that only stock options and their proceeds are excluded from Gregory's gross income from his employment. It is also clear that Gregory's car allowance was considered income by his employer because that $18,000 yearly amount ($1,500 per month) was included as gross income on his W-2 form. Since this reimbursement was not excluded in the MSA, we find that the trial court properly considered it part of Gregory's gross income.

¶ 67 We are not persuaded by Gregory's reliance on *In re Marriage of Worrall*, 334 Ill. App. 3d 550 (2002), as support for his contention that his car allowance should not have been included in his gross income for purposes of calculating unallocated support. Gregory contends that in *Worrall*, this court had to determine guideline child support for an over-the-road truck driver who received a *per diem*, which Gregory alleges is the equivalent of his car allowance here. He also alleges that the *Worrall* court held that the amount the truck driver actually used for travel expenses was not part of his income. *Id*. at 556. Gregory posits that since he testified, without contradiction, that his actual expenses equaled the amount of his car reimbursement, under the reasoning of *Worrall*, his car allowance should be deducted from his income because it was a reimbursement of an expense and not income.

¶ 68 Conveniently, Gregory does not provide the entire holding in *Worrall*. Along with holding that the money the truck driver actually used for travel expenses should not be considered his income for calculating child support, the *Worrall* court also held that the income the trucker driver received from his *per diem* was only subject to reduction *to the extent that he could prove that the per diem was used for actual travel expenses and not for his or her*

economic gain. *Id*. at 555. The *Worrall* court explained why the trial court erred when it completely excluded the father's *per diem* in determining whether the mother was entitled to an increase in child support:

> "The trial court essentially imposed the additional burden of proving a negative proposition: that respondent did not actually spend the amount designated a *per diem* for food and lodging. Because respondent enjoyed far superior access to the relevant evidence, the burden should have been placed on him to prove his actual expenses for meals and lodging and to establish a lawful basis for deducting them from his income. Moreover, unless the supporting parent bears the burden of proof, he or she will have no incentive to keep records of expenses for meals and lodging; such records are not necessary for tax purposes but might be used against the parent in a child support proceeding. Even with liberal discovery, it might be impossible as a practical matter for the parent seeking support to establish the other parent's expenses for meals and lodging. There is a strong societal interest in ensuring that parents provide appropriate support for their children. The trial court's rule rewards poor record keeping and facilitates a parent's efforts to avoid his or her support obligation. This is unacceptable as a matter of public policy." *Id*. at 556.

¶ 69 Here, Gregory provided no documentation that he had $1,500 per month in expenses on his automobile to justify this money as a reimbursement and not income. In addition, his mere testimony that he used his car allowance to pay automobile expenses, which he said were approximately the same amount as his car allowance, is wholly insufficient proof that he was entitled to have his very substantial car allowance deducted from his gross income. For these

reasons, we find that the trial court did not err in using the income listed on Gregory's 2011 W-2 form in order to calculate how much he was in arrears to Michele for unallocated support.

¶ 70 2. Credit for the $21,988.24 Check

¶ 71 Next, Gregory argues that the trial court erred when, in calculating his total arrearage, it refused to give him a credit for the $21,988.24 check that he wrote to Michele and that she cashed as unallocated support arrearage.

¶ 72 In response, Michele claims that for the purpose of the court's arrearage calculations for the years 2011 to 2014—the years that resulted in a contempt finding here—Gregory ignores the fact that her petition for rule to show cause credited that payment to the amounts due in 2014 and 2015, only $511.76 of which was due for 2015. She argues that the court, having made note that Gregory had not yet filed a 2015 tax return, made no finding of an arrearage for that year. The 2014 deficiency found by the court was $45,770, about $3,900 more than Michele had claimed was due for that year in her petition. Therefore, Michele argues, the $21,988.24 payment was credited by the court, just as it had been credited by Michele, but after the court had more precise income and payment numbers for those two years than Michele had.

¶ 73 In his reply brief, Gregory argues that it is without question that the trial court did not give him credit for the $21,988.24 check that he tendered to Michele and that she cashed. He claims that Michele seems to concede that he is entitled to the credit, but she argues that she gave him this credit in her petition for rule to show cause. However, he contends, the trial court did not give him the credit, and therefore there is not a material dispute as to his entitlement to the credit.

¶ 74 Again, the determination of a support arrearage is a factual one and will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399 (2004).

¶ 75 We agree with Gregory that the trial court erred in not giving him credit toward his arrearage for the $21,988.24 check from him to Michele that she cashed for unallocated support. Michele's argument to the contrary is an attempt to blur a simple issue here. Unlike Michele's arguments, we are not concerned with the calculations in her petition for a rule to show cause. Instead, we review the trial court's calculations to find whether it made a proper determination of unallocated support.

¶ 76 Here, in its findings the trial court explicitly noted that in determining the unallocated support due to Michele from 2010 through 2013 it was relying on the parties' stipulations to Gregory's income tax returns and the W-2 earnings summaries from those years. For the year 2014, the court said it was relying upon Gregory's original W-2 form and his original tax returns. The court noted Gregory's gross pay for those years, and then used the mathematical formula in the MSA to determine what he owed yearly in unallocated support. Finally, it deducted any amount of support that Gregory had already paid that year from what he owed pursuant to the MSA in order to determine the precise amount that Gregory was in arrears for each year. In none of the documents that the trial court relied upon did the trial court take into consideration the $21,988.24 check from Gregory that Michele had already cashed. Accordingly, the trial court erred in not crediting Gregory for this amount, and therefore the trial court's determination that Gregory was in arrears in the amount of $168,959 was against the manifest weight of the evidence.

¶ 77 3. Gross Income Miscalculation

¶ 78 We now turn to Gregory's argument that at the hearing on Michele's petition, she "chose to argue for a number *greater* than [Gregory's] W-2 income, and therefore *greater* than what [Michele] alleged in her petition for a rule." (Emphasis in original.) Specifically, Gregory alleged that the ADP forms listed a number for gross pay that included not only the gross pay amount indicated on his W-2 forms, but also cafeteria benefits under section 125 of the Internal Revenue Code. See 26 U.S.C.A. § 125, I.R.C. § 125 (eff. Dec. 19, 2014).

¶ 79 In her brief, Michele does not respond to Gregory's discussion of the gross pay listed on the ADP forms versus the gross pay listed on Gregory's W-2 forms and his income tax returns. Instead, Michele argues that "[t]t is inconceivable that the trial court's gross income calculations, *taken directly from tax returns and W-2s*, could be contrary to the manifest weight of the evidence." (Emphasis added.)

¶ 80 In his reply brief, Gregory alleges that Michele ignored this issue in her brief and falsely stated that the numbers used by the trial court were taken directly from his tax returns and W-2 forms. Instead, Gregory argues that the trial court erred in using the gross pay amount listed on the ADP forms, which numbers do *not* appear on his W-2 forms. That supposed income is greater than the claimed income, and Michele "does not even acknowledge what the trial court did and instead—intentionally or otherwise—misleads this Court by arguing falsely that the numbers came from the [Gregory's] tax returns and W-2s."

¶ 81 ADP is a company whose acronyms stand for Automatic Data Processing. According to its website, "ADP supports a full spectrum of spending and reimbursement accounts, including flexible spending accounts (FSA), health savings accounts (HSA) and more."

https://www.adp.com/solutions/large-business/services/benefits-administration/reimbursement-and-spending-accounts.aspx (last viewed 12/31/16).

¶ 82 Gregory is correct that the trial court used the greater gross pay amount from the ADP forms to calculate the amount he was required to pay in unallocated support instead of the gross pay clearly listed on his W-2 forms and tax returns. In comparing the gross pay amounts listed on his W-2 forms and tax returns against the gross pay amount listed on his ADP forms, the gross pay listed on the ADP forms are between $1,000 and $1,600 higher for the years 2010-2014. Nevertheless, Gregory has forfeited the issue of whether the trial court erred in using the ADP forms to calculate the amount he owed Michele in unallocated support for a given year.

¶ 83 First, in his opening brief, Gregory did not specifically argue that the *trial court* erred in using the gross pay numbers on his ADP forms instead of the numbers listed on his W-2 forms and income tax returns. Instead, he argued that *Michelle* incorrectly relied upon these inflated numbers at the hearing on her petition for rule to show cause. It was only in his reply brief that Gregory argued that the trial court had made this alleged computational error. It is well settled that points not argued in an appellant's brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 84 Second, even if we were to treat Gregory's argument about Michele's alleged error in his opening brief as preserving the question of the trial court's error on appeal, Gregory has also forfeited this issue because other than generally referring to section 125 of the Internal Revenue Code (without even a citation), Gregory cites no authority to support his position that the trial court's reliance on the gross pay listed in his ADP forms was error.

¶ 85 Our research had found that pursuant to section 125 of the Internal Revenue Code, a "cafeteria plan" is defined as a plan under which all participants are employees and the

employees may choose among two or more benefits consisting of cash and qualified benefits. 26 U.S.C. § 125(d)(1)(A)(B) (eff. Dec. 19, 2014). Generally, no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan. 26 U.S.C. § 125(a) (eff. Dec. 19, 2014). However, an exception exists for cafeteria plans that discriminate in favor of highly compensated individuals as to eligibility to participate or as to contributions and benefits. 26 U.S.C. § 125(b)(1)(A)(B) (eff. Dec. 19, 2014). Here, Gregory has not provided this court with a sufficient legal argument for review of this issue. Again, "[t]he appellate court is not a depository into which a party may dump the burden of research." *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 13. Accordingly, we will not address the merits of this issue.

¶ 86 C. Indirect Civil Contempt Finding

¶ 87 Finally, Gregory argues that the trial court erred in finding him in contempt before first determining the amount he owed and allowing him a reasonable amount of time, in light of his financial condition, within which to pay Michele before holding him in contempt for willful non-payment. He argues that "[a]s a matter of fairness, and consistent with general legal principles, the contempt power should be reserved for those who willfully disobey an unequivocal court order." He argues that if the trial court believed that he willfully disregarded its order, then it should have initiated criminal contempt proceedings. He also claims that it was inappropriate to hold him in contempt for non-payment when the amount the trial court found him in arrears was, for some years, greater than the amount Michele sought in her petition.

¶ 88 In response, Michele argues that the trial court did not err when it held him in indirect civil contempt. Specifically, she contends that the terms of the MSA were clear and unambiguous, and its terms were required to be complied with unless or until a court modified or

vacated them. Gregory's only justification for not paying the amounts due under the MSA was that he calculated his obligations differently, and the assumption that his calculation of $21,988.24 was the total amount that he owed her was ridiculous and not made in good faith. Instead, it was an obvious scam that Gregory tried to impose upon her.

¶ 89 In reply, Gregory again asserts that he should not have been held in contempt for failing to pay a greater amount than Michele claimed was due in her petition for rule to show cause. While the difference is small, he admits, a court should not "cut square corners" when exercising its contempt power.

¶ 90 In order to determine whether a contempt finding is civil or criminal in nature, it is important to consider the reason why the contempt sanctions were imposed. *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 977 (2007). Civil contempt is used to compel future compliance with a court order and can be avoided through obedience. *Emery*, 374 Ill. App. 3d at 977. 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).

¶ 91 Once it has been established that a court order has been violated, the burden of proof shifts to the alleged contemnor to establish that the violation was not willful or contumacious. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107-08 (2006). A mistaken view of one's duty to comply with court orders is never a viable excuse to disobey the order. See *In re Marriage of Weddigen*, 2015 IL App (4th) 150044, ¶41. A trial court's determination that a party has engaged in indirect civil contempt will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286–87 (1984).

¶ 92 Here, the trial court did not err when it held Gregory in indirect civil contempt. Gregory incorrectly assumes that the contempt order was based upon an alleged violation of the instant trial court's order that he pay Michele $168,959 in overdue unallocated support. However, the contempt order was imposed upon Gregory based upon his violation of the terms in the MSA, which had occurred well before Michele filed a petition for rule to show cause against Gregory.

¶ 93 The calculations needed to determine the amount of unallocated support that Gregory owed Michele were straightforward and simple: he owed Michele $135,000 of the first $300,000 that he grossed each year, and the applicable stated percentages of his additional income were dependent upon the number of children that were living with Michele in a given year. Gregory had the ability to make that yearly calculation just as easily as the court did. Even if Gregory used his gross income as stated on his W-2 forms and tax returns, which were generally around $1,000 to $1,600 less than the gross income stated on his ADP forms, he would have known that he owed Michelle an amount vastly in excess of his proffered $21,988.24 check. Therefore, the trial court did determine what Gregory owed before finding him in indirect civil contempt of court. It also gave him time to purge the contempt before incarcerating him.

¶ 94 We also reject Gregory's allegation that the trial court should not have found him in contempt because the arrearage amount calculated by the trial court was greater than the amounts listed in Michele's petition for rule to show cause. Here, Michele's calculations could not be made with as much precision as the trial court because, in her petition for a rule to show cause, she alleged that Gregory had not turned over his tax returns to her, in violation of the terms of the MSA. Although Gregory disputed this fact in his response to Michele's petition, we do not find this assertion credible. More important, a determination of the past due unallocated support was

again based upon simple calculations as provided in the MSA, so it is immaterial that Michele's calculations were lower than the calculations that the trial court performed.

¶ 95 Finally, we are not persuaded by Gregory's contention that the trial court should have given him more time to come up with the purge amount in light of his "financial condition."

¶ 96 First, the record reflects that Gregory did not take advantage of the time the trial court gave him to purge the contempt order. The contempt order was filed on March 14, 2016. Gregory was given 24 days, until April 7, 2016, to come up with the purge amount of $160,000. Gregory's counsel, the same counsel that he has on appeal, made an offer of proof and informed the trial court that Gregory did not order the liquidation of $150,000 from his retirement account with Edward Jones until March 21, 2016, seven days after he was found in indirect civil contempt. The trade was executed on March 23, 2016. However, *Gregory waited an additional 14 days*, until April 6, 2016 to call Edward Jones to find out where the check was, and only after his counsel urged him to make that call. Had Gregory made that phone call several days earlier he could have learned that Edward Jones had made a mistake, and Edward Jones could have wired over the money earlier. It was no one's fault but Gregory's that he decided to wait until the day before the purge hearing to inquire about the status of the money he needed to purge himself of contempt.

¶ 97 Second, Gregory created his "financial condition" when, after Michele filed her first petition for rule to show cause, he took $60,000 out of his savings account to pay down the principal on his mortgage. He also took about $30,000 from his savings to purchase a new car, even though he received $1,500 per month for automobile expenses. Gregory should not be able to dissipate his accounts in such a way and then complain about his financial condition in order receive more time from the trial court to pay his very overdue court-ordered debt.

¶ 98 We agree with Gregory that "the contempt power should be reserved for those who willfully disobey an unequivocal court order." Here, that is exactly what Gregory did when he ignored the clear terms of the MSA and chose to attempt to vastly underpay Michele what she was entitled to pursuant to court order. For all these reasons, the trial court's order finding Gregory in indirect criminal contempt and sentencing him to incarceration when he failed to pay the purge amount on April 7, 2016, was not against the manifest weight of the evidence.

¶ 99 III. CONCLUSION

¶ 100 In sum, we find that there was no agreement between the parties that Michele's action of cashing the $21,988.24 check from Gregory constituted a payment in full of all of Gregory's past due unallocated support that Michele was entitled to under the clear terms of the MSA. Also, Gregory was not entitled to have his $18,000 yearly automobile allowance deducted from his gross pay when calculating unallocated support because he never demonstrated that those funds were used to cover actual automobile expenses. Gregory forfeited the issue of whether the trial court erred in using the gross salary listed on his ADP forms since he did not support this issue on appeal with any authority. However, we find that the trial court erred in failing to give Gregory credit for the $21,988.24 check for unallocated support that he sent to Michele and that she cashed. Finally, the trial court properly held Gregory in indirect civil contempt when he violated the clear terms of the MSA. Likewise, the trial court correctly sentenced Gregory to incarceration when he failed to pay the purge amount by the day the court ordered it be paid.

¶ 101 Accordingly, the judgment of the circuit court of Lake County is affirmed in part, vacated in part, and remanded to the circuit court to amend the judgment order to reflect a $21,988.24 credit to Gregory for his debt to Michele for unpaid unallocated support.

¶ 102 Affirmed in part, vacated in part, and remanded.