THIRD DIVISION
November 7, 2018

Nos. 1-16-0259 & 1-16-3372



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* MARRIAGE OF | ) | |
| | ) | Appeal from the |
| JUDITH SPIELMANN[1], | ) | Circuit Court of |
| | ) | Cook County |
| Petitioner-Appellant, | ) | |
| | ) | 14 D3 30754 |
| and | ) | |
| | ) | Honorable |
| SCOTT SPIELMANN, | ) | Alfred Levinson |
| | ) | Judge Presiding |
| Respondent-Appellee. | ) | |

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

**ORDER**

¶ 1 *Held*: Affirmed in part, reversed in part, remanded in part. Trial court erred in ruling that marital settlement agreement did not provide for indefinite maintenance. Trial court's ruling granting husband's motion to reduce maintenance and denying wife's motion to increase maintenance is reversed and remanded for new hearing. Trial court erred in imposing affirmative obligation on wife to become financially self-sufficient within time certain. Trial court's order of sanctions affirmed only to extent it related to wife's claim of disability and is reversed in all other respects. Cause remanded for recalculation of attorney's fee award.

[1] This matter was docketed with the parties' having the surname Spielman. The record reveals it is actual Spielmann. We use their correct names in the caption of this order and herein.

¶ 2 Petitioner, Judith Spielmann, sought to increase the maintenance she received from ex-husband Respondent, Scott Spielmann. Scott then filed a motion to lower or terminate his maintenance obligations. After an evidentiary hearing, the trial court lowered Judith's maintenance. The trial court then conducted a second hearing and sanctioned Judith and her attorney for various reasons.

¶ 3 For the reasons stated below, we hold that the parties' marital settlement agreement provided for modifiable permanent maintenance, and the court erred in lowering Judith's maintenance; we remand for a new hearing regarding maintenance under the marital settlement agreement as explained herein. We also reverse the court's requirement that Judith rehabilitate herself within a two-year period, as that requirement is inconsistent with the parties' marital settlement agreement and thus state law. Finally, we uphold the award of sanctions against Judith and her counsel only insofar as it related to litigation over her claim of disability; we reverse the order of sanctions in all other respects and remand this cause for a recalculation of attorney's fees consistent with our order.

¶ 4 BACKGROUND

¶ 5 Judith and Scott were married for 27 years before their divorce became final in 2011.

¶ 6 During the marriage, Scott worked in sales, while Judith primarily stayed home to raise the couples' four children. Over the course of the marriage, Scott's income steadily rose to the point that his "gross base annual income" was $155,800. This base income does not include bonuses, commissions, or other forms of income. In the year before their divorce, Scott's total taxable income was approximately $245,000.

¶ 7 Judith and Scott met while she was enrolled in college, but she left before graduation because she was pregnant with the couple's first child. While she primarily cared for the

children, Judith tried working twice during the marriage, though never for a significant period of time. As we will explain in more detail later, Judith claims she is unable to work due to anxiety and panic disorders.

¶ 8 The parties settled their divorce. The judgment of dissolution of marriage was entered by the Circuit Court of McHenry County and incorporated the parties' written Marital Settlement Agreement (MSA). In addition to other terms, the MSA contained a maintenance provision—the primary provision at issue in this appeal.

¶ 9 The original maintenance provision provided:

> "Husband's current gross base annual income is $155,800 and his properly calculated current net base annual income is $104,052. Husband shall pay to Wife for maintenance the sum of $4,335 every month, said sum representing 50% of Husband's properly calculated net base income received as a result of his primary employment. 'Properly calculated' net income is defined as Husband's gross base income received as a result of his primary employment, minus the following: (a) federal income tax; (b) state income tax; (c) Social Security/FICA/Medicare payments; (d) mandatory union dues; (e) mandatory retirement contributions which are required as a condition of employment; (f) dependent and individual health/hospitalization insurance premiums. 'Properly calculated' net income shall be based on Husband's current filing status as shown in his state and federal income tax returns and shall take into account all allowable deductions claimed by Husband as shown in his state and federal tax returns."

The Agreement also stated: "Wife hereby knowingly and voluntarily waives any and all right she may have to seek any portion of Husband's income over and above his base income, whether that additional income be in the form of bonuses, commissions, or any other form."

¶ 10 The Agreement contained a "Termination Events" provision, which stated that "Husband's obligation to pay maintenance to Wife shall immediately terminate upon the first of the following to happen:

a. Death of either party[;]

b. Wife's remarriage[;]

c. Wife's cohabitation with another person on a resident, continuing, conjugal basis[.]"

¶ 11 Later in 2011, Scott filed a motion to reduce his maintenance because, "through no fault of his own, [his] employment was terminated on June 28, 2011." Scott moved to withdraw his motion because he found a new, higher-salaried job. Due to the higher-paying job, Scott actually agreed to increase maintenance, because he did not want to get into a lengthy and costly court battle with Judith. That agreement became the maintenance provision that is at issue in this case:

> "Husband's current gross base annual income is $170,000. Husband shall pay to Wife for maintenance the sum of $2,296.86 every two weeks. 'Properly calculated' net income is defined as Husband's gross base income received as a result of his primary employment, minus the following: (a) federal income tax; (b) state income tax; (c) Social Security/FICA/Medicare payments; (d) mandatory union dues; (e) mandatory retirement contributions which are required as a condition of employment; (f) dependent and individual health/hospitalization insurance premiums. 'Properly calculated' net income shall be based on Husband's current filing status as shown in his state and federal income tax returns and shall take into account all allowable deductions claimed by Husband as shown in his state and federal tax returns."

All other provisions of the MSA "remain[ed] in full force and effect."

¶ 12 In the summer of 2014, Judith filed a petition to increase maintenance in the circuit court

of McHenry County. Her petition claimed that the court previously found that "Scott had a $155,800 gross annual income and $104,052 net annual income for maintenance calculations," but "on information and belief Scott is now earning an income of $195,000 annually." Additionally, the petition alleged "Judith received a permanent maintenance award and is still disabled and reliant on said award."

¶ 13 Scott moved to transfer the case to Cook County, since both parties resided here. The case was transferred, and shortly thereafter Scott filed a counter-petition to reduce maintenance. Once again, Scott moved to reduce his maintenance on the basis of losing his employment. Scott obtained new employment and filed an amended petition. Scott's amended petition sought to modify, or terminate, maintenance because, he claimed, Judith was working and able to support herself; Judith "has failed to use her best efforts in the three years prior *** to seek employment, training, or education in order to rehabilitate herself and become self-supporting"; and "Judith has been involved in a continuing conjugal relationship for years."

¶ 14 In July 2015, the parties participated in a pre-trial settlement conference. At this conference, Judith claimed she was unable to work due to an anxiety/panic disorder with agoraphobia and that she had been under a doctor's care. Scott's counsel provided "evidence" that this was not the case, in the form of Facebook photos, which are described later. At this pre-trial conference, the Court recommended a compromise where Scott would pay Judith maintenance at a reduced rate for two years, even if she married her long-term boyfriend, Brian. Scott immediately accepted the court's suggestion, but Judith was dissatisfied and continued with her petition for increased maintenance.

¶ 15 The litigation proceeded, and the parties engaged in discovery. Most pertinent to this appeal, Scott issued interrogatories requesting "the name and address of each witness who will

testify at trial and the subject of each witness' testimony." Judith disclosed that she intended to call two medical treaters: Dr. Allen Kuo, Psychiatrist, and Laura Kezdi-Hamzeloo, Psychotherapist. Judith stated that Dr. Kuo would testify that she had been diagnosed with agoraphobia and other disorders and how they affect Judith's ability to work. As to Kezdi-Hamzeloo, Judith indicated that "*Dr.* Laura Kezdi-Hamzeloo" would testify that Judith has been diagnosed with agoraphobia and "*Dr.* Laura Kezdi-Hamzeloo is expected to testify to her education, knowledge and experience in *medicine* and how it relates to the treatment of [Judith's] diagnosis." (Emphasis added.)

¶ 16 Instead of live testimony in court, the parties conducted evidence depositions of Dr. Kuo and Kezdi-Hamzeloo, both of which were read into evidence at the maintenance hearing. These evidence depositions were conducted in two parts because Judith's counsel, Mr. Hiera, told each witness that the depositions would only take one hour. During both depositions, the witness cut them off at the one-hour mark—shortly after Scott's counsel began her cross-examination. The depositions were later rescheduled and completed.

¶ 17 Dr. Kuo's Testimony

¶ 18 Dr. Kuo testified that he is licensed to practice medicine and practices in the area of psychiatry. There is no separate psychiatry license, but he is not board-certified in psychiatry. Dr. Kuo started treating Judith in April 2007. The first appointment was a 45-minute assessment where he spoke with Judith about why she was there and her background. During this meeting, he observed and assessed her mental status. His initial diagnosis was generalized anxiety disorder with agoraphobia. Anxiety and panic disorders are treated with a combination of medication and therapy. These treatments might improve a patient's symptoms; it depends on the specific patient.

¶ 19 Although in early April 2007, he diagnosed Judith "with agoraphobia," later that month his notes reflect a diagnosis of "without agoraphobia." The diagnosis in his notes remained "without agoraphobia" for the next eight-and-a-half years—until October 2015, when it was changed back to "with agoraphobia." During his examination, Dr. Kuo insisted that his notation of "without agoraphobia" was wrong and that he "stood by" his original diagnosis. He finally admitted that as of October 2014, based on his notes, "without agoraphobia" would have been the correct diagnosis.

¶ 20 Additionally, Dr. Kuo had diagnosed Judith with seasonal affective disorder (September 2007), insomnia (July 2013), and major depressive disorder (January 2014). Dr. Kuo admitted that his diagnosis of major depressive disorder was incorrect.

¶ 21 Dr. Kuo treated Judith by prescribing medication and suggesting that she see a therapist. Judith has consistently been prescribed medication, with minor adjustments, since 2007. Although Dr. Kuo referred her to a therapist, his notes do not reflect that she actually went, but he believes she did see a therapist. Additionally, Dr. Kuo proscribed light therapy and exercise for Judith's seasonal affective disorder. She used the light therapy, and it helped to improve her symptoms.

¶ 22 According to Dr. Kuo, Judith's disorders, including her agoraphobia, all "play off" and amplify one another. Her agoraphobia limits her from interacting because she has a need to control situations that trigger her anxiety. It was his current opinion that Judith could not work, but that opinion could change in the future. Judith is unable to work because the constant pressure to perform better brings up quite a bit of anxiety. Judith explained to Dr. Kuo that her work anxiety is performance-based, not due to an inability to leave. Based on his discussions with her, she becomes incapacitated by anxiety to the point that it becomes difficult for her to

hold employment. Although working would be difficult for her, ultimately, it would be a positive thing. Additionally, on cross-examination, he testified that people without anxiety disorders get anxiety because of pressure at work—although they just work through it, and it fades.

¶ 23 Between 2011 and 2015, Judith's condition seemed to improve or remain stable. On July 17, 2015, Dr. Kuo stated that Judith seemed perfectly fine, except for some memory issues. He noticed a "dramatic" change on September 25, 2015. This change continued into October, and Dr. Kuo described it as "very, very dramatic." He described Judith as having increased anxiety, being more tearful, more nervous, and having a notable difference in her demeanor.

¶ 24 The dramatic change had to do with the maintenance proceedings and her concern about financial stability and inability to work. In October 2015, for the first time in eight-and-a-half years, she described agoraphobic symptoms, so he added the diagnosis back in. Dr. Kuo was unaware that Judith initiated the maintenance proceedings. He was also unaware that on July 24, 2015, the trial court told Judith that it did not appear as though she had agoraphobia. Based on these two facts, he stated that malingering "would definitely" cross his mind.

¶ 25 On cross-examination, he admitted that his diagnosis and notes are primarily based on what Judith tells him. Dr. Kuo did not recall anything that was not written in his notes.

¶ 26 Laura Kezdi-Hamzeloo's Testimony

¶ 27 Ms. Kezdi-Hamzeloo testified that she is a licensed clinical professional counselor who holds a master's degree in psychology. She is not a doctor and did not attend medical school. According to both attorneys, the first time that they became aware that Kezdi-Hamzeloo was not a doctor was at her evidence deposition.

¶ 28 Ms. Kezdi-Hamzeloo cannot prescribe medication but can diagnose mental disorders using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The

DSM-5 is the industry-recognized diagnostic tool for mental disorders.

¶ 29 Kezdi-Hamzeloo first met with Judith in August 2015 (just weeks after the pretrial conference where the trial court expressed doubt about Judith's agoraphobia). Based on their discussions, Laura diagnosed Judith with generalized anxiety disorder and panic disorder. To treat these disorders, Kezdi-Hamzeloo began cognitive behavioral therapy, psychodynamic therapy, and acceptance and commitment therapy. She stated that there was some interplay between Judith's disorders, as they are all based on her "heightened level of anxiety." These diagnoses are entirely based on "self-reporting."

¶ 30 Contrary to the description of her testimony contained in Judith's interrogatory answers, Kezdi-Hamzeloo never diagnosed Judith with agoraphobia.

¶ 31 In her evidence deposition, Kezdi-Hamzeloo gave an opinion about Judith's ability to work. But the trial court sustained numerous objections and allowed only a limited amount of testimony on the subject. The court allowed Kezdi-Hamzeloo to conclude that she does not believe that Judith can work. She believes this because Judith has had problems for a while, and they will take some time to fix. So it is unlikely that Judith will be able to hold employment.

¶ 32 According to Kezdi-Hamzeloo, it is important for Judith to be able to plan and control things such as how and when she gets to and from places. It is about feeling safe and in control. When Judith doesn't, she has issues with her anxiety. Because of her past experiences, and current problems, Judith cannot manage even a part-time job. Once she starts feeling the pressure of obligation, or that someone is criticizing her, she emotionally falls apart and cannot continue.

¶ 33 On cross-examination, Kezdi-Hamzeloo admitted that she was unaware of a number of facts, such as who initiated the maintenance proceedings. Laura was under the impression that Scott had initiated the proceedings and wanted to completely terminate Judith's maintenance.

Kezdi-Hamzeloo was also unaware of the negative feedback that Judith got at the earlier pre-trial conference. Scott's counsel hammered away about the suspicious timing of Judith seeking therapy and Judith's possible malingering and drug-seeking behavior. Kezdi-Hamzeloo refused to make a conclusion and instead said that "anything is possible." Instead, Kezdi-Hamzeloo consistently stated she could not simply conclude what this new information meant but would have to sit down with Judith and reassess the situation. Based on her interactions with Judith, she would not immediately conclude Judith was malingering.

¶ 34 In addition to the two evidence depositions, Scott and Judith testified at the maintenance hearing.

¶ 35 Scott's Testimony

¶ 36 At the time of the divorce, Scott's base salary was $155,000. At the time of the hearing, it was $200,000. Scott explained that although his base salary has gone up, his total income has actually dropped dramatically. This is because at the time of his divorce, a significant amount of his total income came from commissions and bonuses. For example, while at the time of the divorce, his base salary was $155,000, his total income was $245,000.00. Even though this was a "big" bonus year, his bonus structure allowed for significantly more income. In contrast, while his base salary was $200,000 at the time of the hearing, he was uncertain about his bonus structure and if he would get a bonus—though his current job does have a bonus structure of some kind. Between 2011 and the hearing, he had been terminated and changed jobs twice. For the vast majority of the time he was not employed, he received severance or unemployment benefits.

¶ 37 Scott, in fact, agreed to pay Judith 50% of his net base salary when they amended the Agreement in 2011, but he thought the waiver provision barred her from claiming any increase

due to an increase in his base salary. He claims he agreed to the 50% when, and because, his total income was significantly higher than his net base salary.

¶ 38 He indicated that over the past few years his expenses have exceeded his income. This gap has become worse as his total income has continued to fall. Each year Scott has had to dip into his savings or sell off assets to break even. While he did receive substantial assets in the divorce—two residences, for example—he has since sold both homes for practically no profit, even a small loss.

¶ 39 Regarding Judith, he was aware she had been taking medications for anxiety, but does not know severity of her issues. Even though she claims severe anxiety, he has seen her around town and at multiple social events since their divorce, including two weddings. He testified that she has no problem going out to bars, grocery shopping, or attending her son's band's concerts. When he has observed her, she did not appear to be distressed or anxious.

¶ 40 Scott supported this testimony by introducing a number of photos from Judith's Facebook account. These pictures show Judith posing with groups of people—mostly friends and family—at bars, restaurants, and other social gatherings. Other photos do not show Judith, but she is "tagged."

¶ 41 Judith's Testimony

¶ 42 Judith testified that she was 53 years old and incapable of working due to her anxiety, panic, and lack of marketable skills.

¶ 43 Over the years, she attempted working on only three occasions. First, in 2007 or 2008, she partnered up with two friends to open an ice cream shop. According to Judith, she was supposed to be a behind-the-scenes worker. When the other two owners made her start working "in front of everything," she had to quit because of the extreme anxiety of having to deal with

customers.

¶ 44 In 2009, she attended a 40-hour class and obtained a certificate for home staging—preparing homes for open houses. In addition to the class, she created a home-staging business. She explained that she wanted to try self-employment because she has trouble if forced into commitments with a hard timeframe. She claimed she needs to be able to control the job, the comings and goings. Shortly after starting the business, she was incapable of following through and shut down the company, never obtaining any clients.

¶ 45 In 2013, after the divorce, she tried working approximately 10 hours a week for a company named Crossmark. Crossmark began to require more work from her. This caused her to feel frightened, fearful, and anxious. She testified that with each day it became increasingly more difficult to work and caused her depression to deepen. Thus, Judith had to keep lessening the hours she worked until she quit because the anxiety became paralyzing.

¶ 46 Over the years she has been diagnosed with a number of medical conditions. In addition to disorders testified to by Dr. Kuo and Laura Kezdi-Hamzeloo, she suffers from irritable bowel syndrome. Judith takes medication for each of her medical conditions. While Judith could not testify to specifics, she stated that she has seen therapists for her anxiety and panic disorders.

¶ 47 Judith acknowledged that she does get out of the house from time to time. She attends events, such as the weddings, and goes to bars because she feels comfortable and is surrounded by people she knows. Although she is able to leave the house, she explained that when she does, she makes a checklist in her mind about the things that make her anxious—who's driving, how to "escape," how will she get there and back, when she's going to leave, etc. For example, when attending group events, she drives herself, so she has complete control over when she leaves.

¶ 48 When she is not able to control these things her anxiety peaks, making her feel

overwhelmed, trapped, and anxious. When it peaks, she suffers from a number of symptoms: rapid heart rate, shallow breathing, nausea, cramps, troubled thinking, and depression. She stated that sometimes her depression is so severe that she is unable to get out of bed. Although she suffers from these symptoms, she is able to care for herself—clean the house, shop, pay her own bills, and manage her own money. Like Scott, she testified that she has had to sell off assets she received in the divorce to make ends meet.

¶ 49 Since she and Scott separated, she has been in a relationship with a man named Brian. Judith claims it is an on-again, off-again relationship, and that she and Brian have broken up and reconciled a number of times, sometimes being apart for a number of months. She describes their relationship as "complicated." She and Brian have a sexual relationship, and he sometimes spends the night. The couple does not live together or have joint financial accounts. She has given him, at least, one $300 loan. The couple does typical activities together such as vacationing, going out, buying gifts, and visiting each other's families for holidays. She routinely watches his dog while he is at work. Judith denied that they hold themselves out as married.

¶ 50 Judith conceded that her interrogatory answers regarding Dr. Kuo and Kezdi-Hamzeloo were not true. She admitted that Dr. Kuo's notes indicate her diagnosis was "without agoraphobia" but claimed her statement was not an intentional lie, because she knew Dr. Kuo had diagnosed her "with agoraphobia" in April 2007. Regarding Ms. Kezdi-Hamzeloo, Judith acknowledged that she was not a doctor. But much like her counsel, she claimed not to understand this at the time and did not mean to mislead anyone. Additionally, neither Judith nor her counsel discussed with Dr. Kuo or Kezdi-Hamzeloo the substance of their testimony before answering the interrogatory. She did not talk to Kezdi-Hamzeloo about her diagnosis or how she arrived at it before answering the interrogatory—and Kezdi-Hamzeloo testified that she never

shared her diagnosis with Judith.

¶ 51 Court's Maintenance Ruling

¶ 52 At the conclusion of the testimony, the court gave its "impressions." To put it lightly, the Court was less than impressed with Judith's case. He found that Judith, Dr Kuo, and Kezdi-Hamzeloo were completely incredible and that "the credibility of the witnesses lies with Scott."

¶ 53 The court determined that Dr. Kuo and Kezdi-Hamzeloo were "totally unbelievable." The court chastised Dr. Kuo for having the "temerity" to claim that his notes were wrong for nearly seven years. The court found no indication that Dr. Kuo actually sat down and ran tests; rather, he merely prescribed medication. As for Kezdi-Hamzeloo, the court called her a "hired gun." The court did not give weight to her testimony because it was not satisfied that there was a proper basis for her "opinions."

¶ 54 The court described the cross examinations of Judith, Dr. Kuo, and Kezdi-Hamzeloo as "devastating." From this lack of credibility, it found that Judith did not prove her agoraphobia or that her "problems would stop her from gaining employment." The court explained:

> "[It couldn't] conceive of a more stressful situation than when Judy was on the stand testifying, and I might add calmly, while Miss Challacombe was calling her a liar and proving it to the point where Judy had to admit that she lied on the stand and in her documents. There was no manifestation whatsoever during that cross-examination ***. There was no indication that she had any problem at all during that stress. I'm going to tell you, it would have stressed me out. It would have stressed anybody in this room out, that cross-examination. She showed none of it."

Although the court did not find that Judith proved the severity of her symptoms, it did not entirely discount the possibility that she may have some anxiety issues. For example, the court

said:

> "Is she scared about going out into the world? Maybe she is. Do I think she's scared going out with anybody she doesn't know? Maybe she is, maybe she isn't. By that I mean I know she takes vacations to Minnesota, she's traveled, she goes other places, but I did notice that she was always with her family or somebody that she knew. But that's how most of us are when we travel. We travel with people we know. I'm not expecting her to go to China on a trip where she goes alone just to see the Great Wall."

¶ 55 The court also expressed a dislike for the maintenance provision calling it, at one point, "horrendous." In its final ruling, the court said:

> "Do I like the formula? No, I don't like the formula. To tell you the truth, I think it's subject to misinterpretation. They each apparently interpreted it differently. So I think they each didn't understand or had a different view of what they were getting into with the formula that there was. She thought it was permanent. She thought she could get more just because his base went up. He's saying it wasn't permanent, I have a right to modify it and so on."

¶ 56 The court did not terminate maintenance because Scott failed to prove a residential, continuing, conjugal relationship. But, the court found that the maintenance was modifiable and reduced it to $3,600 per month—the number Scott offered. In doing so, the court noted it "was going to modify it to less. What I was going to give her was her hard expenses *** which came out to about 3,300. But I'm going to give her the 3,600 that Scott offered her, two years, 24 months."

¶ 57 The court also found that Judith

> "has an obligation to show that she's done something to improve her situation.

***

If she does something to improve herself and everything and get where she's got to go, that doesn't mean that I'm going to terminate it. I'll see what—where we're at at that period of time in 24 months. Then I'll see where we're at.

Can I make it permanent then? Yeah. I might just say yeah, I'll make it permanent. I don't know. Because that's speculative. But what I want to do here is—you should have taken his offer. You could have married [Brian] and you would have gotten it for a period of time. I might have made it longer.

But I'm going to make her do something. She never once—she never once tried exposure or any of the remedies or any of the methods of overcoming what she has to overcome.

To tell you the truth, I don't know the severity because it was never given to me, the absolute severity, not through these witnesses, the absolute severity of what she's dealing with. I don't know.

But I do know that she was able to do all of these other things which leads me to believe and conclude that there is not much severity and that she controls it. If there is anything at all, she controls it with the medication.

That's my order."

¶ 58 The court then told the parties to provide a written order. The next day, January 5, 2016, the Court ordered:

"The maintenance obligation of the Respondent, Scott Spielmann, to support the Petitioner, Judith Spielmann is reduced to $3,600 per month commencing on January 1, 2016. The maintenance obligation shall be reviewed two years after the entry of this

order upon the filing of a petition by either party on or before January 1, 2018. Judith Spielmann shall have an affirmative obligation to rehabilitate herself and seek employment during this period of reviewable maintenance and to show these efforts at the hearing on reviewability."

¶ 59 Sanctions Motions

¶ 60 After the maintenance ruling, the court allowed Scott to file a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). In March, the court began a hearing on the Rule 137 sanctions, in addition to the previously filed motion for fees pursuant to Section 508(b) of the Act. See 750 ILCS 5/508(b) (West 2016). Scott's motions claimed a myriad of alleged misconduct by Judith and her counsel—principally, false allegations and discovery misconduct.

¶ 61 During the hearing on sanctions, the parties went through a prove-up of each individual attorney billing entry and arguments regarding why the bill was, or was not, includable as part of a sanctions judgment and whether sanctions should even be imposed in the first place. The hearing spanned a considerable amount of time. In July, the court issued an order indicating that it was "advising that he might impose Rule 219(c) sanctions on his own initiative and agreeing to give counsel for petitioner additional time to investigate the law regarding the same before commencing his case in chief."

¶ 62 In November, the court issued a written ruling imposing attorney's fees sanctions against Judith and counsel pursuant to Rule 137, Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), and Section 508(b). The court made a number of findings which form the basis of its decision to impose sanctions. Relevant to this appeal, the court found: (1) Judith and her counsel engaged in discovery gamesmanship by causing Dr. Kuo and Kezdi-Hamzeloo to manipulate the facts to

support her claimed disability; (2) Hiera's (Judith's counsel) handling of discovery was "egregious," especially in relation to the answering of interrogatories and subsequent depositions of Kuo and Laura; (3) Judith is not disabled and her allegation that she was "still disabled" was false, as there was no indication she was currently disabled or that a disability played any part of why she received maintenance; and (4) the allegations that Scott's income had increased was untrue and that "when presented with evidence, including documents, showing that Petitioner's pleading stating that there was a substantial increase in income was incorrect, one does not have the right to press the issue on a frivolous theory. In this case, that is exactly what was done."

¶ 63 After its findings, the order stated that it had gone through the attorney's fees with a "fine-tooth comb." The court ordered that "Judgment is hereby entered in favor of Joanna Challacombe and against Judith Spielmann, as and for sanctions, in the amount of $26,398.62. Judgment is hereby entered in favor of Joanna Challacombe and against Scott A. Hiera, and the Law Office of Scott A. Hiera, LLC, as and for sanctions in the amount of $9,881.75." The sanctions order discussed Rule 137, Rule 219, and Section 508(b) sanctions but did not expressly state how each sanction was applied.

¶ 64 Judith timely appealed from both the maintenance judgment (Appeal No. 1-16-0259) and the sanctions judgment (Appeal No. 1-16-3372), and the appeals were consolidated.

¶ 65 ANALYSIS

¶ 66 As an initial matter, Judith's brief contains citations to a decision filed pursuant to Illinois Supreme Court Rule 23(e). Rule 23 strictly prohibits a party from citing a Rule 23 case in support of its argument. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 17 ("neither an appellant nor appellee can use a Rule 23 order to support any claim or argument in his or her brief. Such citations are strictly prohibited"). While Rule 23 orders can appear helpful to arguments on

appeal, we remind counsel that he is prohibited from citing them, and we will disregard those citations.

¶ 67 I. Maintenance Order

¶ 68 Regarding the maintenance order, Judith claims that the trial court committed two distinct errors. First, the court erred by denying her request for increased maintenance and in granting Scott's request to *decrease* maintenance. Second, the court erred in imposing "an affirmative obligation" on Judith "to rehabilitate herself and seek employment" within a two-year period and to "show these efforts" at the end of that two-year period, when maintenance would be reviewed once more. We will take them in that order.

¶ 69 A. Decrease in Maintenance

¶ 70 We start with the fundamentals. Parties to a divorce may settle their dispute and enter into MSAs, as happened here. Apart from issues concerning the custody, support or visitation of children (not relevant here), and as long as the court does not deem the terms unconscionable for any reason (not applicable here), the parties to a divorce can agree to just about any terms they wish, and the court is bound to enforce those terms. *Blum v. Koster*, 235 Ill. 2d 21, 29-30 (2009); 750 ILCS 5/502(b) (West 2014).[2]

¶ 71 The parties could agree, for example, that maintenance payments may never end, or that they may terminate only upon conditions specifically set out in the MSA. *Blum*, 235 Ill. 2d at 31-32; 750 ILCS 5/502(f) (West 2014). The parties did that here. They spelled out in their MSA that

[2] The Act was comprehensively amended effective January 1, 2016. But we apply the previous version of the Act to our review of the MSA, because the issues regarding the MSA were initially adjudicated back in 2012, and the proceedings to modify the MSA began before the effective date of January 1, 2016. See 750 ILCS 5/801 (West 2016); *In re Marriage of Benink*, 2018 IL App 2d 170175, ¶ 27 (under section 801, new Act applies only to proceedings commenced after effective date or to proceedings commenced before effective date concerning issue on which judgment has not previously been entered).

maintenance payments to Judith could terminate only upon the occurrence of (1) Judith's remarriage; (2) Judith's death; or (3) Judith's cohabitation with another individual on a conjugal basis. (See *supra* ¶ 10.)

¶ 72 The parties could also agree that maintenance payments are non-modifiable, or modifiable only under certain conditions explicitly spelled out in the MSA. *Blum*, 235 Ill. 2d at 31-32; 750 ILCS 5/502(f) (West 2014). If those terms are included in the MSA, those terms would control maintenance modifications. *Blum*, 235 Ill. 2d at 31-32. If, on the other hand, the MSA does not contain that kind of language, section 510(a-5) of the Act steps in and provides that maintenance may only be modified upon "a substantial change in circumstances," with a corresponding list of factors for the court to consider in deciding whether to modify the MSA. 750 ILCS 5/510(a-5) (West 2014); *Blum*, 235 Ill. 2d at 31-32.

¶ 73 That is exactly where our first issue is joined. Scott says that he and Judith did *not* specifically spell out the conditions under which maintenance payments could be modified, and thus the default reference to section 510(a-5) applies here. Judith claims, on the other hand, that the original MSA *did* specifically delineate that Judith was to receive 50% of Scott's net base income; maintenance could be modified, in other words, but only insofar as it tracked that 50% calculation as Scott's net income increased or decreased, because that was the formula to which the parties agreed.

¶ 74 We must interpret the MSA to decide the parties' intent. We interpret it as we would any other contract, first and foremost by its plain language. *Blum*, 235 Ill. 2d at 33. If the plain language is unambiguous, we enforce it. *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 17. If the language is ambiguous, we may resort to parol evidence to determine what the parties intended. *Id*; *In re Marriage of Hulstrom*, 342 Ill. App.3d 262, 269 (2003). Our review in all

respects is *de novo*. *Bolte*, 2012 IL App (3d) 110791, ¶ 17.

¶ 75 As we earlier noted, the original maintenance provision provided:

> "Husband's current gross base annual income is $155,800 and his properly calculated current net base annual income is $104,052. Husband shall pay to Wife for maintenance the sum of $4,335 every month, *said sum representing 50% of Husband's properly calculated net base income received as a result of his primary employment*. 'Properly calculated' net income is defined as Husband's gross base income received as a result of his primary employment, minus the following: (a) federal income tax; (b) state income tax; (c) Social Security/FICA/Medicare payments; (d) mandatory union dues; (e) mandatory retirement contributions which are required as a condition of employment; (f) dependent and individual health/hospitalization insurance premiums. 'Properly calculated' net income shall be based on Husband's current filing status as shown in his state and federal income tax returns and shall take into account all allowable deductions claimed by Husband as shown in his state and federal tax returns." (Emphasis added.)

¶ 76 Let's stop there a moment. Scott is quick to point out that the original MSA, quoted above, did not mandate that Judith will always receive 50% of his net income, but rather only that the original maintenance amount happened to reflect 50% of his net income. If that is true, however, we can think of no reason why the parties would have gone to such great lengths to define " 'properly calculated' net income" and to provide that it "shall" be based on Scott's current tax-filing status and that it "shall" take into account all allowable deductions. If all this order was doing was setting a hard number for monthly maintenance, there would be no need to provide for how "net income" would be "properly calculated" in the future.

¶ 77 In any event, as we mentioned earlier, this maintenance provision was later modified by

agreement. So we now consider the parties' agreed order modifying this maintenance provision, which confuses matters all the more:

> "Husband's current gross base annual income is $170,000. Husband shall pay to Wife for maintenance the sum of $2,296.86 every two weeks. 'Properly calculated' net income is defined as Husband's gross base income received as a result of his primary employment, minus the following: (a) federal income tax; (b) state income tax; (c) Social Security/FICA/Medicare payments; (d) mandatory union dues; (e) mandatory retirement contributions which are required as a condition of employment; (f) dependent and individual health/hospitalization insurance premiums. 'Properly calculated' net income shall be based on Husband's current filing status as shown in his state and federal income tax returns and shall take into account all allowable deductions claimed by Husband as shown in his state and federal tax returns.
>
> All other provisions of the MSA "remain[ed] in full force and effect."

¶ 78 As one can plainly see, the modified maintenance order differs from the original order in a couple of significant ways: (1) it does not identify Scott's "properly calculated current net base annual income" at that time and, more importantly, (2) it does not provide that this modified maintenance payment to Judith "represent[ed] 50% of [Scott's] properly calculated net base income received as a result of his primary employment."

¶ 79 That would seem to support Scott's position that at least the modified maintenance agreement, if not the original one, disclaimed any formula giving Judith 50% of Scott's net income. Thus, Scott would argue, absent a specific agreed-upon formula for modification, the default rules in the Act govern, and Scott was free to seek a modification of maintenance based on a "substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014); *Blum*, 235 Ill. 2d

at 31-32.

¶ 80 But it's not quite that simple. First, it is undisputed that the modified maintenance amount to Judith *still reflected 50% of Scott's net base income,* even if it did not specifically recite that fact. The parties (silently) adhered to that same formula when they modified maintenance. And oddly enough, that modified maintenance agreement still *defines* " 'properly calculated' net base income" and still provides that " 'properly calculated' net base income" shall be based on Scott's current tax filing status and shall account for all permissible tax deductions.

¶ 81 Why even bother to mention, much less define, the phrase " 'properly calculated' net base income" if that concept was not part of the modified maintenance agreement? And why bother to provide that Scott's " 'properly calculated' net base income" "*shall*" be based on his current tax-filing status and "*shall*" account for all permissible tax deductions in the future—if, as Scott claims, the matter of Scott's net income was utterly irrelevant, and all the modified maintenance order did was supply a hard number for maintenance? It's not as if that term appears anywhere else in the MSA. It was only employed in the provision governing maintenance. So if Scott's net income, as Scott claims, is irrelevant to the question of maintenance, what are those two sentences defining the parameters of "net income" doing there?

¶ 82 We cannot interpret the modified maintenance agreement in a way that renders meaningless and superfluous the last two sentences of the four-sentence modified agreement. *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1000–01 (1998) ("Contract language must not be rejected as meaningless or surplusage; therefore, it is presumed that the terms and provisions of a contract are purposely inserted and that the language was not employed idly"); *First Bank & Trust Co. of Illinois v. Village of Orland Hills,* 338 Ill.App.3d 35, 40 (2003) ("A court will not interpret an agreement in a way that would nullify its provisions or render them

meaningless"); *Atwood v. St. Paul Fire & Marine Insurance Co.*, 363 Ill. App. 3d 861, 864 (2006) (contract must not be interpreted in manner that nullifies provisions of contract); *Smith v. Burkitt*, 342 Ill.App.3d 365, 370 (2003) ("A court is not to interpret an agreement in a way that would nullify any of the provisions in the agreement or render them meaningless"); *Coles–Moultrie Electric Cooperative v. City of Sullivan*, 304 Ill.App.3d 153, 159 (1999) ("In interpreting a contract, meaning and effect must be given to every part of the contract including all its terms and provisions, so no part is rendered meaningless or surplusage"). The modified order's definition and calculation of " 'properly calculated' net base income" would be utterly useless if we were to interpret it as Scott prefers.

¶ 83 But on the other hand, we cannot add provisions to the modified maintenance agreement that are not there, whether by inadvertent or deliberate omission. *Empress Casino Joliet Corp. v. W.E. O'Neil Construction Co.*, 2016 IL App (1st) 151166, ¶ 62; *Sheehy*, 299 Ill. App. 3d at 1001. We cannot judicially insert a 50%-net-income formula into the modified order when the parties did not expressly include it.

¶ 84 In sum, the original agreement, as we discussed, does not clearly and unambiguously mandate a 50%-of-net-income formula, but it comes awfully close to doing so, as the provisions defining " 'properly calculated' net income" would be superfluous if a formula had *not* been intended. And then the modified maintenance agreement makes matters worse by *following* the 50%-of-net-income formula, but no longer specifically *mentioning* that it was doing so—but then defining that phrase, anyway, exactly as it did in the original maintenance agreement.

¶ 85 Maybe the half-sentence reference to a 50%-net-income formula, mentioned in the original MSA, was mistakenly excluded from the modified maintenance order. Maybe the definitional sentences regarding " 'properly calculated' net income" were mistakenly *in*cluded in

the modified maintenance order. Either of those possibilities is equally plausible. We have, in short, an ambiguity in this modified maintenance order. See *Gomez v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 130568, ¶ 21 (ambiguity exists when contract provision "can reasonably be read in more than one way").

¶ 86 The proper course of action in the face of ambiguity in any contract, including an MSA, is to resort to parol evidence—evidence beyond the four corners of the maintenance agreement—to determine what the parties intended. *Bolte*, 2012 IL App (3d) 110791, ¶ 17; *Hulstrom*, 342 Ill. App. 3d at 269. In a divorce case, one would expect that the parties' testimony (and perhaps those of the drafting attorneys) would be the most likely source of parol evidence.

¶ 87 Indeed, the parties did testify here. Judith said that a 50% formula was intended. Scott did not agree, though he did admit that both orders gave Judith a 50% net-income amount.

¶ 88 The problem is that the trial court did not resolve the ambiguity. It is difficult for us to understand precisely what the court felt about this issue. It seemed to regard it as a legal finding that the contract was "modifiable"—which doesn't really answer the question—while also noting that the drafting of this provision was "horrendous," that it was "subject to misinterpretation," that the parties "each apparently interpreted it differently," and that "each didn't understand or had a different view of what they were getting into with the formula ***."

¶ 89 Given that the trial court ultimately reduced Judith's maintenance, it is clear that the trial court did not consider itself bound by a 50% formula. That much is obvious. What is less clear is whether the trial court considered that to be a legal interpretation or whether it based that conclusion on the parties' testimony. Given that the trial court ultimately sanctioned Judith for making the 50%-formula argument, believing it to be frivolous, it seems pretty clear that the trial court considered the question as a matter of law, finding that the 50%-formula was not intended

by the parties. If the court's ruling was a legal one, as we suspect, it was incorrect, for the reasons we have just given; the contract was ambiguous on this point (as even the trial court acknowledged, curiously enough, in its comments). And if the court was basing its interpretation on the parties' testimony, deciding the question of intent as a matter of fact—which seems unlikely—it gave no indication whatsoever that it was doing so.

¶ 90 We are not satisfied with this resolution. There is a question of the parties' intent on an ambiguous contractual provision that has not been settled in the trial court through parol evidence as a matter of fact, and we will not attempt to solve it for the first time on appeal.

¶ 91 If the parties agreed that Judith would be entitled to 50% of Scott's net income as defined by the parties, then Judith is entitled to enforce that provision. *Blum*, 235 Ill. 2d at 31-32; 750 ILCS 5/502(f) (West 2014). If, on the other hand, that was not the parties' agreement, then there is no specific provision in the modified maintenance agreement for the parties' modification of maintenance, defaulting them to the Act for any modification based on a "substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014); *Blum*, 235 Ill. 2d at 31-32.

¶ 92 We thus vacate the trial court's order awarding a decrease in maintenance and remand this matter to the trial court, first and foremost, for a determination of whether the parties agreed that Judith would be entitled to 50% of Scott's net income, as defined in the agreement. The trial court may then revisit the cross-motions for modification of maintenance, consistent with its findings on the first question.

¶ 93 B. Affirmative Obligation to Rehabilitate

¶ 94 Next, Judith argues that the trial court erred in imposing "an affirmative obligation" on Judith to "rehabilitate herself and seek employment" within a two-year period and to "show these efforts" at that time, when maintenance would be reviewed once more.

¶ 95 This, again, requires an interpretation of the MSA. The modified maintenance order provided that the remainder of the MSA, other than that particular provision governing the amount of maintenance, remained in effect. So our review is concerned primarily with the original MSA. In any event, it makes no difference. No matter which agreement we review, we agree with Judith that the trial court erred in imposing this affirmative obligation on Judith.

¶ 96 Parties can agree to any type and form of maintenance. We generally group maintenance payments into one of four categories: "(i) permanent maintenance (indefinite in duration); (ii) rehabilitative maintenance for a fixed term (terminates on the term's end or the occurrence of some event); (iii) rehabilitative maintenance (subject to a review date); and (iv) maintenance in gross (specific, nonmodifiable sum, usually in lieu of property)." *Shen v. Shen*, 2015 IL App (1st) 130733, ¶ 84.

¶ 97 Judith says that her maintenance was permanent. Scott says it was rehabilitative. The analysis of an agreement does not hinge on any label but how it actually operates. *Bolte*, 2012 IL App (3d) 110791, ¶ 18.

¶ 98 Rehabilitative maintenance is intended to provide the payee spouse (here, Judith) with the chance and the incentive to adjust to non-marital life and become financially independent, in whole or in part, from the payor spouse (Scott). *Blum*, 235 Ill. 2d at 40-41; *In re Marriage of Carpiel*, 232 Ill. App. 3d 806, 828 (1992); *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 972 (1997). "The policy underlying rehabilitative maintenance is to sever all financial ties between the former couple in an expeditious, but just, manner and make each spouse independent of the other as soon as practicable." *Id*. at 973.

¶ 99 A prime example of rehabilitative maintenance is the MSA in *Blum*, 235 Ill. 2d at 33-34, where the husband agreed to pay maintenance to the wife with some terminating events (such as

the wife's or husband's death, or the wife's remarriage or conjugal cohabitation another man), and with the proviso that his obligation to pay maintenance after 5 years was "reviewable." A separate provision stated that the wife agreed to " 'make reasonable efforts to become economically self-sufficient.' " *Id*. at 34. Our supreme court held that "[i]t is clear from the marital settlement agreement that maintenance was intended to be temporary and rehabilitative" (*id*. at 41), even though the parties never specifically referred to it as rehabilitative *per se*. *Id*. at 35. Because the MSA called for reviewability after 5 years, and because the wife had an agreed-upon affirmative obligation to become financially independent, the MSA bore all the hallmarks of rehabilitative maintenance.

¶ 100 We have none of those hallmarks here. The parties agreed to maintenance that did not specify a term and did not require Judith to become financially self-sufficient. The MSA did not provide for reviewability after a certain period. There is no indication in the MSA—and Scott points to none—suggesting that future maintenance payments would be tied to Judith's financial independence or her attempts to obtain financial independence.

¶ 101 This MSA, rather, provided for permanent maintenance. It is a somewhat misleading term, as it does not mean everlasting or forever. We have said that "a better description would be 'indefinite.'" *Shen*, 2015 IL App (1st) 130733, ¶ 84; see *In re Marriage of Jensen*, 212 Ill. App. 3d 60, 61–62 (1991) ("permanent" maintenance did not mean maintenance forever; even "permanent" maintenance terminated when wife remarried, as Act designated wife's remarriage as terminating event; parties could have contracted around Act in MSA but did not).

¶ 102 That is, it is typically understood (unless, of course, the parties have agreed differently) that maintenance continues indefinitely unless and until (1) a terminating event occurs, either statutorily-provided or as agreed in the MSA, or (2) one of the parties seeks modification based

either on how the MSA permits modification or, absent that, how the Act permits modification due to a "substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014); *Blum*, 235 Ill. 2d at 31-32; *Jensen*, 212 Ill. App. 3d at 61–62; *Shen*, 2015 IL App (1st) 130733, ¶ 87 (unless parties agree otherwise in MSA, "permanent maintenance is always modifiable or terminable should there occur a substantial change in circumstances.")

¶ 103 That description perfectly describes the MSA in this case. The payment of maintenance does not have a fixed term after which it becomes reviewable. It does not require Judith to become self-sufficient. It does, of course, provide for terminating events (the same ones that the Act does—Judith's death, remarriage, or conjugal cohabitation with another man), but that does not change its status as permanent or indefinite. As for modification, based on what the trial court decides on remand, either the MSA provides for modification through a 50%-of-net-income formula or it defaults to the Act, which allows for modification for a "substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014). Either way, the MSA provides for indefinite, or permanent, maintenance.

¶ 104 Now that we have determined that the MSA contained a provision for indefinite or permanent maintenance, not rehabilitative maintenance, we turn to the trial court's order. The trial court imposed "an affirmative obligation" on Judith to "rehabilitate herself and seek employment" within a two-year period and to "show these efforts" at that time, when maintenance would be reviewed once more.

¶ 105 We agree with Judith that the trial court erred. When the parties agree in an MSA to a particular form of maintenance, absent economic unconscionability (not alleged here), the court is required to enforce that provision. 750 ILCS 502(b) (West 2014); see *Blum*, 235 Ill. 2d at 30 ("[S]ection 502 of the Act permits the parties to enter into [MSAs] awarding maintenance, and

the terms of the parties' agreement are binding on the court except when the court finds the agreement unconscionable."). The parties here agreed to indefinite maintenance. The trial court was bound to enforce that agreement. Instead, the trial court converted the MSA into one for rehabilitative maintenance, judicially creating an obligation on Judith that the parties had never agreed to—Judith becoming self-sufficient—as well as judicially creating a two-year reviewability period to which the parties had never agreed.

¶ 106 Scott says the trial court was correct, because the case law provides that Judith has a duty to become self-sufficient. But he cites decisions for that proposition entirely out of context. When a court is deciding whether to modify maintenance based on a substantial change in circumstances, pursuant to sections 504(a) and 510(a-5) of the Act (750 ILCS 5/510(a-5) (West 2015)), it considers 21 different factors, only one of which is "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate." 750 ILCS 5/510(a-5)(2) (West 2014). As our supreme court recently reminded, "the self-support factor is just one of several factors that the circuit court considers when deciding whether to modify a maintenance award." *In re Marriage of Heroy*, 2017 IL 120205, ¶ 28.

¶ 107 So it is true that, if the court were considering a modification based on a substantial change in circumstances under the Act, one of the many things it could consider is Judith's reasonable efforts at self-sufficiency. The cases on which Scott relies, *In re Marriage of Pedersen*, 237 Ill. App. 3d 952 (1992) and *In re Marriage of Lenkner*, 241 Ill. App. 3d 15 (1993), say that and nothing more. The trial court here, however, did not consider Judith's efforts at financial independence as one of many factors to consider in a statutory modification; the court here made it a freestanding obligation in an MSA calling for indefinite modification and

imposed a two-year period in which that obligation had to be met. The court's order violated the parties' MSA and was thus in error.

¶ 108 As such, we reverse that portion of the maintenance order that imposed an affirmative obligation on Judith to become financially independent and that ordered a review of maintenance within two years of that order.[3]

¶ 109 II. Sanctions

¶ 110 In a separate appeal that we consolidated, Judith challenges the order of sanctions against her on various grounds. Recall that the court ordered that Judith pay attorney's fees in the amount of $26,398.62 and ordered her attorney, Mr. Hiera, to pay $9,881.75 in fees, for some or all of the following conduct: (1) Judith's "frivolous" argument for increased maintenance, including her interpretation of the contract and her claim that Scott's net income had increased when, according to Scott, his *overall* pay had decreased (given a drop in his bonus); (2) Judith's claim that she was "still disabled;" and (3) discovery gamesmanship. We will review the claims in that order.

¶ 111 A. General Principles and Standard of Review

¶ 112 Illinois Supreme Court Rule 137 (eff. July 1, 2013) allows the court to sanction a party where their pleading "is not well grounded in fact or is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or is interposed for

[3] To avoid any confusion on remand: While we have held earlier that the MSA was ambiguous as to how maintenance is to be calculated—via a 50% formula or otherwise—and we remanded to the trial court to determine that question, we have no hesitation in concluding that the MSA called for permanent, or indefinite, maintenance. To that extent, the MSA is not ambiguous in the least. The trial court is not tasked with determining that question on remand.

any improper purpose." *Schneider*, 298 Ill. App. 3d 103 at 109. The purpose of Rule 137 is to prevent filing of false and frivolous lawsuits. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 15 (2009). Rule 137 is not appropriate to "penalize litigants and their attorneys merely because they were zealous, yet unsuccessful." *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). Section 508(b) of the Act allows the court to impose attorney's fees where "a hearing under this Act was precipitated or conducted for any improper purpose" such as "harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2016).[4]

¶ 113 We review an order of sanctions under either rule for an abuse of discretion. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 109 (1998) (Rule 137); *In re Marriage of Bussey*, 108 Ill. 2d 286, 299 (1985) (Section 508). A court abuses its discretion only when no reasonable person would adopt its view. *Schneider*, 298 Ill. App. 3d at 109.

¶ 114 B. Interpretation of the MSA

¶ 115 First, Judith says the trial court erred in sanctioning her for arguing that her maintenance was "permanent" and should be calculated based on a 50%-of-net-base-income formula. We agree that the trial court had no basis for imposing sanctions on this ground. We have already explained above that the MSA does, in fact, award permanent (or indefinite) maintenance. We also held above that the MSA is ambiguous as to whether it imposed a 50%-net-income formula, and that a remand for an evidentiary hearing is required to finally determine that issue. So by no means could we say that Judith's argument on this point was frivolous or made for an improper purpose. It was correct as to one part and may prove, on remand, to be correct on the other. We

[4] Unlike our maintenance analysis, we use the amended Section 508(b), in effect at the time of the sanctions order, because a judgment had not been entered on the issue of attorney's fees at the time the Act became effective. 750 ILCS 5/801(b) (West 2016).

thus reverse outright, as an abuse of discretion, that portion of the sanctions orders against Judith and her lawyer concerning the interpretation of the MSA.

¶ 116 C. Judith's Disability

¶ 117 Sanctions regarding Judith's claim, in writing and in her testimony, that she was "still disabled," is a closer question. As to the "still" portion of that phrase, the trial court found no indication in the initial MSA or the modified MSA that Judith was being awarded permanent maintenance due to a "disability" of any kind. The trial court obviously felt that Judith was misrepresenting the record on this point. The trial court also found Judith's claim of a current disability to be completely lacking support in the testimony or evidence. The court found Judith to have been dishonest in her representations to the court and opposing counsel.

¶ 118 While the trial court's comments were sometimes harsh, we cannot say that the trial court abused its discretion on this point. The court was correct that the original and modified MSAs, executed while the case was in McHenry County, gave no indication that Judith was suffering from a disability; the MSA did not reference that fact in any way.

¶ 119 Nor can we say that the trial court abused its discretion in rejecting the testimony of Dr. Kuo and Kezdi-Hamzeloo, each of whom testified about Judith's limitations and illness. The trial court found their testimony "totally unbelievable" and explained why it so found. We need not elongate this Order with a blow-by-blow account of the evidentiary support for the trial court's ruling, which we previously recounted above (see *supra*, ¶¶ 19-34).

¶ 120 In sum, the record showed that for the vast majority of time Dr. Kuo treated Judith, he diagnosed her as *not* having agoraphobia, changing it to an agoraphobia diagnosis on the eve of his trial testimony, and only after Judith's condition seemed to "dramatically" worsen just after Judith had been told by the trial court in the pretrial conference that it doubted her agoraphobia.

Even Dr. Kuo conceded that, had he known of what the court had told Judith, he would "definitely" have considered malingering. Thus, the trial court could have reasonably determined that Judith was deliberately altering her self-reporting to induce a last-minute change in diagnosis to agoraphobia.

¶ 121 As for Laura Kezdi-Hamzeloo, not only did Judith misrepresent her as a "doctor" but also misrepresented her diagnosis in her discovery answers as one involving agoraphobia, when Ms. Kezdi-Hamzeloo testified that she never gave such a diagnosis. And Judith did not even visit Kezdi-Hamzeloo until after the trial court had expressed its doubts at the pretrial conference about her claimed agoraphobia. Again, the trial court could have reasonably ruled that Judith's claim of agoraphobia was not made in good faith.

¶ 122 We thus uphold the award of sanctions against Judith and her counsel relating to Judith's claim of disability. Because the purpose of sanctions is not to punish but merely to prevent the filing of false or frivolous claims (*Kensington's*, 392 Ill. App. 3d at 15), we should be clear about what our ruling here means. To the extent that attorney's fees were incurred for the purpose of litigating the disability question—in discovery, at trial, at the sanctions hearing—those fees may be properly awarded to Scott. But *only* to that extent. The disability question was only one part of the overall hearing on cross-motions for adjustments to maintenance. To the extent that testimony was taken (either at evidence deposition or at trial) regarding Judith's disability, or to the extent time for written or oral argument was devoted to that question, or to the extent discovery took place regarding Judith's disability, reasonable attorney's fees may be awarded to Scott. Judith should not have to pay for the entire hearing just because the trial court did not find her "disability" argument to be in good faith.

¶ 123 D. Discovery Sanctions

¶ 124 We can make short work of the sanctions directed at discovery abuses identified by the trial court. The discovery abuses cited by the court all relate to the disability question: (1) the mistitling of Kezdi-Hamzeloo as a "doctor;" (2) misrepresenting Kezdi-Hamzeloo's diagnosis of Judith as agoraphobic; (3) forcing a continued evidence deposition of both Dr. Kuo and Kezdi-Hamzeloo because Judith's lawyer told them only an hour of their time was needed, thus cutting off Scott's ability to cross-examine; and (4) issues concerning the turning over of medical records in a timely manner.

¶ 125 All of that is subsumed in what we have just held above: Scott is entitled to reasonable attorney's fees for any litigation, in discovery or at trial or at the sanctions hearing itself, concerning Judith's claim of disability. There is nothing to add.

¶ 126 In all other respects, the order of sanctions against Judith and her lawyer is reversed. We remand this order for a recalculation of the sanctions order consistent with our rulings above.

¶ 127 III. Bias

¶ 128 Finally, Judith argues that the trial court was biased. Among other things, Scott responds that the issue was forfeited, because Judith did not raise bias in the trial court.

¶ 129 We will review the argument despite the claim of forfeiture. While typically applied in criminal cases, the plain-error doctrine, allowing review of forfeited issues, is applicable to civil cases. *Fakes v. Eloy*, 2014 IL App (4th) 121100, ¶ 119; see *Belfield v. Coop*, 8 Ill. 2d 293, 313 (1956). Application of the plain-error doctrine to civil cases should be "exceedingly rare and limited to circumstances amounting to an affront to the judicial process." *Palanti v. Dillon Enterprises, Ltd.*, 202 Ill. App. 3d 58, 66 (quoting *Holder v. Caselton*, 275 Ill. App. 3d 950, 959 (1995)). But that, more or less, is exactly what Judith is arguing here—the impartiality of the

court itself. So we will review her claim. See *People v. Nevitt*, 135 Ill. 2d 423, 455 (1990) ("the waiver rule is less rigid where the basis for the objection is the trial judge's conduct.")

¶ 130 We would note, at the outset, that at least part of the relief Judith seeks is a new judge on remand. That will happen, anyway; the trial judge has since retired from the bench.

¶ 131 On the merits, we begin with the principle that there is a difference between a judge believing that a party's case is weak or even frivolous, after receiving the evidence and argument, as opposed to a judge prejudging the case and disfavoring one party's position for extrajudicial reasons. As our supreme court has written, quoting the U.S. Supreme Court:

> " '[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (Emphasis in original.) *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 132 Judith points to some comments by the trial judge that, she says, support her claim of bias. For one, the court indicated that it did not "like" the parties' MSA. To some extent, the trial court's comments about the MSA fall into what we just referenced above—the court was merely noting that the MSA was poorly drafted, based on the court's review of it on the merits. But it's also fair to say, as Judith emphasizes, that the trial court took issue with the overall "fairness" of

the MSA requiring Scott to pay maintenance to Judith seemingly in perpetuity. As we have said many times above, if the parties agree to the terms and scope of maintenance in an MSA, that agreement controls, absent a finding of financial unconscionability. *Blum*, 235 Ill. 2d at 29-30; 750 ILCS 5/502(b) (West 2014). The trial court does not have to "like" it. Those comments were irrelevant legally and inappropriate generally.

¶ 133 But we need not take any action on our finding here. First, we have reversed the trial court's rulings on its interpretation of the MSA and on its imposition of a new obligation that Judith become self-sufficient within a time certain. And second, a new judge necessarily will be interpreting it on remand. So Judith has obtained any relief she could possibly want on this issue.

¶ 134 We would say the same of the trial court's repeated comments that Judith would marry her boyfriend were it not for the maintenance she was receiving. (Recall that remarriage was a basis for terminating maintenance in the MSA.) We fully agree that those comments were not appropriate. Whether they were based on the court's view of the evidence or on a more deep-seated bias or sexism is not something we have to decide—because, again, we have reversed the court's rulings on maintenance and on its requirement that Judith become self-sufficient within a time certain, and we are remanding it to a new judge by necessity. We can give Judith no further relief.

¶ 135 Finally, Judith complains that the trial court relied on extrajudicial facts in its determination that Judith did not suffer from agoraphobia and was not "disabled." The trial court did reference having had a client in private practice who was a "true" agoraphobic, contrasting that client's condition with Judith's to Judith's disfavor. It is arguable that the trial court crossed the line here, moving beyond its own experiences and common sense (which is permissible) by referencing this extrajudicial fact and its diagnosis of a former client. See, *e.g.*, *People v.*

*Wallenberg*, 24 Ill. 2d 350, 353-54 (1962) (trial court improperly injected private, non-record "facts" of what it knew about presence of gas stations along strip of roadway in rejecting defendant's claim that there were no gas stations in that vicinity); *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011) (error for trial court to base determination " 'upon a private investigation by the court or based upon private knowledge of the court, untested by cross-examination, or any of the rules of evidence' ") (quoting *Wallenberg*, 24 Ill. 2d at 354).

¶ 136 Whether it did or not, however, does not change any outcome we would reach here. As we have said, that trial judge is retired; he will not hear this case on remand. To the extent the judge's opinion of Judith's disability infected its rulings on the MSA and the affirmative obligation to become financially self-sufficient, we have reversed both of those rulings. The only place any possible improper consideration of the court's former client's agoraphobia could play a role would be in the court's imposition of sanctions on the issue of diability. But as we detailed above, the court was amply justified in imposing sanctions on Judith regarding her claim of disability. Any improper consideration of a former client's medical condition would be harmless in light of the other evidence in the record.

¶ 137 CONCLUSION

¶ 138 The trial court's rulings decreasing Judith's maintenance and denying her petition for increased maintenance is reversed and remanded for a hearing as described herein. The ruling imposing an affirmative obligation on Judith to become self-sufficient is reversed outright. The ruling imposing sanctions on Judith and her attorney is affirmed only insofar as it pertains to litigation over Judith's alleged disability and in all other respects is reversed outright; we remand the sanctions questions to the court only for a calculation of reasonable attorney's fees.

¶ 139 Affirmed in part; reversed in part; remanded in part.