2019 IL App (2d) 170622-U
No. 2-17-0622
Order filed March 6, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF INEZA KUCEBA, Petitioner-Appellee, and ARTHUR KUCEBA, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 03-D-1754 Honorable Michael B. Betar, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: In its ruling on a contempt petition, the trial court did not err in finding Arthur in contempt for failing to pay for his son's medical expenses, sentencing Arthur to an indefinite term of imprisonment if he failed to pay, altering its ruling on a discovery order, or setting a purge of $7,500. However, the trial court did err in including the son's medical insurance premiums in the judgment. In its ruling on a petition to establish educational expenses, the trial court did not make inconsistent findings about Arthur's employment or err in imputing to him an annual income of $60,000 to $65,000. Therefore, we affirmed as modified.

¶ 2 Respondent, Arthur Kuceba, and petitioner, Ineza Kuceba, were married in 1988 in Cook County. Their son, Allen, was born on March 23, 1989. The parties' marriage was dissolved on May 19, 2005. At that time and thereafter, Ineza and Allen resided in the state of Washington

while Arthur resided in Illinois. In 2011, Ineza filed a petition to establish educational expenses and a petition for rule to show cause relating to Allen's medical expenses. The trial court entered judgment for Ineza on the former petition for $18,752.76. On the latter petition, it found Arthur in contempt and ordered him to pay $22,573.14.

¶ 3 Arthur challenges these rulings on appeal. Regarding the contempt petition, Arthur argues that the trial court erred in (1) finding him in contempt, because Allen had already reached the age of majority at the time the petition was filed; (2) sentencing him to an indefinite term of imprisonment; (3) failing to enforce its prior discovery order barring Ineza's claims that were unsupported by proof of payment; (4) including medical insurance premiums that were covered by his child support obligations; and (5) setting a purge amount of $7,500. For the petition to establish educational expenses, Arthur argues that (6) the trial court made inconsistent findings about his employment, and (7) the trial court erred in imputing an annual income to him of $60,000 to $65,000. We agree with just the fourth argument and therefore affirm as modified.

¶ 4 I. BACKGROUND

¶ 5 The parties' dissolution judgment contained the following provision regarding Allen's uncovered medical expenses:

> "All reasonable medical, dental, optical and related expenses of the child not paid for by insurance, shall be split equally between the parties. The parties' obligation *** shall commence upon entry of the Judgment for Dissolution of Marriage and continue until the obligations for the child's undergraduate or trade school education *** are fulfilled. That after the submission for any and all medical and dental expenses to the insurance for payment, the parties shall equally divide all uninsured medical and dental expenses, which shall include co-pays, deductibles and prescriptions."

On the subject of college expenses, the judgment provided:

> "The parties hereby agree to be responsible for the college expenses of the child, after taking into account the earnings and savings of the child and after exhausting scholarships, grants, and loans. By 'college education expenses' there is meant and included tuition, books, supplies, room and board (including living expenses of the child while at home during vacations or if commuting to college), registration and other required fees, sorority [*sic*] dues, assessments and charges, transportation expenses between the school or college and the home of the child (if the child is in attendance at an out-of-town school or college) not to exceed four (4) in any calendar year."

¶ 6 A. Ineza's Petitions

¶ 7 On October 4, 2011, Ineza filed a petition to establish educational expenses. Ineza alleged that since September 2008, Allen had been attending either Bellevue Community College or the University of Washington and incurred educational expenses of $20,033.16, which had been paid either by Ineza or through student loans. She alleged that Arthur had refused to make any contributions to Allen's education; that fall tuition was $6,014; and that $2,346 had to be paid to the University of Washington by October 14, 2011, for Allen to continue to attend. Ineza requested that the trial court: order Arthur to pay the $2,346; establish the parties' respective obligations for Allen's educational expenses; order Arthur to reimburse her the money she expended in excess of her contribution obligations; and order Arthur to contribute to her attorney fees.

¶ 8 The following month, on November 15, 2011, Ineza filed a petition for rule to show cause. As relevant here, Ineza alleged in count II that she had paid for unreimbursed medical expenses for Allen and that Arthur had refused to pay half of the expenses, in violation of the

dissolution judgment. Ineza requested that Arthur reimburse her for $15,152.72, along with reasonable attorney fees and costs.

¶ 9 The petitions came before the trial court for pretrial conference on October 9, 2014.[1] Arthur's counsel stated that he had not received any financial documents or proof of payment regarding the alleged unreimbursed expenses in the two petitions. He also stated that he had not received any response to his Illinois Supreme Court Rule 214 (eff. July 1, 2014) request that he had served on Ineza's counsel about two years prior. Ineza's counsel stated that Arthur had not yet complied with a local court rule regarding financial disclosure. The trial court stated that it could not intelligently conduct a pretrial conference due to the lack of discovery compliance, and it expressed extreme frustration at the number of times that the case had been continued for this reason. The trial court ordered that both parties comply with the local court rule within 28 days and that Ineza provide proof of payment of the expenses alleged in her petitions within 35 days. Ineza's counsel stated that Ineza would be able to do so.

¶ 10 On January 29, 2015, Arthur filed a motion requesting that the trial court deny Ineza's petitions due to her intentional delay, involuntarily dismiss the case and impose sanctions, or continue the pretrial conference date. He alleged that Ineza had not produced documents for 27 months after service of the request to produce, nor had she complied with the October 9, 2014, order. At a hearing that day, Arthur's counsel stated that Arthur had complied with the aforementioned order by tendering his financial disclosure, but that he had not received any documents or communication from Ineza's counsel since the entry of the order. Ineza's counsel replied that he had just provided Arthur's counsel with a stack of documents in compliance with

[1] Information about what transpired during this hearing and all subsequent hearings comes from certified bystander's reports from Arthur.

the order. Arthur's counsel responded that he had been given a disorganized pile of explanation of benefits statements and unpaid invoices, not proof of payment of expenses. The trial court granted Ineza's counsel time to respond to Arthur's motion.

¶ 11 Ineza thereafter filed a response in which she stated, among other things, that her counsel had delivered a complete packet of documents on educational and medical expenses during the pretrial conference on October 9, 2014. During the court hearing on January 29, 2015, counsel also gave Arthur's counsel a bank statement showing a payment of $25,000 for educational expenses. The parties had a telephone conference in February 2015 in which it became evident that Arthur's counsel was misinformed about what documents Ineza had already provided. He stated that he would create a list of records that he had in his possession and those he still needed, but he never provided such a list, despite repeated e-mail and phone requests. Ineza therefore requested that the trial court deny Arthur's motion.

¶ 12 A hearing on the motion took place on March 25, 2015. Arthur's counsel reiterated the allegations from the motion. Ineza's counsel stated that Ineza was working diligently to locate the requested documents and was not intentionally or negligently delaying or refusing to comply with discovery orders. The trial court entered an order requiring Ineza to provide a document within 45 days indicating the specific expenses for which she sought reimbursement. Further, the document was to:

> "be accompanied by a receipt or other proof of payment with respect to each specific expense or payment. [Ineza] shall be barred from seeking reimbursement for any expense or payment that is not included in such letter with a corresponding receipt or other proof of payment."

¶ 13 On August 28, 2015, Arthur filed a motion *in limine*. He alleged that pursuant to the March 25, 2015, order, Ineza had provided a list with attached documentation, but she did not provide proof of payment with respect to almost all of the alleged unreimbursed expenses. Arthur requested that she be barred from presenting any evidence at trial, or, alternatively, be barred from presenting any evidence with respect to certain expenses.

¶ 14 At a hearing that day, the parties stipulated that Ineza had not produced a receipt or other proof of payment for the alleged expenses indicated in exhibits B, D, and E of the motion *in limine*. Arthur's counsel argued that Ineza should therefore be barred from seeking reimbursement for those expenses. Ineza's counsel stated that Ineza was unable to comply because she had given the original documents to Allen. When Ineza contacted her service providers, they could not provide receipts or other proof of payment. Counsel argued that it would be inequitable for Ineza not to be allowed to testify regarding the expenses. The trial court granted the motion *in limine* in part "on an item by item basis." The trial court then proceeded to trial on the petitions.

¶ 15 B. Trial on the Petitions

¶ 16 The trial on Ineza's petitions began on August 28, 2015, and took place over the course of several dates spanning more than a year, concluding in April 2017. We summarize the testimony as described in Arthur's certified bystander's reports.[2] Allen testified as follows. He was 26 years old. He had attended Bellevue Community College and the University of Washington, and he graduated with a bachelor's degree in the spring of 2012. About three or four years prior to the trial, he visited Arthur and gave him an envelope with proof of payment

[2] The trial court's order discusses additional testimony, which we recite in conjunction with summarizing its order.

for his uncovered medical, dental, optical, college, and insurance expenses. Arthur immediately discarded the envelope in a trash can.

¶ 17 Ineza testified that in mid or late 2014, she gave Allen an envelope with proof of payment with respect to the expenses listed in exhibits B, D, and E, but she did not keep copies. Sometime in 2015, she contacted her bank and service providers to obtain proof of payment, but she was told that the records were "just gone" and that they were too old to reproduce. Ineza testified that she paid all of the expenses indicated in Arthur's exhibits 2, 3, and 4, but could not remember specifically when she made the payments. Several of the explanation of benefits provided in Arthur's exhibit 2 and exhibit B were appealed or refiled with the insurance company, with the patient responsibility portions being eliminated or reduced, but she could not specifically remember which ones.

¶ 18 Arthur testified that he never received proof of payment for the expenses listed in exhibits 2, 3, and 4. He testified that a significant portion of the alleged expenses were extravagant and beyond his ability to pay, including designer eyeglasses and insurance payments on Audi TT and Porsche Cayman automobiles.

¶ 19 C. Trial Court's Ruling

¶ 20 On July 11, 2017, the trial court entered an order finding as follows, in relevant part. Arthur had filed a motion *in limine* seeking to bar Ineza from claiming expenses that did not have a corresponding paid receipt or other proof of payment. During the hearing on the motion, Ineza argued that, through Allen, she gave Arthur several of the original invoices, receipts, and proofs of payment for reimbursement. She did not keep copies for herself, and Arthur threw the documents in the trash. Ineza argued that when she later contacted medical providers for additional copies of the documents, she was told that the documents were too old and could not

be reproduced. Ineza had copies of explanation of benefits statements that contained the date of the procedure, the total charges, the amount the insurance company paid, and the remaining balance, which was the patient's responsibility. She argued that her testimony would reveal that she paid all of the patient responsibility portions of the explanation of benefits. The trial court ruled that it would accept the explanation of benefits documents, and for those bills for which there was not a paid receipt or other proof of payment, Ineza could testify under oath whether she paid the bills, subject to cross-examination.

¶ 21 Arthur argued that if he had known of this ruling, he would have conducted depositions and propounded third-party discovery in preparation for the hearing on the rule to show cause. This argument was unpersuasive because the trial court made its ruling on August 28, 2015, and the hearing was conducted over the course of several days with long delays between the hearing dates, with testimony concluding on April 12, 2017. Arthur therefore had ample time to request a continuance so that he could take depositions and conduct third-party discovery, but he failed to do so.

¶ 22 Allen turned 18 on March 23, 2007. He had a medical condition called ectodermal dysplasia that made him prone to over-heating and also prevented the normal development of his jaws and teeth. As a result, he had significant dental and medical bills, including for surgery. Ineza had prepared a spreadsheet outlining all of Allen's medical expenses. It indicated the date of service, the type of service, and how much Ineza paid for the service. The parties stipulated that the first two entries in the spreadsheet were irrelevant and should not be included because those expenses were incurred before the dissolution of marriage. Ineza attached to the spreadsheet invoices and paid receipts. Where there was no proof of payment, Ineza testified that she paid the patient responsibility portion of the invoice. She further testified that she appealed

several of the charges and that as a result, several of the charges were eliminated or reduced. She testified that to provide for Allen's expenses, she had, at times, worked a second job, withdrew money from her pension, and borrowed money from family and friends. Ineza and Allen testified that Ineza had given Allen a packet of original medical invoices and paid receipts so that he could give them to Arthur, and Arthur could reimburse her for half of Allen's medical expenses. Ineza testified that she did not make copies of the documents, and Allen testified that Arthur threw the packet in the trash in front of Allen. The testimony and the documents were subject to cross-examination by Arthur.

¶ 23 Ineza paid a total of $45,033.68 in medical, dental, and optical expenses for Allen (excluding the first two entries), and the expenses were reasonable. Arthur's one-half share was $22,516, and he had not made any payments toward this amount, in violation of the dissolution judgment.

¶ 24 On the subject of willfulness to pay this amount, the trial court stated as follows. Allen testified that when he visited Arthur, it was always at Liliana Chudy's house. Allen testified that Arthur's clothes were in the master bedroom, where both Arthur and Liliana slept, and from all appearances, Arthur lived there. Allen testified that Arthur referred to Liliana as " 'his girlfriend.' " The testimony showed that Liliana owned a company called A&L Enterprises. Allen testified that Arthur told him that it was a transportation company that picked up freight at airports and other locations and delivered it to various companies. Allen testified that Arthur said that the company was operated out of Liliana's home. Allen saw Arthur answer the business phone at the house by saying the company's name, and then arranging pick-up and delivery times with customers. Allen testified that the previous year, Arthur offered him a job at the company, saying " 'to come work for me.' " During one visit, Allen accompanied Arthur to an

off-site maintenance lot where Arthur performed maintenance on three or four trucks, and at least two of the vehicles had the company's name on them.

¶ 25 Arthur testified that after the marriage was dissolved in 2005, he moved in with his sister. Shortly after that, he moved in Liliana, but they were " 'just friends' " and not romantically involved. Arthur testified that he currently resided with his cousin in Wheeling and stayed in Liliana's house only when Allen came to visit. Arthur testified that before the dissolution of marriage, he worked in information technology and managed computer networks at a law firm, earning $60,000 to $65,000 per year. Afterwards, he worked in the same field for the Lake Villa Library and earned $40,000 per year. Arthur testified that he had not looked for a steady job in the past six years because " 'he didn't have to.' " He was not on Social Security disability or food stamps. Arthur denied working for A&L Enterprises in any capacity. He further testified to having no vehicle. When asked how he earned money to support himself, Arthur testified that in the summer, he walked door-to-door to ask neighbors if he could cut their lawn, using their mowers. He testified that he did not have any regular customers. Arthur testified that in the winter, he went door-to-door asking neighbors if he could shovel their driveways, using their shovels. Arthur testified that his only other employment since the dissolution was occasionally repairing a car or computer for a friend, and that his average weekly income from these odd jobs was $150 to $200. However, since that time, he had also taken multiple vacations to Germany and Mexico and other vacations to Alaska, the Dominican Republic, Lake Geneva, Washington state, Oregon, and Las Vegas. He was usually accompanied on these trips by Liliana.

¶ 26 The trial court found Arthur's testimony:

> "regarding his living arrangements with Liliana Chudy and his employment situation to be totally lacking in credibility, a complete fabrication, outrageous, and literally

> unbelievable. It seems readily apparent to the Court, based on both Allen and Arthur's testimony, that Arthur resides with Liliana and is employed by and is an integral part of A&L Enterprises. It may lead one to wonder whether 'A&L' stands for Arthur and Liliana."

Arthur's failure to pay Ineza 50% of Allen's reasonable medical, dental, and optical expenses was a willful and contumacious violation of the dissolution judgment that was without compelling cause or justification.

¶ 27 Regarding educational expenses, Allen attended Bellevue Community College from June 2007 through winter quarter 2009. He thereafter attended the University of Washington in Seattle through his graduation in June 2012. During that time, he spent a year studying abroad in England, but there was no increase in tuition to participate in the program. The rest of the time, Allen was a commuter student living at home with Ineza.

¶ 28 Ineza prepared a spreadsheet documenting Allen's educational expenses, and there was nothing extraordinary or unreasonable about the charges. The parties stipulated that the top three entries should not be included because the expenses were incurred before the marriage was dissolved. Attached to the spreadsheet were various invoices, paid receipts, and tuition bills, with a total amount of $42,635.52. Ineza was asking that Arthur be responsible for half of this amount. Arthur had made only one $2,565 payment towards Allen's education in 2011, pursuant to court order. After deducting this sum, Ineza was seeking $18,752.76 from Arthur.

¶ 29 Ineza's boyfriend owned a company called Steeler, Inc., and had paid for part of Allen's tuition via company check. Both Ineza and Allen testified that the money was a loan that had to be re-paid to Steeler. Aside from the $2,565 payment, Allen testified that the only other money

Arthur had given to him was to reimburse him for his plane ticket when he visited Arthur. At these times, Arthur would also give him an additional $100.

¶ 30 Ineza testified that after the dissolution, she worked as a teacher and had a second job as an interpreter, earning approximately $20,000 per year. In 2007, she switched careers and became working full-time as a real estate broker. Her earnings were commission-based, and she earned anywhere from $11,000 to $70,000 per year.

¶ 31 The trial court found that Arthur was employable and did not suffer from any apparent health impairments that would prevent him from working, but he was voluntarily underemployed as a lawn mower and snow remover. Alternatively, he was employed by A&L Enterprises and was not forthcoming as to his true employment. The trial court imputed an income to Arthur of $60,000 to $65,000 based on his previous earnings of that amount when he managed computer networks, stating that he could earn at least that much money if he sought employment in his field. Based on a review of all relevant factors, including the financial ability of the parties, it was reasonable that the parties equally split Allen's educational expenses.

¶ 32 On the petition for rule to show cause, the trial court ordered Arthur to pay Ineza $56.30 for his unpaid portion of Allen's automobile liability insurance[3] and $22,516.84 for one-half of Allen's reasonable medical, dental, optical, and related expenses. It further stated:

> "Respondent Arthur Kuceba is sentenced to the Lake County Jail for an indefinite period of time[] until said amount is paid, including statutory post-judgment interest from the date of the Judgment Order forward for his willful failure to pay $22,573.14. His purge amount is $7,500.00. His sentence is stayed for ninety (90) days for him to pay said purge amount. Thereafter, Respondent Arthur is Ordered to pay Petitioner Ineza $1,000.00 per

[3] Arthur does not contest the amount owed for car insurance on appeal.

> month until the balance of the Rule to Show Cause Judgment is paid in full, including statutory post-judgment interest from the date of this Judgment Order forward. Respondent Arthur's Indirect Civil Contempt jail sentence is further stayed so long as he maintains the above described monthly payments. If he misses a monthly payment, the stay is lifted."

The trial court included a footnote stating: "The previously[-]ordered child support in the amount of $450 per month is not at issue in this proceeding. Hence, the six[-]month jail sentence limitation for unpaid child support does not apply."[4]

¶ 33 The trial court further entered judgment in Ineza's favor for $18,752.76 on her petition to establish educational expenses. It also gave her leave to file a petition for attorney fees.

¶ 34 D. Post-Judgment Proceedings

¶ 35 Ineza filed a petition for attorney fees and costs on August 9, 2017, seeking $43,724.24. She filed an amended petition on September 15, 2017, requesting the same amount. On March 13, 2018, the trial court ordered Arthur to pay $85 in costs and $7,614 in attorney fees.

¶ 36 In the meantime, Arthur filed a notice of appeal on August 10, 2017.

¶ 37 II. ANALYSIS

¶ 38 A. Jurisdiction Over Ruling on Petition to Establish Educational Expenses

¶ 39 In both her brief and a motion ordered taken with the case, Ineza argues that we lack jurisdiction to consider the merits of Arthur's arguments relating to the petition to establish educational expenses. She points out that the trial court entered its order on July 11, 2017; she filed a petition for attorney fees and costs August 9, 2017; and Arthur filed a notice of appeal on

[4] The trial court did not cite any authority in referencing a six-month limitation on imprisonment for unpaid child support.

August 10, 2017. Ineza argues that the trial court's granting her leave to file a fee petition prevented the July 11, 2017, order from disposing of the entire proceeding because the trial court did not enter a finding under Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). See *First Chicago Gary-Wheaton Bank v. Gaughan*, 275 Ill. App. 3d 53, 58 (1995) ("Where a judgment or order grants a party leave to petition for attorney fees, the judgment is not final and requires a Rule 304(a) finding to become immediately appealable.")

¶ 40 Ineza acknowledges that Illinois Supreme Court Rule 304(b)(5) provides jurisdiction to review orders finding a party in contempt. However, she argues that our jurisdiction under that rule extends only to issues regarding the medical expense provision of the dissolution, as matters relating to the educational expenses were brought pursuant to a separate petition. See *In re Marriage of Gutman*, 232 Ill. 2d 145, 152-53 (2008) (a contempt judgment that imposes a sanction is a final, appealable order); *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293, ¶ 53 (in an appeal from an order of civil contempt, appellate court was confined to review only those matters relevant to the order, and not other matters); *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 962-63 (2004) (same). Ineza argues that the trial court's findings on the educational expenses petition were not final due to the pendency of the fee petition "and were not the subject of a separate Notice of Appeal," with the result that we lack jurisdiction over that issue. Ineza requests that we strike the portions of Arthur's brief relating to the educational expenses.

¶ 41 Arthur points out that his notice of appeal sought review of both the adjudication of contempt and the judgment regarding educational expenses. He notes that it is undisputed that Ineza's attorney fee petition was resolved on March 13, 2018, as demonstrated by his unopposed supplement to the record on appeal. Arthur argues that even if Rule 304(a) was applicable for the

educational expenses issue because the attorney fee petition was not resolved at the time he filed his notice of appeal, there are now no longer "multiple claims" pending within the meaning of that rule. Arthur argues that, pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. July 1, 2017), his premature notice of appeal became effective upon the trial court's ruling on the fee petition, providing us with jurisdiction.

¶ 42 We agree with Arthur's argument. Rule 303(a)(2) states, as pertinent here:

> "When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." *Id.*

That is, under Rule 303(a)(2), when a party files a notice of appeal at a time when a motion is still pending, the premature notice of appeal becomes effective when the motion is decided. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 407 Ill. App. 3d 207, 212-13 (2010); see also *In re Marriage of Valkiunas & Olsen*, 389 Ill. App. 3d 965, 967 (2008) (premature notice of appeal becomes effective when the order denying a postjudgment motion or resolving a still-pending separate claim is entered).

¶ 43 Arthur sought to appeal the trial court's rulings on both of Ineza's petitions in his notice of appeal. The notice of appeal was not immediately effective regarding the ruling on educational expenses because Ineza's attorney fee petition was still pending at the time, but the notice of appeal became effective when the trial court resolved the fee petition on March 13, 2018, as shown by Arthur's supplement to the record. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007) (party may supplement the record to establish court's jurisdiction).

Accordingly, we have jurisdiction over the issue of educational expenses, and we deny Ineza's motion to strike portions of Arthur's brief.

¶ 44 B. Contempt Ruling

¶ 45 1. Allen's Emancipation

¶ 46 Turning to the merits, we begin with Arthur's argument regarding the trial court's ruling finding him in contempt for failing to pay for half of Allen's medical-related expenses. Arthur first asserts that the trial court erred in finding him in contempt for a failure to pay support-related obligations for a child who had already reached the age of majority. Arthur notes that the petition for rule to show cause was filed when Allen was 22 years old. He cites *Fox v. Fox*, 56 Ill. App. 3d 446, 448 (1978), where the appellate court held that "contempt is not a proper means of enforcing payment of support arrearages where the children have reached their majority," but rather such judgments should be enforceable by ordinary remedies.

¶ 47 However, section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505 (West 2016)) was amended in 2001 (P.A. 92-203 § 5, eff. Aug. 1, 2001) to allow for finding a parent in contempt after the child's emancipation. As Ineza points out, the statute currently provides:

> "The court does not lose the powers of contempt, driver's license suspension, or other child support enforcement mechanisms, including, but not limited to, criminal prosecution as set forth in this Act, upon the emancipation of the minor child." 750 ILCS 5/505(i) (West 2016).

Accordingly, Arthur's argument is without merit.

¶ 48 2. Indefinite Jail Term

¶ 49 Arthur next argues that the trial court erred in sentencing him to the Lake County jail for an indefinite period on the contempt petition. Before summarizing his argument, we first provide some background on the types of contempt proceedings.

¶ 50 A contempt proceeding may be either criminal or civil in nature, and either direct or indirect. *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 34. Whether contempt is direct or indirect depends on where the contemptuous conduct occurred, with direct contempt occurring in the court's presence and indirect contempt occurring outside of the court's presence. *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 39. To determine whether a contempt finding is civil or criminal in nature, we consider the purpose for which the sanctions were imposed. *In re Marriage of O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 26. A contempt proceeding is civil if the sanction's main purpose is to coerce future conduct, and the person held in civil contempt must have the ability to purge the contempt by complying with the court order. *Id.* That is, the civil contemnor must be provided with the proverbial keys to his cell. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 56. Contempt is criminal if it is intended to punish past contumacious conduct that the party cannot now undo, as opposed to coerce the party to comply with court orders. *O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 27. A respondent in an indirect criminal contempt proceeding is entitled to a jury trial if the potential penalty could exceed six months' imprisonment or a $500 fine. *Windy City Limousine Co. v. Milazzo*, 2018 IL App (1st) 162827, ¶ 46.

¶ 51 Arthur was found in indirect civil contempt. Citing *In re Marriage of Betts*, 200 Ill. App. 3d 26 (1990), Arthur argues that the trial court could not sentence him to more than six months' imprisonment for civil contempt. In *Betts*, the appellate court held that a respondent in an indirect civil contempt proceeding is not entitled to court-appointed counsel, stating that

"[i]mprisonment for civil contempt is unique in that the contemnor may secure his immediate release from incarceration by either complying with the court order which he has refused to obey or demonstrating that he is unable to comply with that order." *Id.* at 56. The court further stated:

> "Moreover, no right to a jury trial exists in indirect civil contempt proceedings. [Citations.] *No jail sentence for indirect civil contempt will exceed six months unless the respondent, through his continued recalcitrance, makes it exceed six months.* Prior to the expiration of a six-month period of incarceration, an indirect civil contemnor has ample opportunity either to comply with the court order in question or to explain why he or she cannot comply with it. *** Because of the contemnor's unique ability to control the imposition of sanctions in indirect civil contempt cases, the constitutional guarantee of a jury trial for criminal contempts [*sic*] when the penalty exceeds six months in jail is wholly inapplicable to indirect civil contempt proceedings." (Emphasis added.) *Id.* at 57-58.

¶ 52 Rather than supporting Arthur's position, *Betts* demonstrates that the trial court did not err in sentencing Arthur to an indefinite period. In the above-quoted passages, the *Betts* court contrasted indirect civil contempt proceedings with indirect criminal contempt proceedings, the latter which require a jury trial if the term of imprisonment may exceed six months. See *Windy City Limousine Co.*, 2018 IL App (1st) 162827, ¶ 46. The *Betts* court noted that a jail sentence for indirect civil contempt will never exceed six months "unless the respondent, through his continued recalcitrance, makes it exceed six months." *Betts*, 200 Ill. App. 3d at 57. The court thereby recognized that a civil contempt sanction may include imprisonment of more than six months. In other words, because a civil contemnor may purge the contempt and leave jail by complying with the court order or showing that he is unable to comply with the order, the

contemnor will never be forced to serve more than six months' imprisonment, and therefore is not entitled to a jury trial. See also *Wronke v. Madigan*, 26 F. Supp. 2d 1102 (C.D. Ill. 1998) ("Incarceration for civil contempt may continue indefinitely *** because the contemor has the ability to secure his release by complying with the court's orders *** or adduc[ing] evidence as to his present inability to comply with that order.") We note that there is a federal offense of willfully failing to pay a child support obligation to a child residing in another state, and it has a penalty of up to six months' imprisonment for a first offense. 18 U.S.C. 228(c) (2012). However, that statute is not at issue here.

¶ 53 3. Proof of Payment

¶ 54 Arthur additionally argues that the trial court erred in failing to enforce its prior order barring Ineza's claims unsupported by proof of payment. He notes the following series of events. On October 9, 2014, Ineza's attorney stated that Ineza would be able to provide proof of payment of expenses within 35 days, and the court entered an order to this effect. On January 9, 2015, Arthur filed a motion arguing that Ineza still had not complied with discovery. At a hearing that day and in a subsequent written response, Ineza's counsel represented that counsel had provided Arthur with documents. At a hearing on March 25, 2015, Ineza's attorney stated that Ineza was trying to locate the requested documents. Arthur points out that in none of these instances did Ineza say that he had disposed of the proofs of payment or that such proofs were no longer available, but rather she first made these assertions at the hearing on his motion *in limine* on August 28, 2015. Arthur argues that her assertions are not objectively credible due to the delay and further because it was not possible that her bank did not have the records, as federal regulations require banks to retain records for five years. See 31 C.F.R. § 1010.410 (2016); 31 C.F.R. § 1010.430 (2016).

¶ 55 Arthur recognizes that it was the trial court's role, as the trier of fact, to make credibility determinations. See *In re Omar F.*, 2017 IL App (1st) 171073, ¶ 41. However, he cites *People v. Herman*, 407 Ill. App. 3d 688, 704 (2011), where the court stated that the fact that a judge accepted the truth of certain testimony does not guarantee its reasonableness and that a reviewing court may find, after considering the entire record, that the flaws in the testimony make it impossible for any fact finder to reasonably accept any part of it. Arthur argues that we therefore are not bound to accept Ineza's testimony that he destroyed her records and that she could not obtain new ones.

¶ 56 Arthur argues that, for these reasons, the trial court's decision not to impose a discovery sanction was an abuse of discretion. See *Morrow v. Pappas*, 2017 IL App (3d) 160393, ¶ 27 (trial court's decision whether to impose a discovery sanction is reviewed for an abuse of discretion). A trial court abuses its discretion where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view. *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 73. The trial court should use the following factors to determine what discovery sanction, if any, to impose: (1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 124 (1998). No one factor is determinative. *Id.*

¶ 57 Applying the factors, Arthur argues that there was no surprise to Ineza because discovery was initially requested on October 2, 2012, and the issue of discovery production was raised in October 9, 2014, almost a year before the trial commenced. For the second factor, he maintains

that the prejudicial impact was significant because he relied on the March 25, 2015, order that provided that claims unsupported by documents would be barred. Arthur argues that the trial court basically reversed itself on the day of trial, and the evidence allowed was extremely prejudicial because he had not undertaken discovery to seek documents. He contends that there was no practical way for him to obtain proof of payment for transactions that occurred in Washington. Arthur argues that the trial court paradoxically accepted Ineza's assertions that the documents were not available from banks or service providers while at the same time finding that Arthur could have conducted discovery to secure the non-existent documents. According to Arthur, in this manner the trial court further improperly shifted the burden of proof to disprove Ineza's claim, even though it was Ineza's burden to initially establish, by a preponderance of the evidence, that he had violated a court order. See *In re Marriage of Benink*, 2018 IL App (2d) 170175, ¶ 43 (for a contempt proceeding, the burden initially falls on the petitioner to establish, by a preponderance of the evidence, that the other party has violated a court order; once satisfied, the burden shifts to the other party to show that the violation was not willful and contumacious or that there was a valid excuse for not following the order).

¶ 58 Regarding the third factor, Arthur argues that the nature of the evidence sought, being documentary proof that Ineza had actually paid the expense at issue, was central to the case, as the judgment entered and the contempt sanction were solely the product of the disputed evidence. For the fourth and fifth factors, Arthur argues that his diligence in seeking discovery and the timeliness of his objection are beyond question, as the timeline of the issue shows. As for the last factor, he argues that Ineza cannot be found to have acted in good faith.

¶ 59 Ineza argues that the trial court's March 25, 2017, order was clearly interlocutory in nature and was therefore subject to being reviewed, modified, vacated or reconsidered at any

time before the entry of the final judgment. See *Balciunas v. Duff*, 94 Ill. 2d 176, 185 (1983). Ineza argues that Arthur did not preserve his argument for review because he did not object to the introduction of the disputed evidence during the trial. Ineza cites *Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278, ¶ 54, where the court stated that the denial of the complaining party's pretrial motion to exclude evidence is not sufficient to preserve the issue for appeal, but rather the complaining party must also make a contemporaneous objection at trial when the evidence is introduced to allow the trial court to revisit its prior ruling and prevent forfeiture of the issue on appeal.

¶ 60 Ineza further argues that the trial court merely modified its earlier ruling by stating that it would allow the use of explanation of benefits statements for those entries for which there was not a paid invoice. She notes that she was still required to testify that she paid the "patient responsibility" portion noted on the explanation of benefits, and that Arthur could cross-examine her on these points. As an aside, she points out that the checks in the exhibits show that her bank was Washington Mutual Bank, and she asks that we take judicial notice that the bank collapsed on September 25, 2008. Ineza maintains that the lack of supporting documentation for the payments goes to the weight of the testimony rather than its admissibility, and that the trial court's finding that her testimony was credible was not against the manifest weight of the evidence.

¶ 61 Ineza also argues that an independent basis to affirm the trial court's ruling is that the dissolution judgment did not require Arthur to pay his share of medical expenses only upon payment by Ineza, but rather stated that he was responsible for half of non-covered expenses.

¶ 62 Arthur responds that Ineza's last argument misstates the claim she made before the trial court, as she argued that she had paid the expenses and was due a reimbursement from Arthur,

meaning that she had to prove that the expenses were actually incurred by her. Arthur also argues that her citation to *Balciunas* actually supports his position, as the court there stated, "prior interlocutory rulings should be modified or vacated by a successor judge only after careful consideration" and that the judge should "exercise considerable restraint in reversing or modifying previous rulings." *Balciunas*, 94 Ill. 2d at 187-88. Arthur argues that rather than exercising restraint, the trial court summarily reversed itself. Regarding the question of forfeiture, Arthur argues that the initial grant of the motion *in limine* was in the nature of a discovery sanction rather than an evidentiary issue, and when the trial court reversed itself on the day of trial, "the legal basis to exclude evidence was undone" by the trial court, "so there remained no legal basis to offer an objection based upon the then[-]vacated order." Arthur argues that he was effectively ordered not to object to the disputed evidence, so the issue is not forfeited. He cites *Brown v. Baker*, 284 Ill. App. 3d 401, 406 (1996), where the court stated that because the defendant's motion *in limine* was granted before trial, the plaintiff was effectively ordered not to object to the disputed evidence, and therefore did not waive the issue on appeal. Finally, Arthur argues that we should not take judicial notice of Washington Mutual bank's alleged collapse because Ineza did not request that the trial court do so. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9 (reviewing court will not take judicial notice of critical evidentiary material that was not present to and not considered by the fact finder).

¶ 63 We begin with the issue of forfeiture. *Brown* is inapposite to this situation in that, there, the motion *in limine* was *granted* before the trial, whereas here the motion *in limine* was effectively *denied* before the trial. "The law in Illinois clearly provides that a *denial* of a motion *in limine* does not preserve an objection to disputed evidence later introduced at trial," but rather "a contemporaneous objection to the evidence at the time it is offered is required to preserve the

issue for review." (Emphasis in original.) *Brown*, 284 Ill. App. 3d at 406; see also *Simmons v. Garces*, 198 Ill. 2d 541, 569 (2002) (same). Thus, to the extent that Arthur contests the introduction of the explanation of benefits statements from an evidentiary perspective, he has forfeited the issue for review by failing to object when they were introduced into evidence at trial. That being said, we recognize that the main thrust of Arthur's argument is that the evidence should have been prohibited as a discovery sanction.

¶ 64 On the subject of judicial notice of the collapse of Washington Mutual Bank, we agree with Arthur that it would not be proper to take judicial notice here, as Ineza did not raise this issue in the trial court. See *Boykin*, 2013 IL App (1st) 112696, ¶ 9.

¶ 65 Regarding Arthur's remaining arguments, we ultimately conclude that the trial court acted in its discretion by not imposing a discovery sanction on Ineza in the form of barring testimony regarding medical expenses for which she had no receipts showing proof of payment. We recognize that the trial court's March 25, 2015, order stated that Ineza would be prohibited from seeking reimbursement for an expense that did not have a corresponding receipt or other proof of payment. Further, when Arthur filed a motion *in limine* on August 28, 2015, seeking to bar such evidence, the trial court granted the motion in part "on an item by item basis." However, the trial court's July 11, 2017, order reveals that when ruling on the motion *in limine*, the trial court further stated that it would accept the explanation of benefit documents as evidence, and for those charges that did not have proof of payment, Ineza could testify that she paid the bills, subject to cross-examination. A motion *in limine* order is interlocutory and subject to reconsideration by the trial court throughout the trial. *Douglas v. Arlington Park Racecourse, LLC*, 2018 IL App (1st) 162962, ¶ 79. Thus, it was well-within the trial court's discretion to change/modify its evidentiary ruling. Arthur's citation to *Balciunas* for the proposition that a trial

court should exercise considerable restraint in doing so is inapposite, as that case was referring to successor judges, which was not the situation here.

¶ 66 Looking at the factors used to determine whether a discovery sanction is appropriate (see *supra* ¶ 56), for the fourth and fifth factors, which pertain to diligence, we agree with Arthur that he continually sought paid receipts from Ineza. For the first two factors, being the surprise to Arthur and the prejudicial effect, it is apparent that he subjectively expected that charges without proof of payment would be barred. However, the surprise to Arthur comes from the trial court's ruling rather than the discovery itself, which he had in his possession for some time before the hearing on the petitions. Further, related to the third factor, this is not a situation where Ineza had no proof that the expenses were incurred. There was evidence that Allen had a medical condition that required additional medical and dental expenses. As the trial court pointed out in its order, the explanation of benefits statements produced by Ineza contained the date of the procedure, the total charges, the portion the insurance company paid, and the remaining balance, which was the patient's responsibility. The trial court simply allowed Ineza to fill the remaining gap through testimony that she had paid the remaining balances, subject to cross-examination by Arthur. Ineza further testified that she had given Allen original paid invoices to give to Arthur, and Allen testified that Arthur immediately threw the packet in the trash in front of him. Looking at the evidence as a whole, Ineza presented evidence that could sustain her burden of showing that she had paid for the medical expenses incurred by Allen and that Arthur had not reimbursed her, and the trial court's acceptance of her evidence was not unreasonable.

¶ 67 The trial court acknowledged Arthur's argument that had he known about the trial court's ruling, he would have conducted depositions and propounded third-party discovery in preparation for the hearing. The trial court did not find this argument persuasive, stating that

Arthur could have asked for a continuance to do so, especially considering that the hearings took place over the course of over 1½ years, but he did not. Arthur argues that the trial court could not both accept Ineza's testimony that the proof of payment was not obtainable while also finding that Arthur could have obtained the documents. However, Arthur is taking the position that Ineza's testimony that the documents could not be reproduced was not believable, meaning that he could have undertaken discovery as a means to attack her credibility and undermine her allegations, but he did not seek a continuance to do.

¶ 68 In the end, we cannot say that the trial court abused its discretion by not imposing a discovery sanction of barring evidence of Allen's medical expenses that were shown by explanation of benefits statements but were not accompanied by receipts demonstrating payment.

¶ 69 4. Insurance Premiums

¶ 70 Arthur next challenges the trial court's contempt order as it relates to insurance premiums. Arthur notes that the Ineza's summary of medical expenses totaled $45,538.03. The trial court accepted all of these expenses except the first two, which the parties stipulated predated the dissolution judgment, and the expenses totaled $45,033.68. The trial court ordered Arthur to pay Ineza half of this amount, $22,516.84. Arthur points out that the list of medical expenses includes $9,846 for "Total Insurance Benefits Paid for Allen," and that in his written closing argument, he stated that at trial the parties stipulated that this amount was not subject to reimbursement because the dissolution judgment expressly did not require Arthur to contribute to Allen's health insurance premiums. The dissolution judgment states that Arthur is to pay $450 per month in child support, and that the amount "includes [Arthur's] contribution to the hospitalization and medical insurance for the child." Arthur argues that it is unclear whether the trial court overlooked the stipulation or rejected it, but regardless, he should not be required to

pay for Allen's medical insurance given that the dissolution judgment expressly provides that the monthly child support covers Arthur's medical insurance premium obligations for Allen. He additionally argues that the attached list of insurance premium payments shows that Ineza included premium payments made from June 15, 2004, to April 30, 2005, which predate that May 19, 2005, dissolution judgment. Arthur argues that "[i]n order for the court to enter judgment pursuant to the contempt petition," Ineza had to prove "that Arthur violated a court order directing him to pay for the child [*sic*] medical insurance," which she failed to do because the dissolution judgment specifically states that such payments were covered by child support.

¶ 71 Ineza does not respond to Arthur's argument in her brief.

¶ 72 We agree with Arthur that the dissolution judgment clearly provides that his monthly child support obligation included his obligations for Allen's medical insurance, and therefore such amounts should not have been included in the medical expenses for which Ineza was entitled to reimbursement. Accordingly, based on our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we modify the trial court's order that he pay $22,516.84 for one-half of Allen's reasonable medical-related expenses to subtract $4,923, which the trial court had improperly included in this total as Arthur's obligation for insurance premiums (representing 50% of $9,846). This brings Arthur's new obligation to $17,593.84. Combined with the $56.30 that Arthur owes for Allen's car insurance, the trial court's order should state that Arthur owes a total of $17,650.14 on Ineza's petition for rule to show cause. To the extent that Arthur argues that the contempt judgment cannot stand because he was not responsible for the insurance premiums, we reject his argument, as the petition was supported by the car insurance expenses and remaining medical expenses.

¶ 73 5. Purge Amount

¶ 74 Arthur's last argument relating to the trial court's contempt ruling is that the trial court erred in setting a purge amount of $7,500. Arthur argues that while the trial court did not accept Arthur's representations regarding his income and imputed to him an annual income of $60,000 to $65,000, it did not make any findings regarding the credibility of his representations regarding his assets. According to Arthur, his "financial affidavit reflected $38,652.04 in liabilities, vacant land worth $3,000.00, vehicles with a combined net worth of $3,450.13, $3,670.60 in his checking account as of July 31, 2015, $25.00 cash, and a retirement account of $2,129.65." Arthur argues that his assets are of nominal value and are largely not liquid, so the trial court abused its discretion due to the lack of an effective purge provision. Arthur cites *In re Marriage of Harvey*, 136 Ill. App. 3d 116 (1985). There, the appellate court found that a contempt order lacked an effective purging provision because it provided that the father could avoid imprisonment by paying the $2,860 he owed in child support, but the father was "unpropertied," unemployed, and unemployable. *Id.* at 118. Arthur argues that, as in *Harvey*, there was no effective purge provision here.

¶ 75 Arthur has forfeited his argument because he cites figures from Ineza's financial affidavit rather than his own, thereby not clearly presenting his financial situation. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument shall include citation of the pages of the record relied on); *Northern League of Professional Baseball v. Gozdecki, Del Giudice, Americus & Farkas, LLP*, 2018 IL App (1st) 172407, ¶ 62 (the plaintiff forfeited his argument by failing to cite the page in the record where the testimony could be found).

¶ 76 Even otherwise, we conclude that Arthur's argument is without merit. The trial court found that Arthur's testimony regarding his employment situation was "totally lacking in credibility, a complete fabrication, outrageous, and literally unbelievable." The trial court found

that since the dissolution, Arthur had been able to take multiple vacations to Germany and Mexico and vacations to other destinations such as Alaska, the Dominican Republic, Washington state, Oregon, and Las Vegas. It follows that the trial court likewise did not believe that Arthur's financial affidavit was credible regarding his assets. Additionally, the trial court gave Arthur 90 days to pay the purge amount, which is reasonable given the aforementioned considerations and his imputed annual income of $60,000 to $65,000.

¶ 77 C. Petition to Establish Educational Expenses

¶ 78 Turning to Ineza's petition to establish educational expenses, Arthur argues that the trial court erred by making inconsistent findings by stating on the one hand that he was voluntarily underemployed as a lawn mower and snow remover, and alternatively that he was employed by A&L Enterprises. See *Resolution Trust Corp. v. Hardisty*, 269 Ill. App. 3d 613, 618 (1995) (a trial court cannot make inconsistent findings of fact). Arthur argues that the case should therefore be remanded to correct the error. See *In re Marriage of Eltrevoog*, 92 Ill. 2d 66, 71 (1982) (vacating judgment of dissolution and remanding for the trial court to make consistent findings).

¶ 79 We conclude that the trial court's findings were not inconsistent, as it made them in the alternative, rather than finding that both were true. The alternative findings were appropriate in that the trial court did not believe Arthur's testimony that he did not work for A&L Enterprises (see *supra* ¶ 26), but even if Arthur did not in fact work for the company, he was voluntarily underemployed as a lawn mower and snow remover.

¶ 80 Last, Arthur argues that the trial court erred in imputing to him an annual income of $60,000 to $65,000 as part of its order directing him to contribute $18,752.76 for Allen's college expenses. Arthur cites *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 47, where the appellate court stated:

> "When calculating the amount of income to impute, the trial court may consider the supporting parent's income from previous employment. [Citations.] However, a court should not base its income calculation on outdated data that no longer reflect prospective income. [Citation.] Evidence that the obligor once earned a certain salary and presumably could again is an insufficient basis upon which to impute income."

Arthur also cites *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 161 (1991), where the court stated that averaging income over a six-year period to determine child support could not reflect the parties' current circumstances, and that income averaging should be used only when there is a definitive pattern of economic reversals.

¶ 81 Arthur argues that contrary to *Liszka*, the trial court found that Arthur once earned $60,000 to $65,000 and could presumably do so again. He maintains that contrary to *Schroeder*, the trial court used highly-outdated income data. Arthur argues that he testified that he earned such a salary before the dissolution of marriage while performing information technology work for a law firm, and he thereafter earned $40,000 annually in the same field. Arthur argues that the $60,000 to $65,000 salary had to be no earlier than 2005, 12 years before the trial court entered its judgment imputing income. Arthur argues that under the aforementioned case law, the trial court abused its discretion in its imputation of income and allocating college expenses based on the imputed income.

¶ 82 In order to impute income, the trial court must find that the payor: (1) has become voluntarily unemployed or underemployed, (2) is attempting to evade a support obligation; or (3) has unreasonably failed to take advantage of an employment opportunity. *In re Marriage of Ruvola*, 2017 IL App (2d) 160737, ¶ 39. The trial court may consider the parent's income from previous employment, but it should not base its income calculation on outdated data that does not

reflect prospective income. *In re Marriage of Van Hoveln*, 2018 IL App (4th) 180112, ¶ 40. We will not disturb a trial court's decision of whether to impute income absent an abuse of discretion. *Id.* ¶ 43. Similarly, a trial court's determination of income is reviewed for an abuse of discretion. *Liszka*, 2016 IL App (3d) 150238, ¶ 47. As stated, a trial court abuses its discretion where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view. *Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 73.

¶ 83 We conclude that the trial court acted within its discretion in imputing an income to Arthur, based on its determination that he was either voluntarily underemployed or not being honest about his employment with A&L Enterprises in order to avoid a support obligation. See *Ruvola*, 2017 IL App (2d) 160737, ¶ 39, 42 (trial court was justified in finding that the husband was voluntarily underemployed because he had not even attempted to find jobs within his field of training, which was chemistry).

¶ 84 As for the amount of income it imputed, *Schroeder* is inapposite to this situation, as that case involved averaging income over a six-year period, whereas the trial court did not apply an income-averaging approach here.[5] Further, the *Schroeder* court was dealing with years of income data as opposed to a lack of transparency regarding income. This case is distinguishable from *Liszka* because there the husband was involuntarily terminated from his employment, and there was no evidence that he could earn a similar salary based on his qualifications. *Liszka*, 2016 IL App (3d) 150238, ¶ 47. Here, Arthur testified that he had not looked for a steady job in the past

[5] We further note that cases decided after *Schroeder* have "decline[d] to follow the rigid approach to income averaging expressed" in that case. *In re Marriage of Elies*, 248 Ill. App. 3d 1052, 1061 (1993); see also *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 43 (following *Elies*); *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 655 (1998) (same).

six years because " 'he didn't have to.' " Thus, Arthur had not even attempted to find a job in his field, which could have presumably placed him in a similar salary range. This is all-the-more true given that the trial court applied a salary from at least 12 years prior, even though salaries would have presumably increased during this time. Moreover, during the same period where Arthur testified that he was not looking for work, he was able to take many vacations, including to overseas destinations, indicating that he had much greater financial resources than he was revealing. Based on these considerations, the trial court did not abuse its discretion in imputing a annual income of $60,000 to $65,000 to Arthur. *Cf. In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 31 (trial court did not abuse its discretion by imputing farming income to husband where he had previously earned a substantial amount of money from farming, and the trial court did not find credible his assertion that he quit farming because of factors out of his control); *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344 (2004) (trial court did not exceed its authority in setting child support based on husband's prior income because he was voluntarily unemployed and his previous income reflected his earning potential). Arthur does not argue that, given such a salary, the trial's court's equal division of the college expense was an abuse of discretion, so we do not address that issue.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we affirm the judgment of the Lake County circuit court, except that we modify the trial court's order to reflect that Arthur owes a total of $17,650.14 on Ineza's petition for rule to show cause.

¶ 87 Affirmed as modified.