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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re* PARENTAGE of N.G., ) Appeal from the Circuit Court  
) of Du Page County.  
)  
) No. 00-F-318  
)  
) Honorable  
(Sarita Gilligan, Petitioner-Appellee, v. ) Linda E. Davenport,  
Thomas Sawczuk, Respondent-Appellant). ) Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in requiring father to contribute to daughter's college expenses and to mother's attorney fees.

¶ 2 The petitioner, Sarita Gilligan, filed a petition seeking contribution from the respondent, Thomas Sawczuk, for the college expenses of the parties' daughter, N.G., and for Sarita's attorney fees. Following a hearing, the trial court granted Sarita's petition. Thomas appeals from that order. We affirm.

¶ 3 **BACKGROUND**

¶ 4 On June 27, 2000, N.G. was born to the parties, who were not married. On June 15, 2001, a joint parenting agreement was entered, granting the parties joint custody of N.G. and

requiring Thomas to pay child support of approximately \$1,000 per month. At that time, Thomas was working as an information technology (IT) professional earning about \$75,000 per year.

¶ 5 On April 5, 2018, Sarita filed a verified petition for contribution toward N.G.'s educational expenses pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/513 (West 2016)). Sarita noted that N.G. was 17 years old and had been accepted as a full-time student at the University of Mississippi. Sarita attached a copy of the expenses for the university, which indicated that the total cost for nonresidents was \$41,380 per year. This amount included costs for tuition, housing, food, books, personal expenses, and travel expenses. N.G. had also earned an academic excellence scholarship of \$3,900 per year for four years. Sarita requested that Thomas be ordered to contribute to N.G.'s college expenses and to Sarita's attorney fees incurred in connection with the proceedings.

¶ 6 On May 24, 2018, Thomas filed a response, *pro se*, to Sarita's petition. Thomas stated that he was self-employed and had earned only about \$6636 per year over the last five years. In addition to his monthly living expenses, he paid for N.G.'s medical bills and automotive expenses, and paid \$1003 per month in child support. He was 62 years old, nearing retirement, and had savings of approximately \$51,700 (not including IRAs). He argued that he did not have the means to contribute to N.G.'s college expenses or to Sarita's attorney fees.

¶ 7 On July 17, 2018, a hearing was held on Sarita's petition. Sarita testified that she was 57 years old and lived with her son and N.G. in a single family home owned by her mother. She paid the property tax on the home, which was about \$13,000 per year. She also paid the utilities. Sarita identified her financial affidavit as Exhibit 2. She earned gross income of about \$36,678 per year working part-time, about 30 hours per week. She had worked part-time for about 10 years. She had a checking account with a balance of \$1,000 and a profit sharing account with a

balance of \$65,000. Thomas provided medical insurance for N.G. Sarita provided her own health insurance at a cost of \$60 per month. She provided a car for N.G. and paid the insurance costs. She did not provide N.G. with a cell phone. Sarita paid for N.G.'s clothing and other expenses. She expected that N.G. would continue to reside with her in periods of recess during college and that she would continue to incur these expenses for N.G.

¶ 8 Sarita further testified that N.G. had recently turned 18 and Thomas' child support obligation had terminated. Sarita testified that N.G. would be attending the University of Mississippi in the fall of 2019 and majoring in special education. An exhibit admitted into evidence indicated the total costs for attending the university were \$41,380 per year for a nonresident. Sarita acknowledged that N.G. had been awarded scholarships in the amount of \$3900 per year and was receiving a Pell Grant in the amount of \$5445 per year. Sarita testified that the resident cost for attending the University of Illinois' Urbana campus was \$36,016 per year. Sarita stated that she did not have the ability to contribute to N.G.'s college expenses.

¶ 9 Sarita's financial affidavit, admitted into evidence, indicated the following. Sarita had a recent tax refund of \$5907. Her total monthly net income, after taxes and mandatory retirement contributions, and including child support, was \$3014. She had credit card debt of \$4570. Sarita's total monthly living expenses were \$3488 and she made a monthly credit card payment of \$127. Thus, her total monthly living expenses and debt payments were \$3615.

¶ 10 Thomas testified that he was 62 years old and lived with his wife, Lisa Sawczuk, in a townhouse that he purchased in 2004. He paid child support, provided medical insurance, and paid other expenses for N.G. pursuant to the joint parenting agreement. Thomas identified his financial affidavit and acknowledged that his gross income was \$9,441 as of May 31, 2018. He was self-employed as the owner of a bicycle repair shop that he operated out of his home. He

had been running his business for about six years. Prior to that, he had earned about \$75,000 a year in the IT profession.

¶ 11 Thomas testified that he purchased his townhome for \$285,000 and he still had a mortgage of \$187,000. His 2017 joint tax return showed that he and Lisa's joint household gross income was \$84,576. Lisa had wages of \$75,870 and he had business income of \$6456. He identified profit and loss statements from his business and testified that he earned profits of \$9341 in 2015, \$11,062 in 2016, and \$6259 in 2017. The record indicates that Thomas had the following assets at the time of the hearing: (1) \$125,071 in a Vanguard account, of which \$97,369 was in retirement accounts and \$27,702 was liquid; (2) liquid funds of \$20,307 in a Capital One account; (3) \$353 in a Chase checking account; (4) \$2,316 in a Chase savings account; (5) \$7,345.65 in a Chase business checking and savings account; and (6) \$101,254 of equity in his townhome.

¶ 12 Thomas also testified that he opened a Chase savings account for N.G. when she was born. It was an Illinois Uniform Transfer to Minors Account (IUTMA) and Thomas was the custodian. He used this account to deposit funds that N.G. received as gifts from his family. On December 4, 2016, the account had a balance of \$276. On December 5, 2016, Thomas deposited \$21,121 into the account. This was Thomas' inheritance money from his father. Thomas withdrew funds from the account to pay child support. At the time of trial, the account had an approximate balance of \$350.

¶ 13 Following closing arguments, the trial court rendered its ruling. The trial court stated that the Act "requires both parties have an obligation to contribute towards the undergraduate expenses of their minor child." The trial court found that Sarita's income was \$36,678 per year. Thomas' income was \$9,441 through May. Multiplying the prorated income resulted in an

annual income of \$22,000 for 2018. The trial court noted that Thomas' wife earned \$75,000 per year and that their total household income was about \$97,000.

¶ 14 In terms of college expenses, the trial court stated that the University of Illinois was \$36,000 per year and that N.G. should be responsible for \$12,000, annually, for her own education. The trial court found that Thomas had a greater ability to contribute towards N.G.'s college education and that he should pay her tuition and room and board, totaling \$15,000 annually. The trial court found that Sarita should contribute \$3,000 annually. The requirements for this award were that N.G. must be a full-time student, maintain a C+ average, and finish college within four years unless there was a petition to extend. The trial court noted its concern that Thomas deposited money in an IUTMA account for N.G. and then used it to pay child support. The trial court indicated that once the money was put in the account it became the property of N.G. and stated that N.G. had a possible cause of action for breach of fiduciary duty.

¶ 15 The trial court ordered Thomas to continue to provide health insurance for N.G. and pay half of her uncovered medical expenses. As for attorney fees, the trial court found that, based on Thomas' financial resources, he had the ability to contribute to Sarita's attorney fees. The trial court ordered Thomas to pay \$3500 in fees, which was half of Sarita's total attorney fees. In so ruling, the trial court stated as follows:

“THE COURT: To be able to stop working a \$75,000 job and run a bike shop out of your house means that you have the ability to do something. So at this point I am going to make the findings that you had the ability to contribute fees. I am going to order you to pay \$3,500 in fees \*\*\* because of the necessity of filing this action.”

Thereafter, Thomas filed a timely notice of appeal.

¶ 16

#### ANALYSIS

¶ 17 On appeal, Thomas first challenges the trial court's determination ordering him to contribute to N.G.'s college expenses. Thomas argues that the trial court erred in determining his annual income to be \$22,000. "A court's factual finding as to the parties' annual incomes will be reviewed under the manifest-weight-of-the-evidence standard." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1041 (2008). A finding is "against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *In re Marriage of Bhati*, 397 Ill. App. 3d 53, 61 (2009).

¶ 18 In the present case, the trial court's income determination was not against the manifest weight of the evidence. Thomas testified at the hearing that his earnings through May 2018 were \$9,441. On a prorated basis, this is equivalent to the trial court's income determination of \$22,000 per year. Thomas did not testify that his earnings were seasonal or that he did not expect to maintain that earning level for the remainder of 2018. Additionally, Thomas' financial affidavit indicated that his monthly gross income was \$1,888, which is essentially \$22,000 annually. We acknowledge that there was evidence that Thomas' profits on his bike business were no more than \$11,100 per year for the years 2015 through 2017. Nonetheless, we cannot say the trial court's income determination was against the manifest weight of the evidence as there was evidence to support its ruling.

¶ 19 Thomas next argues that the trial court erred to the extent it considered his wife's income for purposing of allocating educational expenses. This issue is governed by section 513 of the Act (750 ILCS 5/513 (West 2016)), which sets forth the factors a trial court must consider when making an award for the educational expenses of a child. One of the factors that can be considered is the "financial resources of both parties." 750 ILCS 5/513(j) (West 2016). A party's financial resources may include his income, his property and investment holdings, as well

as money or property that is available to him through his new spouse. *In re Marriage of Drysch*, 314 Ill. App. 3d 640, 645 (2000); see also *In re Marriage of Cianchetti*, 351 Ill. App. 3d 832, 835 (2004) (although mother's new husband was not obligated to pay for her children's college tuition, his income could be considered in determining the extent to which the mother's income could be freed through reliance on her husband for support).

¶ 20 In the present case, there is no indication in the record that the trial court considered Lisa's income for any purpose other than to the extent it was a resource to Thomas and could free up his income to contribute to N.G.'s college expenses. Thomas argues that even if the trial court did not err in finding his annual income to be \$22,000, ordering him to pay 68% of his gross annual income, or use 25% of his total assets, for N.G.'s college expenses was an abuse of discretion. We disagree. The evidence showed that Thomas had been running his bicycle repair business for the past six years, while paying \$12,000 per year in child support. The trial court's educational expense award was only \$3,000 per year more than the child support obligation, which had recently terminated. The evidence also indicated that Thomas had savings that were readily available to make up the shortfall. Reviewing the matter for an abuse of discretion, we cannot say that the trial court's decision was unreasonable under the circumstances.

¶ 21 Thomas argues that the trial court erred to the extent it both considered the sum in his business saving and checking account in determining his annual income and considered it as an asset available to pay N.G.'s educational expenses. First, this contention is forfeited as Thomas has failed to cite any authority that doing so would have been improper. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56 (“[A] reviewing court is not simply a depository into which a party may dump the burden of argument and research. \*\*\* A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not \*\*\* supported by citation

to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7) [and] \*\*\* results in forfeiture.”). Second, there is no evidence in the record to suggest that the trial court considered the amount in Thomas’ business account in determining his annual income, as that determination was based on his monthly income contained in his financial affidavit and his testimony that he had earned \$9441 from January 1 to May 31, 2018. Accordingly, even if this argument were not forfeited, there is no evidence that the trial court’s determination was erroneous.

¶ 22 Thomas also notes that, in closing argument, Sarita’s attorney argued that Thomas had \$334,000 worth of assets. This was based on the attorney’s statement that Thomas had \$180,000 of equity in his townhome. We agree that this was a misstatement by Sarita’s attorney, as Thomas only had about \$100,000 of equity in his townhome. However, Thomas did not object when this statement was made and thus forfeited any argument as to error arising from the misstatement. *Friedland v. Allis Chalmers Co.*, 159 Ill. App. 3d 1, 4 (1987). Moreover, there is no indication in the record that the trial court relied on this misstatement and we presume that the trial court properly considered all the evidence. See *City of Chicago v. Sievert Electric Co.*, 134 Ill. App. 3d 552, 556 (1985).

¶ 23 Thomas next contends that the trial court abused its discretion because it misstated the applicable law. Thomas notes that the trial court stated that “[t]he statute at this time still requires both parties have an obligation to contribute towards to the undergraduate education expenses of their minor child.” We agree that this is a misstatement of the law. The Act clearly states that whether to award an amount for educational expenses is within the discretion of the trial court. See 750 ILCS 5/513(a) (West 2016). As this determination is subject to discretion, the parties are not “obligated” to contribute towards college expenses. We encourage the trial court to choose its words more carefully in the future.



¶ 24 Nonetheless, reading the trial court's ruling in its entirety, it is clear that the trial court applied the law correctly. The record indicates that the trial court considered the proper statutory factors and exercised its discretion in determining how much each party had the ability to contribute toward N.G.'s college expenses. Thomas argues that the parties do not have the financial resources to meet the full cost of attendance at the University of Illinois (the benchmark for college expenses). However, the trial court's order does not require them to do so. The full cost for that university is \$36,000 per year. The trial court stated that N.G. could provide \$12,000 for her own educational expenses and that the parties could provide an additional \$18,000 per year. Thus, the total contributions ordered by the court were \$6000 less than the full cost for attendance at the University of Illinois.

¶ 25 As a final challenge to the award for educational expenses, Thomas asserts that the trial court's comments in its ruling regarding the IUTMA account demonstrate that the educational expense award was a punishment for his use of the funds in the IUTMA account and that this was an abuse of discretion. After reviewing the record, we cannot say that the trial court's determination was a punishment for Thomas's use of the IUTMA account. The trial court explained its reasoning and then reached a determination as to how much each party had the ability to contribute to N.G.'s college expenses. It was only after the determination was made that the trial court commented on Thomas's use of the funds in the IUTMA account. The record indicates only that the trial court believed that once the funds were placed in the account, those funds became N.G.'s property. The record does not demonstrate an abuse of discretion.

¶ 26 Thomas' second contention on appeal is that the trial court abused its discretion in ordering him to contribute \$3500 to Sarita's attorney fees. The trial court may award attorney fees associated with proceedings under the Act if one party lacks financial resources and the other party has the ability to pay. See 750 ILCS 5/508 (West 2016). However, the party seeking

contribution must establish an inability to pay and the other party's ability to do so. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *Id.* Financial inability does not mean destitution and the spouse need not exhaust his or her own estate. *In re Marriage of Vance*, 2016 IL App (3d) 150717, ¶ 61. Since the "trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different decision." *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). A reviewing court will reverse the trial court's determination to award or deny fees only if it abused its discretion. *Schneider*, 214 Ill. 2d at 174.

¶ 27 The trial court did not abuse its discretion in ordering Thomas to pay for half of Sarita's attorney fees. The evidence showed that Sarita's monthly expenses exceeded her income and that she had \$4500 in credit card debt. In addition, the trial court ordered her to contribute \$3000 annually to N.G.'s college expenses. We acknowledge that Sarita had a profit sharing account worth \$65,000. However, as stated above, financial inability does not require a party to exhaust all her resources. *Vance*, 2016 IL App (3d) 150717, ¶ 61. Moreover, the evidence showed that Thomas had substantially more savings than Sarita. Thomas argues that the trial court's abuse of discretion is evident from its statement that it was ordering him to pay \$3500 in fees "because of the necessity of filing this action." This statement does not demonstrate that the trial court's determination was based only on the fact that the cause of action was filed. It is evident from the report of proceedings that the trial court considered the parties' abilities to contribute to or pay for attorney fees.

¶ 28 Thomas also argues that the trial court did not consider that Sarita could work more hours and earn more income. However, there was no evidence that Sarita's employer would allow her

to work more hours. Finally, Thomas argues that the trial court abused its discretion because, in its ruling, it mentioned only Thomas' ability to contribute to attorney fees and did not mention Sarita's inability to pay her attorney fees. However, this omission does not demonstrate an abuse of discretion. The Act does not require specific fact findings on the inability of one spouse to pay his or her attorney fees. The trial court's implicit determination that Sarita had the inability to pay all of her attorney fees was, for the reasons stated, not an abuse of discretion.

¶ 29

#### CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 31 Affirmed.