2021 IL App (2d) 200443-U
No. 2-20-0443
Order filed December 20, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LAURA DODD, Petitioner-Appellee, and STEVEN DODD, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 13-D-1490 Honorable Robert E. Douglas, Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: We had jurisdiction over the trial court's July 6, 2020, order resolving Steven's petition to modify child support and Laura's petition for rule to show cause, but we lacked jurisdiction over the trial court's November 9, 2020, order awarding Laura attorney fees. The trial court acted within its discretion in imputing a $100,000 income to Steven. However, it erred in its determination of 2018 child support because the parties' marital settlement agreement could not be enforced as written. Therefore, we affirm in part, vacate in part, and remand.

¶ 2 Respondent, Steven Dodd, appeals *pro se* from the trial court's order resolving his petition to modify child support and the petition by petitioner, Laura Dodd, for rule to show cause. Steven also seeks to challenge the trial court's order requiring him to pay $14,976.13 for Laura's attorney

fees. Steven argues that the trial court erred in: (1) imputing an income to him of $100,000; (2) calculating income and child support for 2018; (3) making determinations related to payments of the children's health insurance premiums; and (4) ordering him to pay Laura's attorney fees. We conclude that we do not have jurisdiction over the attorney fee order; that the trial court did not abuse its discretion in imputing a $100,000 income to Steven; that the trial court erred in its calculations of child support for 2018, requiring a remand of the case; and that the health insurance issue may be addressed on remand.

¶ 3 I. BACKGROUND

¶ 4 A. General Background

¶ 5 The parties were married on August 23, 2003, and had two children, born in 2004 and 2008. On July 18, 2013, Laura filed a petition for dissolution of marriage. On January 9, 2014, the trial court entered the parties' joint custody agreement that gave Laura primary physical custody of the children. The trial court entered a judgment of dissolution of marriage on December 4, 2014, that incorporated the joint custody agreement and the parties' marital settlement agreement (MSA). The MSA stated that the parties' agreement regarding child support was "predicated upon the premise that Steven's current base salary is approximately $150,000" per year. Steven was to pay $2,318 per month for child support and additionally pay on a quarterly basis beginning in 2015 "28% of the net amount he receives from any bonus or commission until his annual gross income reaches $250,000 for that year," beyond which he was not obligated to pay any additional child support. At the time of the MSA, he had a child support arrearage of $5,000. Steven agreed to maintain health insurance for the children. Steven was awarded an investment condo that the parties owned, which at the time of the MSA had a negative equity of approximately $43,000. Laura was awarded another investment condo in the same building.

¶ 6 On May 20, 2016, Steven filed a petition to abate or modify child support. He alleged that he was involuntarily terminated from his employment three days prior. However, on August 4, 2016, Steven voluntarily dismissed his petition with prejudice.

¶ 7 On November 2, 2016, Laura filed a petition for rule to show cause for failure to pay child support, alleging that Steven had failed to provide the proof of income required in the MSA to determine additional child support, and that he had not paid all amounts due. On January 31, 2017, the trial court issued a rule to show cause and ordered Steven to provide Laura with his commission and pay stubs for various quarters of 2015 and 2016. On April 19, 2017, the trial court discharged the rule to show cause because Steven provided the financial documents ordered. On May 24, 2017, the trial court ordered Steven to pay Laura $2,500 for attorney fees she incurred as a result of the rule to show cause. It continued the matter for a hearing to resolve the remaining allegations of her petition.

¶ 8 On June 21, 2017, Steven filed another petition to modify his child support obligation, alleging that his income had decreased substantially since the entry of the dissolution judgment. Steven filed a third petition to modify child support on July 25, 2017, alleging that he had lost his job. On October 10, 2017, the trial court granted Steven leave to file an amended petition. Steven did so on October 16, 2017.

¶ 9 On April 19, 2018, the trial court entered an order stating that: Steven voluntarily withdrew his pending petitions to modify child support; Steven was to pay Laura $15,000 for child support arrearages for the years 2015, 2016, and 2017; and Steven was to pay Laura attorney fees of $9,250. Further, the parties agreed that "the additional support due on [Steven's] earnings from $150,000.00 gross to the cap of $250,000.00 shall be calculated to equal 19% of the gross of such additional earnings, with the maximum additional support would be [*sic*] $19,000.00 per year."

¶ 10 On June 21, 2018, Steven filed a petition to modify child support, alleging that his employment was terminated on June 1, 2018. Laura filed a petition for rule to show cause on February 1, 2019. She alleged that Steven had paid $22,377.65 for 2018 child support and therefore still owed $7,756.35 under the MSA for support through January 31, 2019, plus interest, as well as certain amounts for other expenses of the children. Laura alleged that Steven had also failed to provide financial information required by the MSA to determine additional child support due for income between $150,000, and $250,000. Laura further sought attorney fees for bringing the petition.

¶ 11 On March 19, 2019, the trial court entered a rule to show cause against Steven pursuant to Laura's petition, finding that Steven owed Laura $30,940.69, excluding interest.[1] On July 16, 2019, the trial court entered an agreed order providing that Steven was to pay Laura $7,756 for the base child support arrearage for 2018, reserving the issue of statutory interest. The rule to show cause was continued until trial.

¶ 12 B. Trial

¶ 13 A trial on Steven's petition to modify child support and Laura's rule to show cause took place on October 25, 2019, and February 28, 2020. We summarize Steven's testimony. He was 48 years old and resided in Naperville. Steven filed his petition to modify child support after he was terminated from his employment in June 2018 as the manager for the digital media sales team at Dstillery. He had worked there for about nine months and had an annual salary of $150,000. After the termination, Steven had been looking for a job in his industry for four or five months, including

[1] This was a preliminary determination of child support, as the trial court resolved the issue after a trial.

through headhunters, when he came across a job for a health insurance salesperson with US Health Group. It seemed like a good opportunity to transition his sales experience into a different, more stable field. He thought that with education and experience, he could reach his previous income levels, which the company also affirmed. Steven became self-employed as a contractor with US Health Group in October 2018, and his income was 100% commission-based. His gross income from 2018 was about $110,000 or $120,000, largely from Dstillery, whereas his gross income in 2019 as of the first day of trial was $19,000 to $20,000. Steven was working 80 to 90 hours a week to become established in the insurance industry. However, his net income after expenses from US Health Group was close to $0. US Health Group had lied by telling Steven that the average customer contract was for three years, and it was not until the first or second quarter of 2019 that Steven learned that almost half of his clients were canceling their contracts before one year. Steven was also driving for Uber and Lyft to make money, where, after expenses, he earned $10 to $15 an hour. His financial affidavit listed his monthly net income as negative $12,220; he was meeting his expenses by liquidating his savings.

¶ 14 Steven was still looking for work in his field by speaking to recruiters and headhunters and applying for jobs on LinkedIn and other job websites, and he had records of his efforts and rejections from the past 30 to 60 days. He did not have older records because LinkedIn did not store them for a longer time. He believed that he had not obtained a job in his field due to "consolidation of the industry due to programmatic technology," age discrimination, and being overqualified. Steven was trying in good faith to obtain employment in his prior industry and in other insurance opportunities as well.

¶ 15 Steven admitted that in every year since the dissolution judgment was entered, he had paid additional child support for the income he earned over $150,000. In the 15 years before the

dissolution, he worked at four or five different companies. He had also changed employers many times after the divorce because his positions would get eliminated after 9 to 12 months, though he had previously always earned at least as much as his prior job. Steven admitted that he owned a Corvette worth $8,000 and that he had purchased another car after his employment at Dstillery was terminated. He was also renting a five-bedroom house.

¶ 16 Steven and Laura were each awarded a condo in the dissolution judgment, both of which had negative equity. Steven was forced to liquidate assets and then sell his condo because he was unable to refinance it as the MSA required him to remove Laura's name from the title. He sold it in January 2018 for $210,000, but the check he received at the closing was for $195,960.85. Also, he had to pay over $18,000 in special assessments and $4,000 to $5,000 for association legal fees to sell the condo.

¶ 17 Laura testified that she was 44 years old and had been working for Healthgrades for about eight years, where she was the national sales director. Like Steven, she worked in the digital media sales industry. Her gross income in 2018 was approximately $330,000. Steven called her a few days after he lost his job at Dstillery, and she offered to connect him with headhunters and other industry contacts. Steven refused her help, saying that he was done with the industry and was going to move on to something else.

¶ 18 In July or August 2019, Laura created a fake LinkedIn profile that mirrored Steven's experience, and it showed that he qualified for 27 new digital jobs in the Chicago area. There were also 49 digital media sales jobs in the Naperville area. Laura additionally entered the profile into other job search sites. Laura admitted that she did not know how many other people in the Chicago area would be searching for the same type of job.

¶ 19 Laura and Steven were each awarded a condo that was appraised at $75,000 in the dissolution judgment.

¶ 20 Tim Prerost provided the following testimony. He was the managing partner of a third-party recruiting company where he helped employers find employees. He had about 15 years' experience in the field. Prerost admitted that he had not placed anyone at the managerial level in Steven's industry. Over Steven's objection, Prerost was accepted as an expert in the field of personnel recruitment in business development management, though the trial court stated that it would give Prerost's testimony the weight it was due given that he had not placed anyone in Steven's position.

¶ 21 Prerost had reviewed Steven's resume. He explained to his clients that looking for a job was full-time work that involved not just applying to positions, but also using social media, networks, and attending events. He further recommended talking to as many recruiters as possible and following up with them every two to three weeks. The unemployment rate was currently low, and there were many jobs available.

¶ 22 Prerost had known Laura since college and would occasionally run into her because they lived in the same town. Prerost agreed that the longer someone was out of work, the wider the net they would need to cast for jobs that were not in their direct experience.

¶ 23 C. Trial Court's Ruling

¶ 24 The trial court entered a written opinion and order on July 6, 2020, finding as follows. Steven was involuntarily terminated from his employment in June 2018, which constituted a substantial change in circumstances. He filed a petition to modify child support on June 21, 2018, but failed to provide the financial affidavit required by local court rule until October 26, 2018. His total 2018 income for purposes of calculating child support was $261,586.09. This included

$135,000 in income realized from the sale of his condo, as determined by the sale price of $210,000 less the fair market value of the condo of $75,000 as of the date of the entry of the dissolution judgment. Therefore, no modification of support was granted for 2018, and Steven should have paid an additional $19,000 in support for that year. His failure to do so was not justified but was not willful, so he was not in contempt of court. Steven was to pay this amount, plus statutory interest, in installments over 24 months. Also, Laura was granted leave to file a petition for attorney fees with respect to the rule to show cause under section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(b) (West 2020)). Steven was required to pay $3,261.17 to Laura for attorney fees relating to her March 11, 2020, motion to compel.

¶ 25 Steven was voluntarily underemployed and had not made adequate attempts to secure employment commensurate with his skills and abilities since the termination of his prior employment in June 2018, wherein he had earned a gross sum of $100,000 for the first six months of that year. Steven had a significant history of earning over $150,000 every year since the dissolution judgment. Therefore, the court was imputing an income to him of $100,000 per year commencing January 1, 2019, though he had the ability to earn significantly more than that amount. Steven was required to undertake various actions showing that he was attempting to find a job in his industry, including providing proof to Laura that he was working with headhunters and applying to seven jobs per week.

¶ 26 The evidence showed that Laura's gross income in 2019 was about $300,000. She made $334,000 in 2018, but that amount contained commissions that may not repeat, so $300,000 was a reasonable annual income to assign to her. Based on the parties' incomes, a modification of

Steven's child support was warranted retroactive to January 1, 2019, calculated as $830.41 per month.

¶ 27 Steven filed a notice of appeal from the trial court's order on August 7, 2020.

¶ 28 D. Attorney Fees

¶ 29 Meanwhile, on July 27, 2020, Laura filed her petition for attorney fees under section 508(b), as provided for in the July 6, 2020, order. On November 9, 2020, the trial court entered an order requiring Steven to pay fees of $14,976.13, pursuant to the petition.

¶ 30 II. ANALYSIS

¶ 31 A. Jurisdiction

¶ 32 We initially address the issue of jurisdiction, as Laura argues that we must dismiss the appeal for lack of jurisdiction. The trial court entered an order on July 6, 2020, that resolved, among other things, Steven's petition to modify child support. The order also gave Laura leave to file a petition for attorney fees under section 508(b), and Laura filed such a petition on July 27, 2020. Steven filed a notice of appeal from the July 6, 2020, order on August 7, 2020. The trial court resolved the attorney fee petition on November 9, 2020.

¶ 33 Laura argues that at the time Steven filed his notice of appeal, there were still matters pending before the trial court in this action, as Laura's petition for attorney fees remained unresolved. Laura argues that Steven therefore could not appeal the July 6, 2020, order without a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), which the order lacked. Rule 304(a) provides:

> "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or

claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Laura also argues that although Steven further challenges in his brief the trial court's November 9, 2020, order, he never appealed from that judgment. Laura asserts that we must therefore dismiss the appeal for lack of jurisdiction.

¶ 34 Steven cites generally to Illinois Supreme Court Rules 301(a) (eff. Feb. 1, 1994) (stating "[e]very final judgment of a circuit court in a civil case is appealable as of right") and 304 in his appellant brief, and he does not address Laura's jurisdictional argument in his reply brief.

¶ 35 Steven is incorrect that the July 6, 2020, judgment was a final order that was immediately appealable without a Rule 304(a) finding. Indeed, if it were, we would lack jurisdiction over this case because Steven filed his notice of appeal more than 30 days after the entry of the order. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (generally requiring that a notice of appeal be filed within 30 days after the entry of the final judgment appealed from).

¶ 36 Our supreme court recently addressed jurisdictional issues in marriage cases in *In re Marriage of Crecos*, 2021 IL 126192. It noted that in a predissolution case, a petition for dissolution advances a single claim for a request to dissolve a marriage, and the other issues involved, such as custody, property distribution, and support, are ancillary and are separate issues relating to the same claim. *Id.* ¶ 18. As they are not separate claims, they are not appealable under Rule 304(a). *Id.* In contrast, postdissolution petitions are unique because the final dissolution judgment may be subsequently repeatedly modified at the parties' request. *Id.* ¶ 19. The court stated that "for purposes of appellate jurisdiction, unrelated postdissolution matters constitute separate claims, so that a final order disposing of one of several claims may" be appealed with a Rule 304(a) finding. *Id.* ¶ 45. Thus, at the predissolution stage, a separate issue may not be appealed

before the dissolution judgment, whereas in a postdissolution situation, a separate issue/claim can be appealed if other issues/claims are still pending only if the trial court makes a Rule 304(a) finding.

¶ 37 *Crecos* cited with approval *In re Marriage of Teymour & Mostafa*, 2017 IL App (1st) 161091. *Crecos*, 2021 IL 126192, ¶ 44. *Teymour* has facts that are somewhat analogous to this case. There, the petitioner appealed from two postdissolution orders at a time when the respondent's petitions for attorney fees were still pending. The respondent had sought fees under sections 508(a) and (b) of the Marriage Act and Illinois Supreme Court Rule 219. *Teymour*, 2017 IL App (1st) 161091, ¶¶ 6-7. The postdissolution order did not contain a Rule 304(a) finding. *Id.* ¶ 7. The appellate court concluded that because the respondent's petitions for attorney fees were still pending when the petitioner filed his notice of appeal, the orders appealed from did not dispose of every claim, depriving the appellate court of jurisdiction under Rule 301. *Id.* ¶ 43. The orders were also not appealable under Rule 304(a) because the trial court did not make a finding under that rule. *Id.* The court therefore dismissed the appeal for lack of jurisdiction.

¶ 38 It is therefore clear that at the time Steven filed his notice of appeal, we lacked jurisdiction over this case because Laura's petition for attorney fees was still pending. That being said, 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." Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

Though Rule 303(a)(2) refers specifically to a postjudgment motion, we have interpreted the rule to giving effect to a premature notice of appeal upon the resolution of a pending claim. *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 17; see also Ill. S. Ct. R. 303, Committee Comments (adopted Mar. 16, 2007) ("Subparagraph (a)(2) protects the rights of an appellant who has filed a 'premature' notice of appeal by making the notice of appeal effective when the order denying a postjudgment motion or resolving a still-pending separate claim is entered.").

¶ 39 In sum, Steven's August 7, 2020, notice of appeal was premature because Laura's petition for attorney fees was still pending at the time, but under Rule 303(a)(2), the notice of appeal became effective on November 9, 2020, when the trial court resolved the attorney fee petition.[2] Therefore, we have jurisdiction to review the trial court's July 6, 2020, order.

¶ 40 We do agree with Laura, however, that we lack jurisdiction over the trial court's November 9, 2020, order, which Steven also challenges in his brief. On this issue, Rule 303(a)(2) states:

> "A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion." Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

[2] As it was undisputed that the attorney fee petition was resolved on November 9, 2020, we ordered Steven to supplement the record with a copy of the order, rather than first dismissing the appeal and then allowing him to request to supplement the record. *Cf. In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007).

Rule 303's Committee Comments state that "where the postjudgment order grants new or different relief than the judgment itself, or resolves a separate claim, a second notice of appeal is necessary to preserve an appeal from such [an] order." Ill. S. Ct. R. 303, Committee Comments (adopted Mar. 16, 2007). As Steven did not file a new or amended notice of appeal following the November 9, 2020, order, we lack jurisdiction over that order. *Cf. A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 82 (the plaintiff did not file a new or amended notice of appeal under Rule 303, and therefore an order awarding fees and costs was not reviewable on appeal).

¶ 41 B. Brief

¶ 42 We next comment on Steven's brief, as we find that it violates Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020) in several ways. First, Steven has not used 12-point or larger font, nor has he double-spaced the text. See Ill. S. Ct. R. 341(a) (eff. Oct. 1, 2020). Second, his statement of facts improperly includes argument and comment. See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020). Third, his brief includes many alleged facts that are outside of the record. We recognize that Steven has appealed *pro se* and may not have understood the requirements for appellate briefs. However, *pro se* litigants must comply with the same rules of procedure as attorneys and are not entitled to more lenient treatment. *Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348, ¶ 45. Stated differently, parties who chose to represent themselves in Illinois courts must comply with the same rules as licensed attorneys, and they are held to the same standards. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78; see also *Morse v. Donati*, 2019 IL App (2d) 180328, ¶ 16 (Illinois Supreme Court rules, including those pertaining to briefs, are not mere suggestions but rather have the force of law). Steven's violations are not so severe as to justify striking his brief, but we will disregard any improper argument and factual allegations that are outside of the record

(see *Foxfire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 19), and we caution him to carefully review and follow the rules before filing any future briefs.

¶ 43 C. Underemployment

¶ 44 Turning to the merits, Steven's first argument on appeal is that the trial court erred in finding that he was underemployed and that he failed to make adequate efforts to earn his prior salary. Steven asserts that he showed more than enough proof that he was making maximum efforts to find jobs while also spending 60 to 90 hours per week working multiple jobs, including driving for Uber at night. Steven argues that Laura's fake LinkedIn profile showed only that she knew how to conduct research on posted jobs, and it did not show that he was not already doing this daily. Steven contends that Prerost's testimony did not support Laura's position because he was Laura's college friend, had no experience in Steven's industry, and had no knowledge of what efforts Steven had made to find a job.

¶ 45 Steven analogizes his situation to *Coons v. Wilder*, 93 Ill. App. 3d 127, 133 (1981), where the court stated:

> "Ordinarily a man makes an investment or changes his occupation with the hope of improving his prospects for the future, including raising his own standard of living as well as that of his children. [Citation.] Following dissolution of marriage, the custodial parent and children cannot be allowed to freeze the other parent in his employment or otherwise preclude him from seeking economic improvement for himself and his family. So long as his employment, educational or investment decisions are undertaken in good faith and not deliberately designed to avoid responsibility for those dependent on him, he should be permitted to attempt to enhance his economic fortunes without penalty."

Steven argues that, likewise, his attempt to double his income in the insurance field and his great efforts in job searching were made with 100% good faith to regain the income he enjoyed in the past. He maintains that he was only unemployed for a few months and was then employed with multiple jobs thereafter. He argues that his imputed income should minimally be changed to $70,000 on the support obligation worksheet, especially considering that he had business expenses to earn the income that he actually obtained.

¶ 46 Steven argues that, in contrast to the trial court's attribution of additional income to him, the trial court reduced Laura's income by applying a $300,000 income rather than her average income of $388,250.[3] He argues that the trial court should have applied at least a $375,000 income to her.

¶ 47 Laura, for her part, cites *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 45, where the court stated:

> "If a party is not making a good-faith effort to earn sufficient income, the court may set a support obligation at a level higher than the parent's actual income, as long as the award is appropriate based on the party's skills and experience. [Citation.] 'It is well established that courts have the authority to compel parties to pay child support at a level commensurate with their earning potential.' [Citation.] In determining a party's earning capacity, the court should examine (1) the work and earnings history of the parent, (2) the parent's educational background, (3) the parent's occupational qualifications, and (4) prevailing job opportunities in the geographic area."

[3] It is unclear what information Steven is relying on to arrive at this figure.

Laura also cites *In re Marriage of Deike*, 381 Ill. App. 3d 620, 632 (2008), where the court stated that before the father purchased a restaurant that ended up losing money rather than seeking another job in his field, he "should have been concerned about how he would continue to support his children."

¶ 48 Laura argues that this case's history shows that Steven has repeatedly attempted to evade his child support obligations, as he was almost never current in paying his child support during the time that he was gainfully employed, requiring her to continuously file motions. She argues that after Steven's termination of employment in his industry, he failed to take advantage of available employment opportunities in his field and failed to demonstrate an ongoing, diligent employment search. Instead, Laura argues, he relied on the funds gained from selling his condo to pay his ongoing expenses. Laura maintains that as in *Deike*, Steven abandoned looking for employment in a field where he had been highly successful and instead used all of his time embarking on a new career of selling insurance for over one year, despite his own testimony that he never made any money doing so. Laura argues that it was in the trial court's discretion to impute to Steven an income of $100,000, which was substantially less than he had historically earned, and to require him to actively and continuously seek employment in his field.

¶ 49 We presume that a trial court's determinations in awarding child support are correct, and we will not reverse its findings as to income or its awards unless the trial court abused its discretion. *In re Marriage of Lugge*, 2020 IL App (5th) 190046, ¶ 15; see also *In re Marriage of Evanoff & Tomasek*, 2016 IL App (1st) 150017, ¶ 23 (a trial court's determination of income in a dissolution case 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. *In re Marriage of Folley*, 2021 IL App (3d) 180427, ¶ 34.

¶ 50 The trial court has the authority to impute income to an underemployed noncustodial parent for child support purposes. *Liszka*, 2016 IL App (3d) 150238, ¶ 44. "Imputation is appropriate in cases of voluntary unemployment or voluntary *under*employment." (Emphasis in original.) *Id.* Similarly, the child support statute states that if a parent is voluntarily unemployed or underemployed, child support shall be calculated using a determination of potential income, which is based on employment potential and probable earnings considering the obligor's work history, occupational qualifications, job opportunities, and earning levels in the community. 750 ILCS 5/505(a)(3.2) (West 2020). 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. In imputing income, the trial court may consider the supporting parent's income from previous employment, but it should not base the imputed income on outdated data that no longer reflects prospective income. *In re Marriage of Van Hoveln*, 2018 IL App (4th) 180112, ¶ 40.

¶ 51 We conclude that the trial court did not abuse its discretion in imputing a $100,000 income to Steven for child support purposes. It is undisputed that before the dissolution of the marriage and for years afterwards, Steven was able to earn an income in the $150,000 to $250,000 range, even after changing jobs frequently due to layoffs. The trial court found that Steven was involuntarily terminated from Dstillery. Steven testified that he looked for jobs in his industry for several months afterwards and was continuing to do so at the time of his testimony, which was on October 25, 2019, but he provided evidence only of his LinkedIn activity, and even that was just for the 30 to 60 days before trial. Furthermore, as Laura points out, Steven testified that he made virtually no income from selling health insurance, yet his testimony indicates that he had continued

to work overtime at the job for over one year. In this manner, this case can be analogized to *Deike*, where it was undisputed that the father was working, but he was doing so in a new field that was not producing sufficient income compared to his previous salary. Importantly, the trial court imputed an income of $100,000 to Steven, which was significantly less than his historic earnings.

¶ 52 Regarding Laura's income, the trial court stated that her gross income in 2019 was about $300,000. This is supported by the exhibits in evidence, so the trial court did not err in using this figure in the child support worksheet. The trial court stated that Laura made $334,000 in 2018. As we subsequently discuss, this figure will be taken into account when the trial court redetermines child support for that year by applying section 505. Laura's tax return for 2017 showed an adjusted gross income of $268,376, which does not support Steven's argument that her average income was $375,000. He also did not argue in the trial court that an income-averaging approach should be used for Laura, thereby forfeiting this argument for review. See *Gean v. State Farm Mutual Automobile Insurance Co.*, 2019 IL App (1st) 180935, ¶ 19 (issues not raised in the trial court are forfeited and may not be raised for the first time on appeal).

¶ 53 D. 2018 Income and Child Support Calculations

¶ 54 Steven next argues that the trial court erred in computing his income for 2018 as $261,586.09. He maintains that he earned $100,282 from January to June 2018 from Distillery, and that under the MSA, he would pay $13,908 for base support for that time ($2,318 x 6 months). He argues that 19% of his additional bonus pay above $75,000 during that time would equal $4,803 ($25,282 x 19%), for a total of $18,711 for the six months ($13,908 + $4,803). Steven asserts that even assuming that the subsequent imputation of income was correct, this amount should have applied to the second six months of 2018, which at $830.41 per month would equal $4,982.46, for a total support due in 2018 of $23,693.46. Steven argues that the trial court should have also

deducted the court-ordered health insurance payments and other expenses when calculating income for 2018. Instead, the trial court ordered full child support under the MSA, as amended, for a total payment of $46,816 ($2,318 x 12 months + $19,000).

¶ 55 Steven asserts that the trial court's computation was additionally in error because it included gains from selling the condo, which should be excluded as marital property that he was awarded at the time of dissolution. Steven notes that he and Laura each received a condo in the dissolution judgment. He cites *In re Marriage of Colangelo & Sebela*, 355 Ill. App. 3d 383 (2005), which he states addresses "the argument that cash flow received from the support payor should not be considered income when it represented funds awarded in the initial divorce—because doing so would be improper double dipping." We note that in that case the court held that distributions from stock options that the respondent had received as marital property were income for child support purposes. *Id.* at 389-90.

¶ 56 Steven alternatively argues that under the MSA, additional support was to be calculated only from commissions and bonuses and therefore would not include the proceeds from the condo's sale. He cites *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425-26 (2005), where the court stated that marital settlement agreements are interpreted like contracts, for which a court seeks to give effect to the parties' intent, which is best indicated through the plain and ordinary meaning of the agreement's language. Steven asserts that even if the condo proceeds could be labeled as a bonus, the additional child support was awarded on a quarterly basis, and because he sold the condo in the first quarter of 2018, it could be considered only in that calculation. Steven further maintains that the trial court failed to account for the $43,000 negative equity in the condo and the proven expenses of $20,000 in special assessments and $5,000 in legal fees.

¶ 57 Laura points out that the trial court determined that Steven's 2018 income was $261,586.09 as follows: $135,000 from gain from sale of condo; $100,282.08 employment income from Dstillery; $12,540 unemployment income; $1,621.86 Uber income; $838.77 Lyft income; and $11,303.38 income from US Health. Laura highlights that in Steven's testimony, he agreed that these amounts were his gross income, other than the amount attributed to the condo sale. Laura argues that the condo proceeds should be included because section 505(a)(3) of the Marriage Act defines "net income" as "the total of all income from all sources," minus several enumerated deductions. 750 ILCS 5/505(a)(3) (West 2018). Laura argues that the trial court's calculation of the gain from the condo was correct, as she testified that each condo was appraised at $75,000 at the time of the dissolution judgment, and she submitted an appraisal into evidence. Laura maintains that although Steven argues that certain business expenses that he incurred for the production of his income should have been deducted, he did not make that argument in the trial court or introduce any credible evidence of such expenses, thereby forfeiting the argument on review.

¶ 58 Laura further argues that there is no language in the dissolution judgment or any subsequent court order that excludes certain types of income from the determination of Steven's additional child support payments. She cites that MSA provision that provides that "Steven shall not be obligated to pay any additional child support in excess of an annual income of $250,000.00 for that specific year," and she asserts that the agreement does not state that income from any source other than his bonus or commission is excluded in the determination of his annual income. Laura also maintains that Steven did not raise this argument below, and therefore it is forfeited on appeal. Laura further argues that under *In re Marriage of Solecki*, 2020 IL App (2d) 190381, ¶ 60, a court is not permitted to deviate from the measure of net income to which the guidelines apply

in the first instance, such that the profits from the condo sale had to be included in Steven's income calculation.

¶ 59 Laura notes that although the trial court determined that Steven lost his job on June 1, 2018, and filed his petition to modify child support on June 21, 2018, it ruled that the modification of support would commence on January 1, 2019. Laura highlights that under the Marriage Act, child support obligations may be modified only as to installments accruing after the moving party has provided due notice of the filing of the petition for modification. 750 ILCS 5/510(a) (West 2018). She further notes that whether the modification of support should be retroactive to the date the petition was filed is within the trial court's discretion. *In re Marriage of Heil*, 233 Ill. App. 3d 888, 895 (1992). Laura argues that the trial court's decision was not an abuse of discretion because it properly concluded that inasmuch as Steven's total 2018 income was over $250,000, it was appropriate for the modification of support to be effective as of January 1, 2019. Laura also argues that although Steven filed his petition for modification on June 18, 2018, he did not comply with local court rules to provide Laura with his financial affidavit within 14 day, but rather did not provide it until October 26, 2018.

¶ 60 We initially observe that the entirety of child support for 2018 is at issue here, because although Steven could not seek modification of child support prior to filing his petition for modification (750 ILCS 5/510(a) (West 2018)), Laura sought to enforce the MSA's child support provisions for the whole year.

¶ 61 We next conclude that Steven has not forfeited his argument that the proceeds from the condo should not be included in child support calculations, as he made this assertion both at trial and in his written closing argument, and he included language from the MSA on this issue in the

closing argument. Steven also testified in many instances to expenses that he incurred in his employment and in selling the condo.

¶ 62 We disagree with Steven that the fact that he was awarded the condo as part of the distribution of marital property prevents the proceeds from its sale from being included in child support calculations. Indeed, the case that Steven cites supports our conclusion, as *Colangelo* held that distributions from stock options awarded as marital property were income for child support purposes. *Colangelo*, 355 Ill. App. 3d at 389-90.

¶ 63 We next address whether the condo proceeds would be included as income under the MSA. As mentioned, the MSA stated that the child support was "predicated upon the premise that Steven's current base salary is approximately $150,000" per year. Steven was to pay $2,318 per month for child support and additionally pay on a quarterly basis beginning in 2015 "28% of the net amount he receives from any bonus or commission until his annual gross income reaches $250,000 for that year," after which he would "not be obligated to pay any additional child support in excess of an annual income of $250,000.00 for that specific year." Laura seeks to interpret "income" as income from all sources based on the last quoted portion of this section, but it is clear from reading the plain language of the provision as a whole that the parties were basing child support on only Steven's employment income, bonuses, and commissions. See *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2021 IL App (1st) 200753, ¶ 71 (we construe contracts as a whole rather than focusing on isolated portions). The parties' amendment to the provision likewise ties the child support to Steven's earnings from employment as opposed to all income, as it states that "the additional support due on [Steven's] *earnings* from $150,000.00 gross to the cap of $250,000.00 shall be calculated to equal 19% of the gross of such additional *earnings*, with the maximum additional support would be [*sic*] $19,000.00 per year." (Emphases

added.) Accordingly, we agree with Steven to the extent that income from the sale of the condo would not be included in the child support calculations when relying solely on the MSA.

¶ 64 Our analysis does not end there, however, as Laura's citation to *In re Marriage of Solecki*, 2020 IL App (2d) 190381, ¶ 60, comes into play. There, the parties agreed in their MSA that the husband would pay 32% of his net income for child support, as calculated per statute. *Id.* ¶ 55. The agreement further provided that there would be a yearly "true-up" based on the father's tax return to determine whether the support paid accurately reflected his income for the year. *Id.* ¶ 56. The net income for the true up was based on the gross income reported on the tax return minus enumerated deductions, plus the gross income from his business minus 30% and health insurance premiums. *Id.*

¶ 65 The appellate court stated that the provision regarding the business income was invalid because "courts have no discretion to depart from section 505(a)(3)'s definition of 'net income.' " *Id.* ¶ 60. It stated that "though a trial court is allowed to deviate from the amount of support that the guidelines generate based on a party's net income, the court is not permitted to deviate from the measure of net income to which the guidelines apply in the first instance." *Id.* ¶ 62. This is true *even if* the parties have agreed to a different definition of net income, as a parties' agreement may not "legitimize a departure that the trial court has no power in its own right to grant." *Id.* ¶ 63. Put differently, "courts are not at liberty to depart from the definition of "net income" in section 505(a)(3), either by excluding what is properly 'income' or by disallowing/limiting the enumerated deductions. Such deviation is not permitted even if the parties consent to it in an MSA." *Id.* ¶ 69. Accordingly, the parties' agreement in the MSA to only include Steven's employment income in determining his income for child support purposes was unenforceable by the court.

¶ 66 As stated, section 505(a)(3) defines net income for child support as "the total of all income from all sources" minus various enumerated deductions. 750 ILCS 5/505(a)(3) (West 2018). For child support purposes, income is "simply 'something that comes in as an increment or addition ***: a gain or recurrent benefit that is usu[ally] measured in money ***: the value of goods and services received by an individual in a given period of time.' " *In re Marriage of Roberts*, 213 Ill. 2d 129, 136-37 (2004) (quoting Webster's Third New International Dictionary 1143 (1986)). It is also defined as " '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts and the like.' " *Id.* at 137 (quoting Black's Law Dictionary 778 (8th ed. 2004)). "[I]ncome represents a gain or profit that is generally understood to be a return on an investment of labor or capital, thereby increasing the recipient's wealth. *In re Marriage of Tegeler*, 365 Ill. App. 3d 448, 455 (2006).

¶ 67 The trial court determined that Steven had proceeds of $135,000 from the condo's sale by subtracting the appraised value at the time of the dissolution ($75,000) from the sale price ($210,000). Profits from the condo sale presumably increased Steven's wealth and therefore were properly considered income. However, child support is determined based on "net income." It is undisputed here that Steven received a check of $195,960.85 at closing, so the trial court should not have started with the $210,000 sale price, as Steven never had access to all of those funds. Steven also testified that to sell the condo he had to pay more than $18,000 in special assessments and $4,000 to $5,000 for association legal fees; the trial court neither credited nor discredited this testimony. Similarly, the trial court also did not address Steven's testimony that the condo had a negative $43,000 net equity when it was awarded to him and that he liquidated assets to pay this

off.[4] Accordingly, we must remand this case for the trial court to reconsider how much the condo sale increased Steven's net income.

¶ 68 Going further, under *Solecki*, the trial court also could not enforce the parties' agreement to use Steven's gross employment income, as opposed to his net income, to calculate his annual income. See *Solecki*, 2020 IL App (2d) 190381, ¶ 69. Therefore, the trial court further erred in relying on the income figures Laura set forth in her closing argument, repeated *supra* ¶ 57, because those amounts constituted Steven's gross income rather than his net income under section 505(a)(3). The trial court stated that it was applying the MSA to determine child support for 2018, but as the determination of income under that agreement was unenforceable, the trial court should have instead modified child support for the entirety of 2018 and applied section 505 to determine the appropriate amount of child support for that year.

¶ 69 We therefore vacate the trial court's ruling on this issue and remand this case for the trial court to determine how much child support Steven owed for 2018 under section 505. As this constitutes a modification of child support in contrast to the trial court's ruling that it was enforcing the MSA for that year, the trial court should also revisit the question of whether to attribute the $100,000 income, or any amount of income, to Steven prior to January 1, 2019. The trial court may, within its discretion, reopen the proofs to allow the parties to present additional evidence on how to calculate their 2018 net incomes under the statute, as this was not directly contemplated by the parties during the trial.

[4] We express no opinion on whether or how this testimony, if credited, would affect the determination of Steven's net income from the condo sale.

¶ 70 We note that the trial court has the discretion to deviate from the child support guidelines if it determines that it would be in the children's best interests to do so, but it must first calculate the parties' net incomes under the statute. 750 ILCS 5/505(a)(2) (West 2018); *Solecki*, 2020 IL App (2d) 190381, ¶ 62. Any deviation must "be accompanied by written findings by the court specifying the reasons for the deviation and the presumed amount under the child support guidelines without a deviation." 750 ILCS 5/505(a)(3.4) (West 2018).

¶ 71 E. Children's Health Insurance

¶ 72 Steven next argues that the trial court made errors regarding the children's health insurance. He argues that the support worksheet states that the children's health insurance is $90 per month, but the correct amount is actually $283.32. Steven maintains that "language needs to be added" stating that the health insurance is a shared expense, whereas the MSA provides that he is solely responsible. Steven argues that from June 2018 to November 13, 2020, he has paid $5,970.44 directly to Laura for the full cost of the children's health insurance and that he should be credited the overpayment of his share.

¶ 73 Laura draws attention to her testimony that when Steven's employment was terminated, he notified her that she needed to obtain health insurance for the children. Laura submitted an exhibit indicating that the additional cost of coverage was about $90. The support obligation worksheet allocated this amount between the parties as an expense of $65.96 to Laura and $24.04 to Steven. Laura argues that Steven did not assert that he was carrying health insurance for the children at the time of the hearing or offer any evidence that he had incurred any expense relating to such coverage since the termination of his employment. Laura contends that the court's allocation of the additional premium cost between the parties was not in error.

¶ 74 In his reply brief, Steven points to an exhibit in the record in which Laura asked him in an August 2018 e-mail to reimburse her for the cost of the kids' health insurance, as required by the MSA.

¶ 75 As we are remanding the case and Laura does not contest the trial court's allocation of health care expenses, Steven may raise the health insurance issue on remand.

¶ 76 F. Attorney Fees

¶ 77 Last, Steven argues that the trial court erred in awarding Laura attorney fees of $14,976.13 in its November 9, 2020, ruling. As discussed, we lack jurisdiction over this order due to Steven's failure to file a new or amended notice of appeal. See *supra* ¶ 40.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the trial court's imputation of income to Steven. We vacate the trial court's determination of Steven's 2018 child support, and we remand the case for the trial court to revisit this issue. At that time, Steven may also raise the subject of the children's health insurance payments.

¶ 80 Affirmed in part and vacated in part. Cause remanded.