Illinois Official Reports

Appellate Court

In re Marriage of Sinha, 2021 IL App (2d) 191129

Appellate Court Caption	*In re* MARRIAGE OF JYOTI SINHA, Petitioner-Appellee, and MUKESHA K. SINHA, Respondent-Appellant.
District & No.	Second District No. 2-19-1129
Filed	September 30, 2021
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 15-D-2474; the Hon. Karen Wilson, Judge, presiding.
Judgment	Affirmed in part, reversed in part, and vacated in part; cause remanded with directions.
Counsel on Appeal	Anamaria F. Rivero-Boundas and Thomas T. Boundas, of Thomas T. Boundas & Associates, of Countryside, for appellant. Paul L. Feinstein, of Paul L. Feinstein, Ltd., of Chicago, for appellee.
Panel	JUSTICE McLAREN delivered the judgment of the court, with opinion. Justices Zenoff and Hudson concurred in the judgment and opinion.

OPINION

¶ 1 In its judgment dissolving the marriage between petitioner, Jyoti Sinha, and respondent, Mukesh K. Sinha, the trial court determined child support and maintenance, distributed marital property, ruled on dissipation claims, and entered a finding of indirect civil contempt. Respondent challenges these and other aspects of the court's judgment. We affirm in part, reverse in part, vacate in part, and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 The parties married in September 2004. Petitioner filed her first petition for dissolution of marriage in 2013, which the court voluntarily dismissed in January 2014. In May 2014, the parties travelled to Turkey and Italy together. In June 2014, the parties bought a home. In December 2014, the parties had a son. In 2014 and 2015, petitioner's parents stayed in the parties' home multiple times. In December 2015, petitioner filed the petition for dissolution of marriage at issue. In June 2016, the court entered a parenting plan, awarding petitioner the majority of parenting time.

¶ 4 On October 17, 2016, respondent filed a motion seeking the court to order petitioner to return the $540,000 that she sent her parents in India from the parties' E-Trade account. The following day, the court entered an order stating "[petitioner] shall have all remaining funds from the approximately $540,000 transferred from her E-Trade account to an Indian account returned. The returned funds shall be deposited into [respondent's attorney's] escrow account. [Petitioner] shall have the funds returned as soon as possible but no later than 21 days."

¶ 5 On November 7, 2016, respondent filed a second motion seeking the court to order petitioner to return the $540,000 that she sent her parents in India from the parties' E-Trade account.

¶ 6 On November 16, 2016, the court entered yet another order regarding the $540,000, stating "[petitioner] shall transfer all funds from India pursuant to the prior order to an escrow account to be set up by [respondent's attorney] for the benefit of the parties." On the same day, the court ordered petitioner to provide an accounting of the funds transferred to India. The court also ordered respondent to pay $500 per month in child support and to pay half of the child's day care costs and uncovered medical expenses.

¶ 7 On December 5, 2016, respondent filed a petition for a rule to show cause alleging that petitioner transferred $540,000 to India and failed to comply with the court's orders to transfer it to an escrow account. Respondent also alleged that petitioner failed to cooperate with a court order requiring the marital residence to be listed for sale, refused to allow showings of the home, and kept the home in an "unshowable" condition. On December 9, 2016, respondent filed a second petition for a rule to show cause, alleging that petitioner failed to comply with the court's order that she render an accounting of the $540,000.

¶ 8 On December 13, 2016, the court issued a rule to show cause regarding petitioner's failure to comply with its order that she provide an accounting of the $540,000. The court entered a *mittimus* for contempt stating that, after a hearing on the rule, petitioner willfully failed to comply with the court's order. The court held petitioner in indirect civil contempt and stated that unless she purged herself of the contempt order by tendering an accounting by January 4,

2017, she would be taken into custody. The court continued respondent's first petition for a rule to show cause and gave petitioner until January 2017 to return the remaining funds.

¶ 9 On December 27, 2016, respondent filed a third petition for a rule to show cause alleging that petitioner failed to render an accounting of the funds transferred to India.

¶ 10 On January 3, 2017, petitioner filed a petition for a finding of indirect civil contempt alleging that respondent failed to (1) pay child support, (2) pay day care expenses, and (3) maintain a job search diary, as ordered by the court. The following day the court set a hearing date on respondent's petitions for rule to show cause.

¶ 11 On January 23, 2017, the court issued a rule to show cause for petitioner's failure to return the $540,000 from India, based on respondent's first petition for a rule to show cause.

¶ 12 On May 22, 2017, petitioner filed a petition for indirect civil contempt alleging that respondent failed to reimburse petitioner for their child's day care costs of $3415.54 and the child's medical expenses of $98.10. Petitioner also alleged that respondent failed to maintain a job diary and that he was $1500 in arrears in child support.

¶ 13 On May 30, 2017, respondent filed a petition to reduce child support and day care expenses, seeking a modification of the court's order of November 16, 2016. Respondent alleged that since the court's order, he had been involuntarily terminated from his Uber driver job.

¶ 14 On June 29, 2017, respondent filed a notice of intent to claim dissipation, alleging that, on September 11, 2016, petitioner transferred $540,000 from the parties' E-Trade account to an unknown account in India titled solely in petitioner's mother's name.

¶ 15 Petitioner filed three notices of intent to claim dissipation, one in June 2017, and two in September 2017.

¶ 16 The court heard testimony over five days in November and December 2017, and January 2018. The petitioner testified as follows. Petitioner worked full-time outside the home. In 2012, petitioner began working at Banco Popular until April 2015, when she took maternity leave. In October 2015, petitioner returned to full-time employment as a senior accountant with Northern Trust and held this position at the time of the hearing. Petitioner earned an annual gross salary of $87,125, plus a $5500 bonus. Petitioner recently returned to school to obtain a master's degree in finance. Petitioner testified that the marriage broke down in 2012.

¶ 17 Petitioner testified that, in September 2015, she transferred $540,000 from an E-Trade account to her parents in India. Before the parties' marriage, petitioner had about $80,000 in different accounts in India. In 2005, after the parties married, petitioner transferred the $80,000 to the parties' E-trade account. Because that account was subject to gains or losses in a given year, petitioner estimated its nonmarital value in 2015 was $150,000, using a gain of 6 or 7% per year. However, petitioner had no records to present as evidence. Later, she transferred $18,100 to respondent's attorney's escrow account. She returned no other money. Out of the $540,000, petitioner paid her parents $150,000 for wedding expenses, $122,000 "for my education that my parents paid," and about $100,000 for petitioner's father's cancer treatments.

¶ 18 Respondent testified as follows. Respondent was not currently employed. But during the marriage, respondent stayed home and ran the parties' three businesses: "two eBay stores and an Amazon store." Respondent purchased merchandise in cash at retail stores and then listed the merchandise for sale online on eBay or Amazon.

¶ 19 Respondent testified that the parties attended marriage counseling in 2012. The marriage counseling was helpful. In the spring of 2013, respondent was charged with domestic battery.

Petitioner was the complainant. In 2013, respondent and petitioner filed for divorce and then withdrew their petitions. The parties "worked things out." They did "normal husband/wife things" together. They tried to have a baby.

¶ 20 Respondent testified that, in August 2015, he and petitioner began having difficulties in their marriage. The parties had "money issues; [petitioner's] parents [were] coming over again and again; the food issue with my son, whether he would be a vegetarian or nonvegetarian." In addition, petitioner did not allow respondent to take their son to respondent's parents' home. The parties fought about these issues many times, and in August 2015, petitioner asked respondent to move out of the marital home "many times."

¶ 21 On March 22, 2018, the court issued a written judgment stating the following. Regarding dissipation, it could not determine the date on which the marriage was irretrievably broken. As such, the court determined that "the parties[']marriage suffered an irreconcilable breakdown" on December 4, 2015, the date petitioner filed her petition for dissolution of marriage. Regarding respondent's claim of dissipation, the court stated its finding that "because these alleged transfers occurred prior to the irreconcilable breakdown of the marriage on December 4, 2015, they do not constitute dissipation." The court denied the petitioner's dissipation claims in large part but found that respondent committed dissipation of $19,068.

¶ 22 Regarding respondent's petition for rule to show cause filed on December 9, 2016, the court stated, "[t]he Court does not find that [petitioner] violated this Court's order regarding cooperating with the sale of the marital residence. The petition for Rule to Show Cause is denied."[1] Under "Dissipation," the court stated that respondent's petition for rule to show cause filed December 9, 2016, was denied.

¶ 23 Regarding the parties' incomes to determine child support, the court found petitioner's gross annual salary was $87,000. The court also found that respondent, "although presently unemployed, is under no impediment (other than his own unwillingness) to obtain full time employment. [Respondent] has made little to no effort to become employed." The court found that respondent was voluntarily unemployed and for "purposes of avoiding the payment of child support." The court imputed a gross annual salary of $125,000 to respondent based on its finding that he earned $125,000 in 2015. The court ordered respondent to pay child support of $926.25 per month. In addition, the court allocated the child's uncovered medical expenses and educational expenses 50% to each party and found that "an award of maintenance to either party is not warranted." Regarding the division of marital property, the court awarded petitioner 55% and respondent 45%.

¶ 24 In addition, the court held respondent in indirect civil contempt for failing to (1) pay 50% of the child's day care costs; (2) pay child support, in violation of its November 16, 2016, order; (3) pay 50% of the child's medical costs, in violation of its November 9, 2016, order; and (4) failing to maintain and tender job diaries, in violation of its April 29, 2016, order. The court set the matter for "status on setting for evidentiary hearing as to amounts owed by [respondent] *** for [April 2, 2018] *** and purge to be determined thereon."

¶ 25 On April 20, 2018, respondent filed a notice of appeal regarding the court's March 22, 2018, order.

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[1]Actually, respondent's *December 5*, 2016, petition for a rule to show cause concerned petitioner's failure to cooperate in preparing the marital home for sale. Respondent's *December 9*, 2016, petition concerned the failure to render an accounting of the $540,000.

¶ 26 On May 25, 2018, the court issued a rule to show cause against respondent for failure to, *inter alia*, obey the court's orders requiring him to pay child support and medical and day care expenses. On August 20, 2019, we dismissed respondent's appeal because we lacked jurisdiction. *In re Marriage of Sinha*, 2019 IL App (2d) 180309-U.

¶ 27 On December 19, 2019, the court entered an order setting a "purge of $399.75 in day care costs pursuant to the contempt finding or a judgment against [respondent's] interest in the former marital residence in Darien as to his interest awarded in the judgment for dissolution of marriage." The order also stated, "[t]his is a final and appealable order pursuant to [Illinois Supreme Court Rule] 304(a)."

¶ 28 II. ANALYSIS

¶ 29 A. Dissipation

¶ 30 Respondent challenges the court's ruling on dissipation. He asserts that, in rejecting his dissipation claim, the court applied an incorrect legal standard for determining when the irreconcilable breakdown of the parties' marriage occurred. Respondent further asserts that if the court had applied the proper standard, the evidence would have supported a finding that the marriage began undergoing an irreconcilable breakdown in August 2015, not December 2015. Respondent claims $540,000 in dissipation by petitioner.

¶ 31 When dividing marital property, a court is required to consider all relevant factors, including those listed in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d) (West 2016)). One of the factors listed in the statute is "the dissipation by each party of the marital property." *Id.* § 503(d)(2). We have previously defined dissipation as the " 'use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown.' " *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 37 (quoting *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990)).

¶ 32 Whether dissipation occurred is a question of fact determined by the trial court, and such a determination will not be disturbed unless it is against the weight of the evidence. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 33 We have stated, "dissipation is to be calculated from the time the parties' marriage begins to undergo an irreconcilable breakdown, not from a date after which it is irreconcilably broken." *Holthaus*, 387 Ill. App. 3d at 375. In other words, in *Holthaus*, we rejected the notion that dissipation occurs only *after* an irreconcilable breakdown. *Id.* at 374-75. Rather, dissipation is calculated from when the parties' marriage *began* undergoing an irreconcilable breakdown. *Id.* The spouse alleging dissipation must make a preliminary showing before the burden shifts to the other spouse to refute the accusations. *In re Marriage of Brown*, 2015 IL App (5th) 140062, ¶ 66. "Once a *prima facie* case for dissipation has been made, *** the party charged with dissipation [must] prove by clear and specific evidence how the funds were spent." *Id.*

¶ 34 Here, it appears that the court failed to apply the correct legal standard. The court calculated dissipation, not from when the parties' marriage began undergoing an irreconcilable

breakdown, but rather from when the parties' marriage had completed the process of breaking down. This is apparent from the court's language in its letter order stating:

> "[Respondent] identifies the summer of 2015 as the date of irreconcilable breakdown but identifies no facts or reasons why such a time period should be selected. In light of the ups and downs the parties experienced throughout their marriage, it is virtually impossible to establish a firm date of irreconcilable breakdown. The Court therefore is left to find that the date upon which the parties[']marriage suffered irreconcilable breakdown was on the date that [petitioner] filed her Petition for Dissolution of Marriage or December 4, 2015."

¶ 35 The court's finding that the marriage suffered irreconcilable breakdown on December 4, 2015, for purposes of dissipation is against the manifest weight of the evidence. The court stated that respondent identified "no facts or reasons why [the summer of 2015] should be selected." However, respondent provided ample testimony that the marriage began to irretrievably break down in the late summer of 2015. Respondent testified that, in August 2015, the parties began arguing and having difficulties over many issues, including money, petitioner's parents' visits, and their son's diet. Further, petitioner would not allow respondent to take their son to respondent's parents' house and, most importantly, many times told respondent to move out of the marital home in August 2015. Thus, the court's finding that respondent identified no facts or reasons to support his contention that the marriage began undergoing irreconcilable differences in August 2015 is against the manifest weight of the evidence. We also note that *petitioner* testified that the marriage broke down in 2012. There was a subsequent reconciliation, but petitioner did not alter her view of the breakup nor contest respondent's date of the breakup.

¶ 36 In determining dissipation, the court should have used a date when the marriage began irreconcilable breakdown—not when the breakdown was complete. Thus, the court erroneously determined dissipation. The court chose the date that petitioner filed her petition for dissolution of marriage, explaining that it was "impossible to establish a firm date of irreconcilable breakdown." However, after considering the parties' testimony, it is clear that their marriage *began* undergoing an irreconcilable breakdown, at the latest, in August 2015. In addition, it is uncontroverted that, on September 11, 2015, petitioner transferred the entirety of the parties' E-Trade account, $540,000, to an account in India that was titled solely in petitioner's mother's name. Although the court ordered petitioner to return these funds to the marital estate before the hearing, petitioner returned only $18,100. Petitioner testified that none of the $540,000 remained; she gave it to her parents to pay for her father's medical bills and petitioner's education costs. Therefore, the court erred by denying respondent's unrefuted dissipation claim.

¶ 37 Petitioner argues that here, like in *Romano*, 2012 IL App (2d) 091339, and *In re Marriage of Hazel*, 219 Ill. App. 3d 920 (1991), the parties had disputes during their marriages. However, in contrast to *Romano* and *Hazel*, here respondent testified that in August 2015 petitioner told respondent to move out of the marital home. Nothing in *Romano* or *Hazel* indicates that one spouse told the other to move out of the marital home. Thus, *Romano* and *Hazel* are distinguishable from this case.

¶ 38 As the parties' marriage was undergoing an irreconcilable breakdown before September 11, 2015, we hold that the court's erroneous decision that the funds were undissipated was not harmless. Because the record supports a finding that petitioner dissipated marital assets, we

reverse and remand. Upon remand, the court shall reconsider the distribution of marital assets and liabilities in light of petitioner's dissipation of marital assets.

¶ 39 Next, respondent claims that the court's finding that he dissipated marital assets of $19,068 was against the manifest weight of the evidence. However, the court found that respondent (1) made seven cash withdrawals totaling $3500, (2) made two cash withdrawals from his PNC account totaling $12,395, (3) lost $930 gambling at a casino, (4) lost $1860 gambling at "Cash Play," and (5) lost $383 gambling at Harrah's Casino. The court's findings have ample support in the record. Nothing in respondent's brief places the court's findings in doubt.

¶ 40 B. Imputation of Income

¶ 41 Respondent argues that the court erred by finding that respondent was voluntarily unemployed and erred by imputing $125,000 gross annual income to respondent for purposes of determining child support. To impute income to a party, the court must find that the party (1) is voluntarily unemployed, (2) is attempting to evade a support obligation, or (3) has failed to reasonably take advantage of an employment opportunity. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). We explained, "if a court finds that a party is not making a good-faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000); see also *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 26 ("[I]n determining income for child support purposes, the trial court has the authority to compel a party to pay at a level commensurate with his earning potential. [Citation.] If present income is uncertain, the trial court may impute income to the payor.").

¶ 42 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. *In re Marriage of Liszka*, 2016 IL App 3d 150238, ¶ 45. The amount of imputed income must be supported by evidence that is commensurate with the supporting parent's skills and experience. See *In re Parentage of M.M.*, 2015 IL App (2d) 140772, ¶ 44. Thus, in determining a party's earning capacity, a court should only consider evidence presented, not mere speculation. *Liszka*, 2016 IL App 3d 150238, ¶ 46.

¶ 43 The amount of income imputed to a payor spouse must be based on his earning capacity. See *Gosney*, 394 Ill. App. 3d at 1077. When calculating imputed income, a court may consider the supporting parent's income from previous employment. See *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 706 (2006). However, a court should not base its income calculation on outdated data that no longer reflect future income. *Liszka*, 2016 IL App (3d) 150238, ¶ 47. Evidence that the paying spouse once earned a certain salary and presumably could again is an insufficient basis upon which to impute income. *Id.* A court may not impute income from an obligor's prior employment if the obligor has been involuntarily terminated and there is no evidence that a job with the same salary is available. See *Gosney*, 394 Ill. App. 3d at 1078. We review a court's determination of income under an abuse of discretion standard. *Id.* at 1077.

¶ 44 Here, there was no evidence presented that respondent could obtain a job earning $125,000 per year. The only evidence presented was that respondent had gross sales of at least $500,000 in 2015 from the parties' online businesses. Petitioner testified that her profit margin was 25%. However, respondent testified that his profit margin was 2-3%. Respondent also testified that he no longer had the capital needed to run the online business due to the parties' separation.

Respondent then worked for Uber earning approximately $500 a week, but he was involuntarily terminated from that position. Although respondent had a medical degree from India and tried many times to pass the medical boards in the United States, he could not do so. Instead of relying on evidence regarding respondent's qualifications, past earnings, or current job opportunities in the area, the court relied on speculation. Thus, the court abused its discretion by imputing an income of $125,000 a year to respondent. See *id.* at 1079.

¶ 45 Next, respondent argues that, due to the court's error in imputing income to him, the court abused its discretion by (1) finding that he was not entitled to maintenance, (2) its award of child support, (3) its allocation of the marital property, and (4) its allocation of the child's uncovered medical and educational expenses. We agree with respondent.

¶ 46 The court ordered each party to pay 50% of the medical and educational expenses. However, allocation of the obligation to pay the medical and educational expenses of a minor child is inextricably linked to the determination of how much monetary support each parent should contribute toward the child's care. See *In re Marriage of Turk*, 2014 IL 116730, ¶ 35. Both require an assessment of the parents' respective financial circumstances—they cannot be considered in isolation. See *id.*

¶ 47 Therefore, we vacate the court's order imputing gross annual income of $125,000 to respondent and remand for the court to determine how much income should be imputed to respondent. On remand, the court must consider the relevant factors to determine respondent's imputed income based on his earning capacity. In addition, we vacate the court's maintenance determination, child support award, and allocation of the child's medical and educational expenses, and remand with instructions to redetermine these issues consistent with this opinion.

¶ 48 C. Indirect Civil Contempt

¶ 49 Next, respondent argues that the court erred by refusing to issue a rule to show cause against petitioner and by failing to hold her in indirect civil contempt for not cooperating in selling the marital residence. Evidence of noncompliance with a court order establishes a *prima facie* case of civil contempt. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 62 (2008). Once a *prima facie* case has been shown, the burden shifts to the contemnor to show that noncompliance was not willful. See *id.* Whether a party is guilty of indirect civil contempt is a question for the court. Its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108 (2006).

¶ 50 Here, regarding selling the marital residence, the court's failure to find petitioner in direct civil contempt was not an abuse of discretion, nor was the decision against the manifest weight of the evidence. Respondent contends that petitioner failed to cooperate in selling the marital residence by "not maintaining the interior and exterior of the residence, not keeping it in showable condition, and refusing to allow showings." Respondent asserts that real estate showing reports corroborate his claims. We note that respondent failed to support this argument with citations to the record or authority, which violates Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020). "Mere contentions, without argument or citation to authority, do not merit consideration on appeal." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12. Failure to cite authority or to the record are independent grounds to forfeit an argument. *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 32. Respondent fails to cite

either. Accordingly, respondent forfeited this argument. Further, although respondent attempted to admit reports of the showings, the court properly found the reports hearsay. Respondent claimed he would have real estate agents testify regarding the house's condition but failed to do so. Therefore, even if we were to set aside the forfeiture, which we do not, the court's denial of the rule was neither an abuse of discretion nor against the manifest weight of the evidence.

¶ 51 Respondent also argues that the court erred by failing to hold petitioner in indirect civil contempt for her failure to return the $540,000. Because we have determined that the court erred by finding that petitioner did not dissipate assets, we vacate the court's denial of respondent's rule to show cause regarding petitioner's failure to return the funds as ordered by the court. On remand, the court shall revisit respondent's petition for a rule to show cause regarding petitioner's failure to return the $540,000 that she transferred out of the parties' marital account.

¶ 52 Next, respondent argues that the court erred by holding him in indirect civil contempt for failure to pay 50% of the child's day care and medical expenses. Respondent contends that the court's finding of contempt was against the manifest weight of the evidence because petitioner failed to present any evidence in support of her petitions for rule to show cause. Thus, she failed to present a *prima facie* case.

¶ 53 Regarding day care expenses, respondent asserts that his obligation to pay 50% of such expenses was in force for only one month according to the court's order, and that petitioner failed to present evidence at trial as to how much respondent owed and for which months. However, the record reveals that on November 16, 2016, the court ordered "the parties to be equally responsible for [the child's] daycare costs, until the next court date." Then, on June 27, 2017, the court ordered respondent to pay half of the child's day care expenses. Therefore, respondent's argument that he was only obligated to pay half of the child's day care expenses for one month has no merit. Moreover, at trial, respondent testified that he never paid his share of day care expenses.

¶ 54 Regarding medical expenses, respondent notes that the court order stated, "[i]f a party incurs a health expense for [the child], upon proof of payment to the other party, that party shall reimburse the payor within 7 days." Thus, respondent argues that petitioner failed to establish a *prima facie case* of contempt because she did not introduce any exhibits showing proof of payment or proof that she tendered such proof to respondent. However, the record reveals that petitioner testified that she sent respondent medical bills in January 2017 and that he paid "nothing." Further, respondent testified that he received a medical bill from petitioner but did not pay his share. Also, petitioner's credit card bill showed that she paid numerous medical expenses. Therefore, there was ample evidence to support the court's finding respondent in indirect civil contempt.

¶ 55 Next, respondent contends that the court erred by finding him in contempt because the court did not issue a rule to show cause. Respondent also asserts that he was deprived of his right to due process because the order did not specify whether he was found in civil or criminal contempt and did not specify the payments he failed to make. The record shows that the court continued petitioner's rule to show cause "until trial [and] if the rule issues it shall be returnable *instanter* at trial." Subsequently, the court found respondent in indirect civil contempt for, *inter alia*, his failure to pay child support and 50% of the child's medical and day care expenses. Therefore, after trial, the rule issued "*instanter*." Further, the court later entered a

rule to show cause against respondent for failure to, *inter alia*, obey the court's orders requiring him to pay child support, medical, and day care expenses. The order informed respondent that the rule to show cause was for civil contempt. The court ordered respondent to pay $900 in child support. Later, the court entered an order setting a "purge of $399.75 in day care costs pursuant to the contempt finding or a judgment against [respondent's] interest in the former marital residence in Darien as to his interest awarded in the judgment for dissolution of marriage." Respondent's assertions of error are not supported by the record.

¶ 56 III. CONCLUSION

¶ 57 Because this matter is remanded for further proceedings on the issue of dissipation, and as the court improperly imputed income to respondent, the court shall readdress the division of the marital estate in light of its new dissipation calculation from the beginning of the irreconcilable breakdown of the marriage. The judgment of the circuit court of Du Page County is affirmed in part, reversed in part, and vacated in part, and the cause is remanded with directions.

¶ 58 Affirmed in part, reversed in part, and vacated in part; cause remanded with directions.