Illinois Official Reports

Appellate Court

***In re Marriage of Harnack*, 2022 IL App (1st) 210143**

Appellate Court Caption	*In re* MARRIAGE OF PAMELA HARNACK, Petitioner-Appellee, v. STEVE FANADY, Respondent-Appellant.
District & No.	First District, Third Division No. 1-21-0143
Filed	June 1, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 08-D-02844; the Hon. David E. Haracz, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Steve Fanady, of Northbrook, appellant *pro se*. Paul J. Bargiel, of Paul J. Bargiel, P.C., and Michael G. DiDomenico and Sean M. Hamann, of Lake Toback DiDomenico, both of Chicago, for appellee.
Panel	JUSTICE McBRIDE delivered the judgment of the court, with opinion. Presiding Justice Gordon and Justice Ellis concurred in the judgment and opinion.

OPINION

¶ 1 Pursuant to a 2011 judgment for dissolution of marriage, appellee, Pamela Harnack, was awarded 120,000 shares of Chicago Board Options Exchange, Inc. (CBOE), stock that was part of the parties' marital estate. Appellant, Steve Fanady, however, had already secreted away shares from the parties' marital estate to international accounts or otherwise undisclosed locations and has spent more than 10 years attempting to avoid his obligations to his ex-wife under the judgment. The extensive proceedings have been discussed at length in other appeals, in particular, *In re Marriage of Harnack*, 2014 IL App (1st) 121424 (*Harnack I*), *In re Marriage of Harnack*, 2019 IL App (1st) 170813-U (*Harnack II*), and *In re Marriage of Harnack*, 2021 IL App (1st) 210014-U (*Harnack III*). We will repeat the facts of those cases only insofar as they are relevant to the instant appeal. In the most recent prior appeal, *Harnack III*, this court affirmed the trial court's order granting Harnack's petition to enforce the judgment and requiring Fanady to turn over those shares or the value thereof. This appeal begins where the prior appeal ended. Specifically, Fanady, again, refused to comply with the court's order, and the circuit court held him in contempt, ordered him committed to the Cook County Jail, and issued a body attachment order. Fanady appeals those orders.

¶ 2 The record shows that Harnack and Fanady were married in October 2003, and Harnack initiated a dissolution action against Fanady in March 2008. Fanady stopped appearing in the action, and a default judgment was entered against him. Pursuant to the dissolution judgment, the trial court found that Fanady was worth approximately $7.3 million as of March 2010, while Harnack had minimal income, had health issues, and was unable to support herself. The circuit court further found that the marital estate included 280,000 shares of CBOE stock, which were 100% owned by Fanady. The court noted that one of Fanady's business partners had instituted a breach of partnership action, which was pending with 40,000 shares in dispute, and the court ordered 40,000 shares to be held in an escrow account pending resolution of that action. The court awarded Harnack 120,000 shares of the CBOE stock, and "[t]he balance" of the shares was awarded to Fanady.

¶ 3 As described more specifically in prior appeals, it became clear that Fanady was avoiding obligations, not only to his ex-wife, but to his business partners as well. The dissolution matter was consolidated with the breach of partnership action, as well as an interpleader complaint filed by the CBOE stock holding company against all parties claiming a portion of that stock.

¶ 4 Fanady subsequently attempted to vacate the judgment for dissolution of marriage, arguing that the judgment for dissolution of marriage was unfair and based on a misunderstanding of the size of the marital estate. The trial court denied Fanady's motion in May 2012. This court affirmed the denial of Fanady's motion to vacate, noting that the record showed his

> "complete refusal to participate in the dissolution proceedings for more than 15 months, his attempts to evade service of process and his refusal to comply with the court's orders regarding payment of maintenance and with its restraining orders and injunctions barring him from [the] transfer of any assets held by him or his enterprises." *Harnack I*, 2014 IL App (1st) 121424, ¶ 46.

¶ 5 We also noted that the record showed Fanady's "attempts to evade the jurisdiction of the court and to defraud this court" as well as a Florida court, where he obtained a dissolution of marriage judgment under false pretenses. *Id.* The record further showed that Fanady "forge[d] *** a dissolution judgment in order to obtain a religious divorce" and attempted to "hide

marital assets by selling one presumptively marital CBOE seat and hiding the money received in Switzerland and by transferring 120,000 presumptively marital shares" from partnership accounts. *Id.* In light of the above, we explained that "Fanady was the architect of his own predicament" and that

> "any alleged errors in the judgment or inequalities in the distribution of assets are solely due to Fanady's failure to participate in the dissolution proceedings. Any errors or injustices in the judgment for dissolution of marriage of which Fanady now complains would not have occurred absent his abandonment of the litigation. Fanady chose not to participate in the litigation. He must now live with the consequences of that decision." *Id.* ¶¶ 46-47.

¶ 6 We further explained:

> "Rather than participate in the action and present his own evidence to the court to rebut Harnack's evidence, Fanady chose instead to make underhanded efforts to prevent Harnack from getting her appropriate share of the marital assets and to avoid the trial court's jurisdiction. His behavior in this case has been so egregious, so contemptuous of the law and the court, that he cannot now complain that substantial justice requires that the judgment for dissolution of marriage be set aside." *Id.* ¶ 62.

¶ 7 In so holding, however, this court noted that the parties disagreed "regarding the source of the 40,000 shares that the court ordered transferred to escrow," and we remanded for the limited purpose of clarifying the transfer provision. *Id.* ¶¶ 64, 66. We explicitly cautioned, however, that we were not "inviting further litigation regarding Fanady's attempts to vacate the judgment" on remand. *Id.* ¶ 67. Fanady's petition for leave to appeal to the supreme court was denied.

¶ 8 Over the next several years, Harnack attempted to obtain the shares she was awarded in the judgment. As Fanady had already hidden many of the CBOE shares that were part of the marital estate, the only shares that appeared to be remaining for distribution were in the holdings account that was subject to the interpleader action. The trial court denied Harnack's request to distribute her portion of the shares from that account, concluding that the breach of partnership action and the interpleader action had "to get resolved before any release of any of these shares is ordered" and that the release of the shares to Harnack would be "detrimental to" Fanady's business partners, who also had claims to those shares.

¶ 9 Following extensive briefing and a three-day trial regarding the proper distribution of the CBOE shares, the trial court entered an order on July 11, 2017. The trial court faulted Fanady for his attempts "to deceive his ex-wife and his former business partners," explicitly noting that Fanady had "transferred an additional 120,000 shares of stock to locations which he now refuses to disclose." Because Fanady had already transferred and received the shares to which he was entitled from the partnerships, the trial court concluded that the remaining shares belonged to Fanady's business partners. Fanady—and by extension, Harnack—had no claim to the remaining 120,000 shares that were being held by the stock holding company. The trial court found Harnack's arguments "compelling as an equitable matter," but concluded that she was required "to chase Mr. Fanady for her just share of the marital estate." On appeal, this court dismissed certain issues for lack of this court's jurisdiction and otherwise affirmed the judgment of the circuit court as to Harnack's claims against Fanady's business partners. *Harnack II*, 2019 IL App (1st) 170813-U, ¶ 98.

¶ 10 The case then continued in the circuit court. On December 9, 2019, Harnack filed a petition to enforce the judgment for dissolution of marriage. Harnack explained that the judgment, which had been affirmed by the appellate court, required Fanady to transfer 120,000 shares of CBOE stock to Harnack. Harnack stated that Fanady had "delayed the enforcement of the [judgment for dissolution of marriage] by filing frivolous and fraudulent legal actions against" her and requested that the trial court "end [Fanady]'s delay tactics and enforce" the judgment. Harnack further requested, "in the event [Fanady] is no longer possessed of said shares," that he be required to "pay [Harnack] the value of said shares in an appropriate amount along with any interest, dividends, or other monetary benefits collected by [Fanady] while he was in possession of said stock."

¶ 11 On April 27, 2020, Fanady filed a motion to dismiss Harnack's petition for enforcement. Fanady argued that it was "impossible to award" Harnack the relief she sought because the shares she was awarded in the judgment "no longer exist[ ]" and because those shares were determined to "belong[ ] to others." Fanady further argued that the "law of the case" doctrine and "collateral estoppel" barred Harnack from "relitigating" the ownership of the CBOE stock that was awarded to Fanady's business partners. Fanady additionally maintained that the court could not grant Harnack's alternative request that he pay her the value of the CBOE shares if those shares were no longer available because doing so would be "improperly engrafting an additional obligation into" the judgment.

¶ 12 Harnack responded to Fanady's motion to dismiss on May 20, 2020. Harnack argued that Fanady failed to assert any proper basis for dismissal. Harnack pointed out that the interpleader action was a separate action, which did not extinguish or otherwise adjudicate Fanady's obligations to Harnack under the prior dissolution judgment. Instead, the issue in the interpleader action "was who had a legal right to certain specific shares that were being held by the interpleader in that cause," and that action did not bar Harnack's claims. Instead, Harnack had "a right to enforce" Fanady's obligations under the judgment, and it was Fanady who could not "continue to litigate the legitimacy of those claims." Harnack further asserted that the judgment awarded her 120,000 shares of CBOE stock and provided a way for Harnack to receive what she was awarded, but the provisions were "separate and the former does not depend on the latter." Harnack claimed that she was "not seeking to modify the dissolution judgment, only enforce it," which the court had "indefinite jurisdiction" to do.

¶ 13 On June 19, 2020, the court held a hearing on Fanady's motion to dismiss. After hearing argument from both parties regarding the judgment, the court concluded that the dissolution judgment did not delineate "specific shares that are awarded to Ms. Harnack versus Mr. Fanady" but rather set out the parties' marital estate and ordered "120,000 of those shares *** to be transferred to Ms. Harnack." The court denied Fanady's motion to dismiss, as well as his subsequent motion to reconsider that order.

¶ 14 On July 17, 2020, Fanady answered Harnack's petition for enforcement, in which he largely repeated the arguments contained in his motion to dismiss. Fanady further alleged several affirmative defenses, including *res judicata* and unclean hands.

¶ 15 On November 11, 2020, Fanady, *pro se*, filed a motion for summary judgment, in which he argued that Harnack was not entitled to the relief she sought because she "knowingly deceiv[ed] the trial court as to the size of the marital estate," and because awarding her the shares of CBOE stock would "violate the established law as stated in the doctrine of *** unclean hands."

¶ 16 On November 30, 2020, Harnack responded to Fanady's motion for summary judgment, contending that the motion was virtually identical to his motion to vacate the judgment, which was denied years prior, and the denial was affirmed on appeal in *Harnack I*. Harnack argued that Fanady's arguments "that the Judgment cannot be enforced because it is not fair are *res judicata* barred ***. An enforceable Judgment is the law of the case and [Fanady] cannot continue to relitigate this theory."

¶ 17 On December 10, 2020, the court held a hearing on Fanady's motion for summary judgment and Harnack's petition to enforce. Fanady appeared using only audio, insisting that he did not have a working camera. The court instructed Fanady throughout the proceedings to stop using the mute function on his audio. Additionally, several times throughout the hearing, both the court and counsel for Harnack commented that they were able to hear another voice with Fanady, coaching him as to his answers, and the court observed that he was "certainly talking to somebody." Fanady denied that anyone else was present.

¶ 18 The court denied Fanady's summary judgment motion, specifically finding that it had "no basis in law or fact." Proceeding to Harnack's petition to enforce, Harnack testified briefly to confirm that she had never received the CBOE stock that she was awarded in the judgment. Fanady also testified. The bulk of Fanady's direct testimony included reading at length from court documents.

¶ 19 After hearing argument from the parties, the court granted Harnack's petition to enforce and ordered Fanady to transfer to Harnack 120,000 shares of CBOE Holdings, or the equivalent thereof, by December 18, 2020. The court entered a written order the next day, December 11, 2020, memorializing the above and specifically ordering Fanady to transfer to Harnack "120,000 shares of CBOE Holdings and any other monetary benefits accruing to said shares including but not limited to interest and dividends from the date of the divorce judgment" or, if he no longer possessed those shares, to "pay [Harnack] the value of said shares along with any interest, dividends, or other monetary benefits collected by [Fanady]" on or before December 18, 2020.

¶ 20 On December 17, 2020, Harnack requested the court enter a Rule 304(a) finding as to the December 11, 2020, written order. On January 6, 2021, the court entered an order granting Harnack's motion for a Rule 304(a) finding, explicitly finding as to the December 11, 2020, order that there was "no just reason for delaying either enforcement or appeal or both."

¶ 21 On January 8, 2021, Fanady filed a notice of appeal of the December 11, 2020, order. Fanady sought a stay of enforcement of the December 11, 2020, order in both the trial court and the appellate court, both of which were denied.

¶ 22 On appeal, Fanady argued that the trial court erred in denying his motions for summary judgment and to dismiss and in ordering him to turn over 120,000 CBOE shares, or the value thereof, to Harnack. Fanady claimed that Harnack was not entitled to the shares that she was awarded in the dissolution judgment because it had subsequently been determined that those shares belonged to Fanady's business partners. We affirmed the trial court's judgment, explaining that the dissolution judgment awarded Harnack 120,000 shares of CBOE stock, not only certain shares identified by stock numbers or otherwise, and that Fanady could not "escape his obligations to Harnack by swindling his business partners, ensuring that the assets awarded to Harnack under the judgment are unavailable." *Harnack III*, 2021 IL App (1st) 210014-U, ¶ 45. We also explained that Fanady's "attempts to relitigate the judgment, and his continued

arguments that it was unfair or based on an overstated marital estate, are not persuasive. Those arguments were considered and rejected more than seven years ago, in *Harnack I*." *Id.* ¶ 49.

¶ 23 Meanwhile, Fanady failed to comply with the December 11, 2020, order by the December 18, 2020, deadline. On December 30, Harnack filed a petition for a rule to show cause for his failure to do so. On January 6, 2021, the court set Harnack's petition for a rule to show cause for hearing on February 9, 2021, and granted Fanady time to file a response. The court specifically instructed Fanady that he was required to appear via video. Fanady protested that he did not have video capabilities on his computer or cell phone. The court, however, expressed that Fanady had "ample time" to ensure that he was prepared for the hearing, which was set over a month away.

¶ 24 On January 25, 2021, Fanady filed a response to Harnack's petition for rule to show cause. In his response, Fanady referred to a trust, which had been a continuing point of contention between the parties throughout these proceedings. That trust was wholly owned by Fanady and was established in Belize (Belize trust). The parties disputed when the trust was established, with Fanady contending that it was prior to the parties' marriage and Harnack alleging that it was after. Throughout these proceedings, Fanady acknowledged that the trust contained "everything he has ever owned," but resisted Harnack's attempts to ascertain what assets were in that trust and claimed that it was impossible for him to obtain any assets from the trust. Fanady asserted that it was "a blind trust, and Fanady ha[d] no way of finding out what the trust holds, or earns." Fanady further described the trust as a "spendthrift trust," which paid Fanady "what he requires for his ordinary living expenses, other reasonable expenses required to defend himself and the trust in court, and no more."

¶ 25 In his response to Harnack's petition for rule to show cause, Fanady argued that it was impossible for him to comply with the court's order. He alleged that he provided a copy of the court's order to the trustee of the Belize trust and the trustee denied having ever held shares of CBOE stock. He indicated that the trustee would not comply. Fanady asserted that he did not have any shares of CBOE stock in his possession, and that he could not comply with the order.

¶ 26 In his response, Fanady attached a letter purporting to be from the trustees of the Belize trust. The letter stated that the trustees were "in receipt of your request letter and a copy of the above referenced court order related to the transfer of 120,000 shares of CBOE Holdings as ordered by the Illinois State Court." They stated that they did "not have records to show that the [Belize trust] has ever owned any such shares." They further stated that pursuant to "the terms of the [Belize trust] and Order of The Court of Belize issued in 2018 *** we cannot comply with any request whatsoever as this request have been made by you under duress." The letter further indicated that the trustees were "not obligated to nor will they satisfy your request at this time." Also attached was an order purporting to be from the Supreme Court of Belize, ordering that the trustee of the Belize trust "shall not be obliged to act in response to, in furtherance of, or in compliance with any order or process of a foreign court," unless the order was "issued, sealed or otherwise liable to be enforced pursuant to or in accordance with the Laws of Belize."

¶ 27 On February 9, 2021, the trial court held a hearing via Zoom. Fanady introduced himself as "present by audio and video," and counsel for Harnack notified the court "that Mr. Fanady informed you that he was present by video, [but] he is not appearing visible on the screen." The court agreed that Fanady was not visible on video. Fanady responded that he had "security spyware" that may have been interfering with the video, but "I am on video. I'm waving at

you. Can't you see me waving at you? There is a video. The local rules don't [require] that I actually have to appear by video." Fanady then requested a continuance until the appellate court ruled on a motion to stay, and the court indicated that the hearing would proceed. The court then informed Fanady that the "rule has issued. The ball is in your court for the rule to show cause why you should not be held in contempt of court."

¶ 28 Fanady testified that the December 11, 2020, order required him to turn over shares of stock in "CBOE Holdings" but that "the company known as CBOE Holdings, Inc. ceased to exist on October 17, 2017." Accordingly, Fanady asserted that those shares were "no longer available t[o] be transferred, purchased, sold, or traded," and it was therefore "impossible" for him to comply with the order. Fanady further contended that, since CBOE Holdings ceased to exist, the "value of CBOE stock on December 11, 2020[,] was zero dollars." Fanady further testified that he "h[ad] tried to get shares from the trust," but there were "no shares available."

¶ 29 Harnack's counsel argued that Fanady talked about "an offshore trust somewhere," but had not "presented *** any sort of documentary evidence to match up with" Fanady's representations, including "a copy of the trust." Counsel stated that it was not Harnack's

> "burden to demonstrate what Mr. Fanady did with the shares *** [or] the millions of dollars he wrongfully removed from this jurisdiction. It is Mr. Fanady who is coming before this Court and telling you that he cannot comply with an order of this Court based on *** the impossibility of his compliance."

¶ 30 Counsel asked the trial court to "note that CBOE is publicly traded *** on the NASDAQ stock exchange," and as of December 11, 2020, "the close price of the share was $85.97." The 120,000 shares at $85.97 per share calculated to approximately $10.3 million, and counsel for Harnack requested that Fanady be ordered to pay at least $10 million. Counsel argued that Fanady was seeking to "seize on [a] name change, a public name change that had nothing to do with *** the corporate structure. It is still the exact the same stock that is referenced in the underlying 2011 judgment."

¶ 31 Counsel asked the court to enter a body attachment order, stating that Fanady had

> "demonstrated that there is nothing short of arrest that will enforce the orders of this court. *** You cannot stay enforcement any further because all it does is delay because Mr. Fanady will not comply whenever he is told to do it. The only [thing] that is going to get him to comply is the contempt powers of this Court and the arrest functions of the Sheriff.
>
> I ask Your Honor please to enforce what has been going on since 2011; that Mr. Fanady continues to flaunt to this day. Find him in indirect civil contempt of court, issue the body attachment, do not stay this, Judge, because Mr. Fanady amongst other things is a dual passport citizen and has alternative means that he has been previously been notified [*sic*]. This cannot wait any further and any further delay just risks further non-compliance as has been demonstrated time and time and time and time again."

¶ 32 In ruling, the court explained that it had been "almost ten years" that Harnack had been

> "simply tr[ying] to enforce the judgment [and] *** get her share of the marital estate based on the judgment that was entered in August of 2011. *** I find Mr. Fanady's failure to comply with the judgment from 2011, and then subsequently and more recently his failure to comply with my order of December 11, 2020, to be willful and

> contumacious. He is held in contempt of court and remanded to the custody of the Sheriff of Cook County."

¶ 33 The court entered a written order of adjudication of indirect civil contempt, finding that Fanady had failed to comply with the December 11, 2020, order, that he had not given any legally sufficient reasons for his failure to comply, that he had the means to comply with the order, and that his failure to comply was willful and contumacious. Fanady was found in indirect civil contempt, and the court ordered him committed to the Cook County jail until he purged his contempt by transferring 120,000 shares of CBOE stock, or $10 million, to Harnack. The trial court explained that $10 million was "based on a reduced figure from the $85.97/share close price on December 11, 2020." That order is signed and dated February 9, 2020, the day of the hearing, although Fanady contends that it was "entered" February 18, and "backdate[d]" to February 9.

¶ 34 A body attachment order was entered the next day, on February 10, 2021. In that order, the trial court found that Fanady had failed to comply with the terms of the December 11, 2020, order. The court ordered the sheriff to seize Fanady, and, if taken into custody, Fanady may be released after depositing 120,000 shares of CBOE stock, or $10 million, into escrow with the sheriff or the court. Fanady filed a notice of appeal that same day.

¶ 35 The next day, February 11, 2021, Harnack filed an emergency motion for "Entry of Enforceable Attachment Order." Harnack stated that a technical correction to the body attachment order was necessary. Harnack explained that the sheriff's office would not execute the body attachment order because it could not accept receipt of CBOE shares, and therefore, the body attachment should be corrected to reflect a purely monetary amount. Harnack also noted that Fanady would still be entitled to appear before the court with the CBOE shares to resolve his contempt.

¶ 36 Fanady objected to Harnack's emergency motion, contending that it was not an emergency and that the court lost jurisdiction over the matter because he had filed a notice of appeal.

¶ 37 That same day, the trial court entered an amended body attachment order, which was substantially the same as the initial body attachment order, but provided that if Fanady was taken into custody, he could be released upon depositing $10 million into escrow with the Sheriff or the court.

¶ 38 On February 16, 2021, Fanady filed an amended notice of appeal, noting that he was also appealing the February 11, 2021, amended body attachment order.

¶ 39 On February 23, 2021, Fanady filed a second amended notice of appeal, adding that he was appealing "the Order of Adjudication of Indirect Civil Contempt and/or Order of Commitment entered on February 18, 2021, but which was altered and backdated to misleadingly bear the date of entry of February 9, 2021."

¶ 40 In this appeal, Fanady argues that the circuit court abused its discretion in finding him in contempt, committing him to the Cook County jail, and issuing the body attachment orders.

¶ 41 As an initial matter, Fanady argues that the trial court lacked jurisdiction to consider Harnack's petition for rule to show cause, because he had appealed the order requiring him to turn over the shares, and the appellate mandate resolving the appeal had not yet issued. Similarly, Fanady contends that the trial court lacked jurisdiction to issue the February 11, 2021, amended body attachment order because he had filed a notice of appeal on February 10, 2021, from the initial body attachment order.

¶ 42 Upon the filing of a notice of appeal, the appellate court's jurisdiction immediately attaches, and the trial court is divested of jurisdiction to enter any orders of substance which would modify the judgment or its scope. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173 (2011); *In re Marriage of Steinberg*, 302 Ill. App. 3d 845, 849 (1998). The trial court, however, retains jurisdiction to decide matters independent of and collateral to a judgment and to enforce its orders. *Steinberg,* 302 Ill. App. 3d at 849; *In re Marriage of Benson*, 2015 IL App (4th) 140682, ¶ 40. "Courts also retain authority to compel compliance with their orders through contempt proceedings." *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill. 2d 282, 290 (1993). Because Harnack's petition for rule to show cause sought enforcement of the trial court's order, the trial court retained jurisdiction to entertain and adjudicate her petition. *Id.*

¶ 43 A party can apply for a stay of enforcement of the trial court's order while the order is on appeal, but a notice of appeal "does not in itself operate as a stay of enforcement of the [trial] court's orders." See *Williamsburg Village Owners' Ass'n v. Lauder Associates*, 200 Ill. App. 3d 474, 481-82 (1990) (until a stay was granted, "the trial court was not precluded from exercising its authority to execute its contempt order"). Here, Fanady sought a stay pending appeal in both the circuit court and this court, both of which were denied. Accordingly, there was no impediment to the trial court adjudicating Harnack's petition. Because the trial court retained jurisdiction in this matter for the purpose of enforcing its orders, we reject Fanady's contention that the trial court lacked jurisdiction to consider and adjudicate Harnack's petition for rule to show cause.

¶ 44 Fanady's jurisdictional argument regarding the amended body attachment order similarly fails. The amended attachment order was entered in response to Harnack's emergency motion for "Entry of Enforceable Attachment Order" and was essentially entered to allow enforcement of the trial court's earlier contempt order and the sanctions imposed therein. Accordingly, the trial court retained jurisdiction to consider Harnack's petition and enter the amended body attachment order.

¶ 45 Fanady next contends that the trial court abused its discretion in finding him in indirect civil contempt because, according to him, it was impossible for him to comply with the December 11, 2020, order.

¶ 46 As our supreme court has explained, "Vital to the administration of justice is the inherent power of courts to compel compliance with their orders." *Sanders v. Shephard*, 163 Ill. 2d 534, 540 (1994). In pursuit of that purpose, a party may be held in civil contempt for willfully failing to comply with a court order. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2006). Civil contempt proceedings "are coercive, that is, the civil contempt procedure is designed to compel the contemnor to perform a specific act." *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 52. Once the party bringing the contempt petition establishes a *prima facie* case of disobedience of a court order, the burden shifts to the alleged contemnor to prove that the failure to comply was not willful or contumacious and that there exists a valid excuse for his failure. See *id.* ¶¶ 52-53.

¶ 47 Whether a party is guilty of contempt is a question of fact to be resolved by the circuit court, and its resolution of the issue 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 Estate of Lee*, 2017 IL App (3d) 150651, ¶ 38 (citing *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite

conclusion must be clearly apparent. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009). Based upon the record before us, we find that there is no clearly apparent opposite result from that reached by the circuit court on the question of whether Fanady is guilty of indirect civil contempt.

¶ 48 Fanady did not dispute in the trial court, nor does he dispute on appeal, that he failed to comply with the order of December 11, 2020. Accordingly, there existed *prima facie* evidence of contempt, which shifted the burden to Fanady to show that his failure to comply "was not willful or contumacious and that there exists a valid excuse for his failure to pay." *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 (2008).

¶ 49 In this appeal, Fanady contends that it was impossible for him to comply with the order of December 11, 2020, because that order "was very specific in ordering Fanady to transfer '120,000 shares of CBOE Holdings' to Harnack." He contends that "the Company known as CBOE Holdings no longer existed as of October 27, 2017" and its stock could "not be transferred, traded, bought or sold."

¶ 50 Even if we were to credit Fanady's contention that CBOE Holdings failed to exist at the time of the December 11, 2021, order, such a conclusion would not excuse Fanady's failure to comply with the court order, as the order provided an alternative method to fulfil his obligation to Harnack. Specifically, the order provided that if Fanady no longer possessed shares of CBOE Holdings, Fanady was required to pay Harnack the value of those shares. Where Fanady provided Harnack with neither the shares, nor their value, his claim of impossibility based on the alleged "nonexistence" of the shares is unpersuasive.

¶ 51 Fanady also claims that it was impossible for him to pay $10 million and that he "did not have" $10 million to transfer to Harnack.

¶ 52 The circuit court has the power to enforce an order to pay money through a contempt proceeding where there has been a willful refusal to obey the court's order. *Logston*, 103 Ill. 2d at 285. An alleged contemnor's inability to comply with an order is a defense to contempt, but that defense is unavailable where the contemnor has voluntarily created the inability to comply. *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131, 137 (1974). Moreover, when the alleged inability to comply with an order is due to financial circumstances, a defense to contempt exists "where the failure of a person to obey an order to pay is due to poverty, insolvency, or other misfortune, unless that inability to pay is the result of a wrongful or illegal act." *In re Marriage of Betts*, 155 Ill. App. 3d 85, 100 (1987). "To prove this defense, a defendant must show that he neither has money now with which he can pay, nor has disposed wrongfully of money or assets with which he might have paid." *Logston*, 103 Ill. 2d 285. Financial inability to comply with an order must be shown by definite and explicit evidence. *In re Marriage of Chenoweth*, 134 Ill. App. 3d 1015, 1018-19 (1985).

¶ 53 Initially, we note that Fanady has never explicitly claimed that "poverty, insolvency, or other misfortune" prevents him from complying with the order. Even under Fanady's position, he is not impoverished; he has simply transferred assets that he possessed to an account—namely, the trust in Belize—which he believes makes those assets "uncollectable." He acknowledges that "proceeds from the liquidation of the CBOE stock were transferred to" the trust, but he claims that "the amount held by" the trust "is not known by Fanady, and cannot be revealed to Fanady, pursuant to the terms of the trust." Fanady also asserts that his "access to any such money, is very limited under the terms of the spendthrift trust," and all he "can get out of the *** trust is enough to support a modest lifestyle."

¶ 54 Fanady has never explicitly denied that the trust contains in excess of $10 million. Tellingly, in his reply brief, Fanady compares his use of the trust to "winners of large lottery jackpots [who] take non-transferrable lifetime annuities rather than a lump sum *** so they can guarantee themselves a regular and safe lifetime income, rather than a large lump sum that is vulnerable." Fanady asserts that through his use of the trust, he has "made himself uncollectable," but "in doing so he has given up a great deal of control over any money or property he had."

¶ 55 Just as we previously explained that Fanady cannot "escape his obligations to Harnack by swindling his business partners" to make assets unavailable, he also cannot avoid his obligations to his former spouse by structuring his assets in an offshore trust with the express goal of "mak[ing] himself uncollectable." See *Logston*, 103 Ill. 2d at 285 (to show a valid defense based on inability to pay, "a defendant must show that he neither has money now with which he can pay, nor has disposed wrongfully of money or assets with which he might have paid"); see also *Federal Trade Comm'n v. Affordable Media, LLC*, 179 F.3d 1228, 1243-44 (9th Cir. 1999) (affirming a contempt finding over contemnors' claim that it was impossible for them to comply with order to repatriate assets contained in an offshore trust due to provisions of that trust: "Given the nature of the [contemnors'] so-called 'asset protection' trust, which was designed to frustrate the power of United States' courts to enforce judgments, there may be little else that a district court judge can do besides exercise its contempt powers to coerce people like the [contemnors] into removing the obstacles they placed in the way of a court. Given that the [contemnors'] trust is operating precisely as they intended, we are not overly sympathetic to their claims and would be hesitant to overly-restrict the district court's discretion, and thus legitimize what the [contemnors] have done.").

¶ 56 At the hearing, Fanady claimed that he did not have either the CBOE stock or the cash equivalent. The trial court, however, was not required to credit Fanady's testimony, particularly where he provided no "definite and explicit evidence" to support his claim. It was Fanady's burden to provide such evidence, and we do not find that the trial court's conclusion that Fanady had the means to comply with the order, and that his failure to comply was willful and contumacious, was against the manifest weight of the evidence or an abuse of discretion.

¶ 57 We next turn to the appropriateness of the contempt sanction imposed. The determination of a sanction for indirect civil contempt is a matter largely within the discretion of the trial court and will not be disturbed on review absent an abuse of discretion. *In re Marriage of Daniels*, 240 Ill. App. 3d 314, 323 (1992). Incarceration has long been an appropriate sanction for indirect civil contempt, so long as it serves a coercive purpose. *Sanders*, 163 Ill. 2d at 540; *Tirio v. Dalton*, 2019 IL App (2d) 181019, ¶ 73 ("[I]ncarceration for civil contempt is appropriate so long as it serves a coercive purpose."); see also *Logston*, 103 Ill. 2d at 289 (affirming the contempt order and finding the imposition of a sanction of incarceration appropriate for husband's failure to pay maintenance pursuant to their dissolution judgment, but noting that for the sanction order to be coercive, the contemnor must be "allowed to purge himself of contempt even after he has been imprisoned").

¶ 58 At the hearing, counsel for Harnack requested that Fanady be found in contempt and committed, as he had "demonstrated that there is nothing short of arrest that will enforce the orders of this court." The trial court agreed, finding him in indirect civil contempt and entering an order committing him to the Cook County jail until he purged his contempt by transferring 120,000 shares of CBOE stock, or $10 million, to Harnack. The court observed that it had been

"almost ten years" that Harnack had been "simply tr[ying] to enforce the judgment [and] *** get her share of the marital estate."

¶ 59 Based on the record of this case, as well as this court's longstanding familiarity with Fanady's behavior, we find no abuse of discretion in the court's determination that Fanady would ignore a more lenient sanction and that incarceration was appropriate and necessary to coerce Fanady's compliance. The contempt sanction ordered in this case was properly coercive; Fanady holds the "keys to his cell" and may purge the contempt at any time, by simply complying with the order. (Internal quotation marks omitted.) See *In re Estate of Baldassarre*, 2018 IL App (2d) 170996, ¶ 27; *In re Marriage of Betts*, 200 Ill. App. 3d 26, 58 (1990) (noting that in cases of indirect civil contempt, a contemnor has the "unique ability to control the imposition of sanctions" imposed against him); *Logston*, 103 Ill. 2d at 289.

¶ 60 Fanady, however, contends that the trial court's chosen sanction violates section 12-107 of the Code of Civil Procedure (735 ILCS 5/12-107 (West 2020)). That section provides that

> [n]o order shall be entered for the incarceration of a judgment debtor as a means of satisfying a money judgment except when the judgment is entered for a tort committed by such judgment debtor, and it appears from a special finding *** that malice is the gist of the action, and except when the judgment debtor refuses to deliver up his or her estate for the benefit of his or her creditors." *Id.*

¶ 61 Fanady argues that this statute "abolished debtor's prisons" and that the court's order is "an attempt to create an illegal debtor's prison."

¶ 62 To begin, the order that Fanady failed to comply with was not an order for a money judgment. Instead, the order required specific performance—that Fanady transfer the CBOE shares that were awarded to Harnack under the parties' dissolution judgment. Because Fanady claimed to no longer possess those shares, the court gave Fanady an alternative method of complying with the order—by paying Harnack the value of those shares. The fact that the circuit court offered an alternative way for Fanady to comply does not mean that the trial court ordered his incarceration is "a means of satisfying a money judgment."

¶ 63 Moreover, this court has long held that commitment for the contumacious failure to comply with a court order, even where that order is to pay money, is not imprisonment for debt. See *Wightman v. Wightman*, 45 Ill. 167, 173 (1867) (where a contemnor was ordered committed for his contumacious failure to pay alimony, "[s]uch a commitment is not, as we understand the Constitution and the laws enacted on that subject, an imprisonment for debt"); *Mesirow v. Mesirow*, 346 Ill. 219, 222 (1931) ("commitment of the defendant for contempt for failing to comply with the decree [to pay alimony and solicitor's fees] is not an imprisonment for debt"); *Goodman v. Goodman*, 125 Ill. App. 2d 190, 196 (1970) (concluding that the commitment of a former husband for failure to comply with divorce decree and property settlement agreement was not an imprisonment for debt; "The defendant was sentenced to jail, as he should have been, because he willfully and repeatedly refused to obey the court's orders."). As discussed in detail above, the record supports the trial court's finding that Fanady failed to show he lacked the financial means to comply with the order. Fanady had no compelling justification for failing to transfer to Harnack her share of the marital estate, beyond his disinclination to do so. See *In re Marriage of Paris*, 2020 IL App (1st) 181116, ¶ 62 (circuit court's order finding the husband in indirect civil contempt and remanding him to jail for failure to pay interim attorney fees was not an abuse of discretion where the "record support[ed] the trial court's finding that [the husband] failed to show he lacked the financial ability or access to assets or income to

pay" those fees); *In re Marriage of Patel*, 2013 IL App (1st) 122882, ¶¶ 56-59. In these circumstances, we find Fanady's reliance on section 12-107 (735 ILCS 5/12-107 (West 2020)) unpersuasive.

¶ 64 Fanady next contends that the trial court's order, holding him in contempt and issuing a body attachment, was an abuse of discretion because it allows Harnack to "complete a fraudulent scheme" to "defraud Fanady." Fanady's arguments are substantially the same as those that this court has examined and rejected on multiple previous occasions, and we decline Fanady's invitation to revisit this issue.

¶ 65 Fanady next asserts that the trial court improperly "shifted the burden of proof to Fanady" before a rule to show cause issued. He argues that no rule to show cause had been issued by the trial court prior to the February 9, 2021, hearing. He feigns surprise, contending that he "did not expect that the February 9, 2021 hearing would be for a hearing on the return of the rule to show cause, he expected a hearing on the Petition for Rule to Show Cause." He asserts that the contempt order should be vacated because the "confusing" procedure violated "[w]hatever minimal due process Fanady was entitled to receive." The record rebuts Fanady's contentions.

¶ 66 On January 5, 2021, the trial court set the petition for rule to show cause for hearing on February 9, 2021. The next day, February 6, 2021, the parties appeared before the court again. Counsel for Harnack informed the court that the parties disagreed about certain language in a proposed written order memorializing the previous day's court appearance. The main disagreement related to counsel for Harnack's understanding that the trial court's "general practice" was that "if the rule issues, it's returnable *instanter*." Fanady was "very vehemently" opposed to counsel's proposed language in the order on that point. Counsel for Harnack stated his belief that Fanady was "trying to seize on what he believes to be a procedural misstep here" and asked the court to clarify to Fanady that if a rule issued at the subsequent hearing, it would be returnable *instanter*. The court repeatedly attempted to inform Fanady regarding that procedure, and Fanady repeatedly interrupted both the court and counsel for Harnack. After several interruptions, the following exchange occurred:

> "COURT: Mr. Fanady, I want to make it clear, that we'll be going forward on the hearing on the 9th.
>
> FANADY: I didn't contest that, Judge. The order is the order.
>
> COURT: Okay. It's not a hearing on whether the rule will issue or not. It's a hearing on the petition for rule to show cause. And the burden will shift at the beginning of the hearing to yourself to show cause why you shouldn't be held in contempt.
>
> FANADY: I understand what you're saying, Judge."

¶ 67 Thereafter, at the February 9, 2021, hearing, counsel for Harnack noted that Fanady had admitted that he had not complied with the December 11, 2020, court order. The court then informed Fanady: "The rule has issued. The ball is in your court for the rule to show cause why you should not be held in contempt of court." The court called Fanady to testify, and he immediately began testifying in narrative form as to why it was impossible for him to comply with the court's order.

¶ 68 While Fanady suggests that his due process rights were violated, in the context of indirect civil contempt, "due process requires that the contemnor receive (i) an evidentiary hearing and (ii) adequate notice of the time and place of such hearing." *Milton v. Therra*, 2018 IL App (1st)

171392, ¶ 38. Fanady clearly received notice of the evidentiary hearing, and he appeared at that hearing and was provided an opportunity to be heard. Accordingly, we find no due process violation.

¶ 69 Additionally, Fanady's argument that he was unaware that a rule issued is incredible, as Fanady has never disputed that he failed to comply with the court's order, and accordingly, the issuance of a rule against him was inevitable. Despite Fanady's appellate contentions to the contrary, the record shows that Fanady understood the court's procedure and knew that the court intended to hold an evidentiary hearing on February 9, 2021, as to Harnack's petition, with the rule to issue *instanter*, at which time Fanady could provide whatever evidence he had to avoid a contempt finding. At no time during the hearing did Fanady inform the court that he was unaware that a rule had issued or that he was unprepared to proceed. Accordingly, Fanady waived any objections based on inadequate notice. See *Betts*, 200 Ill. App. 3d at 65 (where an alleged contemnor continued to participate in the indirect civil contempt proceedings directed to him, "he waived his objections that he was not properly served with process and did not receive sufficient notice of the civil contempt charges"); see also *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 58 (issues not raised in the circuit court are waived and may not be raised for the first time on appeal).

¶ 70 Finally, Fanady contends that the body attachment and amended body attachment orders violate section 12-107.5 of the Code of Civil Procedure. That section provides:

> "No order of body attachment or other civil order for the incarceration or detention of a natural person respondent to answer for a charge of indirect civil contempt shall issue unless the respondent has first had an opportunity, after personal service or abode service of notice as provided in Supreme Court Rule 105, to appear in court to show cause why the respondent should not be held in contempt." 735 ILCS 5/12-107.5(a) (West 2020).

It further provides that "[t]he first order issued pursuant to subsection (a) and directed to a respondent may be in the nature of a recognizance bond in the sum of no more than $1,000." *Id.* § 12-107.5(d). Fanady contends that the body attachment and amended body attachment orders, which provided that he could be released after depositing $10 million with the court or the sheriff, exceeded the amount authorized by this statute.

¶ 71 Fanady's argument presents a question of statutory construction. The primary rule of statutory construction is to determine and effectuate the intent of the legislature. *People v. Taylor*, 221 Ill. 2d 157, 162 (2006). In doing so, courts should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *People v. Davis*, 199 Ill. 2d 130, 135 (2002). "In determining legislative intent, we may also consider the consequences that would result from construing the statute one way or the other, and in doing so, we presume that the legislature did not intend absurd, inconvenient, or unjust consequences." *In re Marriage of Goesel*, 2017 IL 122046, ¶ 13. However, our inquiry must always start with the language of the statute itself, which is the most reliable indicator of the legislature's intent. *Taylor*, 221 Ill. 2d at 162. Where the language of the statute is clear, it must be applied as written without resort to extrinsic aids of interpretation. *In re R.L.S.*, 218 Ill. 2d 428, 433 (2006).

¶ 72 As the plain language set out above indicates, the statute on which Fanady relies governs body attachment orders that are intended to bring an alleged contemnor before the court, so that the he or she may "answer for a charge of indirect civil contempt" and so the court may

adjudicate whether that person should be held in contempt. This section does not apply after a person has already been given that opportunity, appeared before the court, and been held in contempt. As we explained above, Fanady received notice of the evidentiary hearing, and he appeared at that hearing where he was provided an opportunity to be heard regarding why he should not be held in contempt. The trial court was unconvinced by Fanady's excuses, finding him in indirect civil contempt and committing him to the Cook County jail until he purged that contempt. Section 12-107.5 of the Code of Civil Procedure simply does not apply under these circumstances. The body attachment orders entered here were not entered "pursuant to subsection (a)" of section 12-107.5. Accordingly, any limitation on the monetary amount provided by that statute is similarly inapplicable.

¶ 73 While Fanady's interpretation is clearly at odds with the plain language of the statute, the facts of this case also illustrate that interpreting the statute as Fanady suggests would lead to absurd and unjust results. Concluding that the statute imposes a requirement that the first body attachment order be a recognizance bond of no more than $1000, even after a contemnor has been properly adjudicated in indirect civil contempt, would allow a contemnor like Fanady, who was found in contempt for evading a $10 million obligation for a decade, to continue dodging that obligation for a comparatively paltry sum. We do not believe that the legislature intended such absurd and unjust results. See *Goesel*, 2017 IL 122046, ¶ 13. Such a requirement applies only where, under the plain language of the statute, an alleged contemnor is being brought before the court to answer a charge of contempt, circumstances in which a recognizance bond may be appropriate. It does not apply in circumstances where, like here, a contemnor has already been adjudicated in contempt.

¶ 74 As we concluded above, committing Fanady to the Cook County jail was an appropriate and available sanction in these circumstances. Once the circuit court entered its contempt order providing for Fanady's commitment as a sanction for his indirect civil contempt, it was similarly entitled to enforce that order and allow the sheriff to effectuate that order, through a body attachment order. See 55 ILCS 5/3-6019 (West 2020) ("Sheriffs shall serve and execute, within their respective counties, and return all warrants, process, orders and judgments of every description that may be legally directed or delivered to them."). While a body attachment order may be issued in certain circumstances before a contempt adjudication is issued, like those described in section 12-107.5 set forth above, its use is not so limited in scope.

¶ 75 Black's Law Dictionary includes the following definitions for the term "attachment": "[t]he arrest of a person who *** is in contempt of court" and "[a] writ ordering legal seizure of *** a person." Black's Law Dictionary (11th ed. 2019). A body attachment order has long been held an appropriate vehicle to effectuate an order of commitment after a person has been adjudged in civil contempt. As early as 1867, our supreme court stated that, where a person has been properly adjudicated in contempt, the circuit court's "power to attach for the contempt cannot be questioned," and the "court [i]s allowed the usual means to enforce the order, by issuing an attachment therefor, and committing [the contemnor] on failure to purge himself of the contempt." *Wightman*, 45 Ill. at 174; see also *Welty v. Welty*, 195 Ill. 335, 338-39 (1902) (a court has the authority to enforce a "decree *** by attachment against the person, by fine or imprisonment, or both, *** which may be necessary for the attainment of justice"); *Mesirow*, 346 Ill. at 222 ("[a] court of chancery has power to enforce its decree for alimony by attachment for contempt"). Illinois courts have consistently utilized body attachment orders to effectuate commitment orders for adjudications of indirect civil contempt from the 1800s through the

present day. See *In re Marriage of Lum*, 2021 IL App (1st) 210981-U, ¶ 36 (the trial court found a former husband in indirect civil contempt for failing to pay approximately $2.7 million under the marital settlement agreement, setting a purge amount of $50,000, and issuing a body attachment); *Illinois Department of Children & Family Services ex rel. Pittman v. Jackson*, 2021 IL App (1st) 210335-U, ¶ 7 (trial court adjudicated father to be in indirect civil contempt of court for his failure to pay child support arrearages and issued a writ of body attachment against him).

¶ 76 In this case, in order to effectuate the contempt order sanctioning Fanady to the commitment in the Cook County jail until he purged his contempt, the court entered a body attachment order. Such order was necessary, in part, because at the time Fanady was found in contempt in this case, that hearing was taking place via Zoom, as was commonplace during the COVID-19 pandemic. Had the hearing occurred prior to 2020, Fanady would have been physically present in court, and he could have been taken into custody at that time. Although he participated in virtual hearings, Fanady consistently has refused to disclose his location in these and other proceedings and has refused to comply with court orders to appear using video, which may be driven by fear of giving any clues as to his whereabouts. In these circumstances, there was no error in the trial court's issuance of a body attachment order to allow the sheriff to effectuate the properly entered order of contempt.

¶ 77 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 78 Affirmed.