

granted her temporary possession of the marital residence and custody of the children.

On July 17, 2000, the court entered a modified temporary order of unallocated maintenance and child support. The order required respondent to pay petitioner \$5,500 per month from March 2000 through June 2000 and \$3,500 during July 2000. Beginning in August 2000, respondent was to pay \$3,000 per month in unallocated support and \$1,200 for the monthly mortgage payment due on the marital residence. The court also prohibited respondent from withdrawing funds from his self-employed (SEP) individual retirement account (IRA), which was valued at approximately \$136,500.

On August 31, 2000, respondent filed a financial affidavit disclosing that he was the sole proprietor of IntraCut Wire EDM, a metal cutting business. The affidavit also disclosed a net monthly income of \$6,825, a monthly business loan expense of \$783, and the minors' monthly health insurance expenses of \$237.

Petitioner operated Airbourne Gymnastics, Inc., a separate business which she opened shortly before the marriage dissolution proceedings began. Respondent had access to the Airbourne Gymnastics account, and on October 3, 2000, the court prohibited respondent from withdrawing funds from the account. On November 21, 2000, the court entered an order again prohibiting the parties from withdrawing funds from respondent's SEP IRA.

On December 21, 2000, respondent filed a petition to abate the unallocated support or to withdraw support from petitioner's business. Respondent alleged that a regional downturn in the metal cutting industry was a substantial change in circumstances that

warranted a reduction in his support obligation. Respondent filed a financial affidavit for the year 2000 in which he stated that his business generated a profit of \$55,506 during the first half and \$60,150 during the second half of the year. Respondent personally drew \$106,138, which was more than 90% of the total profit, as a salary.

Respondent closed IntraCut Wire EDM on December 15, 2000, and relocated to Los Angeles where he attempted to start a similar metal cutting business. Respondent resorted to working as an "extra" in movie productions because his new business was unprofitable. He returned to Rockford and reopened IntraCut Wire EDM approximately five months later. Respondent alleged that petitioner's business generated a net profit of more than \$10,000 per month.

Respondent fell behind in paying support, and on January 11, 2001, the court named petitioner the sole "general agent on behalf of the parties" for the purpose of managing IntraCut Wire EDM and selling the marital residence. On March 27, 2001, the circuit court entered a final judgment for dissolution of the marriage, which incorporated the prior orders setting respondent's support obligation.

On August 20, 2001, petitioner filed a petition for a rule to show cause, alleging that respondent was again receiving income from running IntraCut Wire EDM but was delinquent in paying support. Petitioner further alleged that respondent misappropriated the SEP IRA. Respondent admits that he violated the court's orders by liquidating the SEP IRA in March 2001 and

spending all of the funds. He alleges that he allocated \$56,000 for the federal early withdrawal penalty; \$43,000 for the entire business debt of IntraCut Wire EDM; \$15,247 for federal income tax; \$8,465 for his personal living expenses; \$5,250 for his personal accounting and legal expenses; \$3,275 for auto repair; \$1,210 for storage; \$598 for his personal state income tax; \$335 for court-ordered mediation and counseling; and \$1,500 for the children's expenses. He admits that he earned other income but paid only a portion of the unallocated support due "for the last half of the year 2000 and all of 2001."

On March 5, 2002, the court heard petitioner's petition for a rule to show cause and respondent's motion to reduce his support obligation. The court found that respondent did not act in good faith when he closed his business in Rockford and relocated to California. The court noted that respondent could have opened a metal cutting business in Chicago or pursued other employment in Rockford. Although respondent's job change was unreasonable, the court acknowledged respondent's financial problems and terminated his obligation to pay the \$1,200 monthly mortgage payment retroactive to January 1, 2001. Respondent's prospective unallocated maintenance and child support obligation was to be \$3,000 per month. The court accepted petitioner's calculations, which set the support arrearage at \$60,887 on April 2, 2002.

Noting that the parties had been prohibited from disturbing the SEP IRA, the court further found that respondent only legitimately used \$56,000 of the funds for the early withdrawal penalty. The court concluded that the remaining \$80,500 was a

marital asset to be divided equally between the parties. Because petitioner was denied her \$40,250 share of the SEP IRA as well as \$60,887 in past due unallocated support, the court found respondent in contempt of court and ordered him to spend 180 days in jail if he did not deliver \$80,500 to petitioner by April 1, 2002. Respondent unsuccessfully applied for an \$85,500 unsecured loan from his bank, and he did not tender any payment to petitioner. Petitioner asserted that respondent could have drawn approximately \$20,000 as a cash advance from his credit card and should have pursued other loans.

On April 2, 2002, the court concluded that respondent did not adequately attempt to obtain the funds, and he was taken into custody. The court ruled that respondent could purge the contempt finding by tendering \$80,500. Respondent filed a motion to reconsider, the court denied the motion, and respondent filed a notice of appeal on the same day. Respondent spent five weeks in the Winnebago County jail before purging the finding of contempt.

ANALYSIS

On appeal, respondent contends that he is entitled to a reversal of the March 5, 2002, order denying his motion to reduce his maintenance and child support obligation and finding him in contempt of court for failing to pay support and for withdrawing the SEP IRA funds. Respondent contends that (1) a reduction in his income was caused by a job change made in good faith in light of insurmountable economic factors; (2) the support obligation exceeded the guidelines of section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS

5/505(a)(1) (West 2000)); (3) the court inadequately considered his income; (4) his economic problems justified his noncompliance with the court orders; and (5) he was unable to purge the contempt finding. We reject each of respondent's arguments.

Section 510(a) of the Act provides in pertinent part that "the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification and only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a) (West 2000).

Economic reversals resulting from changes in employment or bad investments may constitute a material change in circumstances sufficient to warrant a modification of a child support order, if made in good faith. In re Marriage of Dall, 212 Ill. App. 3d 85, 95 (1991). While substantial economic reversals resulting from employment or investment are proper circumstances in considering whether support obligations should be reduced or terminated, such changes in economic circumstances must be fortuitous in nature and not the result of deliberate action by the party seeking the reduction. Dall, 212 Ill. App. 3d at 95.

Unless good faith is shown, a voluntary termination of employment resulting in diminished financial status is not considered a material change in circumstances sufficient to warrant abatement or modification of support obligations. Dall, 212 Ill. App. 3d at 95-96; In re Marriage of Ebert, 81 Ill. App. 3d 44, 46-47 (1980). The proponent of the reduction bears the burden of demonstrating that the voluntary change in employment was properly

motivated. In re Marriage of Barnard, 283 Ill. App. 3d 366, 370 (1996).

A finding that a change in employment was made in good faith does not automatically entitle a party to a reduction in child support. If the change in circumstances is temporary or if the party has other assets sufficient to pay support, the court may properly conclude that the party has not experienced a substantial change in circumstances. Barnard, 283 Ill. App. 3d at 371. A change in employment is made in good faith if the change is not driven by a desire to evade financial responsibility for supporting the children or otherwise jeopardize their interests. In re Marriage of Mitteer, 241 Ill. App. 3d 217, 224 (1993). A court's refusal to modify a child support or maintenance obligation will not be reversed absent an abuse of discretion. A trial court abuses its discretion when no reasonable person would agree with the decision. Mitteer, 241 Ill. App. 3d at 224.

A motion to modify support payments involves a two-step process in which the trial court (1) determines the factual questions of whether there has been a material change in the financial circumstances of the parties, and whether a party acted in good faith in voluntarily changing employment to cause such a change; and (2) determines whether and by how much to modify the support obligation if a change in circumstances occurred. A finding that a change in employment was made in good faith does not automatically entitle the obligor to a reduction in support payments because the trial court is free to accept or reject this good-faith change in determining whether the obligor has

experienced a substantial change in circumstances. Barnard, 283 Ill. App. 3d at 371.

A trial court's factual determination at the first stage is subject to a "manifest weight of the evidence" standard of review, and the court's decision to then grant or deny a modification of support is subject to an "abuse of discretion" standard of review. Barnard, 283 Ill. App. 3d at 370.

In this case, the court found that respondent did not change employment in good faith, and we conclude that the finding is not against the manifest weight of the evidence. When he filed his motion to reduce support in December 2000, respondent broadly opined that increased competition and a recession adversely affected the metal cutting industry in Rockford. He also asserted that he lacked training to pursue any other line of work.

However, respondent admitted in his own financial affidavit that he actually earned more during the second half of 2000 than during the first half of the year. Moreover, when he moved to California, respondent accepted employment that paid only a fraction of his prior income. Respondent encountered difficulty in restarting his business upon his return to Rockford, but his problems were the result of his complete abandonment of his prior clients. Also, respondent admitted in a second financial affidavit that he expected his 2001 metal cutting profits to be comparable to those collected in 2000. The trial court found that respondent did not change employment in good faith because he failed to offer credible evidence that he was forced to close his Rockford

business, and we conclude that the court's finding is not against the manifest weight of the evidence.

We further note that it is at least debatable as to whether respondent actually suffered a substantial reduction in income because his stay in California was temporary. See Barnard, 283 Ill. App. 3d at 371. Therefore, we conclude that the trial court did not abuse its discretion in denying respondent's motion to reduce support. See Barnard, 283 Ill. App. 3d at 370.

Respondent next argues that he is entitled to a reversal because the trial court did not comply with section 505(a)(1) of the Act which sets forth guidelines for fashioning a noncustodial parent's child support obligation. When three minor children are involved, a noncustodial parent should pay at least 32% of his net income in child support, and if the trial court deviates from this guideline, it must state its reasons for doing so. 750 ILCS 5/505(a)(1), (a)(2) (West 2000).

Respondent contends that his monthly support obligation of \$3,000 exceeds 32% of his net income and that the court should have better explained its ruling. However, respondent fails to recognize that the guidelines of section 505(a)(1) apply to orders setting child support only, and that his \$3,000 unallocated obligation includes both maintenance and child support. Therefore, we need not consider whether the trial court adequately articulated its reasons for the award pursuant to section 505(a)(2) of the Act. See In re Marriage of Elies, 248 Ill. App. 3d 1052, 1062 (1993) (because the amount awarded to the custodial parent was for both child support and maintenance, it was merely coincidental that the

amount equaled 25% of the noncustodial parent's gross monthly income, and the award, therefore, did not violate section 505(a) of the Act).

We further note that the record clearly reveals that the trial court considered respondent's reduction in income when denying his motion to reduce maintenance and child support. The court acknowledged respondent's problems by retroactively abating his responsibility for the parties' \$1,200 monthly mortgage payment for the marital residence. Even though the court did not disturb the order setting unallocated support, this abatement reduced the amount of respondent's total obligation by more than 25%.

Respondent next claims that the court erroneously entered the contempt finding because his economic problems justified his noncompliance with the support orders and other orders prohibiting him from disposing of the SEP IRA. We disagree. Our supreme court has held that "[t]he power to enforce an order to pay money through contempt is limited to cases of willful refusal to obey the court's order." In re Marriage of Petersen, 319 Ill. App. 3d 325, 332 (2001), quoting In re Marriage of Logston, 103 Ill. 2d 266, 285 (1984). The failure to pay court ordered support or fees is prima facie evidence of indirect civil contempt, shifting the burden to the alleged contemnor to show that his noncompliance was not willful. Logston, 103 Ill. 2d at 285. Whether noncompliance is willful or the alleged contemnor had a valid excuse for noncompliance is a question of fact and the finding of the circuit court will not be disturbed unless it is against the manifest

weight of the evidence or the record reflects an abuse of discretion. Logston, 103 Ill. 2d at 287.

A defense to contempt exists where the failure 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. To prove this defense, a defendant must show he neither has money now with which to pay, nor has he wrongfully disposed of money or assets with which he might have paid. The alleged contemnor must show, with reasonable certainty, the amount of money he has received since the order was made and that it has been disbursed in the payment of expenses which, under the law, he should pay before making any payment for support. Petersen, 319 Ill. App. 3d at 332-33.

This case is similar to Peterson, in which the appellate court rejected the alleged contemnor's argument that his inability to pay support was the result of a "downturn" in his practice. The noncomplying party admitted that, during the period the arrearage accumulated, he spent \$25,000 for his attorney's retainer, \$1,000 on a digital camera, and \$3,000 on a lap top computer. He also paid off \$14,000 in personal credit card debt and paid a discretionary employee bonus of \$5,000. In light of this evidence, the appellate court held that the circuit court's findings of indirect civil contempt were not against the manifest weight of the evidence. Petersen, 319 Ill. App. 3d at 333.

Here, respondent surreptitiously withdrew and spent the SEP IRA funds. If respondent's financial status was as dire as he claims, he could have requested the court's permission to access

the account. Furthermore, he used the proceeds to pay his legal and accounting debts as well as the entire \$43,000 indebtedness of the IntraCut EDM business. Respondent offers no evidence that his creditors planned to foreclose on these debts, and he admits that his children received the benefit of only \$1,500 of the \$136,500 he possessed. Respondent's noncompliance with the order prohibiting his use of the account is exceptionally objectionable in light of his use of only a fraction to pay his support obligation. Under these facts, we conclude that the trial court's finding of contempt is not against the manifest weight of the evidence. Petersen, 319 Ill. App. 3d at 333. Moreover, we summarily reject respondent's claim that he was unable to purge the contempt finding because he, in fact, was released from custody a few weeks after the finding.

For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

Affirmed.

BYRNE, J., with GROMETER and KAPALA, JJ., concurring.