

This Order Is Not Precedential
And Is Not To Be Cited

FILED

MAR 05 2003

Nos. 2--01--0525 & 2--01--0435 cons.

ROBERT J. MANGAN, CLERK
APPELLATE COURT 2nd DISTRICT

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<p><u>In re</u> MARRIAGE OF RICHARD J. SELFRIDGE JR., Petitioner-Appellee, and CRIS MOONEY SELFRIDGE, Respondent-Appellant.</p>	<p>) Appeal from the Circuit Court) of Du Page County.)))) No. 94--D--1137)) Honorable) Michael J. Burke,) and William I. Ferguson,) Judges, Presiding.</p>
---	---

RULE 23 ORDER

The respondent, Cris Selfridge, appeals pro se from the December 18, 2000, December 19, 2000, January 30, 2001, March 5, 2001, March 26, 2001, and April 13, 2001, orders of the circuit court of Du Page County, enforcing the judgment for dissolution of marriage, finding her in indirect civil contempt of court, imposing sanctions, dismissing her postdissolution petitions, and reducing her child support. Originally, in a summary order dated May 5, 2002, this court struck Cris's brief for noncompliance with Supreme Court Rules 341 and 344 (134 Ill. 2d R. 341, 344) and dismissed her appeal. However, on December 27, 2002, the Supreme Court vacated this court's summary order and directed us to hear the merits of the appeal. Pursuant to the Supreme Court's directive, we consider Cris's appeal.

I. Background

Nos. 2--01--0525 & 2--02--0435 cons.

The following facts are relevant to this disposition. Cris and the petitioner, Richard Selfridge, were married on June 18, 1978. The parties had two children, Justin, born August 4, 1982, and Lindsey, born June 18, 1984. During the course of the marriage, the parties acquired an interest in a partnership known as the Weber Road Limited Partnership (the Weber Road partnership). The principle asset of the Weber Road partnership was a 70 acre farm located near Plainfield, in Will County, Illinois.

On January 19, 1996, the trial court entered a judgment for dissolution of marriage. The judgment for dissolution incorporated the parties' agreed parenting order and marital settlement agreement. The agreed parenting order provided that Cris would have sole custody of the children and could reside in Virginia with the children. The agreed parenting order provided Richard with visitation.

The settlement agreement provided that Richard would pay Cris \$2,500 per month for child support. With regard to the Weber Road partnership, the settlement agreement provided that:

"a) Rick and Cris agree that each shall remain a general partner of the Weber Road Property Limited Partnership until the final sale of the [p]artnership property and the final dissolution of said [p]artnership.

b) Rick and Cris further agree that Cris shall continue to do the bookkeeping, accounting, and tax preparation for the [p]artnership.

c) Rick shall continue to manage the day to day operation of the [p]artnership firm.

Nos. 2--01--0525 & 2--02--0435 cons.

d) Rick shall remit cash rent checks paid to Rick from the farm tenant for immediate deposit in the [p]artnership account.

e) Rick and Cris acknowledge that pursuant to the limited [p]artnership agreement, upon the sale of the [p]artnership property and the final distribution of the [p]artnership cash and assets, Rick and Cris are entitled to a 10% deferred [p]artnership fee based upon the net sale proceeds after the return of the limited partners' original capital contributions.

f) Rick and Cris agree that upon the receipt of said deferred general partnership fees, said fees shall be immediately deposited into a college account for the benefit of the parties' two minor children.

g) The proceeds of said college trust fund are to be used to pay the cost of college for the children ***."

Cris initiated the instant postdissolution proceedings when on April 19, 2000, she filed a pro se petition to modify the judgment for dissolution of marriage. In her petition, she sought an increase in Richard's child support obligation. In accordance with that motion, she also filed a request to produce documents.

On May 11, 2000, Richard filed a pro se petition labeled "Plaintiff's Post-Decree Petition for Reduction of Child Support, and Other Relief Post High School Educational Expenses." In his motion, Richard requested that his child support obligation be reduced due to Justin attaining the age of 18. Additionally, he alleged that the sale of the Weber Road partnership property was

Nos. 2--01--0525 & 2--02--0435 cons.

pending and that the judgment for dissolution was silent as to a number of pertinent issues regarding the implementation of the children's college trust account. He also alleged that Cris was making unauthorized withdrawals from the partnership account. Richard therefore requested the trial court to order that (1) Cris provide an accounting of partnership assets; (2) the 10% partnership fee be divided equally among him and Cris; (3) Cris and he pay their own respective income taxes on the fees; (4) Cris and he deposit their fees into separate interest bearing accounts; (5) any withdrawals from the account be made solely for college related expenses of Justin and Lindsey; and 6) Cris and he each pay equal amounts from their trust accounts for Justin's and Lindsey's college expenses. Additionally, Richard filed his own request to produce documents.

On July 14, 2000, Cris filed several more motions, including a combined motion to compel discovery, impose Rule 219 sanctions on Richard, appoint a guardian ad litem for Lindsey, and remove Richard as trustee of Justin's and Lindsey's college trust account. All of Cris's and Richard's motions were scheduled for a July 18, 2000, hearing.

On July 18, 2000, Cris failed to appear. The trial court struck Cris's motion to compel discovery, impose Rule 219 sanctions, appoint a guardian ad litem, and remove Richard as trustee. It rescheduled Cris's petition to reduce child support and other relief for an August 21, 2000, hearing. Richard sent Cris a copy of the trial court's July 18, 2000, order via certified mail.

Nos. 2--01--0525 & 2--02--0435 cons.

On August 21, 2000, Cris appeared and presented motions for substitution of judge for cause and as a matter of right. Cris's motion for substitution as a matter of right was granted. The hearings on Cris's petition to modify the judgment for dissolution and Richard's petition to reduce child support and other relief were then ultimately scheduled for an October 10, 2000, hearing.

On October 10, 2000, Cris failed to appear, but filed a motion for summary judgment on her previously stricken motion to compel discovery, impose 219 sanctions, appoint a guardian ad litem, and remove Richard as trustee. She also filed a motion to continue all postdissolution petitions until December 2000, or January 2001. The trial court denied her motion to continue matters until December 2000, or January 2001. It rescheduled all matters for an October 31, 2000, hearing. Richard sent Cris a copy of the trial court's October 10, 2000, order via certified mail.

On October 31, 2000, Cris again failed to appear. The trial court entered an order stating that:

"(1) All pending pretrial discovery motions are set for hearing on December 18, 2000, at which time all parties with matters filed as of record must appear. Failure to appear may result in a parties (sic) pleadings being stricken."

(2) Hearing on plaintiff's petition for an accounting of the Weber Road Property Limited Partnership sale proceeds is set for December 19, 2000.

(3) Prior motions for setting a hearing date on all other underlying petitions is continued generally."

Nos. 2--01--0525 & 2--02--0435 cons.

As in all instances where Cris failed to appear in court, Richard sent Cris via certified mail a copy of the trial court's order.

On December 18, 2000, Cris failed to appear in the trial court. However, that day, she filed another motion for summary judgment on her previously stricken motion to compel discovery, impose sanctions, appoint a guardian ad litem for Lindsey, and remove Richard as trustee. The trial court entered an order denying this motion.

Cris also failed to appear on December 19, 2000. However, the hearing took place as scheduled. Richard presented evidence that the Weber Road partnership property was sold on December 18, 2000, for \$3,000,000. The trial court entered an order requiring Cris to issue two checks from the Weber Road Property account, one check to herself and one check to Richard, equal to the deferred partnership fees that they were entitled to upon the sale of the Weber Road partnership property. The trial court ordered that, after paying their respective taxes on the fee, Cris and Richard were to deposit their checks into a single interest bearing account in Illinois. The account was to serve as the college trust account for Justin and Lindsey. The trial court ordered that the account was to be retained in both Cris's and Richard's names as trustees for Justin and Lindsey. Any withdrawals were to require both Cris's and Richard's signature. As to Richard's request for an accounting of the Weber Road partnership assets, the trial court ruled that it did not have the authority to hear that issue.

On January 19, 2001, Richard filed a petition for rule to show cause why Cris should not be held in indirect civil contempt,

Nos. 2--01--0525 & 2--02--0435 cons.

alleging that Cris had not complied with the trial court's order of December 19, 2000. More specifically, he alleged that Cris had failed to issue him his check from the Weber Road partnership property sale and that she had failed to cooperate in opening the college trust account. Richard's petition for rule to show cause was scheduled for a January 30, 2001, hearing. On January 29, Cris filed a motion to strike Richard's petition. Cris failed to appear on January 30, 2001. The trial court rescheduled the petition for a March 5, 2001, hearing.

Cris appeared on March 5, 2001. At the hearing, she testified that she had not issued Richard a check for his share of the Weber Road partnership fees, although she had opened up a college trust account in Virginia for the children with a portion of the parties' partnership fees. She testified that Richard was not a trustee of or a signatory on the account. Following the hearing, the trial court found Cris in indirect civil contempt of the trial court's December 19, 2000, order. The trial court ordered that Cris could purge herself of the contempt finding by fully complying with the December 19, 2000, order within 14 days.

On March 21, 2001, Richard filed a motion to impose sanctions on the contempt finding, alleging that Cris still had not complied with the December 19, 2000, order. Richard's motion to impose sanctions was scheduled for a March 26, 2001, hearing. On March 23, 2001, Cris filed a motion requesting the trial court to hold the March 26, 2001, hearing via telephone conference.

On March 26, 2001, Cris failed to appear. Following a hearing, the trial court issued a body attachment against Cris.

ordering that she could be released from custody by complying with the December 19, 2000, and March 5, 2001, orders of the trial court. The trial court also ordered that Richard's monthly child support payments be suspended until Cris complied with the trial court's orders. It denied Cris's motion for a telephone conference. It scheduled all other pending matters for an April 13, 2001, hearing on the merits.

On April 13, 2001, Cris filed a motion for continuance but failed to appear in the trial court. The trial court denied Cris's motion for continuance and struck her petition to modify the judgment for dissolution. Following a hearing on Richard's petition for a reduction of his child support obligation due to Justin attaining the age of 18, the trial court reduced Richard's child support from \$2,500 to \$1,550 per month. On May 11, 2001, Cris filed a notice of appeal from the December 18, 2000, December 19, 2000, January 30, 2001, March 5, 2001, March 26, 2001, and April 13, 2001, orders of the trial court.

II. Discussion

As a preliminary matter, we note that Richard has filed a motion to dismiss Cris's appeal. In his motion, Richard argues that Cris remains in contempt and continues to defy the December 19, 2000, and March 5, 2001, orders of the trial court. Richard argues that so long as Cris continues to defy the orders of the trial court, she should be barred from seeking appellate review.

It is the general rule that a party who refuses to obey the mandate of the court, and who has been adjudged in contempt for such refusal, is not entitled to prosecute or defend an action when

Nos. 2--01--0525 & 2--02--0435 cons.

the nature of the contempt is such as to hinder and embarrass the due course of procedure in the cause. Garret v. Garret, 341 Ill. 232, ___ (1930); Lindsay v. Lindsay, 255 Ill. 442, ___ (1912). Indeed, consideration is not ordinarily given to one who shows her contempt for the courts at the same time that she asks their affirmative assistance. Wick v. Wick, 19 Ill. 2d 457, ___ (1960).

For example, in Lindsay, a party had been found in contempt of court for taking a child who was the subject of the custody proceedings, out of the jurisdiction. Lindsay, 255 Ill. at ___. The Supreme Court refused to consider an appeal by the still noncompliant party, noting:

"The contempt of Mrs. Lindsay affects the due course of procedure in the case by preventing the court from enforcing its decree. So long, therefore, as she remains beyond the jurisdiction of the court and has not purged herself of the contempt adjudged against her she cannot maintain a writ of error to review the correctness of the decree." Lindsay, 255 Ill. at ___.

Garret is equally applicable here. In Garret, the Supreme Court refused to hear the appeal of a party who had failed to obey a trial court order requiring him to pay alimony and who then left the jurisdiction of Illinois and had refused to come back. Garret, 341 Ill. at ___.

In this case, similar to Lindsey and Garret, we believe that Cris's contumacious conduct hindered and embarrassed the due course of proceedings in these postdissolution matters. Accordingly, it is well within our discretion to dismiss Cris's appeal on the

grounds that she contumaciously continues to defy the trial court. In addition to Cris's blatant disregard for the orders of the trial court, we also frown on her incessant filing of rambling motions in the trial court and then failing to appear for the hearings, which was also a hindrance and an embarrassment. Nevertheless, in this case, we choose to exercise our discretion to hear the merits of the appeal.

On appeal, Cris presents nineteen issues relating to the propriety of the various orders of the trial court. These nineteen issue are laid out in her statement of the issues section of her brief. However, in her argument section, Cris only argues ten issues. In accordance with Supreme Court Rule 341 (e) (7) (134 Ill. 2d. R. 241(e) (7)), we will not address those issues for which she presents no arguments. Moreover, Cris raises several issue for which she cites no legal authority, which we also will not address. See In re marriage of Hindenburg, 227 Ill. App. 3d 228, 232 (1992) (arguments not supported by relevant legal authority are waived). In reviewing Cris's numerous contentions, we find that she has preserved six issues for our review, namely whether (1) the trial court lacked subject matter jurisdiction to enter the December 19, 2000, order; (2) the December 19, 2000, March 5, 2001, March 26, 2001, and April 13, 2001. orders of the trial court are void; (3) the termination of child support was an improper contempt sanction; (4) the trial court erred in denying her request to appoint a guardian ad litem to represent Lindsey; (5) the trial court erred in reducing Richard's child support obligation; and (6) the trial

Nos. 2--01--0525 & 2--02--0435 cons.

court erred in entering certain orders relating to her being found guilty of indirect criminal contempt.

We now turn to Cris's first argument on appeal, that the trial court lacked subject matter jurisdiction to enter its December 19, 2000, order. Cris maintains that the trial court's December 19, 2000, order essentially modified the parties' settlement agreement. She maintains that the trial court lacked the authority under Sections 502 and 510 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502, 5/503 (West 2000)) (the Marriage Act) to modify the parties' agreement, and that therefore, it lacked jurisdiction.

We begin by noting that the circuit courts are courts of general jurisdiction that may adjudicate any justiciable matter. Ill. Const. 1970, art. VI, § 9. Legislation such as the Marriage Act, which creates rights not recognized in the common law or equity, defines justiciable matters but does not limit or preclude a court's jurisdiction over the matter. In re Marriage of Schauberger, 253 Ill. App. 3d 595, 602 (1993). Consequently, in a dissolution action, if a trial court fails to follow the requirements of the Marriage Act, the error is procedural, not jurisdictional. See In re Marriage of Adamson and Cosner, 308 Ill. App. 3d 759, 766 (1999). Such an error is waived if not timely raised in the trial court. Adamson, 308 Ill. App. 3d at 766.

We believe that Cris has waived this argument by not raising her argument in the trial court. See In re Marriage of Jerome and Martinez, 255 Ill. App. 3d 374, 388 (1994) (a party can not challenge the trial court's authority to hear a marital dissolution

Nos. 2--01--0525 & 2--02--0435 cons.

action or render a particular judgment for the first time on appeal). Nevertheless, absent waiver, we find no procedural error. Contrary to Cris's contention, the trial court's order did not modify the parties' settlement agreement, but rather, enforced it. The settlement agreement provided that the parties would use the Weber Road partnership fees to fund their children's post high school education. Accordingly, the trial court entered an order requiring Cris to comply with the agreement. Undoubtedly, a trial court may enforce provisions of a settlement agreement incorporated into a judgment of dissolution. In re Marriage of Moriarty, 132 Ill. App. 3d 895, 897 (1985). Indeed, a trial court does not abandon its equitable powers over the parties simply because the parties have entered into a marital settlement agreement. In re Marriage of Carrier, 332 Ill. App. 3d 654, 662 (2002). As such, Cris's second contention is without merit.

Cris's second argument on appeal is that the December 19, 2000, March 5, 2001, March 26, 2001, and April 13, 2001, orders of the trial court are void. Cris contends that the December 19, 2000, order is void because she did not receive proper notice of the December 19, 2000, hearing. She contends that, in its order dated October 31, 2000, the trial court ordered her to appear for a hearing on the issue of an accounting of the Weber Road partnership assets. She contends that all other matters, including the matter of setting up the children's trust fund, were continued generally. Cris contends that the remainder of the orders are void for being based on the December 19, 2000, void order. Additionally, she contends that the March 5 and 6, 2001, orders of

Nos. 2--01--0525 & 2--02--0435 cons.

the trial court finding her in indirect civil contempt and sentencing her for contempt are void because they failed to contain purge orders.

A "void" judgment is one that was entered by a court which lacked jurisdiction over the parties or the subject matter or lacked the inherent power to make or enter the particular order involved. R.W. Sawant & Co. v. Allied Programs Corp., 111 Ill. 2d 304, 309 (1986). A void judgment may be attacked at any time, either directly or collaterally. R.W. Sawant, 111 Ill. 2d at 309. The issue of whether a judgment is void is a question of law subject to this court's independent review. See Zeigler v. Illinois Trust & Savings Bank, 245 Ill. 180, 192 (1910).

In the case herein, we do not believe that the December 19, 2000, order of the trial court is void. First, the notice that Cris received was sufficient and in accordance with Supreme Court Rule 11 (a) (3) (134 Ill. 2d R. 11 (a) (3)). The record reveals that Cris was sent by certified mail a copy of the October 31, 2000, order. The order provided that:

"(2) Hearing on plaintiff's petition for an accounting of the Weber Road Property Limited Partnership sale proceeds is set for December 19, 2000.

(3) Prior motions for setting a hearing date on all other underlying petitions is continued generally."

Although the order did not specifically say that the issues regarding the implementation of the children's college trust account would be litigated on December 19, 2000, it is clear that Richard's petition labeled "Plaintiff's Post-Decree Petition for

Nos. 2--01--0525 & 2--02--0435 cons.

Reduction of Child Support, and Other Relief Post High School Educational Expenses" was scheduled for a hearing that day. This petition collectively sought an accounting of the Weber Road partnership assets, enforcement of the portion of the settlement agreement pertaining to the partnership fees and the children's college trust account, and a reduction in child support.

Second, even assuming the notice was a bit ambiguous about what issue would be litigated, that fact would not make the December 19, 2000, order void. The trial court had jurisdiction over the matter, both subject matter and in personam, and, as already discussed, the requisite authority to enter the order. Once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. People v. Davis, 156 Ill. 2d 149, 156 (1993). The lack of notice of a hearing on a particular matter would not vitiate the trial court's jurisdiction or authority. See LaSalle Nat. Trust, N.A. v. Lamet, 328 Ill. App. 3d 729, 731-732 (2002) (an order entered without notice is not necessarily void). An order entered without an adequate notice of a hearing is more akin to a voidable order. See LaSalle Nat. Trust, 328 Ill. App. 3d at 732.

Finally, we note that the lack of an adequate notice of the hearing would not have excused Cris from appearing in court on December 19, 2000. See Tiller v. Semonis, 263 Ill. App. 3d 653, 656 (1994); Hall v. Hall, 15 Ill. App. 3d 599, 602 (1973). Indeed, it is the duty of the litigant to follow the progress of her case. Semonis, 263 Ill. App. 3d at 656. The record demonstrates that Cris was not diligent in following her case. The

Nos. 2--01--0525 & 2--02--0435 cons.

fact that Cris is an attorney makes her lack of diligence even more troubling. Accordingly, as the December 19, 2000, order of the trial court is not void, neither are the March 5, 2001, March 26, 2001, and April 13, 2001, orders that follow the December 19, 2000, order.

We also reject Cris's argument that the March 5 and 6, 2001, orders of the trial court finding her in indirect civil contempt and sanctioning her for contempt are void for failing to contain purge orders. Civil contempt is a process to secure obedience to a judgment or to coerce a party into obeying a court order which incidentally benefits another party. In re Marriage of Morse, 240 Ill. App. 3d 296, 302 (1993). Civil contempt is synonymous with the phrase, "the contemnor has the keys to the cell in her own hands." Morse, 240 Ill. App. 3d at 302. In other words, a contemnor must have the ability to purge herself of the contempt. Pancotto v. Mayes, 304 Ill. App. 3d 108, 111 (1999). A contempt order without a purge provision is so defective that it is void. Pancotto, 304 Ill. App. 3d at 112.

In the case herein, the trial court's orders of March 5 and 26, 2001, contained effective purge orders. The trial court's March 5, 2001, order stated that Cris could purge herself of the contempt finding by complying with the directives of its December 19, 2000, order. The trial court's March 26, 2001, order issued a body attachment against Cris and suspended Richard's child support payments, but stated that Cris could be released from jail and the support payments would be reinstated upon her compliance with the December 19, 2000, order. We find no reason why Cris would not be

Nos. 2--01--0525 & 2--02--0435 cons.

able to comply with the December 19, 2000, order which directed her to take certain steps to open a college trust account for her children.

Cris's third argument on appeal is that the suspension of child support was an improper contempt sanction. We agree with this contention. Although the imposition of a civil contempt sanction is a matter within the sound discretion of the trial court (In re Marriage of Metz, 233 Ill. App. 3d 50, 57 (1992)), the trial court should follow certain guidelines in fashioning a sanction. First, a proper sanction for civil contempt should be coercive rather than punitive. see sanders v. shephard, 163 Ill. 2d 534, 540 (1994). Additionally, the nature of the sanction should bear some reasonable relation in duration and severity to the contemptuous conduct for which the contemnor has been sanctioned. See Sanders, 163 Ill. 2d at 541.

Here, although the sanction at issue was fashioned prospectively, we do not believe that it bears a reasonable relationship to Cris's contemptuous conduct. Rather, we believe that the suspension of child support is an overly severe sanction which punishes the child more than it coerces the desired compliance. We find that it is a great injustice to punish a child for the wrongdoings of the parent. Accordingly, we vacate that portion of the March 26, 2001, order of the trial court suspending Richard's child support obligations. All other portions of the March 26, 2001, order remain in effect.

Cris's fourth argument on appeal is that the trial court erred in failing to appoint a guardian ad litem for Lindsey. Section 506

Nos. 2--01--0525 & 2--02--0435 cons.

of the Marriage Act governs this issue. That section provides that:

"[i]n any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, and subject to the terms or specifications the court determines, appoint an attorney to serve in one of the following capacities:

- (1) as an attorney to represent the child;
- (2) as a guardian ad litem to address issues the court delineates;
- (3) as a child's representative whose duty shall be to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case." 750 ILCS 5/506(a) (West 2000).

The appointment of a guardian ad litem under section 506 of the Marriage Act is discretionary, not mandatory. See In re Marriage of Koenig, 211 Ill. App. 3d 1045, 1051 (1991). The trial court need not appoint a guardian ad litem if the child's interests are adequately represented. See In re Marriage of Doty, 255 Ill. App. 3d 1087, 1093 (1994). Being a matter of the trial court's discretion, a trial court's decision regarding the appointment of a guardian ad litem will not be disturbed absent an abuse of its discretion. See Doty, 255 Ill. App. 3d at 1093.

In this case, we do not believe that the trial court abused its discretion in not appointing a guardian ad litem for Lindsey. First, Lindsey's interests were adequately represented, both by her

Nos. 2--01--0525 & 2--02--0435 cons.

father and the trial court. This was evident from the efforts of both in attempting to establish her trust account. Second, Cris essentially abandoned her petition to appoint a guardian ad litem by continuously failing to show up and prosecute her petition. The trial court was under no obligation to sua sponte appoint a guardian. See In re Marriage of Ricketts, 329 Ill. App. 3d 173, 182 (2002). As such, that the trial court did not err in failing to appoint a guardian ad litem for Lindsey.

Cris's fifth argument on appeal is that the trial court erred in reducing Richard's child support obligation. Specifically, Cris argues that it was error for the trial court to determine Richard's net income using the income averaging method. Additionally, Cris argues that Richard concealed a portion of his income. Cris argues that her award of child support was based on these erroneous calculations of Richard's net income.

Modifications of child support should be determined according to the provisions of section 505 of the Marriage Act. See People ex rel. Hines v. Hines, 236 Ill. App. 3d 739, 748 (1992). Section 505(a) of the Marriage Act provides the trial court with certain guidelines by which to set an award of child support. See 750 ILCS 5/505(a) (West 2000). These guidelines are based on a party's net income. See 750 ILCS 5/505(a) (West 2000). The minimum amount of support for one child should be 20% of the supporting party's net income. 750 ILCS 5/505(a) (West 2000). Net income is the total of all income from all sources, minus certain deductions such as federal, state, and social security taxes. 750 ILCS 5/505(3) (West 2000). A trial court's findings regarding modifications of child

Nos. 2--01--0525 & 2--02--0435 cons.

support, including net income, are matters within the trial court's discretion, and we will not disturb them absent an abuse of discretion. See In re Marriage of Harmon, 210 Ill. App. 3d 92, 96 (1991).

When a supporting party's income fluctuates significantly from year to year, it is appropriate for the trial court to determine the party's net income by averaging prior years of income. This method, known as the income averaging method has been upheld on several occasions. See In re Marriage of DiFatta, 306 Ill. App. 3d 656, 662 (1999) (holding that it was proper for the trial court to average ten years' prior income); In re Marriage of Elies, 240 Ill. App. 3d 1052, 1059 (1993) (holding that it was reasonable for the trial court to average three years' prior income); see also In re Marriage of Freeson, 275, Ill. App. 3d 97, 104 (1995) (holding that the trial court erred in not using the income averaging method); In re Marriage of Carpel, 232 Ill. App. 3d 806, 818 (1992) (same).

In the instant case, we believe that it was appropriate for the trial court to average Richard's income for the past six years. The record reveals that during those years, Richard's gross income ranged from \$86,000 to more than \$200,000 per year. Accordingly, the trial court averaged Richard's prior income and then calculated his net income at \$93,000 per year. It awarded \$1,550 per month in child support, which is in line with the section 505 guidelines detailing that support for one child should be set at a minimum of 20% of the supporting party's net income.

Additionally, we find unpersuasive Cris's arguments that Richard had concealed a portion of his income. We note Cris's

contention that "[Richard's] tax returns clearly disclosed that [he] transferred \$100,000 to his non-attorney spouse as 'profit' from [his] illegal services corporation." We additionally note that the trial court made a specific finding regarding that contention in that there had been no intent on Richard's part to conceal income or to divert income from his law practice to his new wife. After a thorough review of Richard's tax returns and the other evidence in the record, we also find no evidence that Richard was concealing income or diverting income to his new wife. Accordingly, we find no abuse of discretion in the trial court's determination of Richard's net income or its modification of Richard's child support obligation.

Cris's final argument on appeal is that the trial court erred in entering certain orders relating to her being found guilty of indirect criminal contempt. The record reveals that, in addition to finding Cris in indirect civil contempt on March 5, 2001, the trial court also found Cris in indirect criminal contempt for interfering with Richard's visitation rights. The trial court entered orders on March 5, 2001, and April 13, 2001, regarding this finding of criminal contempt. However, the trial court never imposed a sanction for the criminal contempt; it continued Cris's sentencing for criminal contempt until she could be apprehended on the body attachment. Therefore, as the trial court has not yet imposed a sanction for her indirect criminal contempt, the orders relating to Cris's indirect criminal contempt are not final orders. Vowell v. Pedersen, 315 Ill. App. 3d 665, 666 (2000). As such, we

Nos. 2--01--0525 & 2--02--0435 cons.

cannot address this final contention due to lack of jurisdiction.
Vowell, 315 Ill. App. 3d at 666.

For the foregoing reasons, we vacate that portion of the trial court's March 26, 2001, order suspending Cris's child support payments. The remainder of the orders of the circuit court of Du Page County are affirmed.

Affirmed in part; vacated in part.

GILLERAN JOHNSON, J., with O'MALLEY and CALLUM, JJ.,
concurring.