**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (3d) 220355-U

Order filed March 24, 2025

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2025

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| *In re* MARRIAGE OF | ) | Appeal from the Circuit Court |
| | ) | of the 18th Judicial Circuit, |
| ERUM SIDDIQUI, | ) | Du Page County, Illinois, |
| | ) | |
| Petitioner-Appellant, | ) | Appeal No. 3-22-0355 |
| | ) | Circuit No. 19 D 2222 |
| and | ) | |
| | ) | Honorable |
| NABEEL NOOR, | ) | Susan L. Alvarado, |
| | ) | Judge, Presiding. |
| Respondent-Appellee. | ) | |

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JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Hettel concurred in the judgment.
Presiding Justice Brennan specially concurred.

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**ORDER**

¶ 1 *Held*: The circuit court's factual findings with respect to child support were against the manifest weight of the evidence. The court did not abuse its discretion in refusing to award retroactive child support or requiring the mother to share unpaid tax debt and pay attorney fees.

¶ 2 Erum Siddiqui (the mother), appeals the circuit court's resolution of the financial issues between the parties, contending the circuit court erred when it (1) calculated Nabeel Noor (the

father)'s child support obligation based on the father receiving 161 overnights and paying $750 for health insurance; (2) declined to order retroactive child support; (3) required the mother to share the costs of the father's failure to file income taxes for four years; and (4) ordered the mother to pay attorney fees incurred following an abuse of parenting time.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on August 19, 2016. They had one child, Z.N., born in 2018. The mother filed a petition seeking to dissolve the parties' marriage on November 22, 2019. At that time, the father was living in Maryland, and the mother was living in Illinois. Z.N. was one year old, and the father exercised parenting time every other weekend. In 2020, the father moved to Illinois and petitioned for additional parenting time. Shortly thereafter, on September 17, 2020, the mother filed a motion seeking child support.

¶ 5 On October 27, 2020, the court entered an order granting the father one day of overnight parenting time ("overnight") per week, in addition to his established parenting time every other weekend. The mother then moved the court to allow the parties to take vacation time with Z.N. An agreed order was entered on December 29, 2020, granting the father seven vacation days and the mother six vacation days in 2021. The order stated that the "vacation days may be taken in increments of less than 6 consecutive days."

¶ 6 On February 4, 2021, the court entered a temporary child support order, which required the father to pay child support in the amount of $500 per month.

¶ 7 On March 16, 2021, the parties entered an Agreed Allocation Judgment, resolving the issues of parenting time and parental decision-making between the parties. The father was allocated parenting time every Tuesday at noon until Wednesday at noon, and on alternating weekends from Thursday at noon until Sunday at 6 p.m. With respect to vacations, the parties

agreed to "reasonable extended summer parenting time." The Agreed Allocation Judgment indicated that "[s]ummer parenting time of two (2) weeks shall be deemed reasonable," and instructed that summer parenting time should be exercised in increments of seven consecutive days until the child attained the age of eight. The parties agreed to alternate holidays between even- and odd-numbered years.

¶ 8 A trial was held over the course of five days between August 17, 2021, and December 22, 2021, to determine the distribution of the parties' assets and debts, and to set child support. At trial, the father testified that he began working as a physician on June 26, 2021, and he earned $18,600 per month. Prior to that, he was unemployed, dating back to June of 2020. Before his unemployment he worked as a medical resident in Maryland, where he earned approximately $50,000 per year. The parties lived together through November of 2018, and then the mother moved to Illinois. The father testified he contributed to the support of the child throughout her life, and the child flew to Maryland to stay with him for periods of time prior to the divorce. After the divorce was filed, the father flew to Illinois every other weekend. He stated he did not file taxes for the years 2017, 2018, 2019, or 2020, choosing instead to pay other personal expenses.

¶ 9 Several financial affidavits describing the father's income and expenses were entered into evidence. The most current financial affidavit at the time of trial, dated August 6, 2021, described the father's health insurance coverage. The affidavit stated the father's policy covered himself and the minor child and listed the total monthly cost of insurance at $400. No other evidence or testimony was adduced at trial describing the cost of health insurance for the minor child.

¶ 10 The father created a calendar for the years 2021 and 2022 into which he entered "every night that [he had] with the child," including "all the vacations and the spring break, winter break." He moved to enter those calendars into evidence "only for demonstrative purposes." The mother objected to the admission of the calendars, claiming they contained numerous errors. The court deferred ruling on the objection until the conclusion of the trial. When asked to approximate how many overnights he would exercise in 2021, the father stated he had been allocated 171 overnights, which he later corrected by stating that there was some "overlap" with the mother's parenting time. After taking into account that overlap, his estimate came to "about 161 or 162."

¶ 11 On cross examination, the father admitted he had failed to account for the mother's winter break, summer break, and holiday parenting time in calculating his total number of overnights. The mother's attorney questioned the father's calculations and stated that, based on the father's calendar, he would receive "only 161 [overnights] at most." The circuit court admitted the calendars over the mother's objection, noting it was "aware of the flaws."

¶ 12 The mother testified that the parties never resided together after the birth of their child. She stated that the father never paid any child support until the court ordered temporary support, and even then did not pay child support until November 18, 2021, when he made a lump sum payment of $4500. The mother stated she worked as a pharmacist, and she earned $11,243.68 per month.

¶ 13 On November 5, 2021, during the trial, the father filed a motion alleging the mother had abused her allocated parenting time by using her vacation days to prevent the father from exercising his weekly overnight parenting time. The court held a hearing on the motion, and the father testified the mother had informed him she would be exercising her vacation days on six

consecutive Tuesdays during which the father had been allocated parenting time, essentially preventing the father from seeing the minor child every other week. At the time of the hearing, the mother had in fact already exercised parenting time on two consecutive Tuesdays before the court restrained her from continuing to do so. The mother admitted to attempting to exercise her vacation days during the father's parenting time, but she argued that the father had also exercised his vacation days individually, taking individual vacation days on January 27, 2021, June 29, 2021, and August 4, 2021. The court found the mother's actions were "contrary to the spirit of the parenting plan" and awarded the father two make-up days.

¶ 14 On May 31, 2022, the court issued a Supplemental Judgment for Dissolution of Marriage, which resolved the property and child support issues between the parties. The court determined that the father's monthly income was $18,600, while the mother's monthly income was $11,243.68. It also found that the father spent $750 per month "as and for health insurance coverage which includes coverage for the minor child." The court further found that the father "exercises an average of 161 overnights with the child each year." The court did not include its calculations in the order but, based on its findings, required the father to pay $486.93 per month in child support. The order did not address whether child support would be ordered retroactively.

¶ 15 The court also ordered the parties to take joint responsibility for any state and federal "tax delinquency, debt, interest, penalty, fees, costs or the like which may be associated with tax filings for calendar years 2017, 2018, 2019 and 2020," which the court found to be a "joint responsibility and a marital debt." Further, the court ordered that each party was responsible for their own attorney fees. However, the court ordered the mother to pay the attorney fees incurred as a result of her abuse of parenting time.

¶ 16 The parties each filed a motion to reconsider the court's order. The mother's motion argued that, based on the Agreed Allocation Judgment, the father could not exercise 161 annual overnights. It further noted that the order did not address the issue of retroactive child support and requested that child support be ordered retroactive to the date of the mother's petition seeking to dissolve the marriage. The father's motion for reconsideration argued that the court underestimated the mother's income.

¶ 17 Following a hearing, the court denied both motions. Addressing the mother's contention that the father could not exercise 161 overnights per year based on the Agreed Allocation Judgment, the court stated that the father had "presented specific evidence of actual overnights," and that the mother "did not object and did not present any evidence to contradict [the father]'s interpretation of the parenting schedule." The court stated it believed the mother "agreed with the exhibit." The court also declined to order retroactive child support based in part on the father's period of unemployment.

¶ 18 The mother appealed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, the mother claims the court erred when it (1) calculated child support based on a finding that the father exercised 161 overnights per year and spent $750 per month for health insurance, (2) declined to order retroactive child support, (3) ordered the mother to share in the expenses associated with the father's failure to file income tax returns for the years 2017, 2018, 2019, and 2020, and (4) ordered her to pay the father's attorney fees incurred on the issue of abusing parenting time. We address each contention in turn.

¶ 21 A. Child Support

¶ 22 We review the circuit court's determination of child support for an abuse of discretion. *In re Marriage of Gabriel and Shamoun*, 2020 IL App (1st) 182710, ¶ 56. The court abuses its discretion if "no reasonable person would take the trial court's view." *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 233 (2008). When reviewing the factual findings underlying the court's child support determination, we will reverse those findings only if they are against the manifest weight of the evidence. *In re Marriage of Moorthy and Arjuna*, 2015 IL App (1st) 132077, ¶ 41. Factual findings may be deemed to be "against the manifest weight of the evidence" when the opposite conclusion is apparent, or when they appear to be "unreasonable, arbitrary, or not based on evidence." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 23 Section 505(a)(3.8) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(3.8) (West 2020) provides that if each parent exercises 146 or more overnights per year with a minor child:

> "[T]he basic child support obligation is multiplied by 1.5 to calculate the shared care child support obligation. The court shall determine each parent's share of the shared care child support obligation based on the parent's percentage share of combined net income. The child support obligation is then computed for each parent by multiplying that parent's portion of the shared care support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the child support amounts."

¶ 24 Section 505(a)(4)(D) addresses the issue of health insurance premiums, and states that:

> "The amount to be added to the basic child support obligation shall be the actual amount of the total health insurance premium that is attributable to the

> child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the health insurance premium shall be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the health insurance policy. This amount shall be added to the basic child support obligation and shall be allocated between the parents in proportion to their respective net incomes."

¶ 25 The parties entered into an Agreed Allocation Judgment on March 16, 2021, which represented their full and final agreement with respect to parenting time. That document, signed by the parties and ratified by the court, modified the parties' previous parenting arrangement, which was a temporary order entered on October 27, 2020. The Agreed Allocation Judgment had been in effect for less than one year when the trial occurred, which prevented the parties from presenting the court with evidence about whether either parent had actually exercised 146 overnights per year under the most current parenting agreement.

¶ 26 The father speculated that he would receive 161 overnights under the parties' agreement. Contrary to the court's recollection, however, the parties did not agree at trial to that calculation. The mother objected to the admission of the father's demonstrative exhibits reflecting his calculations and cross-examined the father extensively on the subject. Indeed, the father admitted his calculations were flawed, since they failed to include any of the mother's vacation time. Although his calendars were admitted into evidence, demonstrative evidence has "no probative value in and of itself and is merely admitted or used as a visual aid to the trier of fact." *Sharbono v. Hilborn*, 2014 IL App (3d) 120597, ¶ 30. As such, the calendars were, at best, flawed guesses

about how many overnights the father would receive. The court erred in adopting the calendars as evidence and in asserting the father's calculations were agreed to by the parties.

¶ 27 A much more reliable source of information about the number of overnights the father could expect to exercise under the Agreed Allocation Judgment was the judgment itself. By its plain terms, the father was allocated five overnights every two weeks, resulting in 130 overnights per year. In addition, the father was allocated reasonable vacation time during the summer, defined as two non-consecutive weeks. Based on the parties' agreed schedule, the father could expect to exercise an additional twelve overnights during the summer, assuming he exercised both weeks during weeks where he would normally only be allocated one overnight. However, those additional overnights would be offset if the mother exercised her summer vacation time. The offset amount would be at least two but as many as eight, depending on whether the vacation days were exercised on a week when the father would normally have one overnight or four. The effects of holidays and vacations related to school breaks would be variable, depending on whose parenting time the holidays and school breaks fall. Nonetheless, if the parties followed the schedule as written, it would be very difficult for the father to exercise 161 overnights per year.

¶ 28 The father's calculations and calendars were not an accurate reflection of the court's previously-entered judgment, and the court was not required to rely on those calculations. "Even uncontradicted testimony, if inherently unreasonable or improbable, need not be believed." *In re Marriage of Klose*, 2023 IL App (1st) 192253, ¶ 28. The court's finding that the father "exercises an average of 161 overnights with the child each year" was not based on how many overnights the father was actually entitled to exercise under the parenting plan since the plan had been in effect less than one year, and it directly conflicted with the plain terms of the plan. We therefore find that it was against the manifest weight of the evidence.

¶ 29 In addition, the court found the father spent $750 per month "as and for health insurance coverage which includes coverage for the minor child." The father claims this issue was not raised in the mother's motion to reconsider the judgment and is therefore not properly preserved. However, a "posttrial motion is not necessary to preserve issues in an appeal from a bench trial." *In re S.A.M.*, 2021 IL App (3d) 210066, ¶ 19. We find that the issue was properly preserved, and we will therefore review the court's finding.

¶ 30 After reviewing the record, we can find no testimony by either party on the issue of health insurance. The only available evidence in the record regarding the father's payment for health insurance came from the father's financial affidavit, which listed the cost of coverage for himself and the minor child at $400 per month. The court's finding that the father spent $750 per month for health insurance was therefore "not based on evidence" and must be overturned. *Bazydlo*, 164 Ill. 2d at 215.

¶ 31 B. Retroactivity

¶ 32 It is "within the trial court's discretion to award or not to award child support on a retroactive basis." *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 37. The decision not to order retroactive support is reviewed for an abuse of the court's discretion. *Janssen by Janssen v. Turner*, 292 Ill. App. 3d 219, 223 (1997). A court abuses its discretion when "no reasonable person would take its view." *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 22.

¶ 33 The mother argues the court abused its discretion when it declined to order child support retroactive to the date she filed her petition to dissolve the marriage on November 22, 2019. The mother contends the father did not pay any child support until he made a lump sum payment of $4500 on November 18, 2021.

¶ 34 At the time of the mother's petition to dissolve the marriage, the parties were living in different states. According to the father's testimony, he flew regularly to Illinois to exercise parenting time. He also testified that he contributed financially to the child's well-being. He then moved to Illinois to seek employment and remained unemployed for nearly a year. During that time, he exercised parenting time and, according to his testimony, continued to contribute financially. The court ordered temporary support on February 4, 2021, in the amount of $500 per month, an amount similar to the eventual child support award the court granted in its Supplemental Judgment for Dissolution of Marriage.

¶ 35 "Witness credibility and the resolution of conflicts in evidence are matters within the discretion of the trial judge and should not be disturbed upon review." *Moniuszko v. Moniuszku*, 238 Ill. App. 3d 523, 530 (1992). After reviewing the record, and according the appropriate deference to the circuit court's credibility determinations, we cannot say that "no reasonable person" would decline to order retroactive child support. *Pratt*, 2014 IL App (1st) 130465, ¶ 22. We defer, as we must, to the court's resolution of the conflicting testimony regarding whether and how much the father contributed financially. Based on the court's factual findings, it did not abuse its discretion when it declined to order retroactive child support.

¶ 36 C. Tax liability

¶ 37 "A trial court's decision on the distribution of property will not be reversed unless the court clearly abused its discretion." *In re Marriage of Sawicki*, 246 Ill. App. 3d 1107, 1117 (2004). Section 503 of the Act requires the division of marital property in "just proportions." 750 ILCS 5/503(d) (West 2020). "The division of marital property in just proportions does not mean that the property must be divided in mathematical equality, and an unequal distribution may be made if a court has properly applied the statute." *In re Marriage of Doty*, 255 Ill. App. 3d 1087,

1098-99 (1994). Section 503(d) sets forth 11 factors which must be considered by the court in making its determination.

¶ 38 The court referred directly to section 503 in its order, and we find that it properly considered those factors when issuing its ruling. The tax liability was apportioned as part of the court's broader distribution of property and debts and, according to the father, his income was "minimal" during those years. Taken as a whole, we cannot say the court "exceeded the bounds of reason so that no reasonable person would take the view adopted by the trial court with regard to the division of the marital estate." *Id*. at 1098.

¶ 39 D. Attorney Fees

¶ 40 Following a hearing held during the trial, the court found the mother failed to allow the father to exercise his parenting time by claiming her vacation days on his assigned weeknights. On appeal, the mother claims that both parties misinterpreted the court's order equally, and states that, while she "does not appeal the court's order requiring her to provide [the father] with make up time for the time he missed ***, the court's imposition of an additional sanction of an award [of attorney fees] was an abuse of its discretion."

Section 607.5(c) of the Act provides that "if the court finds by a preponderance of the evidence that a parent has not complied with allocated parenting time," the court is empowered to order a variety of remedies, including make-up parenting time. 750 ILCS 5/607.5(c) (West 2020). Section 607.5(d) goes on to state that "except for good cause shown, the court shall order a parent who has failed to provide allocated parenting time or to exercise allocated parenting time to pay the aggrieved party his or her reasonable attorney fees, court costs, and expenses associated with an action brought under this Section." *Id*. § 607.5(d).

¶ 41 After reviewing the record, we find no basis for the claim that the court abused its discretion in this matter. The mother's sole argument on this issue is that it was unfair to impose the "additional sanction" of attorney fees when both parties engaged in the same behavior. However, the mother misconstrues the statutorily outlined procedure. Having found that the mother denied the father parenting time, the court was required to award the father attorney fees absent a showing of good cause. *Id*. The argument that both parties misconstrued the plan does not excuse the mother for denying the father parenting time, although it may have served as the basis of a separate motion. Neither does it provide good cause for the court to ignore the mandate of section 607.5(d) and refuse to award attorney fees.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, the circuit court's denial of retroactive child support is affirmed. We further affirm the court's allocation of property and debts between the parties, including its allocation of tax liabilities and attorney fees. We reverse the court's child support calculation and remand the case to the circuit court for purposes of recalculating child support in accordance with this order. On remand, the court is not required to determine the specific number of overnights each parent exercises, only whether each parent exercises 146 or more overnights per year with the child. 750 ILCS 5/505(a)(3.8) (West 2020).

¶ 44 Affirmed in part and reversed and remanded in part.

¶ 45 PRESIDING JUSTICE BRENNAN, specially concurring:

¶ 45 Although I agree that the court's calculation of the party's overnights was against the manifest weight of the evidence, I do not agree with the majority's suggestion that the court improperly relied on demonstrative evidence. The father calculated 171 overnights in 2021 and 168 overnights in 2022, which was reflected in the calendars he prepared. Through cross-

examination at trial, various errors in the father's calculations were revealed, and the court acknowledged as much when it admitted the calendars as demonstrative exhibits over the mother's objection.

¶ 46 If the court had relied on the demonstrative exhibits themselves in determining the number of overnights, the calculation for support purposes would have been 168 or 171 overnights for the father. The record is clear that the court, instead, properly relied on the father's trial testimony, wherein he explained his understanding that the parenting time schedule afforded him at least 161 overnights. Indeed, during cross-examination, the court stated to the mother's counsel, "[The father] has testified he believes he has 161 overnights. So now, you know, it's your obligation to establish otherwise." Moreover, the court noted at the hearing on the motions to reconsider that "there was a great deal of conversation and testimony related to" the demonstrative exhibits. Accordingly, I disagree with the majority's conclusion that the court "adopt[ed] the calendars as evidence."