2025 IL App (1st) 230026-U
No. 1-23-0026

FIRST DIVISION
June 16, 2025

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE FORMER MARRIAGE OF:	)	
	)	Appeal from the Circuit Court
JOHN ZIEGELMAN,	)	of Cook County, Illinois.
	)	
Petitioner-Appellant,	)	
	)	No. 2011 D 8195
v.	)	
	)	
DEBRA ZIEGELMAN,	)	The Honorable
	)	Karen J. Bowes,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* (1) the Court has jurisdiction to consider the ex-husband's request for modification or termination of maintenance and the maintenance provisions are modifiable pursuant to the MSA, (2) the ex-husband failed to demonstrate a substantial change in circumstances, and (3) the trial court's contempt order was deficient where it failed to find the ex-husband's conduct willful or contumacious and failed to identify whether the contempt was criminal or civil.

¶ 2 This matter comes before this court on appeal pursuant to Illinois Supreme Court Rule 303, stemming from a dissolution of marriage between the petitioner-appellant, John Ziegelman ("John"), and the respondent-appellee, Debra Ziegelman ("Debra"). Following judgment of

dissolution of marriage, Debra filed a petition for rule to show cause alleging that John failed to pay her all the support obligations he owed under the parties' MSA. In response, John filed a petition to terminate or modify his support obligations due to substantial changes in circumstances pursuant to section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"). The trial court denied John's request to terminate or modify his support obligations and granted Debra's petition for rule to show cause.

¶ 3 On appeal, John asserts that the trial court erred when it denied his petition and held him in contempt. John maintains that the change in his employment and compensation structure, as well as the financial support Debra receives from her family and her failure to seek employment were substantial changes in circumstances which warranted termination or modification of his support obligations. Additionally, he claims that the trial court erred when it held him in contempt.

¶ 4 I. BACKGROUND

¶ 5 On January 27, 1990, John and Debra were married. During their marriage, the parties had three children. On August 17, 2011, John filed a petition for dissolution of marriage. Thereafter, on October 9, 2015, the trial court entered a judgment of dissolution of marriage ("judgment" or "JDOM") which incorporated a marital settlement agreement executed by the parties ("MSA") and the parties were divorced. At the time of judgment, the parties had two adult children (J.M.Z., DOB: 7/4/95; and D.A.Z, DOB: 6/21/97) and one minor, thirteen-year-old child together (S.A.Z., DOB: 11/20/01). Also, at the time of judgment, John worked for Wolverine Asset Management, LLC ("Wolverine") as a W-2 employee earning a base salary plus discretionary bonuses, while Debra was and had been unemployed since the birth of the parties' first child.

¶ 6 A. JDOM and MSA

¶ 7 Paragraph 4 of the JDOM provides:

> "Pursuant to the terms of said [MSA] and under the provisions of Section 502(f) of [IMDMA], said [MSA] shall not be modifiable by subsequent action of any court without the express written consent of the parties."

Paragraph 7 of the JDOM also provides that "this is a final and appealable order, and there is no just reason to delay enforcement or appeal of the same." Neither party appealed the JDOM.

¶ 8 The JDOM expressly incorporated the parties' MSA. The MSA resolved a number of issues remaining between the parties including financial matters such as John's child support and maintenance obligations. The parties agreed that there would be a cap on John's support obligation, without the imposition of a floor, which would apply to any amounts of yearly gross income John received over three million dollars. Further, the parties agreed that "any variance in John's income from year to year up to the cap *** shall not be a basis for modification of [John's] support obligations absent any other changes in circumstances."

¶ 9 Articles IV, V and VI of the MSA addresses John's support obligation to Debra further. Under Article IV, the parties agreed John would pay 50% of his gross income to Debra for unallocated child support and maintenance until the first of the following termination events: (1) Debra's remarriage, (2) Debra's cohabitation, (3) Debra's death, (4) John's death, (5) December 31, 2020, which was approximately 6 months after the youngest child's high school graduation, or (6) further order of court. Beginning January 1, 2021, the parties agreed that John would pay permanent maintenance in lieu of unallocated support. Article V provides:

> "5.2 Commencing on January 1, 2021 ***, as and for permanent maintenance, JOHN shall pay to DEBRA the amount of forty

> percent (40%) of his gross income from any and all sources (subject to the Cap set forth below in paragraph 5.4) ***
>
> 5.4 A Cap will be imposed for the purpose of calculating JOHN's maintenance obligation, and JOHN shall not pay maintenance to DEBRA on any amounts of gross income he receives over Three Million Dollars ($3,000,000) in any calendar year. ***
>
> 5.5 JOHN's maintenance obligation, as set forth in Paragraph 5.2, shall forever terminate upon the first of the following "Maintenance Termination Events" to happen: 1) DEBRA's remarriage; 2) DEBRA's cohabitation on a resident, continuing, conjugal basis; 3) DEBRA's death; or 4) JOHN's death; or 5) further order of court."

Article VI addresses support related obligations. Section 6.6 provides that either party may seek to modify or terminate unallocated support or maintenance based upon applicable statutory factors except as otherwise provided in the MSA.

¶ 10 Article XVII addresses general provisions. In relevant part, it provides:

> "17.8 This Agreement shall not be changed, modified or altered by any order of Court after this Agreement has been incorporated into a Judgment for Dissolution of Marriage, or after it has become effective by the entry of any Judgment for Dissolution of Marriage, except by mutual consent of the parties. ***
>
> 17.10 *** (g) The provisions of this Agreement shall not be subject to subsequent modification by any Court, except by mutual consent [of] the parties or as otherwise provided by operation of law."

¶ 11 B. Post-Decree Proceedings

¶ 12 Four years following the judgment, on November 20, 2019, John voluntarily left Wolverine and formed his own financial advisory business, Sopris Global Advisors LLC ("Sopris"). To calculate his gross income while self-employed, John began deducting business expenses from Sopris' gross revenue. He determined that the remainder was his personal gross income and paid his support obligations to Debra (50% of his gross income for unallocated support until December 31, 2020, and 40% of his gross income for permanent maintenance beginning January 1, 2021) based on this figure.

¶ 13 On December 10, 2020, Debra filed a verified petition for rule to show cause, which was later supplemented on August 24, 2022. In her petitions, Debra claimed that John failed to pay all unallocated support and permanent maintenance due to her to under the MSA. She argued that it was improper for John to deduct business expenses prior to calculating his gross income and paying his support obligations.

¶ 14 On February 16, 2021, John filed a petition seeking to terminate or modify his support obligation retroactive from the date that he formed Sopris. He later amended his petition on October 5, 2021. John argued that termination or modification was appropriate because of substantial changes in circumstances. John alleged three substantial changes in the parties' circumstances: (1) changes to his compensation structure from a W-2 employee to self-employed at Sopris, (2) the parties' youngest child's emancipation, and (3) changes in Debra's financial circumstances, including her failure to make efforts to become self-supporting and her family's financial support. In the alternative to terminating his support obligations, John requested the court "restructure" his support obligations, so that instead of paying support based upon a percentage of

his gross income, he would be permitted to deduct reasonable business expenses from Sopris' gross receipts prior to paying his support obligations.

¶ 15 Trial on the parties' pleadings took place from August 24-25, 2022. Both parties as well as John's personal and business certified public accountant, Jason Lunte, testified. The parties also stipulated to affidavits submitted by Debra's parents, Jules and Eleanor Laser, and hundreds of exhibits.

¶ 16 The evidence put forth at trial revealed that John is the sole managing member of Sopris, its only employee, and has sole control over the operations and decision-making of the LLC. John has a 97% interest and each of the parties' children have a 1% interest in Sopris. The parties' children do not receive distributions, all distributions go to John. According to Sopris' tax returns, from November 2019 through 2021, its yearly gross income was $57,203, $272,965, and $209,192, respectively. John determined Sopris' business expenses and his gross income.

¶ 17 On December 19, 2022, the trial court ruled on Debra's petition for rule to show cause and John's request for modification. The trial court held that paragraph 6.6 of the MSA allows "either party" to "file a petition seeking modification or termination of the unallocated support and maintenance based upon applicable statutory factors except as otherwise provided in this Agreement," and paragraph (j) provides that any variance in John's income shall not be a basis for modification of his support obligations absent any other changes in circumstances.

¶ 18 First, the trial court determined that the youngest child's emancipation did not constitute a substantial change in circumstances because the parties expressly contemplated that John's support obligations would reduce from unallocated support to permanent maintenance following the child's emancipation. As to John's employment and compensation, while the trial court acknowledged that John had worked as a salaried employee earning discretionary bonuses at the

time of judgment, it pointed out that his income had always fluctuated greatly during the parties' marriage and noted that this was specifically contemplated by the parties in the MSA. Further, the trial court found that John had owned businesses, including LLCs, during the parties' marriage and that John was primarily responsible for the parties' finances. Specifically, as to Sopris, the trial court found that John was the sole controlling and operating member of Sopris, he made all decisions regarding Sopris, and he received all income from Sopris. For these reasons, the trial court found that John and Sopris were one in the same and, therefore, John's change in employment did not constitute a substantial change in circumstances.

¶ 19 Additionally, the trial court concluded that the financial support Debra received from her parents was not a substantial change in circumstances. The trial court found that Debra was not employed at the time of judgment, had not been employed since the birth of the parties' first child in 1995, and was not currently employed. While the trial court noted that Debra received substantial monetary gifts from her parents throughout the year and the gifts constitute as income, it reasoned that the amount and frequency of the gifts fluctuate depending upon the maintenance payments Debra received from John and only allowed her to maintain her standard of living. The trial court also reasoned that Debra's receipt of financial assistance from her parents was not a change in circumstances because the parties received financial assistance from her parents during the marriage.

¶ 20 Ultimately, the trial court granted Debra's petition for rule to show cause and denied John's petition to terminate or modify support. In doing so, the trial court found that John had unilaterally and improperly deducted amounts from his gross income prior to paying Debra unallocated support and maintenance and held John in contempt of court for failing to abide by the terms of the judgment. John was ordered to pay $138,056.92 within 24 months for unpaid maintenance owed

to Debra from November 2019 through July 31, 2022, finding that John owed $21,879.72 for 2019, $52,932.50 for 2020, $23,476.80 for 2021, and $39,767.90 for 2022. On January 5, 2023, John filed the instant notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 On appeal, John argues that the trial court erred when it denied his request for modification of his support obligation and found him in contempt because the court misconstrued the parties' MSA and section 510 of the IMDMA. Specifically, John claims that the trial court should have reduced or terminated his support obligation based on a change in his employment and compensation structure and Debra's receipt of substantial post-judgment gifts from her family and her failure to seek employment. Additionally, John argues that the trial court's order holding him in contempt failed to make the requisite findings, incorrectly interpreted the MSA, and incorrectly calculated his gross income.

¶ 23 A. Jurisdiction

¶ 24 Before addressing John's arguments, we must first address Debra's argument that this court lacks jurisdiction to consider John's appeal because he failed to timely appeal the JDOM.

¶ 25 Illinois Supreme Court Rule 303(a)(1) provides that the notice of appeal from final judgments in civil cases must be filed with the clerk of the circuit court within 30 days after the entry of the final order. Ill. Sup. Ct. R. 303(a)(1). Neither the trial court nor the appellate court has the "authority to excuse compliance with the filing requirements of the supreme court rules governing appeals." *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150 (1994) (quoting *In re Smith*, 80 Ill. App. 3d 380, 382 (4th Dist. 1980)). "It is undisputed that, in order to vest this court with jurisdiction to entertain [an] appeal, [the] notice of appeal must have been filed within the time provided in Rule 303." *Hayes Machinery Movers, Inc. v. REO Movers & Van Lines, Inc.*, 338 Ill.

App. 3d 443, 445 (1st Dist. 2003). "It is the duty of this court to consider whether it has jurisdiction to hear an appeal even though the issue was not raised by the parties." *Kinkin v. Marchesi*, 213 Ill. App. 3d 176, 178 (3d Dist. 1991)

¶ 26 The JDOM provides:

> "4. Pursuant to the terms of said [MSA] and under the provisions of Section 502(f) of the [IMDMA], said Agreement shall not be modifiable by subsequent action of any court without the express written consent of the parties.
>
> ***
>
> 7. This is a final and appealable order, and there is no just reason to delay enforcement or appeal of the same."

¶ 27 Neither party filed a notice of appeal within 30 days after the entry of the JDOM. Instead, more than 5 years later, on February 16, 2021, John filed his first petition to terminate or modify his support obligations. Debra argues that because John failed to appeal the JDOM within 30 days after it was entered, this court lacks jurisdiction to consider whether John may now modify any terms of the MSA because the JDOM expressly provides the MSA "shall not be modifiable by subsequent action of any court without the express consent of the parties." In response, John argues that the MSA permits modification of maintenance and that specific provisions permitting modification should control over general provisions limiting modification.

¶ 28 Although the issue of jurisdiction was not raised at the trial court level, the trial court's order contained a brief statement that it had "jurisdiction over the parties and the subject matter." Additionally, the order acknowledged that the MSA provides that either party may file a petition seeking modification or termination of the support obligations.

¶ 29 While there is no dispute that the JDOM is a final order, Debra's focus on paragraph 4 of the JDOM ignores multiple sections of the MSA which contemplate subsequent termination or modification of maintenance after the entry of judgment. Although paragraph 4 of the JDOM states that the MSA shall not be modifiable, paragraph 3 provides that the MSA is "incorporated by reference, is made part of this [JDOM]; and all of the provisions of said [MSA] are expressly ratified, confirmed, approved and adopted as the Orders of this Court to the same extent and with the same force and effect as if said provisions were in this paragraph set forth verbatim as the Judgment of this Court ***." To that end, we must give the terms of the MSA "the same force and effect" as the JDOM.

¶ 30 Article 5 of the MSA governs permanent maintenance. Section 5.5 instructs:

> "JOHN's maintenance obligation *** shall forever terminate upon the first of the following "Maintenance Termination Events" to happen: 1) DEBRA's remarriage; 2) DEBRA's cohabitation on a resident, continuing, conjugal basis; 3) DEBRA's death; or 4) JOHN's death; or 5) further order of court. ***"

This section clearly expresses the parties' intention that the court would have jurisdiction to determine other circumstances beyond Debra's remarriage or cohabitation, or either of the parties' death, that may warrant termination of permanent maintenance. Article 6 of the MSA governs "Support Related Provisions." Section 6.6 of the MSA permits "either party" to seek "modification or termination of maintenance based upon applicable statutory factors except as otherwise provided in [the MSA]." Section 6.6 clearly expresses the parties' intention that either party may seek to modify or terminate the maintenance obligation. Further, paragraph (j) of the recitals of the MSA contemplates situations in which modification of maintenance is prohibited:

> "*** any variance in John's income from year to year up to the cap of three million dollars shall not be a basis for modification of his support obligations absent any other changes in circumstances."

As such, the MSA provisions confirm the parties' ability and intention to be able to modify or terminate the maintenance obligation.

¶ 31 "Usual principles of contract interpretation apply to MSAs." See, *e.g.*, *In re Marriage of Scarp*, 2022 Ill. App. (1st) 210711, ¶ 11. In construing a contract, the primary objective is to give effect to the intention of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232-33 (2007). "A court must initially look to the language of a contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties' intent." *Id.* Intent of the parties is not to be gathered from detached portions of the contract or from any clause or provision in isolation. *Id.* "[A] contract must be construed as a whole, viewing each part in light of the others." *Id.* "A court will not interpret a contract in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used." *Insurance Benefit Group, Inc. v. Guarantee Trust Life Insurance Co.*, 2017 IL App (1st) 1620808, ¶ 38. Courts construe contracts so as to avoid absurd results. *Rubin v. Laser*, 201 Ill. App. 3d 519, 524 (1st Dist. 1998). Further, "where both a general and a specific provision in a contract address the same subject, the more specific clause controls." *Grevas v. U.S. Fidelity and Guaranty Co.*, 152 Ill. 2d 407, 411 (1992).

¶ 32 Here, Debra's reliance on paragraph 4 of the JDOM to the exclusion of paragraph 3, would render paragraph (j) and section 6.6 of the MSA meaningless. If maintenance were non-modifiable, there would be no reason to allow either party to seek modification or to specify specific circumstances in which a request for modification would be prohibited. Furthermore, when the

JDOM and MSA are read together, it is clear that the parties' intention was to (1) permit modification or termination of maintenance based upon statutory factors except where the sole basis for modification or termination is variance in John's income, and (2) prohibit modification of any other terms in the MSA without the express written consent of the parties. This interpretation is further supported by the fact that paragraph (j) and sections 5.5 and 6.6 of the MSA are more specific clauses, as compared to the more general clause in paragraph 4 of the JDOM. Thus, the trial court had jurisdiction to determine whether termination or modification was appropriate and this court has jurisdiction to review that decision as John timely appealed.

¶ 33 B. Non-Modification Catchall

¶ 34 Relatedly, in her response brief, Debra also argues that the explicit terms of the MSA prohibit modification of maintenance except by consent of the parties. Section 502 of the IMDMA governs marital settlement agreements. 750 ILCS 5/502. In relevant part, it provides:

> (f) *** The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances. ***" *Id.*

¶ 35 Debra points to Article XVII of the MSA which governs "General Provisions" for her contention that the parties provided that maintenance would be non-modifiable. Specifically, section 17.8 and 17.10(g) provide that the MSA shall not be changed, modified or altered by any order of court following the judgment "except by mutual consent of the parties or as otherwise provided by operation of law." Debra argues that the non-modification catchall provisions prohibit modification of maintenance except by consent of the parties. Section 6.6 of the MSA allows either

party to file a petition seeking modification or termination of unallocated support and maintenance based upon statutory factors "except as otherwise provided in this agreement." Debra argues that consent of the parties, as provided in section 17.8 and 17.10(g), is the exception contemplated by section 6.6 of the MSA. She claims that because she did not consent to modification or termination of maintenance, any request for modification or termination must be rejected.

¶ 36 However, this reading of section 6.6 and Article XVII would lead to absurd or unreasonable results. First, there would be no reason to allow "either party" to seek modification or termination of maintenance if the only time such a modification would be permitted is where the parties mutually consented to the modification. Similarly, there would be no reason for section 6.6 to specify that modification or termination of maintenance may be sought based upon the applicable statutory factors as provided by section 510 of the IMDMA. In such circumstances, the statutory factors would not be considered nor applicable because the only consideration for the court would be whether the parties consented to modify or terminate the maintenance obligations. Likewise, if the only consideration for modification is the consent of the parties, there would be no reason for the parties to include paragraph (j) of the MSA stating "any variance in John's income from year to year up to the cap *** shall not be the basis for modification of his support obligations absent any other changes in circumstances." It would be meaningless to exclude variance in John's income because are no "other changes in circumstances" which would permit modification except the parties' consent. Additionally, 4.4 and 5.5 also would not permit unallocated support or permanent maintenance to be terminated "upon further order of the court," if the support provisions of the MSA could not be modified. Furthermore, Article XVII deals with general provisions of the MSA, while Articles IV, V, and VI specifically deal with unallocated support, permanent maintenance and support related provisions. Under contract interpretation, to the extent that there

is conflict between the general provisions of Article XVII and the specific provisions of Articles IV, V, and VI, the specific provisions must control.

¶ 37 Debra also cites several unavailing cases to support her contention that the maintenance provisions of the MSA are non-modifiable. In the first case Debra cites, *Scarp*, 2022 Ill. App. (1st) 210711, the appellate court found that the catchall provision which stated "except for the terms herein concerning the support, custody or visitation of the minor children, this Agreement shall not be changed, modified or altered ***," was a clear and unambiguous statement that any other provision of the agreement, including maintenance, was non-modifiable. *Id.* at ¶ 15. The appellate court reasoned, in part, that the maintenance provisions did not address modification and the non-modification catchall provision would not render any of the maintenance provisions meaningless. *Id.* at ¶ 16. Similarly, in *In re Marriage of Schweitzer*, 289 Ill. App. 3d 425 (4th Dist. 1997), the parties' agreement contained a non-modification catchall provision with no other provision addressing modification of maintenance. *Id.* This is not the situation here. Here, the parties' maintenance provisions address modification and certain provisions would be rendered meaningless if the non-modification catchall were applied to maintenance. Debra's final case, *In re Marriage of Dynako*, 2021 IL 126835, is inapplicable because the agreement contained specific language which expressly provided that maintenance was nonmodifiable, whereas the MSA here has no provision specifically stating that maintenance is non-modifiable. *Id.* at ¶ 20.

¶ 38 C. Denial of Modification of Support

¶ 39 On appeal, John argues that the trial court erred in denying his petition for modification or termination of his maintenance obligation because (1) John's new employment and compensation structure constituted substantial changes in circumstances and (2) Debra's financial support from her parents and failure to seek employment constituted substantial changes in circumstances which

warranted modification or termination of support. John claims that trial court erred because it misconstrued the MSA's modification provisions and made factual findings which were against the manifest weight of the evidence.

¶ 40 "The interpretation of a[n] [MSA] is reviewed *de novo* as a question of law," *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 22, while any challenges to a trial court's factual findings regarding maintenance will not be reversed unless they were against the manifest weight of the evidence. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 30. "*De novo* consideration means we perform the same analysis that a trial judge would perform." *In re Marriage of Yabush*, 2021 IL App (1st) 201136, ¶ 29. Factual findings are "against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's finds are unreasonable, arbitrary, and not based on any of the evidence." *Brill*, 2017 IL App (2d) 160604, ¶ 30 (quoting *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (4th Dist. 2010).

¶ 41 Section 510 of the IMDMA governs modification and termination of maintenance and support obligations. 750 ILCS 5/510. In relevant part, it provides:

> "(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. Contemplation or foreseeability of future events shall not be considered as a factor or used as a defense in determining whether a substantial change in circumstances is shown, unless the future event is expressly specified in the court's order or the agreement of the parties incorporated into a court order. The parties may expressly specify in the agreement incorporated into a court order or the court may expressly specify in the order that the occurrence of a specific future event is contemplated and will not constitute a substantial change in circumstances

> to warrant modification of the order. *** In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors [set forth in subsection (a-5) of Section 510] ***" *Id.*

¶ 42 John's petition for modification sought to terminate or reduce his maintenance obligations pursuant to section 510 of the IMDMA. 750 ILCS 5/510(a-5). Under section 510(a-5) of the IMDMA, an order for maintenance may be modified or terminated "only upon a showing of a substantial change in circumstances." *Id.* "It is important to note that not all changes in circumstances constitute a "substantial" change in circumstances ***." *Yabush*, 2021 IL App (1st) 201136, ¶ 31 (discussing a "substantial change in circumstances" as it relates to modification of a child support order). A substantial change in circumstances "means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed." *In re Marriage of Bostrom*, 2022 IL App (1st) 200967, ¶ 35 (quoting *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 132. However, a substantial change in circumstances is not limited to adverse circumstances. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 34 (1st Dist. 1997). The party who is seeking modification bears the burden of proving that a substantial change in circumstances has occurred. *Id.*

¶ 43 i. Changes in John's Employment and Compensation Structure

¶ 44 After John left his employment with Wolverine and formed Sopris, he began deducting business expenses from Sopris' gross revenue prior to calculating and paying his maintenance obligations to Debra. The deductions were Debra's basis for her petition for rule to show cause. Ultimately, the trial court ruled that John and Sopris were one in the same and, as the MSA contemplated a great deal of variation in John's total gross income and did not permit any

deductions from his total gross income, John was not permitted to make any deductions prior to calculating and paying his maintenance obligations.

¶ 45 On appeal, John argues that the trial court erred in denying his request for termination or modification because it improperly conflated his gross income with the LLC's gross revenue and because his change in employment and compensation structure from a W-2 employee to self-employed at his LLC was a substantial change in circumstances which warranted termination or modification of his maintenance obligations under the MSA.

¶ 46 Pursuant to subsection 510(a-5) of the IMDMA, any good faith change in the employment status of a party is a factor which may show a substantial change in circumstances to warrant modification or termination of maintenance. 750 ILCS 5/510(a-5)(1); see *In re Marriage of Barnard*, 238 Ill. App. 3d 366, 369 (1996) ("a voluntary change in employment which results in diminished financial status may constitute a substantial change in circumstances if undertaken in good faith").

¶ 47 Pursuant to the MSA, the parties expressly acknowledge "that John's income could fluctuate between zero to several million dollars from year to year." Further, the MSA provides that "any variance in John's income from year to year up to the cap of three million dollars shall not be a basis for modification of his support obligation absent any other changes in circumstances." As to permanent maintenance, the MSA provides that, beginning January 1, 2021, "JOHN shall pay to DEBRA the amount of forty percent (40%) of his gross income from any and all sources (subject to the Cap ***)." As discussed above, section 6.6 states that "[e]ither party may file a petition seeking modification or termination of the unallocated support and maintenance based upon applicable statutory factors except as otherwise provided in this Agreement."

¶ 48 The parties clearly contemplated an extreme variance in John's income, from $0 to $3 million, and excluded such variance from being the basis for any modification to his support obligations. However, John argues that he is not seeking modification or termination based upon his income, rather he is seeking it based upon changes to his employment and compensation structure. To this end, John claims that *Yabush* is dispositive and demonstrates that forming a new business and changing compensation structure is a substantial change in circumstances.

¶ 49 In *Yabush*, the petitioner agreed to pay the respondent monthly child support in the amount of $2,226, which represented 28% of his net income at the time of judgment, and an additional 28% of his net income from any bonuses or commissions he received. *Yabush*, 2021 IL App (1st) 201136, ¶ 5. Subsequently, the parties agreed that the petitioner would pay increased child support to $2,800 per month. *Id.* A few years later, the petitioner filed a petition to decrease the amount of child support because "both parties [earned] more income than they had at the time of [judgment], with petitioner earning 'substantially' more income." *Id.* at ¶ 7. The petitioner claimed that, at the time of judgment, his gross income was approximately $140,000 and, in the years, following the judgment, his gross income ranged from approximately $150,000 to $500,000. *Id.* at ¶¶ 9-11. However, since he formed his own company, he earned $2.2 million in income. *Id.* at ¶ 11. Following trial, the court denied the petition and the petitioner appealed. *Id.* at ¶¶ 18-19.

¶ 50 The appellate court reversed and remanded the matter back to the trial court finding that there was no evidence that the parties intended or contemplated that the petitioner would earn 16 times the amount he was earning at the time of judgment and such an increase constituted a substantial change in circumstances. *Id.* at ¶ 30. While the parties had contemplated that the petitioner would earn income above his base pay as the agreement included a provision which required him to pay 28% of any commissions or bonuses, the parties had not contemplated that

any increase in income would not be a substantial change in circumstances. *Id.* at ¶¶ 33-34. The appellate court noted that it was "troubled by the fact that the trial court's order *** [did] not discuss the fact that petitioner's increased income was the result of his starting his own company" because the petitioner was no longer paid under the same formula of base pay and commission, and that the new formula resulted in a substantial increase in income. *Id.* at ¶¶ 35-37. The appellate court further noted that the change in the petitioner's type of employment was not contemplated by the parties' agreement either. *Id.* at ¶ 38.

> "In the case at bar, petitioner works in a different capacity, in a different company, and making substantially more income than he was at the time of the entry of the agreed judgment ***. This is not a case in which a party's income naturally fluctuates because of the nature of his job. This is a case in which a party has more income because of different employment. Nobody has argued – and the trial court never found – that the increase in petitioner's income was small or negligible or that an increase in income cannot serve as the basis for modification. We cannot find any evidence that the parties contemplated such an increase under the facts of this case *** Although petitioner's income did fluctuate, and there is evidence that the parties contemplated the fluctuation in the context of the job petitioner held at the time of the agreed judgment ***, that fluctuation did not rise to the level of millions until 2018, after petitioner had formed his own company." *Id.* at ¶ 39.

¶ 51 While this case shares similarities with the instant matter, John's claim that *Yabush* is dispositive is misplaced. It is clear that, in *Yabush*, the petitioner based his petition and the court based its ruling on his change in income. Unlike the ultimate consideration in *Yabush*, here, the parties' MSA expressly excludes any change in John's income from being a basis for modification "absent any other changes in circumstances."

¶ 52 John claims that like the petitioner in *Yabush*, he works in a different capacity, at a different company, and is no longer paid under the same formula. *Yabush* provides some guidance for these "other changes in circumstances." Specifically, *Yabush* discusses the manner in which the petitioner's change in income occurred, including the change to his payment structure and change in type of employment. However, unlike John claims, the *Yabush* court did not state that a change in type of employment or compensation structure entitled the petitioner to modification of his child support. Instead, the appellate court expressed concern that the trial court did not contemplate that the petitioner's change in income "was the result of his starting his own company." The instant matter is distinguished because the trial court here extensively discussed the formation of Sopris, its clients, the amount and structure of the payments from clients, and that John controlled all decision-making and received all income from Sopris. It is clear that the trial court considered John's employment change, the formation of his company, and the payment structure when ruling on Debra's petition and his request to modify or terminate maintenance. Additionally, while the *Yabush* court discussed the fact that the husband was "no longer paid under the same formula," it attached significance to the method of compensation because the method used resulted in a substantial increase in income. As explicitly provided in the MSA, we cannot consider any variance in John's gross income.

¶ 53 John also argues that the trial court erred in finding that he and Sopris are "one in the same." He argues that Sopris is a separate and distinct legal entity from himself. See *Flores v. Westmont Engineering Company*, 2021 IL App (1st) 190379, ¶ 29 ("A limited liability company *** is a legal entity distinct form its members, which has its own legal rights and obligations."). John owns 97% interest in Sopris and the parties' children each own 1% interest. Sopris files its own tax returns, has its own bank accounts, and enters into contractual obligations. John claims that Sopris has business expenses such as postage, software, storage, office supplies, and phone bills and that these expenses must be deducted from Sopris' gross revenue prior to calculating his gross income.

¶ 54 However, the evidence at trial revealed that John exerts complete and sole control over Sopris as the managing member. He is permitted to determine Sopris' expenses and he receives all the income from Sopris. John is the only employee. For the purposes of calculating his support obligations, the trial court's findings that John and Sopris are one in the same are not against the manifest weight of the evidence. John contemplates various hypotheticals where he might be a minority investor in Sopris, where Sopris might hire an employee or pay rent to a landlord. However, none of these hypotheticals are the facts at hand or were facts presented to the trial court. John's hypotheticals are irrelevant to the trial court's findings.

¶ 55 Furthermore, the trial court did not err in determining that the requirement that John pay a percentage of his "gross income" for his support obligations prohibits him from making any deductions prior to calculating his support obligations. The MSA requires John to pay a percentage of his gross income "from any and all sources". Gross income is defined in section 504(b-3) of the IMDMA as "all income from all sources, within the scope of that phrase in Section 505 ***." 750 ILCS 5/504(b-3); see *In re Marriage of Dahm*-Schell, 2021 IL 126802, ¶ 39 (explaining the difference between "gross income" and "net income" within the scope of the IMDMA). Section

505(a)(3) defines gross income as "total of all income from all sources" but excepts benefits received from means-tested public assistance programs and benefits and income received for other children in the household. *Id.* at § 505(a)(3). Black's Law Dictionary also defines "gross income" as "[t]otal income from all sources before deductions, exemptions, or other tax reductions." INCOME, Black's Law Dictionary (12th ed. 2024). Even John's accountant testified that adjusted gross income, gross income minus allowable deductions, is not the same as gross income. Neither the MSA nor the definition of "gross income" permit John to make deductions in his income prior to calculating his support obligations.

¶ 56 ii. Debra's Financial Support from Her Parents

¶ 57 John also argues that the trial court erred in denying his request for modification because the financial support Debra received from her parents constitutes a substantial change in circumstances. Debra's response argues that the financial support she received from her parents cannot constitute a substantial change in circumstances because the parties received financial support from her parents throughout the marriage.

¶ 58 Pursuant to section 510(a-5) of the IMDMA, a substantial change in circumstances may be shown by "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts ***" and by "the increase *** in each party's income since the prior judgment ***." 750 ILCS 5/510(a-5)(2), (7). "The policy underlying maintenance awards is that a spouse who is disadvantaged through marriage be enabled to enjoy a standard of living commensurate with that during the marriage." *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 970 (1992).

¶ 59 At trial, John presented evidence which demonstrated that Debra received almost $2 million from her parents from 2019 through 2022 in the form of bank account deposits, use of her

mother's debit card, a loan to purchase real estate, car payments, and payments of legal fees. Specifically, Debra received $87,018.16, $280,502.47, $202,650.03, and $1,352,520.36, respectively in each year. While Debra categorizes these sums as loans, the trial court found that the money Debra received were gifts and considered income, noting that there is no payment schedule, repayment date, and no amortization schedule.

¶ 60 However, aside from 2022, the evidence demonstrated that when John's maintenance payments decreased, Debra's reliance on parental gifts increased, and vice versa when John's maintenance payments increased. This is consistent with the MSA and the parties' standard practice during the marriage. Paragraph (i) of the MSA acknowledges that the parties borrowed money during the marriage and section 14.1 provides that Debra is solely responsible for any debts owed to her parents. At trial, Debra testified that she used her mother's debit card for the family's benefit throughout the parties' marriage. The trial court's finding that Debra's reliance on monetary gifts fluctuates based on her maintenance payments and that the parties used money from her parents during the marriage was not against the manifest weight of the evidence. In 2022, Debra purchased a condo, her primary residence, with funds from her father. The MSA and the evidence presented at trial revealed that the parties had used loans from Debra's parents to purchase their former marital residence, a condo on Lake Shore Drive. The trial court's determination that John and Debra received financial assistance to purchase real estate during the marriage was not against the manifest weight of the evidence. As the parties' financially relied on Debra's parents during the marriage, we cannot say that the trial court abused its discretion in finding that Debra's financial support from her family does not constitute a substantial change.

¶ 61 iii. Debra's Failure to Seek Employment

¶ 62 John also argues that Debra's failure to seek employment following the judgment is a substantial change in circumstances. John presented evidence that Debra has professional degrees from the University of Michigan and University of Chicago, including a master's in social work, but has failed to seek employment. "The failure of the recipient to make good-faith efforts to achieve financial independence (*e.g.*, to seek employment) can be the basis for a petition for modification pursuant to section 510(a)." *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 770 (4th Dist. 2000).

¶ 63 However, the evidence demonstrated that, at the time of judgment, Debra was not and had not been employed for at least 20 years, since the birth of the parties' first child. Debra was almost 50 years old at the time of judgment. The trial court found that Debra had never formally utilized her education and was a stay-at-home mom throughout the 25-year marriage. Debra was 57 when the trial court ruled on the petitions. The trial court did not abuse its discretion in determining that her failure to seek employment following judgment was not a substantial change in circumstances.

¶ 64 D. Contempt Order

¶ 65 John argues that the trial court erred in granting Debra's petition for rule to show cause and holding him in contempt of court. In its order, the trial court found that he "unilaterally deducted amounts from his gross income" and "refused to abide by" the MSA which required him to pay a percentage of gross income "without deductions." The trial court then held John "in contempt of court for his failure to abide by the *** [JDOM]," ordered him to pay $138,056.92 in unpaid support to Debra within 24 months, and cautioned that if the support was not paid, additional sanctions may be imposed. The order did not specify whether the contempt was civil or criminal, and did not make a specific finding that John's conduct was willful or contumacious.

¶ 66 In support of his argument that the trial court's contempt order is deficient, John cites *In the Interest of J.L.D.*, 178 Ill. App. 3d 1025, 1033 (4th Dist. 1989). In *In the Interest of J.L.D.*, the appellate court reversed the trial court's contempt order because the order did not find a willful violation. *Id.* "Merely because a party has not complied with a divorce decree or a court order is not a sufficient basis for holding that party in indirect contempt of court." *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480 (5th Dist. 1997). "The order of the Court *** must in fact find that the failure to comply with the decree was willful ***." *Janov v. Janov*, 60 Ill. App. 2d 11, 15 (1965). Although the reviewing court is permitted to resort to the record to substantiate the trial court's findings, where the trial court has failed to make a necessary finding, the order is deficient. *In the Interest of J.L.D.*, 178 Ill. App. 3d at 1033; see *People v. Mowery*, 116 Ill. App. 3d 695, 704 (1983) (contempt order was fatally deficient because, among other defects, the order did not find the defendant's conduct was willful); *Mesirow v. Mesirow*, 346 Ill. 219, 222 (1931) ("the power to enforce the payment of alimony by imprisonment of the defendant for contempt of the court is limited to a willful and contumacious refusal to obey the order of the court ***").

¶ 67 The trial court's order did not find John's conduct willful or contumacious. While the order notes that John "refused" to abide by the MSA, this type of finding does not rise to the level of a finding of willful or contumacious conduct. Contumacious conduct consists of "conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or lessening the authority and dignity of the court." *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2d Dist. 2006). Willful is defined as:

> "1. Done wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional, but not necessarily malicious. The word connotes blameworthiness. A voluntary act becomes

> willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong. The term *willful* is stronger than *voluntary* or *intentional* ***." WILLFUL, Black's Law Dictionary (12th ed. 2024).

Although the record may support a finding of willful and contumacious conduct, the trial court's failure to find as much is a fatal deficiency.

¶ 68 Additionally, the trial court failed to specify whether the contempt was civil or criminal. Generally, civil contempt occurs when a party fails to do something ordered by the trial court which results in the loss of a benefit to the opposing party, *Charous*, 368 Ill. App. 3d at 107, and the sanction imposed is intended to coerce compliance. *People ex rel. The Chicago Bar Association v. Barasch*, 21 Ill. 2d 407, 409-10 (1961). In our review of the record, based upon (1) the type of conduct sanctioned, John's failure to comply with the JDOM and MSA, and (2) the sanctions imposed, order of payment and coercion of compliance with the order by the imposition of increasing sanctions if the contempt was not purged, it appears that the trial court may have intended to hold John in civil contempt. However, a valid contempt order must specify whether the contempt was civil or criminal and its failure to do so constitutes another deficiency in the order. *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 978 (1st Dist. 2007).

¶ 69 Finally, we note that, while the trial court failed to identify the contempt as direct or indirect in the contempt order, no case law that we have come across indicates that the failure to do as much is a fatal deficiency. *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 630 (1st Dist. 1991) (erroneous mislabeling of contempt as "direct" when it was indirect was "not in itself a basis for

vacating the sanction imposed"). Rather, the question usually falls upon whether the proper due process was afforded to a contemnor under each type of contempt. *Id.* at 629-30. Direct contempt is contemptuous conduct that occurs within the presence of the judge where all the elements are within the personal knowledge of that judge, whereas indirect contempt is contemptuous conduct that occurs outside the presence of the judge. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 47-48 (1st Dist. 1990). The conduct alleged, John's failure to pay Debra the full amount of support owed, happened outside of the court's presence and is a form of indirect contempt. Due process in indirect civil contempt entitles the contemnor to receive the verified petition, notice, and a full and fair hearing, including the ability to answer orally or in writing, present evidence, and call and cross-examine witnesses. *Id.*; *Pryweller*, 218 Ill. App. 3d at 629-32. John does not argue that his due process rights were violated and, in our review of the record, it is apparent that the trial court afforded him the proper due process.

¶ 70 CONCLUSION

¶ 71 For the reasons stated, we affirm the trial court's ruling denying John's petition to terminate or modify his maintenance obligation. We reverse and remand the trial court's order holding John in contempt and ordering him to pay unpaid support to Debra for further proceedings to determine (1) whether John's conduct was willful and contumacious and the basis for that decision and (2), if the conduct was willful and contumacious, whether the contempt was civil or criminal; and enter a written order including both of these findings.

¶ 72 Affirmed in part, reversed and remanded in part.