2025 IL App (5th) 220378-U

NO. 5-22-0378

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ANGELA SPRINGER,	)	Vermilion County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 18-D-110
	)	
BRETT ALAN SPRINGER,	)	Honorable
	)	Derek J. Girton,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE BOIE delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's calculation of permanent child support as it was based on the evidence. We also affirm the trial court's distribution of the parties' joint checking account without considering any alleged dissipation by the petitioner, and the trial court's classification of the disputed mutual fund account and the Nationwide annuity account as marital assets. Further, we reverse the trial court's contempt judgments entered against the respondent in connection with the petitioner's fourth, fifth, and sixth petitions for rule to show cause and remand for further proceedings.

¶ 2 The respondent, Brett Springer, appeals the supplemental order to the judgment of dissolution of marriage entered by the circuit court of Vermilion County. The respondent contends that (1) the trial court erred in calculating child support; (2) the trial court abused its discretion when it failed to award the respondent funds that the petitioner, Angela Springer, dissipated from

the parties' joint checking account; (3) the trial court's determination that the AIVSX mutual fund was marital property (disputed mutual fund account) was against the manifest weight of the evidence; (4) the trial court abused its discretion in barring testimony as to the nature of the Nationwide annuity account being nonmarital property; and (5) the contempt judgments that were entered against the respondent should be vacated where the underlying petitions were defective. For the reasons that follow, we affirm in part, reverse in part, and remand for further proceedings consistent with this order.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on June 20, 1998, and have three children: Gabrielle Springer, born June 3, 2002; Calvin Springer, born April 19, 2004; and Shea Alan Springer, born October 29, 2005. On May 23, 2018, the petitioner filed a petition for dissolution of the marriage and a petition for temporary relief, requesting temporary child support and temporary maintenance. The petitioner took no action on the petitions until July 18, 2019, when the summons was issued. On August 12, 2019, the petitioner filed an amended petition for temporary relief. On September 5, 2019, a hearing was held on the petitioner's amended petition, at which the respondent failed to appear. There is no transcript of this hearing in the record on appeal, but the trial court's September 5, 2019, docket entry indicated that an order on the temporary issues would be entered.

¶ 5 On October 7, 2019, the trial court entered a judgment for dissolution of marriage on grounds only, reserving ruling on all ancillary issues. In the judgment, the trial court noted that the respondent was served with the summons on July 24, 2019; more than 30 days had elapsed since the respondent was served; and the respondent had failed to answer or otherwise plead to the petition. The trial court also noted that proper notice was given to the respondent for the September 5, 2019, hearing, but the respondent failed to appear. Thus, the trial court found that the respondent

had defaulted. That same day, the trial court entered an order on the petitioner's petition for temporary relief. In the order, the trial court temporarily adopted the petitioner's parenting plan, temporarily set the amount of child support that the respondent was required to pay, ordered the respondent to maintain health insurance on the minor children, and granted the petitioner the temporary and exclusive possession of certain property.

¶ 6 Thereafter, the trial court's October 30, 2019, docket entry indicated that a hearing was held for final prove-up, that the respondent had failed to appear, that the petitioner's amended parenting plan was approved, and that the supplemental order was also approved. On November 4, 2019, the trial court entered the supplemental order to the judgment of dissolution of marriage, resolving all remaining issues. In the order, the trial court noted that although the respondent was given proper notice of the October 30, 2019, hearing, he had failed to appear. The trial court then adopted the petitioner's amended parenting plan, set the amount of child support that the respondent was to pay, and distributed the parties' assets.

¶ 7 On December 3, 2019, the respondent filed a motion to vacate the supplemental order to the judgment for dissolution of marriage. In the motion, the respondent noted that section 2-1301(e) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2018)) permitted the trial court to set aside a default order within 30 days of the entry of the order and that his motion to vacate was filed within the requisite time period. The respondent argued that justice would be served by the trial court vacating the supplemental order and allowing him to present his case as to parenting time, parental responsibility, and the financial considerations that were necessary to more accurately determine child support and the division of the parties' assets.

¶ 8 On February 10, 2020, the trial court held a hearing on the respondent's motion to vacate. The transcript of the hearing is not included in the record on appeal, but the trial court's February

10, 2020, docket entry stated that the respondent's motion was granted and that the previously entered parenting plan was vacated. On February 27, 2020, the trial court entered a written order, vacating the supplemental order to the judgment for dissolution. The trial court ordered that the October 7, 2019, temporary order that was previously entered would continue as the temporary order. The trial court also ordered the respondent to file a parenting plan and financial affidavit by the ordered date.

¶ 9 On July 27, 2020, the petitioner filed a petition for rule to show cause for the respondent's failure to pay child support and his portion of the children's medical expenses. The petitioner argued that the respondent's failure to pay was without cause or justification and was in willful and contumacious contempt of the trial court's October 7, 2019, order. The petitioner requested that the respondent be ordered to pay the arrearages and her attorney fees in connection with filing the petitions for rule to show cause, that he be held in willful and contumacious contempt of the trial court's temporary order, and that he be "sentenced for said contempt as determined appropriate by the court." That same day, the trial court issued the rule to show cause, ordering the respondent to show cause for why he should not be held in contempt of court as it appeared that he had willfully failed and neglected to abide by the trial court's temporary order. The trial court ordered the respondent to appear on August 18, 2020, and show cause for why he should not be "held in and punished" for contempt of court for his willful failure to comply with the trial court's order.

¶ 10 According to the trial court's August 18, 2020, docket entry, the trial court held a hearing, at which the respondent admitted that he owed a child support arrearage in the amount of $4,089.28, which was less than the amount that the petitioner claimed that he owed. The respondent agreed to pay that amount immediately and to, within seven days, provide the

petitioner's counsel with a calculation showing why he believed that the petitioner's arrearage calculation was incorrect. Also, the trial court ordered the respondent to answer all outstanding discovery within 14 days. On September 10, 2020, the petitioner filed a second petition for rule to show cause for the respondent's failure to respond to discovery requests. The petitioner alleged that the respondent's failure to answer discovery was without cause or justification and requested that the respondent be held in willful and contumacious contempt and be "sanctioned/punished." That same day, the trial court issued the rule to show cause, ordering the respondent to show cause for why he should not be held in contempt of court as it appeared that he had willfully failed and neglected to abide by the trial court's August 18, 2020, order. The trial court ordered the respondent to appear on September 29, 2020, and show cause for why he should not be "held in and punished" for contempt of court for his willful failure to comply with the trial court's order.

¶ 11 On September 29, 2020, the respondent filed a motion to modify child support because the parties' oldest child had turned 18 and graduated high school. That same day, the trial court held a hearing on the rules to show cause. A transcript of this hearing is not included in the record on appeal, but the trial court's September 29, 2020, docket entry indicated that the trial court found the respondent in indirect civil contempt of court and ordered him to pay $5,924.99 and any other remaining fees within 30 days. On October 7, 2020, the trial court entered a written order, in which the trial court found that the respondent had failed to show cause for why he should not be held in contempt for his failure to provide his discovery responses by the due date and for his failure to pay temporary child support. Thus, the trial court found the respondent in indirect civil contempt, ordered him to pay the child support arrearage, and ordered him to pay the petitioner's reasonable attorney fees that were incurred in connection with the petitions for rule to show cause. The trial court determined that the respondent could purge his contempt by paying the arrearage as well as

current support by October 29, 2020, and indicated that the matter would be set for hearing in approximately 30 days on the status of the purge and sentencing, if the purge was not met.

¶ 12 According to the trial court's October 29, 2020, docket entry, a hearing was held, at which the respondent paid the support arrearage in full. The trial court then ordered the respondent to pay the petitioner's attorney fees within 45 days, ordered both parties to update discovery, and ordered the respondent to file a parenting plan within 45 days.

¶ 13 On December 31, 2020, the petitioner filed a third petition for rule to show cause for the respondent's failure to pay the petitioner's attorney fees in connection with the previously filed petitions for rule to show cause, failure to provide updated discovery responses, and failure to file a parenting plan as ordered. The petition requested that the respondent again be held in willful and contumacious contempt and be "sentenced" for failing to purge his earlier contempt. That same day, the trial court issued the rule to show cause, ordering the respondent to show cause for why he should not be held in contempt of court as it appeared that he had willfully failed and neglected to abide by the trial court's October 28, 2020, order.[1] The trial court ordered the respondent to appear on January 19, 2021, and show cause for why he should not be "held in and punished" for contempt of court for his willful failure to comply with the trial court's order.

¶ 14 According to the trial court's January 19, 2021, docket entry, the respondent's sentencing was stayed for 10 days pending the respondent's completion or failure to complete a financial affidavit, discovery, and a parenting plan. Thereafter, the trial court's January 29, 2021, docket entry indicated that the parties had agreed to a parenting plan, the respondent had updated his discovery, and the case was set for final pretrial. Then, on June 10, 2021, the trial court entered a

[1]From our review of the record, there does not appear to be an October 28, 2020, order or docket entry from the trial court. However, as noted above, the trial court did enter an order on October 29, 2020, via docket entry.

written order, ordering the respondent to pay the petitioner's attorney fees in connection with the rules to show cause.

¶ 15 On June 22, 2021, the respondent filed a memorandum on joint tenancy of the mutual fund, in which he alleged that he set up and funded the disputed mutual fund on approximately September 11, 1990, prior to the parties' marriage, with an initial $5,000 investment. During the parties' marriage, no money was added to the fund, and the current value was the result of a market increase. In approximately 2017, the mutual fund was moved to a new fund manager, and the petitioner was added as a joint tenant. However, no other actions were taken, and no additional monies were contributed to the fund. The respondent acknowledged that the disputed mutual fund was presumed marital property since he added the petitioner as a joint tenant. However, the respondent contended that it remained nonmarital property because the fund was started long before he knew the petitioner, and the fund's increase was solely due to market forces. Thus, the respondent argued that the fund and its increase were his nonmarital property.

¶ 16 On July 22, 2021, the petitioner filed a fourth petition for rule to show cause. However, this petition does not appear to be included in the record on appeal. That same day, the trial court issued the rule to show cause, ordering the respondent to show cause for why he should not be held in contempt of court as it appeared that he had willfully failed and neglected to abide by the trial court's October 28, 2020, order. [2] The trial court ordered the respondent to appear on July 29, 2021, and show cause for why he should not be "held in and punished" for contempt of court for his willful failure to comply with the trial court's order.

[2]Again, from our review of the record, there does not appear to be an October 28, 2020, order or docket entry from the trial court. However, the trial court did enter an order on October 29, 2020, via docket entry.

¶ 17 On July 28, 2021, the respondent filed a motion to strike the petitioner's fourth petition for rule to show cause pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2020)). The respondent contended that the petition should be stricken because the petition failed to allege any appropriate basis for relief and failed to specify whether the respondent was allegedly in indirect civil or criminal contempt. Following an August 18, 2021, hearing, of which there is no transcript in the record on appeal, the trial court denied, via docket entry, the respondent's motion to strike, ordered the respondent to file a new financial affidavit within 30 days, and ordered the respondent's counsel to submit a "response for agreement" by August 27, 2021.

¶ 18 On September 3, 2021, the petitioner filed a motion to approve the settlement agreement reached between the parties on the contested issues. In the motion, the petitioner noted that, following an extended settlement conference with the trial court, the parties had reached a settlement on all but two ancillary issues. One issue that the parties could not agree on was the classification of the disputed mutual fund as marital or nonmarital property. Thereafter, in accordance with the parties' agreement, the petitioner's counsel drafted a marital settlement agreement. However, the respondent's counsel never responded to indicate an objection or agreement to the proposed settlement by the court-ordered date.

¶ 19 On September 7, 2021, the petitioner filed a fifth petition for rule to show cause for the respondent's failure to comply with the trial court's August 18, 2021, order that was entered via docket entry. The petitioner argued that the respondent was previously found in indirect civil contempt for noncompliance with the trial court's orders; that the respondent's failure to comply with the August 18, 2021, order was without cause or justification; and that the petitioner incurred attorney fees in connection with this proceeding, which should be assessed against the respondent. The petitioner requested that the respondent be ordered to show cause for why he should not be

held in contempt for his failure to comply with the trial court's order, that the respondent again be held in willful and contumacious contempt, and that the respondent be "sentenced" for his contempt. The record on appeal does not contain a rule to show cause or a docket entry showing that the trial court issued a rule to show cause, but the record does include a second amended notice of hearing filed on September 8, 2021, notifying the respondent of a final pretrial, and a hearing on the petitioner's fourth and fifth petitions for rule to show cause on September 13, 2021. According to the trial court's September 13 docket entry, the trial court held the hearing on the petitions for rule to show cause and found that the respondent was in contempt for his failure to respond to the settlement agreement and to pay child support. The trial court thus sanctioned the respondent and ordered him to pay $500 as well as the petitioner's attorney fees within 14 days. Although, in his appellate brief, the respondent appears to cite to a September 13, 2021, transcript, it does not appear that a transcript of this hearing was included in the record on appeal.

¶ 20 Thereafter, on September 17, 2021, the trial court entered a written order, denying the petitioner's motion to approve the settlement agreement. Also, the trial court found that the respondent had failed to pay temporary child support, and his failure was without cause or justification. Thus, the trial court again found that the respondent was in indirect civil contempt for his failure to pay temporary child support, that he purged his contempt by paying the petitioner the arrearage amount, and that the only remaining issue was the petitioner's attorney fees. The trial court also found that the respondent was in indirect civil contempt for his failure to respond to the petitioner's proposed settlement agreement as ordered and that the respondent failed to present any cause or justification for failing to respond by the trial court's deadline. Thus, the trial court assessed the respondent a sanction in the amount of $500 but indicated that sentencing was reserved and that the respondent could purge the contempt by paying the sanction to the petitioner

within 14 days. The trial court also ordered the respondent to pay the petitioner's reasonable attorney fees in connection with filing the fourth and fifth petitions for rule to show cause.

¶ 21 On September 30, 2021, the petitioner filed a sixth petition for rule to show cause for the respondent's failure to file a new financial affidavit and failure to reimburse the petitioner for the September health insurance costs for the minor children. The petitioner indicated that the respondent was previously found in indirect civil contempt on several occasions for noncompliance with the trial court's orders. The petitioner argued that the respondent's failure to comply was without cause or justification and that the petitioner incurred attorney fees in connection with the petition. The petitioner requested that the respondent be ordered to show cause for why he should not be held in contempt for his failure to comply with the trial court's order, that he again be held in willful and contumacious contempt, that he be "sentenced" for contempt, and that he be assessed the attorney fees the petitioner incurred in bringing the petition.

¶ 22 That same day, the trial court issued the rule to show cause, ordering the respondent to show cause for why he should not be held in contempt of court as it appeared that he had willfully failed and neglected to abide by the trial court's August 18, 2021, and September 13, 2021, orders. The trial court ordered that the respondent appear on October 18, 2021, and show cause for why he should not be "held in and punished" for contempt of court for his willful failure to comply with the trial court's orders. On October 18, 2021, the trial court entered a docket entry that indicated that the trial court held a hearing on the sixth petition for rule to show cause, that the respondent's attorney "appear[ed] for respondent," and that a "[w]rit of body attachment [was] to issue $2,500 full cash over [the respondent's attorney's] objection."

¶ 23 On November 2, 2021, the petitioner filed a response to the respondent's memorandum on joint tenancy mutual fund, in which the petitioner argued that the disputed mutual fund was marital

property and that there was nothing to support the respondent's claim that the jointly owned mutual fund was his nonmarital property. The petitioner indicated that the disputed mutual fund had been titled in joint tenancy since 2005. Then, in 2017, when the mutual fund was moved to a new fund manager, the parties again set the account up as a joint account.

¶ 24 On November 15, 2021, the trial court began the three-day hearing on the majority of the pending issues. The issues of child support and attorney fees were reserved for a separate hearing. At the November hearing, the following testimony relevant to the issues in this appeal was presented. The respondent, who was 57 years old, testified that he retired from his employment as a teacher with the Danville Community Consolidated School District No. 118 in June 2021 and received $5,857.74 per month in retirement benefits before deducting the petitioner's marital share. The respondent explained that this amount was the gross amount and that the net amount was approximately $4,900, but he did not have any documentation showing the exact net amount. Also, he was employed part-time as a teacher at Bismarck-Henning Community Unit School District No. 1, and his gross earnings were $40,599 per year ($3,383 per month).

¶ 25 The respondent had no explanation for why he waited until the night before the hearing to file a new financial affidavit. The respondent acknowledged that the trial court had ordered him to reimburse the petitioner for the health insurance premiums that the petitioner incurred by adding the children to her health insurance. He acknowledged that he had not made those payments to the petitioner, but he explained that he had overpaid child support for over two years. He also explained that although he was not present at the hearing when the writ of body attachment was issued, he believed that he was paying for the medical expenses arrearage when he paid the $2,500 bond. In addition, the respondent testified that, in October 2019, the petitioner withdrew $7,500

from their joint checking account to divide the account. However, even after she divided the account, some of her expenses were paid out of that account.

¶ 26 The respondent had three separate mutual funds that were managed by Morgan Stanley and were under one account number. The respondent stipulated that two of the funds were marital property. However, the disputed mutual fund was established and funded in 1988 by the respondent before the parties' marriage. The respondent's counsel introduced into evidence an account statement, evidencing that the disputed fund was established in 1988 in the respondent's name. The respondent testified that the management companies for the fund had changed over the years, but it was the same mutual fund being managed by Morgan Stanley. In 2005, the respondent added the petitioner as a joint tenant with the right of survivorship in case something happened to him. The parties did not make any withdrawals from the fund during the marriage as it was an investment for the future. His intention was that the petitioner could make withdrawals from the fund if he predeceased her. They also did not contribute additional capital to the fund during the marriage. The respondent believed that this account was his nonmarital property.

¶ 27 On cross-examination, the respondent acknowledged that the account statements offered as exhibits showed that the account was redeemed in April 1989 and that the ending balance after redemption was zero. He also agreed that the exhibits relating to that fund showed that the ending balance in July 1995 was zero. However, he explained that, since he started the fund in 1988, it had moved from different investment companies, but he never redeemed it or cashed it out, and he did not know why the statement showed that it had been redeemed and/or that it had an ending balance of zero.

¶ 28 The respondent also had a Nationwide annuity account that was established and funded by him in 1995 before the parties' marriage. This account was included on the Morgan Stanley

statement, but the parties referred to it as the Nationwide annuity account, so that is how we will refer to it for clarity purposes. The respondent never converted that account into a joint tenancy, it was in the respondent's name alone, and he did not put any money into it during the marriage.

¶ 29 During the respondent's testimony about the Nationwide annuity account, the petitioner's counsel interjected to seek clarification as to whether the respondent was classifying this account as a nonmarital asset. The petitioner's counsel noted that, during discovery, it was acknowledged that the Nationwide annuity account was a marital asset and that the respondent's counsel never indicated that they were claiming it as a nonmarital asset. In response, the respondent's counsel indicated that he had changed his position on the annuity being a marital asset after recently receiving a document in response to a subpoena that showed the annuity was held in the respondent's name only. Counsel indicated that the documents showed that the previous understanding that the account was marital property was a mistake.

¶ 30 The trial court then interjected, noting that a final pretrial was held earlier in the summer where the parties had seemingly negotiated an agreement on almost all issues, which turned out not to be the case. Then, there was another two-day final hearing where the respondent was ordered to produce a financial affidavit, but the respondent did not update his financial affidavit until less than 12 hours before the trial was to start. Also, the trial court noted that, during the settlement negotiations, the parties had discussed whether the annuity and mutual fund accounts should be classified as marital or nonmarital property. However, the respondent's counsel first raised the issue of the annuity account being a nonmarital asset at the trial and had not provided the documents evidencing this position to the petitioner until the trial. In response, the respondent's counsel explained that he did not receive the Nationwide document in his previous document requests, and he did not know it existed until he received it in response to his latest subpoena.

However, he acknowledged that his client had previously taken the position that the annuity was marital property.

¶ 31 The trial court then stated that this was a trial by ambush and that it had been a trial by ambush throughout the entire case. The trial court questioned how, in fairness, they could proceed since the petitioner was unable to conduct additional discovery in response to the new evidence. The trial court, explaining that there was no way that it could force the petitioner to trial on this issue, believed that the only way to proceed was to bar the respondent from presenting the evidence. The trial court then asked the petitioner's counsel if that was what counsel wanted, and the petitioner's counsel responded, "[a]bsolutely Judge." The petitioner's counsel noted that he had only been focused on the disputed mutual fund account because it was admitted that the Nationwide annuity was a marital asset. The trial court then addressed the respondent's counsel, noting that it was troubling that the respondent appeared to testify from memory that this account was a nonmarital account, not something that was recently discovered, but he answered the discovery throughout the case saying that it was marital. Thus, the trial court found that it had no choice but to bar the testimony concerning that account being nonmarital property.

¶ 32 Later during the trial, the respondent's counsel made an oral motion for the trial court to reconsider its decision to bar evidence concerning the Nationwide annuity fund being nonmarital property. In making this argument, counsel presented the respondent's answers to interrogatories, which indicated that the respondent had claimed that the annuity was a nonmarital asset at that time. However, the trial court noted that the respondent had always steadfastly claimed that one of the accounts was nonmarital and that the answers to interrogatories identified the Nationwide annuity and Morgan Stanley mutual fund accounts as nonmarital property without making any distinction. Then, during settlement negotiations, the respondent claimed that one of the accounts

was a nonmarital asset and that was the disputed mutual fund account. Also, in opening statements, the respondent's counsel identified the disputed mutual fund account as the only account being claimed as nonmarital. The trial court also noted that, at the beginning of trial, the respondent's counsel was under the impression that the Nationwide annuity was a marital asset. Thus, although the trial court acknowledged that, early in the discovery phase of the proceedings, the respondent claimed the fund was nonmarital, the trial court found that the answers in the interrogatories did not change its decision to prohibit the introduction of this evidence. The trial court noted that the circumstances had not changed because it was still a situation where, after further discussions and investigations, everyone was under the impression that the account was a marital asset but then that changed on the second day of trial. Thus, the trial court denied the respondent's oral motion to reconsider the trial court's ruling.

¶ 33 The petitioner, who was 47 years old, also testified at the hearing. The petitioner was an accounting instructor at Danville Area Community College. The petitioner indicated that the respondent failed to reimburse her for the children's health insurance premiums for September 2021 through November 2021, which totaled $1,463.85. The petitioner testified that she and the respondent had a joint checking account, which had a balance of $15,000 in October 2019. At that time, she withdrew $7,500 from the account and left the remaining $7,500 for the respondent. She later deposited $1,000 back into that account. She acknowledged that she had paid some of her attorney fees from the joint account but explained that, at the time, the respondent had refused to obtain counsel and participate in the divorce proceedings, and her attorney was doing all the work. She also explained that some of the attorney fees were attributable to the problems that she was having with the respondent that resulted in her filing a petition for order of protection against him. She acknowledged that, in October and November 2019, the respondent had paid some of the

children's expenses as well as some of the parties' shared expenses out of the joint checking account. She had paid some of the marital debts from her personal checking account after the joint checking account was closed.

¶ 34 Regarding the disputed mutual fund account, the petitioner indicated that the account was in her and the respondent's names as joint tenants. She did not withdraw any funds from that account during the marriage. She explained that, on January 31, 2017, the fund manager on the account changed, and she and the respondent had to update their signature card. The petitioner's counsel introduced into evidence a Morgan Stanley account application and client agreement signed by the parties on January 31, 2017, regarding that joint account (exhibit D-2), and a February 2017 statement from that account showing that the parties held the account as joint tenants (exhibit D-3). However, the petitioner explained that the account was established in 2005 as a joint account. The petitioner's counsel introduced into evidence May 2006 account statements from the mutual fund accounts showing that the jointly held accounts were established in March 2005 (exhibits D-4 through D-6). The petitioner explained that the accounts were established as joint accounts because she had decided to quit her employment and stay home with the children, and she was concerned about not having a retirement. Thus, to address her concerns, they established the accounts as joint accounts.

¶ 35 The petitioner explained that, when they established the mutual fund accounts, she contributed some of the money she had earned from her employment. However, she noted that they established different investment accounts that day, including college savings plans for the children, and she did not know into which account her money was placed. She explained that all of the money contributed to the funds was both hers and the respondent's money and that the respondent had told her that she would be taken care of. When asked whether she was aware that

the respondent had the disputed mutual fund account before 2005, she responded that she was aware that the respondent had some savings at the time, but she did not recall "what it was" because she did not have any statements. She knew that there were different funds in the Morgan Stanley account, but other than when the funds were transferred to Morgan Stanley, she did not know when those funds were established.

¶ 36 Following the testimony, the parties submitted written closing arguments. In the petitioner's closing argument filed December 28, 2021, the petitioner requested, in relevant parts, that the trial court find the respondent in indirect civil contempt on the sixth petition for rule to show cause. The petitioner noted that the respondent had failed to appear at the October 18, 2021, hearing on the sixth petition for rule to show cause, which resulted in the writ of body attachment being issued against the respondent with a full cash bond set at $2,500. The respondent posted the bond on October 21, 2021. The respondent then testified that his counsel told him not to appear at the October hearing and that he had not paid the health insurance arrearage because he believed he had overpaid temporary child support.

¶ 37 The petitioner argued that this was merely another case of the respondent ignoring what the trial court had ordered him to do, and there was no reasonable basis for the respondent to quit reimbursing the petitioner for the children's medical insurance. The petitioner also argued that there was no excuse for the respondent's failure to update his financial affidavit by the trial court's deadline and that he had offered no excuse for waiting to file it until the night before the trial. Thus, the petitioner requested that the respondent again be held in indirect civil contempt, that the respondent be ordered to pay the petitioner the medical insurance reimbursement arrearage, that he be assessed the petitioner's attorney fees in connection with filing the petitions for rule to show cause, and that he be sentenced for contempt and subject to a purge order requiring payment within

14 days. In addition, the petitioner also requested that the respondent be ordered to pay her attorney fees in connection with filing the fourth and fifth petitions for rule to show cause.

¶ 38 The petitioner also requested that permanent child support be set at $1,472.64 per month. This amount was based on the petitioner having a gross income of $6,339 per month ($4,610 per month from her employment, and $1,729 per month from the State of Illinois teacher's retirement system for her marital share of the respondent's monthly retirement benefits), and the respondent having a gross income of $7,512 per month ($3,383 per month for his part-time employment, and $4,129 per month in retirement benefits). Consistent with the petitioner's calculation, the petitioner's September 17, 2021, financial affidavit indicated that her monthly gross income from her regular employment was $4,610 ($55,320 annually). However, her 2020 W-2 statement indicated that her taxable gross income was $62,986.88. The financial affidavit also indicated that the petitioner had income from tutoring services that amounted to approximately $1,000 per month (gross). Attached to the petitioner's financial affidavit were the petitioner's paystubs from Danville Area Community College for August 13, 2021, and August 31, 2021, which indicated that her gross income was $2,305.55 per pay period (approximately $4,611 per month). The petitioner noted the child support amount was adjusted to reflect the increased cost of the children's health insurance effective January 1, 2021.

¶ 39 As for the disputed mutual fund account, the petitioner requested that the fund be classified as a marital asset. The petitioner indicated that the evidence showed that the most recent joint tenancy designation was made on January 31, 2017, when the parties signed and submitted the account application and client agreement, and that the evidence also showed that the joint account designation had existed since 2005. The petitioner argued that the respondent failed to present any evidence supporting his position that the account was a nonmarital asset. The petitioner argued

that the evidence indicated that the account was established at the same time as the other two mutual fund accounts, which the respondent stipulated were marital property, and there was nothing about the disputed account to distinguish it from the other two accounts or that could reasonably prove it was nonmarital property. The petitioner noted that the parties established the account in the same way they established the other two mutual fund accounts, they titled all three accounts identically, and the joint ownership was the same way they titled their other valuable assets.

¶ 40 The petitioner argued that, if the respondent intended to keep the money in that account as his separate, nonmarital property, he could have done so by keeping the money in the original account that he claimed was in his name only before the marriage. Instead, in 2005, the parties established the new account, and they held that account as joint tenants with the right of survivorship. Consequently, the previous account no longer existed, and the new account was jointly held by the parties. Thus, the petitioner argued that the only reasonable conclusion was that the disputed mutual fund was marital property and that it should be divided equally between the parties. Further, the petitioner argued that the annuity should be divided equally as the respondent had stipulated that the annuity was a marital asset.

¶ 41 Regarding the division of the parties' joint checking account, the petitioner argued that the respondent essentially asserted that the petitioner had dissipated $8,800 in marital assets by paying her attorney fees for the divorce proceedings from the joint checking account. However, the petitioner argued that the respondent was not entitled to reimbursement because the respondent had full knowledge that the petitioner had paid attorney fees out of their joint checking account as he had equal access to that account, and he had failed to make any objection. The petitioner argued that, since the respondent had refused to participate in the divorce proceedings, the money that the

petitioner paid for attorney fees was reasonable and necessary. Also, the petitioner noted that it was undisputed that she deposited $1,000 into that account on November 12, 2019. Thus, the petitioner argued that the trial court should find that the joint checking account was equitably divided and deny the respondent's claim for reimbursement for the attorney fees.

¶ 42 Thereafter, on January 3, 2022, the respondent filed his closing argument, in which he argued, in relevant parts, that the disputed mutual fund account was nonmarital property. He argued that he had established the account in 1988; no additional funds were added to or withdrawn from the account during the marriage; and when the respondent added the petitioner as a joint tenant in 2005, he did not intend to make a present gift to the marital estate. The respondent indicated that he had provided testimony and exhibits to trace the account from when it was established to present day, and the petitioner never disputed his testimony that no money was added to or withdrawn from the fund during the marriage or that the petitioner was added as a joint tenant in name only.

¶ 43 The respondent also maintained that the Nationwide annuity account was nonmarital. The respondent argued that the trial court erred in barring the testimony as to the annuity's nonmarital nature, which would have shown that the respondent established the annuity prior to the marriage, that no money was added to or withdrawn from the annuity during the marriage, and that the petitioner was never added as a joint tenant.

¶ 44 As for the joint checking account, the respondent noted that, despite the petitioner not contributing any funds in the account after October 1, 2019, the respondent had paid the parties' joint bills from it for October and November. The respondent also noted that the petitioner's vehicle loan payment, mortgage payments for October and November, and some of her attorney fees were paid from the account. Thus, the respondent requested that the petitioner be ordered to

reimburse him a total of $6,018.68 for her expenses from the joint account after October 1, 2019, and $4,400 for the attorney fees.

¶ 45 The respondent requested that permanent child support should be $1,155.82 per month with the petitioner providing health insurance for the children. This calculation was based on the petitioner's gross monthly income being $6,978, which seems to be based on her 2020 W-2 and her marital share of the respondent's retirement benefits. Further, consistent with the petitioner's calculation, the respondent's calculation was also based on the respondent's gross monthly income of $7,512.

¶ 46 As for the contempt orders, the respondent argued that none of the petitions for rule to show cause specified whether he was allegedly in indirect civil contempt or criminal contempt. Thus, the respondent argued that the petitions should have been stricken, that the trial court's orders finding him in contempt should be vacated as void *ab initio*, and that the fees that he had paid with respect to the petitions should be refunded and credited back to him.

¶ 47 On February 25, 2022, the trial court held a hearing on permanent child support, at which the parties presented arguments as to their disagreement about the petitioner's gross income. The petitioner's counsel acknowledged that the amount that he used for the petitioner's gross income did not include "some tutorial income" that was included on the financial affidavit. Counsel noted that there was not much evidence about that income, but if the trial court included that in the petitioner's gross income, it would reduce child support by approximately $40 per month. The respondent's counsel indicated that the amount that he used for the petitioner's gross income was based on the petitioner's gross income reported on her financial affidavit plus her 29.5% marital portion from the respondent's retirement. In response, the petitioner's counsel indicated that the

respondent's number for the petitioner's gross income was not from the petitioner's financial affidavit and that the respondent did not indicate how that number was calculated.

¶ 48 Following arguments, the trial court noted that the evidence supported the petitioner's calculation as to her income, although the trial court agreed that the tutorial income was not included in the petitioner's calculation and should have been. Assuming that the addition of the tutorial income reduced child support by $40 per month, the trial court found that permanent child support should be $1,430 per month. The trial court also found that the disputed mutual fund was a marital asset, noting that the parties made the mutual decision to place all accounts they each held in joint tenancy. The trial court noted that the respondent acknowledged that the accounts were placed in joint tenancy but seemed to take the position that he only wanted to make a gift to the marriage if the marriage lasted. The trial court found that there was nothing to refute the petitioner's testimony that the joint tenancy account was a gift to the marriage, and there was nothing presented that overcame the presumption that the accounts were marital property.

¶ 49 As for the Nationwide annuity, the trial court acknowledged that the respondent had initially identified this annuity as nonmarital property in his discovery response. However, at that time, he also listed himself as the owner on the accounts that he later conceded were marital assets. Thus, the trial court found that the respondent's claim that his discovery response was proof that the annuity account was nonmarital was disingenuous because his position ultimately changed on many of the accounts. The trial court also noted that, on the first day of trial, the respondent stipulated that this annuity was a marital asset, and it was not until the second day of trial that the respondent changed his position and claimed the account was a nonmarital asset. The trial court explained that it made the decision to prohibit the respondent from presenting evidence on the annuity being nonmarital because they were in the middle of the trial, the respondent had raised a

very important issue for the first time, the respondent had just provided 500 pages of discovery to the petitioner, and the respondent had put the petitioner and her attorney at a complete disadvantage as they were unable to call witnesses or refute the respondent's claim that the asset was nonmarital. The trial court again noted that it was a trial by ambush and completely unfair to the petitioner. The trial court noted that the reason for the discovery process and the multiple pretrials was to narrow the issues as to the nature of the assets. The trial court explained that it did not take lightly barring the evidence, but it did not believe that it was unfair to the respondent in this situation. Thus, the trial court found that the Nationwide annuity was a marital asset that should be divided equally between the parties. The trial court then indicated that another hearing would be held on the remaining issues, including sanctions and attorney fees.

¶ 50 On April 22, 2022, the trial court held a hearing on the remaining issues, at which the respondent argued that he should not be held in contempt of court on the sixth petition for rule to show cause. The respondent argued that similar to the previous petitions for rule to show cause, the petitioner's sixth petition had failed to identify whether the respondent was allegedly in direct or indirect contempt. In response, the petitioner argued that the respondent had already made this argument, and it was not well taken. After hearing the arguments, the trial court found the respondent in contempt of court based on the allegations contained in the sixth petition for rule to show cause in that the respondent failed to file a financial affidavit by the court-ordered deadline and failed to pay the insurance premiums. The trial court found the respondent in indirect civil contempt and "sentence[d]" him to pay reasonable attorney fees in connection with filing the sixth petition.

¶ 51 Also, after hearing arguments regarding the petitioner's request for contribution toward her attorney fees, the trial court ordered that the $3,000 being held by the clerk be applied to the

petitioner's attorney fees and that the respondent pay the remaining balance of $20,681 for the petitioner's attorney fees plus an additional $12,000. The trial court held that although the case was fairly straightforward, the parties had accumulated approximately $70,000 in attorney fees because of the respondent's actions during the litigation.

¶ 52 On May 16, 2022, the trial court entered a supplemental order to the judgment for dissolution of marriage. The provisions relevant to this appeal are as follows. The trial court set permanent child support at $1,430 per month retroactive to August 1, 2021, for the two minor children. The trial court noted that the parties had disagreed about the petitioner's income, but the trial court found that the petitioner's child support calculation, after the adjustment for the petitioner's tutorial income, accurately stated the petitioner's income. The trial court ordered the petitioner to maintain the children's health insurance through her employment. The trial court noted that the mutual fund account, which consisted of three mutual funds having a total value of $102,632 per the September 30, 2019, statement, was marital property. The trial court noted that the evidence was that the parties were joint tenants on the account and that the respondent had stipulated that two of the three mutual funds in the account were marital property. The trial court indicated that the petitioner testified that the three mutual funds were purposefully placed in joint tenancy in 2005 by the parties, that the respondent testified that he intended a gift to the marriage but only if the marriage lasted, and that the respondent had presented no evidence to overcome the presumption of marital property. Thus, the trial court found that the evidence overwhelmingly supported the finding that the account was marital property and ordered the account to be divided equally between the parties.

¶ 53 The trial court also divided the Nationwide annuity account, which was valued at $66,103 per the September 30, 2019, statement, equally between the parties as marital property. In addition,

the trial court indicated that the parties' joint checking account had previously been divided. The trial court further found the respondent in indirect civil contempt for his failure to show cause or justification for not filing his financial affidavit by the ordered due date and for his failure to reimburse the petitioner for the children's medical insurance premium. The trial court indicated that the respondent was previously found in contempt for failing to pay temporary child support and for failing to respond to the petitioner's settlement agreement as ordered. The trial court found the petitioner's attorney fees in connection with the filing of the petitions were reasonable and should be assessed against the respondent. The trial court ordered that the $500 sanction and the $2,500 cash bond that were being held by the clerk's office should be paid to the petitioner's attorney for the petitioner's attorney fees.

¶ 54 Regarding the petitioner's petition for contribution to attorney fees, the trial court indicated that the petitioner had incurred attorney fees totaling $50,069.75, and had a balance due of $20,681.40, and that the respondent had incurred attorney fees totaling $16,994.44. The trial court found that the charged fees were reasonable and appropriate under the circumstances and that most of the fees were attributable to the respondent because of his initial unwillingness to participate in the litigation, his failure to comply with discovery matters, his refusal to comply with the negotiated settlement agreement, his delay in filing certain documents, his attempt to introduce 500 pages of documents at trial that had not been produced in discovery, and his change in position on certain accounts being marital property. The trial court also found that the petitioner never took an unreasonable position on any issue throughout the proceeding, she was in full compliance with all of the trial court's orders and directives, she appeared at all hearings as required, she did not seek to take advantage of the respondent's refusal to participate earlier in the proceedings, and she

continued to request an approximately equal division of the marital estate when she could have reasonably requested more.

¶ 55 The trial court, noting that it had considered the requisite statutory factors for awarding attorney fees in accordance with section 503(j) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(j) (West 2022)), ordered the respondent to contribute $32,618.40 toward the petitioner's attorney fees. The trial court found that the respondent was responsible for his own attorney fees. The respondent appeals the supplemental order.

¶ 56 II. ANALYSIS

¶ 57 A. Child Support Obligation

¶ 58 The respondent first argues that the trial court erred by accepting the petitioner's child support calculation, which did not accurately calculate the petitioner's gross income. When determining child support under section 505(a)(1.5) of the Act (*id.* § 505(a)(1.5)), the trial court should first calculate each party's basic child support obligation under the statutory guidelines. *In re Marriage of Gabriel*, 2020 IL App (1st) 182710, ¶ 54. Section 505(a)(1.5) of the Act instructs that, to calculate the basic child support obligation, the following steps should be taken: (1) determine each party's net income, (2) add the parents' monthly net incomes together to determine the parents' combined monthly net income, (3) select the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children of the parties, and (4) calculate each parent's percentage share of the basic child support obligation.

¶ 59 The trial court ultimately has discretion to determine the appropriate amount of child support. *In re Marriage of Gabriel*, 2020 IL App (1st) 182710, ¶ 56. Thus, the reviewing court will not reverse the trial court's determination of support absent an abuse of discretion. *Id.*

However, whether the trial court correctly applied the statutory formula in determining the parties' respective incomes for child support purposes is a question of law that is reviewed *de novo*. *Id.*

¶ 60 Here, the trial court set permanent child support at $1,430 per month retroactive to August 1, 2021, for two minor children, which was based on the petitioner's child support calculation after the adjustment for the petitioner's tutoring income. The petitioner's child support calculation indicated that her gross monthly income from her employment was $4,610 (annual gross income of $55,320). Then, this number, along with her share of the respondent's monthly retirement benefit and her tutoring income, was used to calculate her net income. The petitioner's gross monthly income from her employment was based on her September 17, 2021, financial affidavit, which reported a gross monthly income of $4,610 from her employment and approximately $1,000 in tutorial income, and also her August 2021 pay stubs, which evidenced a monthly gross income of $4,611. However, the petitioner's gross annual income based on her 2020 W-2 from the Danville Area Community College was $62,986.88 ($5,249 per month). Thus, the respondent contends that the trial court's child support calculation was in error because it was not based on the petitioner's reported gross income using the petitioner's 2020 W-2 and was instead based on "an under-reported income number."

¶ 61 The petitioner contends that the trial court reviewed the calculations and evidence submitted by both parties and found that the evidence supporting the petitioner's calculation was more persuasive. Thus, the petitioner contends that the trial court's decision was not an abuse of discretion. We agree. The child support calculation approved by the trial court was supported by the evidence as it was based, in part, on the petitioner's gross income from her August 2021 pay stubs, which indicated that her gross annual income was approximately $55,332. The petitioner's pay stubs were attached to her September 17, 2021, financial affidavit. The respondent did not

contest the petitioner's August 2021 income during the trial proceedings, and he cannot now challenge that amount based on the petitioner's W-2 from the previous year. Accordingly, we affirm the trial court's decision setting permanent child support at $1,430 per month.

¶ 62 B. Dissipation

¶ 63 The respondent next argues that the trial court abused its discretion when it failed to award him the funds that the petitioner dissipated from the parties' joint checking account. The respondent indicated that the petitioner spent $6,018.68 from the parties' joint checking account after they had separated and argued that the trial court failed to consider these expenses in its supplemental judgment. Instead, the trial court's order merely stated that the parties' joint checking account had previously been divided. In response, the petitioner argues that the respondent has forfeited any claim of dissipation as the respondent failed to file the requisite notice of intent to claim dissipation.

¶ 64 Dissipation is one of the factors in section 503(d) of the Act that a trial court must consider when dividing the marital property. 750 ILCS 5/503(d)(2) (West 2022). However, for the trial court to consider a dissipation claim, the party alleging dissipation must file a notice of intent to claim dissipation that complies with the statutory requirements. *Id.* Section 503(d)(2) instructs that a party claiming dissipation must file a notice of intent to claim dissipation no later than 60 days before trial or 30 days after discovery closes, whichever is later. *Id.* Thus, the party claiming dissipation must comply with section 503(d)(2)'s notice requirement. *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 73.

¶ 65 Here, the respondent failed to file the requisite notice of intent to claim dissipation. Thus, the respondent has forfeited any dissipation claim that he may have made regarding the parties'

joint checking account. Accordingly, the trial court did not err when it did not consider the respondent's dissipation claim.

¶ 66 C. Investment Accounts

¶ 67 The respondent asserts that the trial court's determinations that the disputed mutual fund account and the Nationwide annuity were marital property were against the manifest weight of the evidence. Before distributing property upon the dissolution of a marriage, a trial court must classify the property as marital or nonmarital. 750 ILCS 5/503 (West 2022); *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 49. A trial court's classification of property as marital or nonmarital will generally not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when the trial court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 68 Under section 503(b)(1) of the Act (750 ILCS 5/503(b)(1) (West 2022)), there is a rebuttable presumption that all nonmarital property transferred into some form of co-ownership between the spouses, regardless of whether the title is held individually or by the spouses in some form of co-ownership, such as joint tenancy, tenancy in common, tenancy by the entirety, or community property, is marital property. The presumption of marital property can be overcome by clear and convincing evidence that the property was acquired by one of the methods listed in section 503(a) of the Act (*id.* § 503(a)), or was done for estate or tax planning purposes or for other reasons establishing that the transfer between spouses was not intended to be a gift. *Id.* § 503(b)(1). Section 503(a)(6) of the Act (*id.* § 503(a)(6)) instructs that property acquired before the marriage, except as it relates to retirement plans that may have both marital and nonmarital characteristics, is considered nonmarital property. Also, section (a)(7) of the Act excludes from marital property

the increase in value of nonmarital property, irrespective of whether the increase resulted from a contribution of marital property, nonmarital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement. *Id.* § 503(a)(7). The burden of proof is on the party claiming that the property is nonmarital, and any doubts as to the property's classification will be resolved in favor of finding that the property is marital property. *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 51.

¶ 69 Here, the respondent testified that he set up the disputed mutual fund account in 1988, before the parties' marriage; he did not make any contributions toward it during the marriage; and he did not withdraw any funds from the account during the marriage. He explained that he added the petitioner to the account in 2005 as a joint tenant with the right of survivorship in "case something happened to [him]." He noted that the account was for the "future, not for then" and that he intended for the petitioner to be able to access the account if he died. The petitioner also testified that she did not make any withdrawals from that account during the marriage. As for the account being transferred to joint tenancy, the petitioner explained that she and the respondent had decided that she would quit her employment and stay home with the children. Since she was concerned about not having a retirement, they set up some investment accounts as well as college savings plans for the children with Morgan Stanley, which included the disputed account. However, she later noted that, other than when the mutual funds were transferred to Morgan Stanley, she did not know when the disputed fund was established. She claimed that they used some of her money to fund the accounts, but she could not recall how much, or into which fund her money was placed. She was aware that the respondent had some savings, but she did not recall "what it was."

¶ 70 The trial court found that the disputed mutual fund was a marital asset, noting that the parties had made the mutual decision to place all accounts that that they each had in joint tenancy. The trial court found that the respondent acknowledged that the accounts were placed in joint tenancy but seemed to take the position that he only wanted to make a gift to the marriage if the marriage lasted. The trial court found that nothing presented refuted the petitioner's testimony that the joint tenancy account was a gift to the marriage and thus the presumption that the accounts were marital property was not rebutted.

¶ 71 After considering the evidence, we conclude that the trial court's findings were not against the manifest weight of the evidence as the respondent failed to prove, by clear and convincing evidence, that the disputed mutual fund account was nonmarital property. At the hearing, both parties testified about the circumstances surrounding their decision to create investment accounts during their marriage. In particular, they testified about their mutual decision to add the petitioner as a joint tenant to the mutual fund that the respondent claimed was established by him prior to their marriage. The parties also testified about their reasons for making that decision. After hearing that testimony, the trial court found that the respondent had failed to refute the petitioner's position that the disputed mutual fund account was a gift to the marriage. In making this decision, the trial court had to evaluate the parties' testimony and determine their credibility. "It is well established that determinations by the trier of fact as to the credibility of parties are given great deference." *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). Also, as previously mentioned, any doubts as to the account's classification must be resolved in finding that it was marital property. *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 51. Given our standard of review, and the deference we afford to credibility determinations made by the trier of fact, we conclude that the trial court's decision was not against the manifest weight of the evidence.

¶ 72 The respondent next contends that the trial court abused its discretion in barring testimony as to the nonmarital nature of the Nationwide annuity. The respondent noted that this evidence would have shown that he purchased the annuity prior to the marriage, there were no funds added to or withdrawn from the annuity during the marriage, and the petitioner was never added to the annuity as a joint tenant.

¶ 73 The admission of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *McHale v. Kiswani Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 28. An abuse of discretion occurs when the court's ruling is arbitrary, fanciful or unreasonable or where no reasonable person would adopt the court's view. *Id.*

¶ 74 Here, the record indicates that the trial court barred any evidence about the nonmarital nature of the Nationwide annuity because the evidence was not disclosed until day two of the trial. In barring the evidence, the trial court acknowledged that the respondent had claimed in a discovery response that the annuity was nonmarital. However, the trial court noted that the respondent then changed his position; the parties had participated in pretrial proceedings and settlement negotiations with the understanding that the account was a marital asset; and on the first day of trial, the respondent's position was that the account was a marital asset. The trial court found that it was unfair to the petitioner to permit the respondent to change his position and submit evidence of the nonmarital nature of the account on day two of the trial when the petitioner would be unable to conduct additional discovery related to the new evidence or refute in any way that the asset was nonmarital. Thus, the trial court found that the petitioner and her counsel were at a complete disadvantage by the respondent's late change in position, prohibited the respondent from introducing this evidence, and found that the Nationwide annuity was a marital asset. Based on the above, we find that the trial court's decision barring the evidence because of the untimely

disclosure was not an abuse of discretion. We also conclude that the trial court's decision to classify the annuity as a marital asset was not against the manifest weight of the evidence.

¶ 75 D. Sanctions

¶ 76 Lastly, the respondent argues that the trial court's judgments finding him in contempt of court should be vacated because the underlying petitions were defective in that they failed to allege whether the respondent was in indirect civil contempt or criminal contempt of court. Thus, the respondent argues that he was not given proper notice of the nature of the contempt proceedings before he was found in contempt.

¶ 77 First, we must address whether the respondent's admitted purge of the contempt orders render moot any appeal from those orders. Although neither party addressed this issue in their appellate briefs, it was briefly discussed at oral argument, and we find it necessary to address it before analyzing whether the contempt orders should be reversed. The existence of a real controversy is a prerequisite to the exercise of our jurisdiction. *In re Estate of Wellman*, 174 Ill. 2d 335, 353 (1996). When intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party, then the issue raised on appeal is moot. *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007). Similarly, when a finding of contempt has been purged by satisfying the conditions of the contempt order, the appeal from that order is moot. See *In re Marriage of Betts*, 155 Ill. App. 3d 85, 104 (1987) (where the nonpayment of child support was the basis for the contempt order, actual payment of the entire amount owed rendered the issue moot as there was nothing to be accomplished by reversing the purge order).

¶ 78 In this case, the respondent has admitted that he has purged his contempt by paying the amounts owed under the contempt orders. At oral argument, the respondent's counsel also indicated that the respondent had paid to the petitioner the amount assessed for attorney fees in

connection with the petitions for rule to show cause. However, if the underlying relevant petitions for rule to show cause were defective, and as a result, the contempt judgments were improper, then the respondent would not be responsible for the assessed attorney fees in connection with those contempt orders. Thus, this is not a situation where nothing can be accomplished by reviewing the contempt orders. We now turn to the merits of the respondent's argument concerning the findings of contempt.

¶ 79 Although there were six petitions for rule to show cause filed in this case, the respondent's counsel acknowledged during oral argument that the respondent had essentially admitted to the first three petitions and only contested the last three. Thus, counsel indicated that he only sought to have the last three petitions set aside.

¶ 80 Contempt proceedings are a mechanism a court can use to enforce its orders. *In re J.S.*, 2022 IL App (1st) 220083, ¶ 70. A petition for a rule to show cause is the method by which a party notifies the trial court that a court order may have been violated. *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 508 (1993). "The petition for a rule to show cause and the rule to show cause operate together to inform the alleged contemnor of the allegations against her." *Id.* Constitutionally mandated procedural requirements apply to contempt hearings but what requirements apply depends on the type of contempt involved. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 44-48 (1990). Contempt can be categorized as either civil or criminal, and it may occur directly or indirectly. *Id.* at 43-47.

¶ 81 Civil contempt is remedial in nature, intending to compel future compliance with a court order, and is avoidable through obedience. *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 26; *Door Properties, LLC v. Nahlawi*, 2023 IL App (1st) 230012, ¶ 30. For civil contempt, the contemnor must have an opportunity to purge himself of contempt by complying with the pertinent

court order. *Door Properties*, 2023 IL App (1st) 230012, ¶ 31. In contrast, criminal contempt is punitive and designed to punish the contemnor for past acts that cannot be undone. *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 27.

¶ 82 As we have noted, the procedural requirements for imposing civil and criminal contempt sanctions differ. See *Betts*, 200 Ill. App. 3d at 49-50. Indirect civil contempt requires only minimal due process protections, such as notice and an opportunity to be heard. *Door Properties*, 2023 IL App (1st) 230012, ¶ 48. "[I]ndirect criminal contempt is a criminal proceeding that must be accompanied by the full panoply of rights afforded criminal defendants." *Id.* Significantly, the contemnor has the right to be informed in advance that he is facing criminal contempt charges. *Id.* ¶ 49. This is crucial because absent such notice, it is impossible for the contemnor to assert his specific rights. *Id.* ¶ 49.

¶ 83 Here, the petitioner contends that sufficient facts were pled in the numerous petitions for rule to show cause to alert the respondent that the petitioner was seeking to hold the respondent in indirect civil contempt. Specifically, the petitioner indicated that the petitions alleged that the trial court entered certain orders, the respondent had willfully failed to obey those orders, and the petitioner sought compliance with those orders. The petitioner contends that a petition for rule to show cause is commonly and appropriately used for a petition for indirect civil contempt. Also, the petitioner noted that the trial court agreed with the allegations in the petitions and entered contempt findings to ensure compliance with its orders. The petitioner also noted that the contempt issues were litigated, the trial court found against the respondent on those issues, and the respondent purged himself of his indirect civil contempt by complying with the trial court's orders. The petitioner contends that the substance of the contempt finding, rather than the label, determines

whether the contempt finding was criminal or civil in nature. See *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 28.

¶ 84 After carefully reviewing the record, we disagree with the petitioner that sufficient facts were alleged in the relevant petitions to notify the respondent that the petitioner was seeking to hold the respondent in indirect civil contempt. Although the fourth petition for rule to show cause does not appear to be included in the record on appeal, and thus we cannot see the allegations that were made in that petition, the rule to show cause that was issued by the trial court did not specify whether the petitioner was seeking to hold the respondent in indirect civil contempt or criminal contempt. Instead, the rule to show cause ordered the respondent to show cause for why he had willfully failed and neglected to abide by a specific court order and ordered the respondent to appear on a specific date to show cause for why he should not be "held in and punished for contempt of court" for his willful failure to comply. Thus, the rule to show cause did not identify whether the respondent was allegedly culpable for indirect civil or criminal contempt.

¶ 85 Moreover, the fifth and sixth petitions also did not give adequate notice to the respondent as to whether the petitioner sought to have him held in indirect civil or criminal contempt. These petitions, which were included in the record on appeal, alleged that the respondent failed to comply with certain orders of the trial court, that the respondent's failure was without cause or justification, and that he was previously found in indirect civil contempt for noncompliance with court orders. The petitions requested that the respondent be ordered to show cause for why he should not be held in contempt for his failure to comply with the orders, that he again be held in willful and contumacious contempt, and that he be "sentenced" for his contempt. Thus, the petitions not only failed to identify whether the petitioner was seeking indirect civil or criminal contempt, but they also used language that seemed to conflate civil and criminal contempt.

¶ 86 Further, there does not appear to be a rule to show cause that was issued in connection with the fifth petition. The petition for rule to show cause initiates the contempt proceedings, but the trial court must issue a rule to show cause to satisfy the notice requirements. *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 39. If the trial court fails to issue a rule to show cause and serve it on the alleged contemnor before holding the contemnor in indirect civil contempt, the trial court deprives the contemnor of due process. *Id.* ¶ 40. Thus, if a rule to show cause was not issued in connection with the fifth petition, and it appears that it was not, then the respondent did not have sufficient notice of the contempt proceedings. Lastly, the language used in the rule to show cause based on the sixth petition was the same as the language in the fourth petition, which, as we already concluded, was not sufficient to notify the respondent of whether the petitioner sought to hold him in indirect civil or criminal contempt. Thus, absent the procedural protections that were in place to make sure the respondent had advance notice of the nature of the contempt proceedings, the contempt orders entered in this case that relate to the fourth, fifth, and sixth petitions for rule to show cause cannot stand. Accordingly, we reverse the contempt orders related to the fourth, fifth, and sixth petitions for rule to show cause, without prejudice to the petitioner refiling the petitions, if necessary. We also remand for further proceedings consistent with this decision.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the trial court's calculation of permanent child support as it was based on the evidence. We also affirm the trial court's distribution of the parties' joint checking account without considering any alleged dissipation by the petitioner, and the trial court's classification of the disputed mutual fund account and the Nationwide annuity account as marital assets. Further, we reverse the trial court's contempt judgments entered against the respondent in

connection with the petitioner's fourth, fifth, and sixth petitions for rule to show cause and remand for further proceedings.

¶ 89 Affirmed in part and reversed in part; cause remanded.