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Father's Anger Up-Ends Quest for Greater Parenting Time

The parties were at issue with respect to parenting time which the father sought to equalize. Judge Robert E. Douglas noted that the father's anger toward the mother and his demeanor throughout the trial demonstrated that he lacked the ability to encourage a close and continuing relationship between the mother and the children The Guardian Ad Litem, Dennise McCann believed that the father was entitled to alternate weekends and one night during the week but that the mother should be awarded the majority of the parenting time and be the sole decision maker for the minor children.

The wife was represented by Amy L. Jonaitis and Simul S. Jhaveri of Beermann LLP. The husband was represented by Lawrence S. Manassa and Kathy E. Bojczuk of the Law Firm of Manassa Bojczuk, P.C. Dennise L. McCann of Anderson & Associates P.C. was the Guardian Ad Litem.

The parties were married on December 19, 2009 in Naperville, Illinois. They had a daughter now five years old and a son, now three years old.

The mother had been the primary caretaker for the children. The parties testified that the mother was the parent who located the children's pediatricians, speech therapist and child counselor. She was the parent who spoke to pediatricians and doctors to find the children's current pediatrician.

When the parties' son was approximately fifteen months old, the mother noticed that he was having some delayed speech. At that time, she reached out to the father on Our Family Wizard, informing him of what she saw so he could keep his eye out and communicate with her about any issues he saw. When the son turned two years old, the mother requested that the son be evaluated. The father initially said no. The mother researched early intervention programs through the State of Illinois, found out the testing through the State would be free. The father eventually agreed to get the son tested for his speech issues.

The mother's instincts were right and the son required a speech therapist, which she helped coordinate. The father did not object to the mother's choice of therapist or course of conduct after he agreed to the initial testing.

In the fall of 2018, the mother observed the daughter binge eating sugary foods. The child was exhibiting signs of binge eating, tying cords around her neck and having sleep issues. The mother testified that she communicated her concerns over the daughter's behavior to the father via Our Family Wizard. Despite the alarming behaviors, the father did not agree to have the daughter start therapy.

The Guardian Ad Litem had to intervene so the daughter could start therapy immediately and she testified that she believed the child's behaviors were concerning and it was in the child's best interest to attend therapy. The mother learned from the Guardian Ad Litem that at least one of the daughter's concerning behaviors was in fact occurring at the father's house. He did not tell her directly.

The daughter was currently still attending counseling services with a therapist the mother

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selected. The father did not dispute the mother's choice of therapist. The daughter was showing improvement since beginning therapy.

The father had not objected to the mother's choice of medical providers. The first time that the father ever attended a pediatrician appointment for either child was in December of 2018. This was after this case was set for trial. When he attended his first pediatrician appointment for his children, the son was two years old and the daughter was four years old and this litigation was underway. The father did attend the son's Ear/Nose/Throat surgery in July of 2018.

Prior to even the start of this litigation, the daughter attended a vacation bible school at the Naperville Presbyterian Church. In approximately May of 2018, the mother reached out to the father to request that the daughter attend again. It took the father two weeks to respond and agree to her request. It was clear that the father was attempting to frustrate the mother.

Five months after the children started daycare, in December 2018, for the first time, the father objected to Creative World, despite not having visited the daycare once.

In the summer of 2018, the issue of daycare presented itself once again. The mother initiated the conversation with the father and requested that the children continue to attend Creative World. She sent multiple messages seeking a response but never received one from him. Ultimately, the Guardian Ad Litem advised the mother to enroll the children in Creative World due to the fact that the father had not responded.

The parties both testified that the mother had been the parent to research and locate each of the minor children's extracurricular activities. It was undisputed that the father had not enrolled the minor children in an extracurricular activity. In fact, the father had never initiated a conversation about enrolling the children in an extracurricular activity or suggested an activity himself.

The court weighed the sincerity of each parent's wishes and beliefs. The mother's testimony that she could not co-parent with the father was credible and made in good faith. She demonstrated that she has been the parent who performed the primary role in all allocation responsibilities.

On June 12, 2019, one week prior to the start of trial, the father filed an Amended Counter Petition for Dissolution of Marriage in which he sought an award of sole decision making over all allocation responsibilities. He requested that all of the mother's parenting time be supervised. He persisted in this position through the conclusion of the trial. The court found that the primary reason why he felt he should be allocated sole decision making authority for the minor children stemmed from an incident which began on September 4, 2018, wherein the parties daughter complained to her mother that her "privates" hurt and that daddy had put night time lotion there. The court also found credible the mother's testimony that upon reflection she realized that the child's statements as to her father's putting lotions on the little girl's privates did not make sense and she dismissed any concerns of possible abuse and forgot about the video.

The father's positions while testifying were that the mother was abusive, that she should be supervised, and he should have sole decision making, but on occasion, his attorney stated that the father would be willing to make joint

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decisions with the mother.

The mother rented a home from her grandmother and has resided there since June 2018. It was a three bedroom, single family residence with a fenced in yard, and with lots of kids in the neighborhood. The children had their own rooms, were comfortable there and they felt safe there. They had friends in the area and they were able to walk to the park and meet the mother's friend and her children. The mother intended to stay in that residence with the children. The father presented no evidence about his home or community, other than he recently moved from a one bedroom to a two bedroom apartment and his lease expired in the coming months. 750 ILCS 5/602.5(2).

The court observed the father's anger toward the mother and his demeanor throughout the trial. It was unlikely that he had the ability to encourage a close and continuing relationship between the mother and the children.

The father testified that he had used over $65,000.00 for attorney's fees since December 2018 and still went out drinking at bars, despite not paying the mother a single dollar towards his half of the child related expenses. In the two month gap between trial dates, the father still did not pay a single dollar towards his child related expenses.

Dennise McCann, the Guardian Ad Litem, testified that if she had to apply the best interest standards, the parent that those standards favor as the sole decision maker for the minor children would be the mother. Further, Ms. McCann believed that it would not be in the minor children's best interest if the father would be awarded sole decision making. She testified that throughout the case there had been communication issues between the parties.

From May 2017 through October 13, 2017 the parties followed their own parenting schedule. The mother agreed to the father seeing the children at his request. The father requested to see the children approximately once per week for one hour. During this time period, the father did not request more parenting time.

The evidence reflected that during the parties' marriage, the father was fairly uninvolved in the day to day administrative duties of parenting. The father now testified that he was now ready and willing to play a primary caretaking role in the children's lives.

Ms. McCann testified that the father's position seeking 100% of the parenting time with supervision for the mother was unreasonable. She testified that the mother always had been the primary caretaker for the children. The court agreed with Ms. McCann's recommendations on parenting time for the parties.

Ms. McCann felt that it was in the minor children's best interest for the father to have alternating weekend parenting time (Friday to Sunday) and an overnight every Wednesday. The mother testified that she agreed to that schedule. Ms. McCann testified that she has never believed a 50/50 parenting schedule to be appropriate in this case.

The court found that it was not in the minor children's best interest to have the mother's parenting time supervised which was the father's wish. The court found that the mother provided a safe and loving environment to the minor children and was fully able to care for them. 750 ILCS 5/602.7(1).

The court considered and weighed all factors set forth in 750 ILCS 6/602.7. Accordingly, the court found it was in the minor children's best interest that the parties share a parenting schedule where the father had parenting time every other weekend and every Wednesday overnights.

Husband "Architect of His Own Predicament – Motion to Vacate Default Judgment Denied

The husband filed a Motion to Vacate a Default Judgment which he filed within thirty days. Judge Raymond D. Collins found that the record showed a lack of diligence with respect to the husband' failure to act and his complete refusal to participate in the dissolution proceeding.

The wife was represented by Brett M. Buckley and Joshua M. Jackson of Schiller DuCanto & Fleck LLP. The husband was represented by Ronald L. Bell and Deborah Long of Ronald L. Bell & Associates, P.C.

The husband claimed that he was not properly notified of the default Judgment entered against him on May 2, 2019. According to him, he first learned of the default in mid-May 2019, at which time he retained counsel to represent him in this matter and sought to vacate the default within 30-days pursuant to 735 ILCS 5/2-1301(c). He maintained that he moved to Florida in October 2018 to reside with his ailing father. He claimed that his failure to participate in court proceedings and make various payments pursuant to court orders was brought about by his inability to access funds, his depressed mental state after his father passing in December 2018, his medical condition following his back surgery in January 2019, and the months-long recuperation period that followed.

In response, the wife argued that she properly served the husband with various court papers pursuant to requirements set forth in the court's 10/2/2018 Order. After the husband's prior attorneys, Berger Schatz, withdrew from the case in October 2018, the wife mailed court-related correspondence and court filings to the parties' marital residence. She also sent electronic copies of correspondence and court filings to the husband's email address. Although the 10/2/2018 Order gave the husband 21-days to file a Supplemental Appearance with an updated address or retain counsel to file an Appearance on his behalf, the wife pointed out that the husband did not provide an updated address for service of process and did not retain new counsel until after entry of the May 2019 Default Judgment.

With respect to entry of a default judgment, the wife argued that the husband was the architect of his own predicament through his failure to participate in court proceedings. In spite of the husband's assertions to the contrary, the wife maintained that he was well aware of her filing a motion for default in December 2018 based on the husband's "read receipt" email response. In the same manner, the wife claimed that the husband was properly served with various court papers on 1/7/2019, 2/6/2019, 3/5/2019, 4/22/2019, and 4/25/2019. Also, the wife contended that the evidence of the husband's actions during the intervening months (i.e. following counsel's withdrawal in October 2018) could not be reconciled with his alleged inability to participate in court proceedings because of depression, medical conditions, and a lack of funds.
On 8/15/2019, after ruling on various evidentiary issues regarding relevance and the scope of proceedings, the court held an evidentiary hearing on the allegations set forth in the parties' written submissions. During this hearing, the husband testified under both direct and cross examination.

After the husband's testimony, the wife's attorneys orally moved for a directed finding and argued that the husband had failed to meet the requirements for vacating the 5/2/2019 default Judgment pursuant to Section 2-1301. The court then continued the matter without hearing further evidence from the wife's counsel.

Beginning with the husband's arguments regarding improper notice, the court reviewed his 8/13/2019 memorandum of law. However, the husband's notice-related arguments did not serve as proper grounds for vacating a default judgment under Section 2-1301. See *J.P. Morgan Mortg. Acquisition Corp. v. Straus, 2012 IL App (1st) 112401, 116-13* (rejecting litigants' efforts to collaterally attack a default judgment pursuant to Section 2-1301 for failure to strictly comply with motion service requirements under Ill. Sup. Ct. Rules 11 and 13). Furthermore, in light of the husband's testimony, it was evident that he did in-fact receive emails with attached court papers related to the wife's request for default months before the entry of the default judgment against him. Even though the husband claimed not to have opened any of the attachments to the emails he received, the court found that he did not testify credibly about his apparent lack of notice regarding the wife's motion. There also appeared to be no basis for the proposition that litigants previously served in a case can refuse to open legal mail and then credibly profess ignorance of later court proceedings.

As to the propriety of serving the husband with court papers and legal correspondence by email, the court was mindful of the fact that the husband was apparently aware of the contents of the 10/2/2018 Order and its service requirements, and that the husband did not filed a pro se appearance that designated an updated mailing address after his counsel withdrew pursuant to the court's 10/2/2018 Order. Thus, under Illinois Supreme Court Rule 13(c)(5), the wife's counsel was authorized to serve him with subsequent notices and court filings "at the last known business or residence address." Based on the evidence presented at the hearing on the husband's motion, it was clear that the wife's counsel complied with the service requirements in the 10/2/2018 Order as well as the those in Rule 13(c)(5). Thus, the court found that the lack of authorization under Rules 11(b) and Rule 131(d)(2) to serve the husband by email to be of no legal consequence. To rule otherwise, would allow the husband to take advantage of his own noncompliance with the court's 10/2/2018 Order.

Moving on to the merits, under Section 2-1301(e), "[t]he court may in its discretion, before final order or judgment, set aside any default, and in a motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that would be reasonable." 735 ILCS 5/2-1301(C)(West 2019). Given that the husband's motion to vacate was filed within 30-days of the 5/2/2019 default judgment, his request for relief was clearly governed by this section of the Code of Civil Procedure.

In interpreting the requirements for vacating defaults under Section 2-1301, the Illinois Appellate Court had ruled that trial courts "must be mindful that a default judgment is a drastic remedy that should be used only as a last resort. The law preferred that controversies be determined according to the substantive rights of the parties; the provisions of the Code governing relief from a default judgment were to be liberally constructed toward that end. A party seeking to vacate a default judgment under Section 2-1301(e) need not allege the existence of a meritorious defense or a reasonable excuse for not having asserted the defense. The overriding consideration was whether substantial justice was being done between the litigants, and whether it

was reasonable, under the circumstances, to compel the parties to go to trial on the merits," *Godfrey Healthcare & Rehab. Ctr., LLC v. Toigo, 2019 IL App (5th) 170473, 39.*

To determine whether "substantial justice" was being done between the litigants, "[t]he court had to consider all of the events leading up to judgment and decide what was just and proper based on the facts of the case." (quoting *Larson v. Pedersen, 349 111 App. 3d 203, 208 (2nd Dist. 2004*), Other relevant considerations included: "diligence or the lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the order or judgment, and the relative hardships on the parties from granting or denying the vacate." *Jackson v. Bailey, 384 III. App. 3d 546,549 (1st Dist. 2008)*

For purposes of applying the foregoing considerations, the court found the Illinois Appellate Court's opinion in *IRMO Harnack and Fanady, 2014 IL App (1st) 121424* to be instructive. In that case, the First District reviewed an appeal from the denial of a motion to vacate a default judgment pursuant to both Section 2-1301 and Section 2-1401 of the Code of Civil Procedure. Similar to the facts in the case at bar, the default judgment in *Harnack and Funady* was entered after the appellant-spouse had stopped participating in divorce proceedings at the trial court level. In addressing the appellants arguments, the First District ruled at the outset that Section 2 1301(e) did not apply, because the appellants motion to vacate was filed over eight months after the entry of default judgment. Id. at 1943-44. Nonetheless, the appellate court concluded that it would still have affirmed the denial of the motion to vacate if it had been timely-filed within 30 days.

As part of its analysis, the First District noted that the record showed "a lack of diligence by [the appellant-spouse) as a result of his complete refusal to participate in the dissolution proceedings, his attempts to evade service of process, and his refusal to comply with the court's orders regarding payment of maintenance and with its restraining orders and injunctions barring him from transfer of any assets held by him or his enterprises."

After considering the appellant's conduct in its totality prior to entry of the default judgment, the appellate court reasoned that the appellant "was the architect of his own predicament, and his complaint now that he was denied substantial justice would not be heard by this court." The appellate court also observed that "any alleged errors in the judgment or inequalities in the distribution of assets was solely due to [appellant's] failure to participate in the dissolution proceedings," and that any "injustices in the judgment for dissolution of marriage of which complaints would not have occurred absent his abandonment of the litigation."

Thus, the First District concluded that "substantial justice was done" and that it would not be reasonable to vacate the judgment and thereby compel the parties to proceed to trial on the petition for dissolution.

Bearing in mind the foregoing authorities, as well as the testimony and evidence presented at the hearing on 8/15/2019, the court found that the husband has failed to make a prima facie showing in meeting the requirements for vacating the 5/2/2019 default judgment. Just as in *Harnack and Fanady*, it was evident that he did not exercise diligence in the period of time from 10/2/2018 until the entry of the default judgment on 5/2/2019. As discussed above, the husband elected to ignore the legal proceedings following the withdrawal of his legal counsel in October 2018.

The husband did not file a pro se Appearance to update his mailing address, or otherwise apprised the court and opposing counsel of his whereabouts. Although the husband testified that he ignored legal proceedings partly because of a lack of funds to afford the services of legal counsel, the court could not credit this explanation in light of his admissions on cross examination that he had received notice of the wife's various legal filings, as well as his admission that he had sufficient money to retain counsel at various times prior to the entry of the default judgment.

As for the husband's testimony concerning the existence of a meritorious defense to the default judgment based on his apparent depression and medical condition, the court could not credit his explanation because it could not be reconciled with his admissions on cross-exam regarding his various activities in the immediate aftermath of his father's passing and his back surgery. Given his testimony regarding those activities, his alleged depression and medical condition would not have impaired him from taking action to prevent entry of default judgment.

For the foregoing reasons, the court found that substantial justice was done in entering the default Judgment on 5/2/2019, and that it would be unreasonable to vacate the default judgment and made the parties proceed to trial on the petition for dissolution, Judge Raymond D. Collins denied the husband's Section 2-1301 Motion to Vacate.

Trustee Not Obligated to Pay Additional Maintenance

The trustee of the husband's Life Insurance Trust filed a Motion for Summary Judgment declaring that the remaining proceeds of a Life Insurance Trust be distributed to the two children of the parties and that the wife's claim to additional maintenance payments be denied. Judge Anna M. Loftus granted the Motion for Summary Judgment and found that the parties two children were the sole heirs of their father's estate and were entitled to the balance of the funds held in escrow in his Life Insurance Trust.

The trustee was represented by Francis P. "Pat" Cuisinier of Ruberry, Stalmack and Garvey LLC. The wife was represented by Anita M. Ventrelli of Schiller, DuCanto & Fleck LLP.

The wife was the former spouse of the husband and they had two sons. The parties were married on December 8, 1985. A Judgment for Dissolution of Marriage was entered in Cook County on June 17, 2010 by Judge Veronica B. Mathein. The Judgment incorporated the Marital Settlement Agreement executed by the parties. Following the entry of the Judgment and through the date of the husband's death in 2017, no order was ever entered by any court to vacate, modify or amend the terms of the Judgment or MSA.

On October 4, 1995, prior to the divorce, the husband executed a "Last Will and Testamentary Trust" providing for the wife and their two sons. As a result of the divorce, the two sons became the sole heirs of the husband's estate, subject to the court's ruling on the wife's pending claim in the current proceedings.

As part of the MSA incorporated in the Judgment, the husband assumed an obligation to provide maintenance for the wife. The husband was to pay the wife maintenance, the non- modifiable amount of $10,000.00 per month, commencing on the first day of the first of January, 2010, and continuing on the first day of each month

thereafter until the occurrence various events including the death of the husband. The husband was to pay the wife maintenance, the non-modifiable amount of $7,500.00 per month, commencing on the first day of the first of January, 2012, and continuing on the first day of each month thereafter until the occurrence of among other events, the death of the husband. If for any reason, either party filed any pleading which requested that any provision was to be modified, the parties stipulated that any such pleading should dismissed by the court and that the party filing such a pleading would pay all attorney fees and costs incurred by the other party to defend.

The MSA also included a life insurance provision that provided that upon entry of a Judgment for Dissolution of Marriage the husband would keep and maintain an insurance policy on his life in the unencumbered face value and death benefit of $1,300,000.00 for the benefit of the children of the parties and the wife, with the beneficiary designation of said life insurance policy to be a Life Insurance Trust. The face value and death benefit was to be in an amount equal to the declining and unpaid balance of the financial obligations of the husband for the maintenance and property settlement payments due the wife and the husband's financial obligations for the educational expenses to be incurred on behalf of the children of the parties.

The purpose of the husband's life insurance obligations under Article V of the MSA was to secure the husband's maintenance obligations to the wife, along with his responsibility to pay for the education of their two sons pursuant to the terms of the MSA.

In order to obtain a judicial construction of the rights and liabilities of the parties under the MSA and the Trust, the children filed the Declaratory Judgment Action. The MSA unambiguously provided that the wife's right to maintenance terminated at the time of the husband's death; accordingly, the balance remaining in the Life Insurance Trust was subject to distribution to the husband's heirs, namely the parties' two sons.

The wife argued that the parties to the MSA intended the Life Insurance Trust to serve as a death benefit to the wife to secure the maintenance payments that the husband would have owed to her had he continued to live until December 31, 2020. In this regard, she argued that using life insurance as security for the payment of maintenance was a common judicially and statutorily approved practice in Illinois, citing Section 510 of the Illinois Marriage and Dissolution Act which provided in relevant part: "Any termination of an obligation for maintenance as a result of death of the obligor, however, would be inapplicable to any right of the other party or such other party's designee to receive a death benefit under such insurance on the obligor's life" 750 ILCS 5/510(c). Similarly, she relied upon the case of *In Re Marriage of Walker, 386 Ill. App. 3d 1034 (4th Dist. 2008*) which held that the trial court in a divorce proceeding had the discretionary authority to order a payor to keep a life insurance policy to prevent the premature termination of maintenance. The trustee argued that *Walker* was misplaced. While the parties could have agreed to an irrevocable death benefit in the form of life insurance to secure a continuation of payments after death, the language of the MSA did not reflect their intent to do so. Similarly, the trial judge in the parties' divorce proceedings did not order the husband's to purchase life insurance naming the wife as a beneficiary. Instead, the parties agreed that the husband would create a life insurance trust to secure his financial obligations as defined in the MSA. His financial obligations to the wife were limited to the payment of any

maintenance that he owed up through the date of his death.

The wife argued that the interpretation of the MSA rendered the inclusion of Article V "Life Insurance" completely meaningless. In making this argument, she pointed to the language of the MSA requiring the purchase of life insurance equal to the declining balance of the maintenance payments due to her under the MSA. She also pointed to her right to make a claim against the Estate in the event that the husband's maintenance obligations were not met. Neither argument had any merit, according to the trustee.

The court was simply being asked to enter a declaratory judgment finding that the trustee of the husband's Life Insurance Trust, was no longer obligated to pay any sums to the wife, under the terms of the MSA, and that the remaining proceeds in the Life Insurance Trust were to be distributed to the parties' sons pursuant to the terms of the Trust.

The husband's financial obligations concerning maintenance were set forth in the terms of the MSA, his obligation to pay was terminated. He had no further obligation to pay maintenance after his death, If he had not died, he would have been required to pay maintenance through 2020. On the face of the MSA, the husband's obligation to pay maintenance ended upon his death. There could be no unpaid financial obligations with respect to maintenance following his death except for payments due, but unpaid, prior to his death.

The trust proceeds were used in this scenario when the husband failed to pay maintenance for the last two months of his life, and the trustee did pay the wife the amount due, and that was consistent with the court's reading of the MSA's provisions which addressed obligations that remained outstanding at the time of his death. It did not create new financial obligations or revive the MSA's maintenance obligation and his obligations terminated upon his death.

The court was not modifying the terms of the MSA. The court reviewed the claim and unambiguous language of the MSA and determined that the trustee's reading was consistent with the intent of the parties as established by the language of the MSA. 5Judge Anna M. Loftus granted the trustee's Motion for Summary Judgment.

Legal & Advocacy Obligation Under Medical Expense Provision

The parties had a daughter who was suffering from autism. The mother incurred legal and advocacy fees and expenses incurred in connection with her attempt to obtain proper medical services. Judge Abbey Fishman Romanek found there to be an interconnectedness between legal fees incurred relating to medical expenses under the facts on this case. The legal and advocacy fees incurred were extraordinary and necessary medical expenses, for which the father was responsible. However, the father's failure to pay was not willful or contumacious, and Judge Romanek did not find him to be in contempt.

The mother was represented by Joan S. Colen of Joan Colen Law Office. The father was represented by Jill R. Quinn of the Law Offices of Jill Rose Quinn.

The parties were never married to one another. They had one child, a daughter, born in 2003. Before the child was born, the mother filed and served the father with a Petition to Establish Parentage. On September 17, 2004, following DNA testing, the court found the father to be the child's biological father. On September 17, 2004, the parties entered an Agreed Order setting child

support at $1,280.05 per month, retroactive child support, insurance coverage and retroactivity for insurance coverage. As it pertained to medical expenses, Sections 6 and 7 of the 2004 Order provided, "that any amounts of hospital, medical, dental or the like expenses incurred for the minor child which were not covered by insurance, were to be paid equally by the parties, 50/50, upon the bill from the provider. The obligations were not limited to, all hospitalization, doctor bills, prescriptions, dental, orthodontic, psychiatric, psychological or any other health professional related expense incurred."

On April 15, 2011, the State's Attorney's Office filed a Petition for Judgment because the father was in arrears in paying child support. On July 12, 2011, a Uniform Order for Support was entered by agreement The 2011 Order did not modify the amount of current support or reimbursement for the child's health insurance premiums. With regard to medical expenses, the 2011 Order checked the box on the Uniform Order for Support form that "the Obligor was liable for 50% of medical expenses incurred by the minor child and not covered by insurance."

Beginning in 2012, when the child was 8 years old, she struggled with her social skills and with math. The mother attempted to advocate with Evanston School District 65 to secure an IEP and services for the child, but the school was resistant. The mother took the child to Dr. Nathan Wagner in Evanston, Illinois, and after working with the child for several months, Dr. Wagner indicated his belief that the child had either Aspergers Syndrome or high-functioning autism. Dr. Wagner recommended that the mother take the child for autism testing. Subsequently, the mother had the child evaluated at Advocate Medical Group, where Dr. Carol Rolland diagnosed the child with Aspergers Syndrome. Dr. Rolland's report included several recommendations for the child's school to implement, including a "multi-sensory learning environment," additional time to complete schoolwork and tests, sensory breaks throughout the day and an incentive program for good behavior.

According to the mother, she called the father when the child was first being tested in September 2012 to tell him the child was being tested for autism and to ask him about family history. Within one week after the child was diagnosed with Aspergers Syndrome in December 2012, the mother called the father to inform him of the diagnosis. Again, according to the mother, the father said it was easier for him not to see the child or to know what was going on with her. It was not until the Spring of 2016, when she was 12 years old, that the child and the father began communicating with each other via letters. In the interim, following consultation with an attorney, additional testing and the assistance of a special education advocate, the mother secured an IEP and services for the child with Evanston School District 65.

In 2014, when the child was 11 years old and about to begin 5th grade, the mother and the child moved to Tennessee without objection from the father. The child was enrolled at a school in Murfreesboro City school district, which immediately gave the child an IEP and services consistent with the medical testing performed in Chicago. However, upon completion of 6th grade, the child was required to move to Blackman Middle School, a Rutherford County school. Blackman cut the child's services, limiting her to only Special Education math classes. The mother brought an advocate to all 7th-grade IEP meetings, as well as taking the child to a psychologist for additional testing. The psychologist made seventeen separate recommendations for the child's treatment, including that the results of the evaluation be

shared with the school district, so that an IEP team meeting can be convened. The school district was resistant to extend the child's IEP, and in September, 2017, the school terminated the child's IEP.

From October 2017 through May 2018, the mother hired an attorney and sued the Rutherford County school district for violating the child's rights under the Individuals with Disabilities Education Act ("IDEA") by terminating her IEP. The mother obtained additional medical testing for the child, and subsequently hired advocates to discuss the child's medical evaluations and persuade the school district at IEP meetings. The litigation was settled in May 2018 when the mother could no longer fund it, and the school agreed to implement an IEP for the child.

On January 2, 2019, the mother filed a Petition for A Rule to Show Cause against the father, asserting that he refused to pay 50% of the child's medical expenses as required by the 2011 Order.

Following discovery, the father asserted that he should not be responsible for any of the legal or advocacy expenses the mother incurred to ensure that the schools the child attended provided her with an appropriate IEP. The parties disputed whether the father was aware of the legal action during the pendency of the litigation against Rutherford County school district. Of note, the father did not contest the outstanding medical bills, prescriptions or the child's psychological expenses for which the mother had requested contribution. However, the father insisted that the mother never directly requested financial assistance for legal or educational needs until this action was commenced in 2019. Furthermore, he claimed there had been no direct conversation between the parties about the need for engaging legal representation for or on behalf of the minor child prior to the mother incurring such expenses.

On the other hand, the mother insisted that the father was not only aware of the legal battle, but was fully supportive and encouraging. Moreover, the mother claimed she asked the father to contribute to the child's legal fees over the course of the litigation.

There were two major legal issues presented to the court. First, whether the legal and advocacy fees that the mother incurred from October 2017 and May 2018 as a result of suing the Rutherford County School District for violating the child's rights under the IDEA were a medical expense within the father's obligation to contribute. The court found the legal and advocacy fees incurred were extraordinary and necessary medical expenses, for which the father was responsible. The court found the father not in contempt for his failure to pay and found his noncompliance was not willful and contumacious.

The court considered whether the legal and advocacy fees were medical expenses under the Illinois Marriage and Dissolution of Marriage Act and the parties' prior court orders. Section 505 of the IMDMA vests the court with the authority to order either or both parents owing a duty of support to a child to pay an amount reasonable and necessary, including the obligation to provide reasonable and necessary physical, mental and emotional health needs of the child. 750 ILCS 5/505 (a).

However, the IMDMA did not explicitly define "medical expense." Therefore, the court also looked to the court orders for guidance. In the 2004 Order, the parties purposefully contracted that, "[t]he obligations under the medical include but are not limited to..."

Notably, the parties chose not to limit either of their obligations as it related to medical or

distinguish between ordinary and extraordinary expenses. The inclusion of the phrase "include but were not limited to" coupled with the parties' silence as to extraordinary expenses lent itself to an interpretation that "medical" encompasses both ordinary and extraordinary expenses. This interpretation was relevant since in Illinois, "extraordinary medical expenses" included expenses for a remedial educational program. *In re Marriage of Morrisroe, 155 Ill. App. 3d 765 (2d Dist. 1987).* In *Morrisroe*, the minor child had severe learning disabilities, emotional problems, dyslexia, hyperactivity, impulsiveness, and mood swings. Due to problems at school, the mother was required to place him in behavior disorder classroom. *Morrisroe*, 155 Ill. App. 3d at 467. The Appellate Court affirmed that expenses for the minor child's remedial educational program were medical expenses extraordinary in nature, for which the father was responsible.

Just as petitioner in *Morrisroe* was required to place her child in a special classroom to treat his disabilities, the mother in this case was advised by psychologists to secure an IEP for the child to treat her mental illness and medical disabilities. It was certainly in her best interest to secure an IEP that offered the same services when she transitioned to Blackman Middle School.

The parties neither provided, nor had the court found, any additional legal authority in Illinois addressing whether legal and advocacy bills can constitute medical expenses. Absent additional Appellate guidance or a statutory definition of "medical expense," the court looked to other jurisdictions. A California Court of Appeals interpreted the relationship between legal fees and medical expenses as being inextricably intertwined. *People v. Beaver, 186 Cal. App. 4th 107 (Cal. Ct. App. 2010).* Although in the context of victim restitution and analyzed as a matter of law and statutory construction, the court in *Beaver* held that legal fees incurred to reduce an employer's exposure to medical expenses were every bit a part of those medical expenses. *Beaver, 186 Cal. App. 4th at 118.* In this case, the defendant fraudulently told his employer, that he was injured on the job in order for the employer to pay for medical expenses incurred from a prior, unresolved injury. The employer's insurance paid for the medical expenses. The employer then sought advice from counsel to establish that this claim fell under their general liability policy rather than worker's compensation. In affirming, the court of Appeals reasoned that even if the legal fees were expended for the purpose of determining the insurance coverage issue, they naturally flowed from the defendant's conduct and were inextricably intertwined with the employer's expenditure for medical care.

Likewise, the legal fees in the case at bar were expended precisely for the purpose of implementing the services and accommodations the child's psychologists recommended as a treatment for her medical condition. The attorney and advocates recommended and heavily relied on medical testing to persuade the school district. Under *Beaver*, the legal and advocacy fees were inextricably intertwined with the medical expenses to secure the child's IEP, and would therefore be considered medical expenses.

Additionally, a Virginia Court of Appeals had broadly interpreted extraordinary, necessary and appropriate expenses associated with medical treatment to encompass hotel costs, phone bills, rental furniture bills and a TV/VCR system. *Carter v. Thornhill, 19 Va. App. 501, 510 (Va. Ct. App. 1995).* In *Carter*, the parties' minor daughter had catastrophic injuries as a result of an automobile accident that left her requiring the care of numerous facilities in Virginia, Delaware,

Pennsylvania, and Tennessee. Carter, 19 Va. App. at 503-04. As a result of her daughter's grave medical condition, the mother remained at her daughter's bedside and incurred substantial expenses in the course of her travels. The Appellate Court upheld the trial court's determination that father pay forty-five percent of mother's personal travel, food, hotel and miscellaneous expenses.

As the court in *Carter* concluded that the mother's personal expenses were ancillary medical expenses, likewise, the court found the legal and advocate fees were necessary and appropriate". Another jurisdiction broadly interpreted the duty to support a child to include necessary legal fees. *Price v. Perkins, 242 Md. 501 (1966)* (determining the mental health of the minor child was of paramount importance, not only to him, but also to his parents, the court rendered legal fees incurred by divorced mother in an action to judicially determine whether a child should be enrolled in school for mentally disturbed children 'necessaries' for which father was liable). The Alaska Supreme Court had also broadly interpreted expenses associated with medical treatment as within a husband's obligation to contribute to. See *Cedergreen v. Cedergreen, 811 P.2d 784, 787-88 (Alaska 1991)* (affirming the superior court's interpretation of "medical and dental expenses" as inclusive terms for health-related costs that should be read broadly, and determining that expenses for airfare and travel in connection with children's treatment were medical expenses for which husband had to reimburse wife pursuant to divorce decree). There was no evidence before the court that the father lacked the financial resources to pay his share of the legal and advocacy bills.

Finally, the mother cited federal law, which allowed individuals to deduct medical expenses on their federal income tax return, including, "legal fees you paid that are necessary to authorize treatment for mental illness." IRS Publication 502 (2018). The legal and advocacy fees the mother incurred in connection with implementing the child's IEP for her mental illness and medical disabilities fell precisely under this personal deduction. That was further support that the costs at issue had been characterized under the umbrella of medical expenses.

Now that the court found the father to owe his share of the legal and advocacy related medical expenses, the court considered the issue of the father's contempt. "In a civil contempt proceeding, the burden of proving the defendant was in contempt was on the party bringing the action, and the defendant must be proved guilty by a preponderance of the evidence." *In re Marriage of LaTour, 241 Ill. App. 3d 500, 507 (4th Dist. 1993).* Satisfaction of this burden required that the complaining party first show or establish "that an order had been violated."

Following a showing of failure to make payment, the burden then rested upon the alleged contemnor to show his noncompliance was not willful and contumacious, and that he had a valid excuse for his failure to pay." *In re Marriage of Betts, 155 Ill. App. 3d 85, 98 (4th Dist. 1987).* "Whether noncompliance was willful or [in the alternative,] whether it was backed by a valid excuse was a question of fact" to be assessed in light of the evidence presented by the alleged contemnor. Ultimately, "the existence of an order of the court and proof of willful disobedience of that order were essential to any finding of indirect contempt."

The father had the burden to show his noncompliance was not willful and contumacious, and that he had a valid excuse for his failure to pay. He argued that he had never been presented

with any medical bill, let alone any legal or advocacy bills, until the mother filed a Petition for Rule to Show Cause against him in January 2019. Although the mother claimed she asked the father to contribute throughout the litigation, she provided no evidence that she tendered invoices at those times. In fact, the mother admitted only that following discovery in the current litigation, she produced receipts for all of the child's medical expenses to the father. However, the mother incurred the legal and advocacy fees from October 2017 through May 2018. The evidence reflected that the mother received invoices from the attorney and advocates throughout the pendency of the case. The parties' 2004 order placed an ongoing responsibility on the mother to send the father, in a timely manner, the legal and advocacy invoices for which she was now requesting 50% contribution. The court took issue with the fact that the mother waited to present these bills and request reimbursement from the father until she initiated a contempt proceeding. The father met his burden of proving his failure to pay was not willful or contumacious.

Extension of Order of Protection Denied

The parties were currently involved in a pending dissolution action. They had two children. The mother sought an Order of Protection against the parental grandmother and a Stalking No Contact Order against the paternal aunt. Judge Frederick Harvey denied the Petition for Stalking finding that the statute required two of more acts and a single incident was insufficient. Further, the Judge found that the mother had not provided sufficient evidence to substantiate her claims against the grandmother to justify an Order of Protection and therefore the Order of Protection which had been in place for almost a full plenary period based on the length of time the case had been ongoing, was denied.

The mother was represented by Judith A. DeVriendt of DeVriendt & Associates. The father's mother and sister were both represented by Thomas E. Grotta and Kaley E. Baish of Grotta & Associates, P.C.

The mother was currently pursuing a Dissolution of Marriage from the father of the minor children (who was also the grandmother's son and aunt's brother). At the time of filing, the mother also had an active Emergency Order of Protection against her husband, again including the minor children as protected parties. At the time the hearing took place, the father had regularly scheduled parenting time pursuant an order of court in the dissolution case. Due to several continuances, the emergency order of protection against the grandmother was in place for eighteen months, before a full and complete hearing on the matter was conducted.

At the conclusion of the hearing, the court determined that the mother had not presented sufficient evidence to support her request for the plenary Order of Protection or No Stalking Order and the case was dismissed with prejudice.

On May 30, 2018, the mother filed an Emergency Petition for Order of Protection against the grandmother, who was also her mother-in-law, naming herself and her minor children, ages 15 and 17, as protected persons. The Emergency Order was entered and the matter was set for hearing on the Plenary Order the following month. The mother also filed a Petition for a Stalking No Contact Order against her sister-in-law. In that case, the Emergency Order for Stalking No Contact was denied, and the matter was also set to be heard on plenary order concurrently with the Order of Protection case.

In the Petition for Order of Protection, the mother alleged that three separate incidents involving the

grandmother occurred in May 2018. The mother alleged that the first incident occurred on May 1, 2018, when she observed the grandmother and the father driving down her street. The mother alleged that once the grandmother realized that the mother saw them, that the grandmother and her husband turned around and left. The mother alleged that the second incident occurred on May 23, 2018, at approximately 3:00 p.m. when she noticed the grandmother sitting at the entrance of the mother's subdivision. The mother again alleged that the grandmother realized that the mother was aware of grandmother's presence, so the grandmother again left. The mother further alleged that she felt the grandmother and her husband were doing so in an attempt to intimidate her because of the Order of Protection against her husband.

The final incident alleged by the mother was reported to have occurred on May 29, 2018 at approximately 10:30 a.m. when one of the minor children observed the grandmother and her husband sitting at the entrance to the subdivision watching him. The mother again alleged that the grandmother was taking this action to intimidate her and the minor children and further alleged that the grandmother's actions were frightening to her child causing him to run and lock the doors and windows.

In the Petition for Stalking No Contact Order, the mother alleged an incident taking place on May 24, 2018, wherein the Aunt came to the mother's home and ran up and hugged one of the minor children. The mother further alleged that the Aunt told the child that "your dad loves you a lot. I promise he will see you soon," although the Aunt was aware of the Order of Protection against the children's father. Finally, the mother also alleged that the Aunt had called the children on four occasions prior to the May 23, 2018 incident, despite the mother telling the Aunt not to do so.

Both parties and their attorneys appeared on June 19, 2018 for the hearing on both cases, however due to the court's unavailability the matter was reset for hearing on July 18, 2018, at which time the court again required that the case be continued.

After several continuances, primarily at the request of the mother, hearing on this matter finally commenced on June 12, 2019. The mother testified that on May 23, 2018 at approximately 3:00 p.m. that she observed, through a fence, that the grandmother was sitting in her vehicle at the entrance to mother's subdivision, taking pictures. She stated this caused her to be fearful of the grandmother. On cross-examination, the mother testified that she was not sure who she observed taking pictures because the person's hands were in front of his or her face. She further testified that she waived at the person she observed taking pictures.

The mother then testified that, prior to the incident in question, that she had informed the grandmother not to have contact with her or the children. She then testified regarding a second incident which took place approximately one week later when her teenage son observed the grandmother near the mother's home although the mother was not present on that day. The mother testified that she sought an Order or Protection due to her children being fearful of the grandmother's actions. On cross-examination, the mother could not recall how many incidences occurred with the grandmother or how many were listed in the Petition for Order of Protection.

In regard to the incident with the Aunt, the mother testified that on May 24, 2018, the Aunt pulled her car into the mother's driveway, blocking it, and grabbed one of the minor children, causing the child to be shocked, and then angry. The

mother further testified that the Aunt told the children that their father loved them and would see them soon, despite the Aunt being aware of the Order of Protection against the father.

Both minor children testified against the grandmother and the father at hearing. The first minor child, age fifteen, testified regarding a Facetime communication with the grandmother during which time the grandmother was saying "bad stuff" about the mother, but the child could not recall what exactly was said. He also testified regarding the incident where the Aunt came to his house and gave him a hug, stating that he was surprised to see her, but he was not scared.

The second child, age seventeen, testified that in late May 2018, he observed the grandmother pull into his subdivision. He further testified that he had a good relationship with the grandmother, but was alarmed because he was aware of "certain emplacements" and that he knew his grandmother could not be within a certain distance of him and his brother, although the alleged incident was cited in the Petition for Order of Protection as occurring prior to the Petition being filed.

The mother rested her case after questioning the second child. At that time, the grandmother, through counsel, made a Motion for Directed Verdict, arguing that the mother had not presented any evidence that would rise to the level of conduct that would justify an Order of protection. The Motion for Directed Verdict was denied.

Three witnesses, including her husband, her neighbor and herself, testified on the grandmother's behalf. All of the grandmother's witnesses testified that the grandmother was in Indiana, where she resided, during the timeframes of the alleged incidences, thus directly contradicting the mother's testimony. While testifying, the Aunt admitted to stopping by the mother's home on the date in question, and that she did hug and speak with the minor child.

On December 19, 2019, the court determined that the single incident regarding the Aunt did not amount to stalking. The statute required two or more acts, and therefore the Petition for Stalking No Contact Order against the aunt was denied. In regard to the grandmother, the court noted that the mother had had the benefit of almost a full plenary Order of Protection, based on the length of time the matter had been ongoing. Nonetheless, the court found that the mother had not provided sufficient evidence to substantiate her claims against the grandmother to justify an Order of Protection against her, and therefore the Order of Protection was denied.

Neither Party Credible

The parties were married on August 8, 2014 in the Grand Caymans. They had no children. The trial went on for over ten hours and finally concluded at 11:45 at night. The husband had trouble recalling certain things from a short term marriage. The wife's credibility was substantially worse and the court went so far as saying horrendous, especially regarding her LinkedIn testimony and her not seeking employment. Judge John. T. Carr found neither party to be credible. The wife was awarded maintenance of $2440 monthly for nine months.

The wife was represented by Tiffany M. Hughes of The Law Offices of Tiffany Hughes. The husband was represented by Timothy D. Jasper of Davis Friedman LLP.

The wife was barred from presenting any witnesses other than herself and the husband for failing to disclose any witnesses pursuant to the May 13, 2019 trial order. For the reasons stated on the record by the court on October 11, 2019, the

wife was barred from using, referring to or presenting any documentary evidence at trial for her exhibits because she failed to disclose or produce any updated discovery or trial exhibits pursuant to the May 13, 2019 trial order, including a signed Marital Settlement Agreement that was barred. The signed Marital Settlement Agreement provided for a vastly different outcome then what Judge Carr's Judgment ordered. The wife was still allowed to use, refer to or cross-examine any of the husband's exhibits.

During the pendency of this litigation, the wife relied upon gifts and loans from her mother to support her inflated lifestyle. During their marriage, both parties lived way beyond their means. The wife's testimony that she currently required $25,000 per month for living expenses was not credible. Her claims of various physical and mental medical conditions as part of the reason why she said she could not find suitable work were not credible. Even after the court commented on her physical appearance, posture and demeanor part way through the trial, nothing demonstratively throughout the remainder of the trial demonstrated that the wife was despite the extended trial that lasted until 11:45 p.m. at night.

The wife's Financial Affidavit expenses were outrageous which stated expenses of approximately $11,000 per month was not credible but her later testimony on her direct that they had increased to over $25,000 per month was beyond outrageous.

The wife's testimony about her Linked-In account and how she could circumvent processes with employment and finding employment was not credible and the court found it to be "an outright lie". Her testimony as to why she could not take job offers was not credible and her request for $10,000 per month in maintenance with a five-year review again makes her not credible.

The husband's gross income was approximately $13,600 per month. If the court were to grant the wife's request of $10,000 per month in maintenance, after the husband paid that he would probably be negative each month with nothing to support himself, especially since maintenance was now not deductible for income tax purposes.

The court went through the factors of Section 504 as follows: Each party was to keep all personal property and effects in their respective possessions. The needs of each party were greatly inflated as both parties during their marriage were living beyond their means and relying upon their parents for income. Each party had sufficient future earning capacity. The husband's income should be steady if not continue to rise.

The wife had positions during the marriage that paid her $200,000 and $165,000 gross incomes per year respectively. She had also received job offers this year alone that were sufficient to support herself.

The court was not presented any credible evidence that either party was impaired in their earning capacity. Regarding lifestyle, no amount of maintenance awarded would allow the wife to maintain her stated lifestyle as she was living well beyond her means.

The duration of the marriage was short-term. The court found the marriage was 43 months for maintenance purposes. The court rounded up to nine full months for the maintenance duration.

The court found the only sources of income for the parties were the husband's employment and the recently minor income of doing ride-sharing drives. Both parties had income tax liability so the court viewed this as a wash. The court did not

hear any credible evidence as to contributions by either party that would make the court deviate from maintenance guidelines.

For calculating maintenance the court used $165,000 gross annual income for the husband and imputed $35,000 of annual income to the wife. Commencing November 1, 2019, the husband was to pay $2,440.00 per month for nine consecutive months terminable and not reviewable. Upon that maintenance payment, the wife's right to receive maintenance would be forever barred. The husband was forever barred from asserting any claims for maintenance against the wife.

The parties were owners of certain real property improved with a condominium located on West Hubbard St. in Chicago. The parties were to cooperate to settle any insurance claims and fix-up the marital residence as best as possible in order to list it for sale as soon as possible. If the parties could not agree on settling the insurance claims or as to what fixes/repairs needed to be made the marital residence, it was to be sold "as-is". If the husband wanted to buy-out the wife's interest that was also an acceptable alternative.

The husband was to receive as his sole property his Thrivent Financial life insurance policy and any cash value associated therewith. During his maintenance obligation he would continue to name the wife the beneficiary of the policy. When his maintenance obligation terminated, the husband was to be allowed to change the beneficiary designation of his policy as he wished.

The husband was to pay the wife's health insurance premiums for the months of November 2019 and December 2019 only. As of January 1, 2020, the wife was to be solely responsible for her own health insurance premiums. She was to be solely responsible for all of her uncovered health related costs.

The husband was awarded all of the assets (including but not limited to bank accounts and equipment) and goodwill of Thrive Point Consulting, LLC. He was to be solely responsible for any and all indebtedness, liabilities, taxes and the like associated with his business interest, Thrive Point Consulting, LLC.

The wife was awarded all of her assets (including but not limited to bank accounts and equipment) and goodwill of Circa 888.

Legal Guardian Prevails Over Parents

At the time that the underlying action commenced in St. Clair County, the Legal Guardian resided in St. Clair County with the minor child. Subsequently, the Legal Guardian relocated to and lived with the child in Chicago, Illinois. The child was currently residing with her Legal Guardian in Chicago Illinois pursuant to an Order entered in St. Clair County. That court had granted the Legal Guardian's petition to relocate with the child on February 24, 2019. On January 24, 2020, Judge Myron J. Mackoff outlined a parenting schedule for each of the parents and the uncle.

The minor child's legal guardian was represented by Morgan L. Stogsdill and Elizabeth C. Szabo of Beermann LLP. The biological relatives (mother, father and uncle) were represented Pro Se at the time of the hearing. Marcellus H. Moore, Jr. was the Guardian Ad Litem.

The child's biological parents resided separately in St. Louis, Missouri. The uncle, who was the intervenor, also lived in St. Louis, Missouri as well.

Pursuant to the February 4, 2019 Order, the biological mother had parenting time with the child on the second weekend of the months of January, March, May, July, September and November from Friday at 7:00 p.m. until Sunday at 4:00 p.m.; the biological father had parenting time with the child on the second weekend of the months of February, April, June, August, October and December from Friday at 7:00 p.m. until Sunday at 4:00 p.m.; and the uncle/intervenor had parenting time with the child every fourth weekend of the month from Friday at 7:00 p.m. until Sunday at 4:00 p.m., except for December when he had three days during the child's Christmas break from school.

The February 4, 2019 order stated the parties were to meet at the Cracker Barrel in Caseyville, Illinois for all visitation exchanges. The visitation exchange location was approximately 300 miles and at least five hours from Chicago, Illinois. This meant that for every visitation weekend, the child would miss at least one-half of a school day. Further, with the visitations regularly ending at 4:00 p.m. on Sunday, the child did not usually get home until after 10:00 p.m., on a night before she must be in school the next morning.

Additionally, Petitioner has had to hire a tutor for the child given the amount of school she had missed during the 2018-2019 academic year.

The uncle did not regularly exercise all of his parenting time with the child. Instead, on his weekends, he regularly gave the child to her biological mother. This occurred despite requests from the Legal Guardian that the uncle keep the child in his care during his parenting time as the child wanted to spend time with the uncle.

The child's relationship with the biological father had not progressed.

The child was involved in activities in Chicago with her peers including Sunday school, Girl Scouts, ballet, piano lessons, and gymnastics. She missed many events on weekends due to the parenting schedule described herein. The child was a talented gymnast and was working with a coach to hopefully make the junior Olympics Gymnastics team.

Since March 2019, the child had started seeing a psychologist, Amy Wilde who testified at the trial. In her meetings with her therapist, the child expressed she did not want to communicate or visit with either of her biological parents. The child hid under a table when talking about the biological father, something which Ms. Wilde testified she had only seen previously when children were afraid. The child told Ms. Wilde that she had been pushed down the stairs by a sibling while at the biological mother's house and that she had been asked to keep secrets by the biological mother.

The Guardian ad Litem had multiple interviews with the child, the Legal Guardian, and the biological relatives. The Guardian ad Litem reviewed school documents, spoke to teachers at the child's school regarding how much school the child had missed and concerns by the school regarding the same, as well as Amy Wilde on multiple occasions. The Guardian ad Litem also testified to his concern regarding the child hiding under a table while discussing her biological father and that the child told Mr. Moore that she was uncomfortable with the biological father.

Judge Mackoff also conducted an in camera interview of the child.

The current parenting schedule was not in the child's best interests for the reasons. Section 5/610.5(c) of the Illinois Marriage and Dissolution

of Marriage Act stated: "[e]xcept in a case concerning the modification of any restriction of parental responsibilities under Section 603.10, the court was to modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court found that on the basis of facts that had arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change had occurred in the circumstances of the child or of either parent and that a modification was necessary to serve the child's best interests."

The effect of the extensive travel and regularly missing school and extracurricular activities was not anticipated at the time the February 4, 2019 Order was entered and/or was not fully realized at that time; the extent was also now being realized through the child's therapy sessions and through her performance at school. A modification to the current parenting schedule was necessary to serve the child's best interests.

Judge Myron J. Mackoff determined that the child's biological relatives would have parenting time with the minor child the third full weekend of every month. Parenting time would be in Chicago from 9:00 a.m. to 6:00 p.m. each day and that the biological relatives would be responsible for getting the minor child to all scheduled activities which all parties were allowed to attend. Notwithstanding the above, parenting time in June and July would be in St. Louis.

To ensure that costs of travel were not a barrier to the biological relatives' exercise of their parenting time, for every even numbered month, the Legal Guardian was to reimburse their travel costs (either the actual costs of a rental car or the average cost of three round-trip train tickets from St. Louis to and from Chicago, whichever was smaller).

The parties were to make alternate or additional plans for parenting time by written agreement. Parenting time in St. Louis in June and July would be from noon to 9:00 p.m. on Saturday and from 8:00 a.m. to 3:00 p.m. on Sunday. The Saturday start time was to be flexible given the uncertainty of traffic and travel.

All phone communications between the minor child and the biological relatives would continue as previously established. As previously ordered during parenting time the minor child was not to be left alone or with her siblings without adult supervision.

The Legal Guardian was to facilitate any other parenting time for the biological relatives upon reasonable request and reasonable conditions including shared holiday time. Both the Legal Guardian and biological relatives were allowed to attend any recitals, athletic events and major school events for the minor child.

Downward Modification of Support Despite Voluntary Job Loss

One child was born to the parties, a son, currently age fourteen. A Custody Judgment was entered on August 14, 2014 whereby the parties shared joint custody and equal parenting time. On September 9, 2019, the father filed a Petition to Modify Child Support. Judge Jeanne Cleveland Bernstein terminated his $150 per month support obligation despite the husband's voluntary loss of income and ordered the mother to pay the father $104 per month and in support.

The father was represented by Peter R. Olson of Chicago Family Law Group, LLC. The mother was represented by Marc D. Wolfe of Wolfe & Stec, Ltd.

The Judgment for Dissolution of Marriage was entered on November 24, 2014 where by the father was ordered to pay $150 per month to the wife for child support. The Judgment further provided that the parties' were to equally divide the cost of health and dental insurance premiums that were attributable solely to solely the minor child's coverage. The father had been contributing $200 per month to the mother for the premiums. However, the father had not been provided notice of the current premium amount as required under the Judgment.

The father's $200 monthly contribution was greater than 50% of the minor child's insurance premium and included costs that were attributable to the mother herself and to other children not related to father.

After the entry of the November 24, 2014 Judgment, there had been material and a substantial change in circumstances of a continuing nature, within the meaning and purview of 750 ILCS 5/510(a), that necessitated an immediate modification of the child support payments.

The mother's income had increased some $10,000 per year since the time the Judgment and Custody Judgment were entered. The father's income had involuntarily been reduced from the $77,000 that he had been earning at the time the Judgment was entered. The father had been over-paying for his insurance premiums on behalf of the minor child pursuant to the oral representations by the mother.

Both parties had a duty of support to the minor child, including providing for his reasonable and necessary physical, mental and emotional health needs. The father alleged that the mother should be required to pay child support for the minor child, pursuant to Section 505 of the Illinois Marriage and Dissolution of Marriage Act and the father's current child support obligation should be terminated on account of a substantial change in circumstances.

The father also asked the court to require the mother to disclose the health and dental plans and premiums that she was currently incurring on behalf of the minor child and that his child support obligation be terminated. He also asked that an order be entered increasing the mother's child support obligation upward, in such an amount as was reasonable under the circumstances and consistent with the statutory guidelines.

Under Illinois law both parents' incomes are used to calculate child support. Both parties were to produce evidence of their income via paystubs, Financial Affidavit, and two years of tax returns. In this case, the mother worked in government and had steady raises over five-to-seven years and her income was some 25% higher than when the last support order was entered. The father was in the private sector and had worked consistently over the last five-to-seven years but had changed jobs a number of times and his income had decreased some 10% over the same time period.

Illinois law disfavored a child support payor from voluntary reducing her/his income. The "why" a person's income went down mattered a lot. In this case, the father's income reduction was voluntary in the sense that he was not fired by an employer. But, the evidence presented was that his employer had been bought-out by another company, jobs were getting cut, and he acted smartly in leaving when he did. Plus, he had been very active in seeking opportunities over recent years, but, the fact remained that his income was 10% lower than when the last child support order was entered. The most common/easy way that court's evaluated a "voluntary" reduction was...does the individual get unemployment compensation? Because, if you

lose a job that was not your fault you get unemployment for six months (or until you get a new job).

The father had faithfully paid child support for some five years although he had an income reduction. He did not file for child support the day after he changed jobs five years ago. That made him very credible and said to a court he did not reduce income to merely lower child support.

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