

No. 2—10—0446
Order filed May 16, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> KEEGAN JOSEPH KENT, a Minor,)	Appeal from the Circuit Court
)	of Stephenson County.
)	
)	No. 98—F—58
)	
)	Honorable
(Kristina A. Kent, Petitioner-Appellee, v.)	Theresa L. Ursin,
Brian J. Saunders, Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in granting petitioner's motion to modify child support and increasing respondent's monthly child-support obligation from \$300 to \$1,682. The trial court did not find the testimony of respondent and his family members credible and therefore was unable to accurately determine respondent's net income. Accordingly, the trial court ordered support in an amount that was reasonable in the circumstances, taking into consideration the financial resources and needs of the minor, the financial resources and needs of the custodial parent, the standard of living the minor would have enjoyed had the relationship between the minor's parents not deteriorated, and the financial resources of respondent. In addition, as a result of the increased child-support obligation, the trial court awarded the income tax exemption for the minor to respondent as long as he remained current on his child-support obligation and required petitioner to contribute to the minor's uncovered medical expenses.

Respondent, Brian J. Saunders, appeals an order of the circuit court of Stephenson County modifying his monthly child-support obligation and denying his motion to reconsider the same. On appeal, respondent contends that the circuit court abused its discretion by increasing his monthly child-support obligation from \$300 to \$1,682. We affirm.

I. BACKGROUND

Petitioner, Kristina A. Kent, is the biological mother of Keegan Joseph Kent. Keegan was born in the late nineties as a result of a relationship between respondent and petitioner. Petitioner and respondent have never been married to each other. Respondent, however, has been married to Karlene Saunders at all times relevant to these proceedings, including the date of Keegan's conception and birth. Respondent has three children with Karlene. In June 1998, a petition was filed to establish a father-child relationship between respondent and Keegan. On April 8, 1999, the circuit court of Stephenson County entered an agreed order setting respondent's child-support obligation at \$300 per month. That same order also required respondent to maintain Keegan on his health insurance policy and pay for all of Keegan's medical, dental, and optical expenses. While Keegan has resided primarily with petitioner since his birth, the record suggests that he spends a substantial amount of time with respondent and his family and enjoys a good relationship with the Saunders. Moreover, it is undisputed that during his relationship with petitioner, respondent paid many of petitioner's expenses, including rent and car payments, in addition to child support.

On May 19, 2008, petitioner filed a petition to modify child support, alleging that since the entry of the agreed order in April 1999, respondent's income has increased substantially as has the cost of raising Keegan. On July 31, 2008, respondent also filed a petition for modification. In his petition, respondent, anticipating an increase in his child-support obligation, requested that the trial

court enter an order (1) allowing him to claim Keegan as an exemption on his federal and state income taxes and (2) obligating the parties to divide equally Keegan's medical, dental, and optical expenses. Testimony in the matter commenced on December 5, 2008, and continued over the course of two additional dates in May and July 2009.

At the hearing, testimony was presented from petitioner, respondent, Karlene (respondent's wife), Charlene Saunders (respondent's mother), and Douglas Rogers, a certified public accountant. The evidence demonstrated that respondent and his family are involved in several business ventures, including Saunders Oil Company, C&D Properties, Inc., and Saunders Family Properties, Inc. Saunders Oil Company, an oil wholesaler, is organized as a C corporation. Respondent owns 220 of the company's 500 shares. Respondent's parents, Charlene and Donald Saunders, own the remaining shares of Saunders Oil Company. C&D Properties is also organized as a C corporation. C&D Properties operates four convenience stores in Wisconsin. It has issued 750 shares of stock, of which respondent owns 250 shares and his parents own 500 shares. C&D Properties leases the land and buildings that house two of its four convenience stores. The lessor is an informal land partnership, one-third of which is owned by respondent and Karlene and two-thirds of which is owned by Charlene and Donald. Saunders Family Properties, Inc. is organized as an S corporation. Saunders Family Properties owns and operates the Stockton Travel Center, which consists of a Citgo gas station and a McDonald's restaurant. Saunders Family Properties is owned by respondent, Karlene, Charlene, Donald, and respondent's son, Luke Saunders. In addition to these family businesses, respondent has been involved with a racing car venture known as Saunders Racing.

Respondent testified that he has worked full time for Saunders Oil Company since 1979. Respondent's duties include delivering product, doing office work, and preparing price quotations.

Respondent is also an officer of Saunders Oil Company. Respondent related that his gross monthly pay is \$3,300 and his net monthly pay is between \$2,800 and \$2,900. Respondent also receives a yearly bonus of between \$500 and \$1,000. Respondent's benefits include health insurance for himself and Keegan, but not a retirement plan. Respondent testified that his salary, which is set by himself, Karlene, and his parents, has decreased because of the poor economy. Respondent was unable to recall the highest amount of pay he received from Saunders Oil Company, stating, "I don't know. I just work."

Respondent testified that aside from his salary, the only other income he receives on a regular basis is \$1,200 in monthly rental income, half of which belongs to Karlene. The rental income is paid by C&D Properties for the land and buildings it leases from the informal land partnership. In 2007, respondent also received two gifts of \$12,000 each from his parents, which he used to buy stock in a biofuel company. According to respondent, he has yet to receive any dividends from his investment in the biofuel company. Respondent added that he does not receive any income or distributions from Saunders Family Properties.

Respondent also testified regarding his involvement in Saunders Racing. Respondent stated that sponsorship money covers the expenses for Saunders Racing so that he neither makes money nor loses money from the venture. However, respondent acknowledged that his 2007 tax return includes a schedule C (self-employment income) showing gross receipts of \$1,155 for Saunders Racing and expenses in excess of \$13,000. Respondent also acknowledged that the gross receipts on the schedule C do not reflect any sponsorship money he received. Respondent testified that he no longer participates in Saunders Racing. Respondent also testified regarding more than \$92,000 in "unexplained income" deposited into his bank account between January 2007 and May 2008.

Respondent attributed this income to various sources, including the sale of scrap metal to a junkyard, sponsorship money for Saunders Racing, and rental payments from C&D Properties.

Respondent testified that he and Karlene have various assets, including a home, a 2003 Ford Mustang, and a recreational vehicle (RV). The couple own the Mustang outright. However, their home is subject to a mortgage. In addition, the RV, which was purchased in 2005 for \$77,000, is subject to a loan for which respondent makes monthly payments of \$700 to his mother, Charlene. Respondent thought there was a note associated with the RV loan, but was not sure how much is still owed on it. Respondent also owns a 2007 Ford F350 truck. Respondent purchased the truck with money he borrowed from his mother and leases the vehicle to Saunders Oil Company for an amount equal to the monthly payment. Respondent's daughter drives a 2005 Chrysler Sebring which is titled in respondent's name, but which was purchased by Charlene. In addition, respondent owns a snowmobile, a four wheeler, and a hot tub (for medical purposes). Karlene also has her own snowmobile and respondent's and Karlene's children share a third snowmobile. Respondent bought an ATV for Keegan, but is trying to sell it.

Rogers testified that he has represented the Saunders family in various capacities, including personal and business tax consulting and preparation, for about 10 years. Rogers identified Charlene Saunders as the "lead bookkeeper" for the Saunders family's business ventures and stated that he receives the information he uses to prepare the business's financial documents from Charlene. Rogers testified that over the most recent period of four or five years, Saunders Oil Company has incurred an aggregate loss of about \$250,000. Rogers estimated that about half of the losses for the Saunders Oil Company during this time period were attributable to depreciation. Rogers testified that Saunders Family Properties has been in existence for two years. Saunders Family Properties

sustained a loss of \$128,000 in 2006, \$76,000 of which was attributable to depreciation, and a loss of \$149,000 in 2007, \$162,000 of which was attributable to depreciation.

Rogers testified that C&D Properties has broken even in three of the last four years and earned a profit of \$50,000 in the most recent year. C&D Properties does not distribute its net income, but holds it as retained earnings. Rogers explained that most of the rental income paid by C&D Properties does not flow directly to the Saunders to spend, but is used to make the mortgage payments on the leased land and buildings. Rogers allowed, however, that respondent and Karlene have discretionary power to spend \$1,200 of “extra rent” that C&D Properties began paying in August 2007.

Rogers prepared respondent’s and Karlene’s tax returns for 2006 and 2007. With respect to Saunders Racing, Rogers stated that sponsorship receipts are considered taxable income and should be reported as such. Rogers agreed that if respondent did not provide him with information regarding all of the sponsorship income, his gross receipts from Saunders Racing would have been under reported, resulting in a smaller loss or even a profit. Rogers also testified that respondent’s and Karlene’s tax returns included a schedule E, which reports income and losses related to rental properties and carry over from S corporations such as Saunders Family Properties. Rogers stated that the main expenses related to the rental income is mortgage interest and depreciation. Rogers noted that depreciation does not represent a payment made because of a particular asset, but only a reduction in usefulness of its value. For 2007, respondent and Karlene’s schedule E reflected supplemental income of \$8,816 after depreciation, including a loss from Saunders Family Properties. Rogers noted, however, that the rental properties themselves generated income of over \$28,000 after deducting about \$35,000 in depreciation.

Charlene Saunders, respondent's mother, testified that she is a part owner and officer of Saunders Oil Company. As an officer of Saunders Oil Company, Charlene testified that she is familiar with the company's financial dealings. Charlene stated that all of the family companies are run from the same office and that, although she is the bookkeeper for the companies run by the Saunders family, she receives assistance from others, including Karlene. According to Charlene, respondent receives a salary from Saunders Oil Company, but receives no other type of distribution from that company. Charlene stated that respondent's salary has not changed over the last few years because of the poor economy. Charlene acknowledged, however, that respondent and Karlene each receive \$600 a month as rental income from C&D Properties. Charlene also admitted that she purchased an automobile for a granddaughter and that, in 2007, she made a one-time gift of \$24,000 to respondent to purchase stock in a biofuel company.

Karlene Saunders testified that she has been married to respondent for almost 28 years. She has also worked for Saunders Oil Company for the same amount of time, most recently as the office manager and a bookkeeper. Karlene testified that she earns about \$37,000 per year from Saunders Oil Company, and that, other than respondent's salary and the rental income from C&D Properties, she and respondent do not receive any other income on a regular basis. Karlene drives a Ford Expedition that is owned by her mother-in-law. Karlene was not sure if she has any ownership in the Saunders Family Properties, Inc., or C&D Properties, Inc., stating that "It's complicated."

Petitioner testified that Keegan is 11 years old. Petitioner is also the mother of two other children, ages 20 and 17, from a relationship with another man. At the time of her testimony, petitioner was residing with her mom for "financial and safety reasons," paying her rent of \$100 a week. Petitioner works as a cosmetologist at a salon in Stockton, Illinois. Petitioner is paid on

commission and her most recent annual income was about \$22,000. Petitioner testified that in addition to the child support she receives from respondent for Keegan, she also receives child support in the amount of \$860 for her 17-year old child. Petitioner stated that the support for the 17-year old was scheduled to end March 20, 2010. Petitioner receives a medical card for herself, Keegan, and her 17-year-old child. However, because Keegan's medical is paid for by respondent, she has not had to use Keegan's medical card. Keegan also receives reduced school fees and free lunches at school.

Petitioner testified that until February 2009, she had been receiving \$300 per month in child support from respondent for Keegan. After February 2009, petitioner began receiving \$704 per month, which is more than the court order. Petitioner testified that Keegan is well cared for by respondent. She stated that Keegan receives "nice stuff" from respondent, including a Playstation 3, a laptop computer, an iPod, a cell phone, and expensive clothing. Keegan also has a snowmobile that he stores at respondent's house, and he used to have a four wheeler. In addition, Keegan travels with respondent in the RV to races, camping, and football games during visits.

On January 29, 2010, the trial court issued an order granting petitioner's request for modification and increased respondent's monthly child-support obligation to \$1,682. The trial court did not find the testimony of respondent and his family members credible. The court believed that the Saunders family had made "a concerted effort to keep [respondent's] income at a minimum." Because it was unable to accurately determine respondent's net income, the trial court ordered support in an amount that it felt was reasonable in the circumstances, taking into consideration the financial resources and needs of the child, the financial resources and needs of the custodial parent, the standard of living the minor would have enjoyed had the relationship between the minor's

parents not deteriorated, and the financial resources of respondent. In addition, as a result of the increased child-support obligation, the trial court awarded the income tax exemption for the minor to respondent as long as he remained current on his child-support obligation. The court also required petitioner to contribute to the minor's uncovered medical expenses in light of respondent's increased child-support obligation. On February 23, 2010, respondent filed a "Motion to Vacate Judgment and for Reconsideration." On April 7, 2010, the trial court denied respondent's motion. On May 5, 2010, respondent filed a notice of appeal.

II. ANALYSIS

On appeal, respondent contends that the child-support obligation set by the trial court is "reversible error." Respondent acknowledges that the section 505(a)(5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(5) (West 2008)) permits the trial court to deviate from the statutory guidelines.¹ However, respondent argues that the award set by the trial court in this case was not reasonable. Petitioner responds that the trial court properly awarded child support based upon the circumstances of the case. We agree with petitioner.

The modification of a child-support obligation is within the trial court's sound discretion, and a reviewing court will not disturb the trial court's decision absent an abuse of that discretion. *In re*

¹ Although the respondent and petitioner were never married, section 16 of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/16 (West 2008)) provides that any order for support made under the Parentage Act is subject to modification in accordance with section 510 of the Act (750 ILCS 5/510 (West 2008)). In addition, section 505 of the Act (750 ILCS 5/505 (West 2008)), which governs child support, specifies that it applies to proceedings for modification for a previous order of child support under section 510.

Marriage of Tegeler, 365 Ill. App. 3d 448, 453 (2006); *Roper v. Johns*, 345 Ill. App. 3d 1127, 1130 (2004). Aside from no review at all, the abuse-of-discretion standard is the most deferential standard of review. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 646 (2009). An abuse of discretion occurs when no reasonable person would agree with the position adopted by the trial court. *Sanfratello*, 393 Ill. App. 3d at 646; *In re Marriage of Takata*, 304 Ill. App. 3d 85, 96 (1999).

Normally, the payor's minimum child-support obligation is based on a percentage of his or her income. 750 ILCS 5/505(a)(1) (West 2008); *Takata*, 304 Ill. App. 3d at 96. Thus, for instance, in the case of one child, section 505(a)(1) of the Act specifies that the minimum amount of support shall be 20% of the payor's statutorily defined "net income." 750 ILCS 5/505(a)(1) (West 2008). Section 505(a)(3) of the Act (750 ILCS 5/505(a)(3) (West 2008)) defines "net income" as "the total of all income from all sources" minus certain statutory deductions, including, federal and state income taxes, social security, mandatory retirement contributions, union dues, health insurance premiums, and "expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income." However, the legislature recognized that there may arise some situations in which the amount of the payor's net income cannot be accurately determined. 750 ILCS 5/505(a)(5) (West 2008); *Takata*, 304 Ill. App. 3d at 96. In such cases, the court "shall order support in an amount considered reasonable in the particular case" and express the level of support in a dollar amount. 750 ILCS 5/505(a)(5) (West 2008); *In re Marriage of Severino*, 298 Ill. App. 3d 224, 231 (1998).

In this case, the trial court was unable to accurately determine respondent's net income. The court described the evidence presented by respondent as "smoke and mirrors." The court did not find credible the testimony of respondent, Karlene (respondent's wife), and Charlene (respondent's

mother), noting that these witnesses answered many questions posed to them with phrases such as “I don’t know,” “I can’t remember,” “Ask the accountant,” and “It’s complicated.”

The court also noted that respondent’s salary was set by respondent, Karlene, Charlene, and Donald (respondent’s father). The court found implausible that respondent, who was an employee and an officer of a multimillion dollar family business, would earn an annual salary of less than \$39,000. Although the court found credible the testimony of accountant Rogers, who was one of respondent’s witnesses, it was unable to rely on the tax returns prepared by him for respondent and the family businesses. Rogers testified that he prepares tax returns based on information given to him by his clients. Thus, in preparing respondent’s personal income tax returns and the returns for the family businesses, Rogers relied on information provided to him by members of the Saunders family. However, respondent acknowledged receiving a substantial amount of sponsorship income for his race car business which was never reported on his taxes. Rogers stated that this income should have been treated as taxable income and reported on respondent’s tax returns.

The court also found that “there is money coming in and out of this family business and money flowing to [respondent] which is not accounted for as income.” In this regard, the court noted that between January 2007 and May 2008, respondent received “unexplained” income totaling more than \$92,000. Although respondent attempted to explain the sources of this income, the trial court, noting a “lack of confidence in [respondent’s] overall testimony,” stated that it was “very difficult to ascertain what actually constitutes income.” In addition, the court questioned whether a purported loan from respondent’s mother was actually a gift to respondent. Respondent testified that he was paying Charlene \$700 per month on the loan for the purchase of the RV, but indicated that the balance on the loan was “unknown.” Moreover, respondent was not entirely sure if there was a note

associated with the RV loan. Since the trial court was without credible evidence of respondent's income, it was compelled to make an award of child support that was reasonable in the case. 750 ILCS 5/505(a)(5) (West 2008); *Takata*, 304 Ill. App. 3d at 96; *Severino*, 298 Ill. App. 3d at 230.

In setting respondent's child-support obligation, the trial court began its calculation with income that was not in dispute, including respondent's reported salary from Saunders Oil Company, the rental income respondent receives from C&D Properties, and the gifts from respondent's parents. The trial court calculated that these items yielded a minimum monthly child-support obligation of \$841 based on the statutory guidelines. See 750 ILCS 5/505(a) (West 2008). However, the court determined that respondent underestimated his income from all sources by at least 50% and set respondent's monthly child-support obligation at \$1,682. In reaching this figure, the court considered the financial resources and needs of Keegan, the financial resources and needs of petitioner, the standard of living the child would have enjoyed had the relationship between petitioner and respondent had not deteriorated, and the financial resources of respondent. See 750 ILCS 5/505(a)(2) (West 2008); see also *Ivanyi v. Granoff*, 171 Ill. App. 3d 411, 422 (1988) (noting that although section 505(a)(5) of the Act does not list the factors a trial court should consider in setting child support, the factors enumerated in section 505(a)(2) of the Act have historically been applied to the extent they are pertinent and determinable). The court noted that Keegan's needs have increased with age and that a substantial amount of time had passed since respondent's monthly child-support obligation had been set at \$300. The court also noted that petitioner earns less than \$25,000 per year, resides with her mother, and receives assistance with medical and school expenses. With respect to the standard of living Keegan would have enjoyed had the relationship between petitioner and respondent not deteriorated, the court pointed out that Keegan is treated to

snowmobiles, four wheelers, and trips to races and football games. In addition, respondent has gifted Keegan an iPod, a laptop, video games, and expensive clothing. The court stated that these “perks of being with [respondent] would have been Keegan’s standard of living” had petitioner and respondent remained on good terms. The court stated that Keegan “should not be expected to live at a [*sic*] near poverty level with his mother while his father enjoys a high standard of living.”

Since the trial court was unable to accurately determine respondent’s salary based on the evidence before it, we conclude that the trial court acted reasonably in considering the factors set forth above. We note further that the trial court set the obligation in a dollar amount, as required by the statute. See 750 ILCS 5/505(a)(5) (West 2008). In addition, the increase in child-support was tempered by the fact that the trial court also granted respondent the relief he requested in his petition. The court ordered petitioner to contribute to Keegan’s uncovered medical expenses (see *Takata*, 304 Ill. App. 3d at 97 (noting that although the trial court required the custodial parent to contribute to certain insurance costs, the court did so in conjunction with an increase in child support)) and allowed respondent to claim Keegan as an exemption for income-tax purposes as long as he remained current on his child-support obligation. Accordingly, we find that the trial court did not abuse its discretion in setting respondent’s child-support obligation at \$1,682 per month.

Respondent insists that he and his family are not involved in a concerted effort to minimize his child-support obligation, as suggested by the trial court in its ruling. According to respondent, he and his family’s lack of understanding regarding the finances of their various business entities and his failure to include sponsorship income for the racing car venture are merely the result of “naivete.” However, the intention of respondent and his family presented a credibility issue. It is the function of the trial court to assess the credibility of the witnesses and assign the weight to be accorded their

testimony. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 400 (2004); *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1095 (1992). After reviewing the record and considering the deference we must accord the trial court with respect to matters of credibility, we decline to disturb the trial court's findings on this basis.

Respondent also insists that the racing car enterprise was “clearly a hobby loss” which produced no net income on which support could be calculated. He states that the racing car venture was not his alone, but consisted of “a group of eight local car enthusiasts that were together for about four years to share the enjoyment and expense of racing stock cars on local race tracks.” Respondent claims that the majority of income attributable to the racing car enterprise was “shared” with other individuals and should not be classified as income for purposes of child support. We disagree. As noted earlier, respondent acknowledged receiving a substantial amount of sponsorship income for his race car business which was never reported on his income taxes, but should have been. Alternatively, respondent suggests that the racing car income “could have easily been objectively factored into” the statutory support guidelines and would have yielded a child-support obligation “well below the ordered 50% multiplier amount” calculated by the trial court. However, respondent does not provide a calculation for this amount. Moreover, respondent seemingly ignores the \$92,000 in “unexplained” income that the trial court factored into its child-support calculation, much of which respondent attributed to the racing venture at trial. See *Tegeler*, 365 Ill. App. 3d at 461 (finding that unexplained funds should be considered as additional resource for child support).

Finally, respondent argues that the trial court improperly considered his standard of living. Respondent claims that he does not enjoy an extravagant or upscale lifestyle. However, we interpret

the trial court's ruling to merely be a recognition that, relative to petitioner's standard of living, respondent's standard of living was higher. Accordingly, we find no error.

III. CONCLUSION

For the reasons set forth above, we affirm the judgment of the circuit court of Stephenson County.

Affirmed.