

**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).

NO. 4-10-0365

Filed 1/19/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KEVIN J. GARNER,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
CHERYL L. GARNER, n/k/a CHERYL LANE,	)	No. 94D384
Defendant-Appellee.	)	
	)	Honorable
	)	Steven H. Nardulli,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

*Held:* Where the record on appeal was lacking a report of proceedings for the hearing on the child-support-arrearage issue, we presume the trial court's judgment had a factual basis and was in conformity with the law.

In March 2010, plaintiff, Kevin J. Garner, filed a motion to terminate child-support payments to his former wife and defendant, Cheryl L. Garner, who is now known as Cheryl Lane. At some point, the issue of a child-support arrearage arose, and on June 1, 2009, the trial court held a hearing on that issue. On June 4, 2009, the court entered an order, requiring plaintiff to pay a \$7,652.69 child-support arrearage and \$3,709.46 in interest. Plaintiff filed a motion to reconsider. In April 2010, the court held a hearing on plaintiff's motion and decreased the arrearage by \$1,513.88 for payments made in between the date of

the hearing and the order. Plaintiff appeals, asserting the trial court erred by failing to (1) give him credit for four other unaccounted-for payments and (2) recalculate the interest based on the date the payment was made. We affirm.

#### I. BACKGROUND

The parties married in June 1986 and had one child, Lauren Garner (born in February 1991). In April 1994, plaintiff filed a petition for dissolution of the parties' marriage. Plaintiff's August 23, 1994, financial affidavit stated he had a gross weekly income of \$1,030, and after taxes and medical insurance, a net weekly income of \$704.73. He also received quarterly bonuses that ranged from \$0 to \$8,000. The docket entry does not indicate any proceedings took place on August 26, 1994. In November 1994, the trial court entered the judgment of dissolution of marriage, which required plaintiff to pay defendant \$1,000 per month in child support.

In September 1996, plaintiff filed a motion to modify his child-support payments. On September 3, 1997, the trial court entered a written withholding order for \$377.08 in biweekly child support. The order further stated the following:

"Child support shall be modified each subsequent year based upon the previous year's income. If the amount for the previous year is more than the established 8/26/94

earnings amount for child support, [plaintiff] shall pay 20% of the earnings in excess of the amount of the previous year in one lump sum by March 1 of the subsequent year."

In November 2006, plaintiff filed a motion to modify child support, noting he had changed employment. The appellate record does not indicate that motion was ever heard. On March 25, 2009, plaintiff filed a motion to terminate child support, noting Lauren was to graduate from high school on May 29, 2009.

According to the docket sheets and a bench trial docket entry, the trial court held a hearing on June 1, 2009, for a petition to establish a child-support arrearage. The appellate record does not contain a written petition regarding a child-support arrearage. Moreover, the appellate record fails to contain a report of proceedings under Supreme Court Rule 323 (eff. Dec. 13, 2005) for the June 1, 2009, proceedings. The bench trial docket-entry form notes witnesses were sworn, evidence and oral arguments were presented, and the matter was taken under advisement. The lines for exhibits for each party were left blank. However, a docket entry for June 1, 2009, simply notes exhibits A, B, C, D, and E. The appellate record does contain plaintiff's exhibits A through E. Exhibit A contains plaintiff's W-2 forms, B is plaintiff's calculations of child support owed and paid, C addresses payments before 1997, D is

plaintiff's first paycheck of 2007, and E is a check related to Lauren's car. The court's comments in its written order suggests the court did admit plaintiff's exhibits. Another docket entry for the hearing indicates both parties were *pro se* at the hearing.

On June 4, 2009, the trial court entered a written order, denying plaintiff's request for credit for overpayments prior to September 1997 and money he gave Lauren to purchase an automobile. The court found as of May 29, 2009, plaintiff was \$7,652.69 in arrears in his child-support obligation and owed \$3,709.46 in accumulated interest. The court ordered plaintiff to repay the amount at the current monthly child-support rate of \$979.63 until it was paid in full. The court explained it calculated (1) plaintiff's yearly income based on plaintiff's W-2 forms and (2) the amount of child support paid by plaintiff based on the Sangamon County circuit clerk's records. As to the amount of child support paid, the court gave plaintiff credit for each year's payments divided by 12 months. The court attached to its order a spreadsheet, showing its calculations.

On June 30, 2009, plaintiff filed a *pro se* motion to reconsider, asserting the trial court's (1) arrearage amount was incorrect due to the omission of eight child-support payments and (2) interest amount was incorrect based on the missed payments and the circuit clerk's office's delayed entry of payments.

According to plaintiff, the judgment as to the child-support arrearage should be reduced by \$3,023.59 and the interest by \$518. In support of his argument, plaintiff attached the following to his motion: (1) the court's June 4, 2009, order; (2) the Sangamon County circuit clerk's audit listing for plaintiff's child-support payments; (3) documents showing payment of the alleged missing child-support payments; (4) a child-support payment summary prepared by plaintiff; and (5) a child-support payment worksheet prepared by plaintiff. In March 2010, defendant filed a *pro se* response to the motion to reconsider, simply asserting the court's judgment was correct. That same month, plaintiff by counsel filed an argument, listing eight omitted child-support payments. Plaintiff's counsel attached the State disbursement unit record of plaintiff's child-support payments as well as plaintiff's child-support worksheet.

On April 9, 2010, the trial court held a hearing on plaintiff's motion to reconsider. The record on appeal also does not contain a report of proceedings for this hearing. The docket entry for the proceedings states that, between the time of the hearing and the entry of the order in May 2009, plaintiff paid an additional \$1,513.88 in child support. Accordingly, the court modified its order, decreasing the arrearage to \$6,038.81. The court made no change to the amount of interest owed. The court found no just reason existed for delaying the enforcement or

appeal of the order.

On May 10, 2010, plaintiff filed a notice of appeal from the trial court's June 4, 2009, and April 9, 2010, orders. In her brief, defendant has contested our jurisdiction of those orders, and thus we will address that issue in our analysis section.

## II. ANALYSIS

### A. Jurisdiction

Our supreme court has emphasized a reviewing court's duty to ascertain its jurisdiction before considering the appeal's merits. See *People v. Lewis*, 234 Ill. 2d 32, 36-37, 912 N.E.2d 1220, 1223 (2009); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009); *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). Thus, defendant's questioning of our jurisdiction is a threshold matter. See *Lewis*, 234 Ill. 2d at 37, 912 N.E.2d at 1223.

"The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Co.*, 232 Ill. 2d at 213, 902 N.E.2d at 664. Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058.

The appellate record indicates the parties had other

issues pending between them in addition to the child-support arrearage. Supreme Court Rule 304(a) (eff. Feb. 26, 2010) addresses multiple claims and provides, in pertinent part, the following: "an appeal may be taken from a final judgment as to one or more but fewer than all of the \*\*\* claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." The trial court's June 4, 2009, order determined the parties' rights on the issue of the child-support arrearage, and thus it was a final judgment (see *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 504-05, 916 N.E.2d 886, 889 (2009) (stating a final judgment is one that "determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with execution of the judgment")). In both the June 2009 and April 2010 orders, the trial court included a finding that no just reason existed to delay enforcement or appeal of the order. Thus, if plaintiff complied with the notice-of-appeal requirements, we have jurisdiction over this appeal under Rule 304(a).

The time for filing a notice of appeal pursuant to Rule 304(a) (eff. Feb. 26, 2010) is governed by Supreme Court Rule 303 (eff. May 30, 2008). Rule 303(a) (eff. May 30, 2008) requires a notice of appeal to be filed within 30 days after the court's judgment or, if a timely postjudgment motion was filed, within 30

days after the entry of the order disposing of the last pending postjudgment motion. In this case, plaintiff filed a motion to reconsider the court's June 4, 2009, judgment on June 30, 2009. Since plaintiff's motion to reconsider was timely filed, it tolled the period for filing a notice of appeal.

The trial court decided plaintiff's timely filed motion to reconsider on April 9, 2010. Thus, under Rule 303(a), plaintiff had 30 days to file his notice of appeal, which would have expired on Sunday, May 9, 2010. However, section 1.11 of the Statute on Statutes (5 ILCS 70/1.11 (West 2008)), which also governs the construction of supreme court rules (Ill. S. Ct. R. 2(a) (eff. May 30, 2008)), provides that, if the last day for doing any act falls on a Sunday, that day shall be excluded. *Walikonis v. Halsor*, 306 Ill. App. 3d 811, 814, 715 N.E.2d 326, 328 (1999). Accordingly, the 30-day period for plaintiff to file a notice of appeal ended on Monday, May 10, 2010. Thus, plaintiff's notice of appeal filed on May 10, 2010, was timely filed, and we have jurisdiction.

#### B. Motion To Reconsider

Plaintiff argues the trial court erred by only giving him credit for four of the eight omitted child-support payments and overlooked the miscalculations of interest due to the missed payments and untimely inputting of payment by the circuit clerk's office. Whether to grant or deny a motion for reconsideration

falls within the trial court's discretion, and this court will not disturb that determination absent an abuse discretion. *Ortiz v. Jesus People, U.S.A.*, No. 1-09-3255, slip op. at 14 (November 12, 2010). "'A trial court abuses its discretion only where the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Lovell v. Sarah Bush Lincoln Health Center*, 397 Ill. App. 3d 890, 900, 931 N.E.2d 246, 254 (2010) (quoting *People v. Purcell*, 364 Ill. App. 3d 283, 293, 846 N.E.2d 203, 211 (2006)).

Additionally, we note the determination of the amount of a child-support arrearage is a factual issue. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 389, 775 N.E.2d 1045, 1052 (2002). Thus, this court will disturb the trial court's decision only if the decision is against the manifest weight of the evidence. *Ackerley*, 333 Ill. App. 3d at 389, 775 N.E.2d at 1052. "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary or not based upon the evidence." *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 80, 667 N.E.2d 1094, 1100 (1996).

From the scant record we do have, it is clear the four payments plaintiff received credit for on the motion to reconsider were for child-support payments he made before May 29, 2009, but were inputted into the system after the trial court's

June 4, 2009, order. Since the trial court was determining interest based on the input date and not the date paid, the court did not err by finding the four payments did not affect its interest calculations. We will later address the propriety of the court's use of the input date.

The alleged missed payment in June 2009 was not a child-support payment as child support had already terminated at that time. The June 2009 payment was a payment on the arrearage judgment. Thus, the trial court did not err by failing to reduce the arrearage judgment by the June 2009 payment. The other three missed payments were in 2005 and 2007.

As to the three older missed payments and the propriety of the trial court's interest calculation, this court has been presented with a deficient record. Plaintiff, as the appellant, had the burden to present a sufficiently complete record. See *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001). Regarding a record lacking a report of proceedings, our supreme court has stated the following:

"This court has long recognized that[,] to support a claim of error, the appellant has the burden to present a sufficiently complete record. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156[, 839 N.E.-2d 524, 531] (2005); *Webster* \*\*\*, 195 Ill. 2d

[at 432, 749 N.E.2d at 962]; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92[, 459 N.E.2d 958, 959] (1984). From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant. *Foutch*, 99 Ill. 2d at 391[, 459 N.E.2d at 959]. An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding. *Corral*, 217 Ill. 2d at 156[, 839 N.E.2d at 532]; *Webster*, 195 Ill. 2d at 432[, 749 N.E.2d at 962]. Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009).

Additionally, the supreme court has stated "[a]ny doubts stemming from an inadequate record will be construed against the appellant." *People v. Hunt*, 234 Ill. 2d 49, 58, 914 N.E.2d 477, 481

(2009).

The absence of the report of proceedings for the hearing on the child-support arrearage hinders our ability to review the trial court's failure to award plaintiff credit for the three older missed payments and the propriety of the court's interest calculations. As stated, the calculation of a child-support arrearage is a factual determination (*Ackerley*, 333 Ill. App. 3d at 389, 775 N.E.2d at 1052). Thus, as we explain below, the facts the parties presented to the trial court and what took place at the hearing on the child-support arrearage is important to our review of plaintiff's issues. Since we lack the report of proceedings, we apply the presumption the trial court's order had a sufficient factual basis and conformed to the law. See *Gulla*, 234 Ill. 2d at 422, 917 N.E.2d at 397.

Without the report of proceedings, we lack insight into why the trial court looked to the circuit clerk's records to determine the amount of child support plaintiff had paid. All we have are plaintiff's five exhibits, and only two of those deal with the time frame the trial court considered. Exhibit A contains plaintiff's W-2 forms, and exhibit B is plaintiff's child-support-analysis worksheet. In the worksheet, plaintiff asserts he paid \$9,804 every year in child support. However, plaintiff did not present any documentary evidence of the amount of child support he paid. Thus, the parties may have agreed to

use the circuit clerk's records as evidence of plaintiff's payments. A party cannot complain of error that it induced the court to make or to which it consented. *McMath v. Katholi*, 191 Ill. 2d 251, 255, 730 N.E.2d 1, 3 (2000). Thus, if plaintiff agreed to use the circuit clerk's records or did not present the trial court with other evidence of his child-support payments, he could not challenge the records' accuracy.

This court also lacks insight into why the trial court calculated monthly child support paid based on the year in which the child-support payment was inputted into the system as opposed to the year in which it was paid. Presumably, the *pro se* parties did not provide the trial court with any evidence or argument on the issue, and the court was left with the circuit clerk's records that did yearly totals based on the input date as opposed to the date paid. Again, if plaintiff failed to present evidence or agreed to use the circuit clerk's records, he could not challenge the court's calculations based on those records.

Additionally, we point out the evidence plaintiff presented regarding the three older missed payments could have been presented at the hearing on the child-support arrearage. A motion to reconsider's purpose is "to bring to the court's attention (1) newly discovered evidence not available at the time of the hearing; (2) changes in the law; or (3) errors in the court's previous application of the law." *Ortiz*, slip op. at 14.

Plaintiff could have obtained his payment history with the State distribution unit that showed the three older missed payments before the hearing, and thus it is not newly discovered evidence. Accordingly, the trial court could have disregarded the "new" evidence showing the three older missed payments.

Last, we point out plaintiff has not shown the trial court's use of the input date as opposed to the date paid alone had any significant impact on the court's interest calculation as plaintiff's interest calculation with his motion to reconsider included the alleged eight missed payments. A review of the trial court's interest calculation shows the trial court gave plaintiff interest credit when plaintiff had an overage for a given month. Thus, if the circuit clerk's office entered a child-support payment in a future year, plaintiff either had his arrearage reduced or overpaid support in the future year. In either event, plaintiff's interest owed was reduced.

Accordingly, we find the trial court did not abuse its discretion by not granting in full plaintiff's motion to reconsider, and the child-support arrearage calculation was not against the manifest weight of the evidence.

### III. CONCLUSION

For the reasons stated, we affirm the Sangamon County circuit court's judgment.

Affirmed.