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NO. 4-11-0063

Filed 6/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KELLY NORRIS, n/k/a KELLY D'AGUANNO,	)	Appeal from
Petitioner-Appellee and	)	Circuit Court of
Cross-Appellant,	)	Sangamon County
v.	)	No. 02F164
ROBERT MASON,	)	
Respondent-Appellant and	)	Honorable
Cross-Appellee.	)	John E. Childress,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Turner and Pope concurred in the judgment.

**ORDER**

*Held:* The appellate court affirmed, concluding that the trial court properly (1) denied the respondent's (a) request for extended summer visitation with his daughter and (b) motion for a downward deviation of child support, (2) calculated the respondent's child-support obligation, and (3) ordered the respondent to pay \$7,500 of the petitioner's attorney fees.

In February 2004, the trial court entered an order determining parentage, (1) finding that respondent, Robert Mason, was the biological father of M.N. (born October 10, 2002); (2) granting petitioner, Kelly Norris, n/k/a Kelly D'Aguanno, permanent custody of M.N. subject to the parties' agreed visitation schedule; (3) ordering Robert to pay Kelly \$700 per month for child support; and (4) allowing the parties to revisit their agreed visitation schedule on M.N.'s fifth birthday.

In May 2009, Robert, an Alabama resident, filed a motion to modify parenting time, visitation, and parenting rights, requesting (1) modification of the parties' visitation

schedule and (2) joint custody of M.N. In June 2009, Kelly filed a petition to increase child support. In December 2009, Robert filed a motion for temporary child custody and visitation, seeking, in pertinent part, increased visitation with M.N. outside of Illinois. On May 14, 2010, Robert filed a motion to deviate below the statutory child-support guidelines.

At a hearing on the parties' respective motions, held two weeks later, the trial court first entered an order--proffered by the parties--in which they agreed to certain matters. The court thereafter considered testimony from Robert and Kelly. The parties then agreed to provide evidence depositions and written arguments that addressed the remaining pertinent issues of visitation, child support, and Kelly's request for attorney fees.

In November 2010, after a hearing, the trial court entered an order, (1) granting Robert an annual 14-day period of visitation and a separate 7-day period of visitation during the summer and (2) requiring Robert to pay Kelly \$5,086 per month for child support and \$7,500 toward Kelly's attorney fees.

Robert appeals, arguing that the trial court abused its discretion by (1) denying his request for six continuous weeks of summer visitation with M.N., (2) denying his motion for a downward deviation of child support, and (3) not considering certain deductions when calculating his child-support obligation. Kelly cross-appeals, arguing only that the court abused its discretion by ordering Robert to pay only \$7,500 of her attorney fees.

Because we disagree with the parties' respective arguments, we affirm.

## I. BACKGROUND

Kelly and Robert were never married but had a brief relationship that resulted in M.N.'s birth in October 2002. During her pregnancy, Kelly began a relationship with another

man whom she eventually married. (Kelly's marriage, which later ended, produced two additional children.) At that time, Robert worked as an ophthalmologist (vitreoretinal surgeon) in Springfield, performing microsurgery on patients' retinas. Sometime in 2002, Robert left Springfield and eventually moved to Alabama to further his medical career. (Robert married but later divorced with no children being born.)

In February 2004, the trial court entered an order determining parentage, (1) finding that Robert was M.N.'s biological father; (2) granting Kelly permanent custody of M.N. subject to their agreed visitation schedule; (3) ordering Robert to pay Kelly \$700 per month for child support; and (4) allowing Kelly and Robert to revisit their agreed visitation schedule on M.N.'s fifth birthday.

The parties' visitation schedule was comprised of yearly intervals in which Robert was allowed increasing access to M.N. The first interval (February 2004 through October 2004) allowed Robert one hour of supervised visitation with M.N. per month, which changed to monthly, two-hour supervised visits the following year and, thereafter, gradually increased. Robert testified that he exercised his visitation rights once, spending one hour of supervised visitation with M.N. in 2007. Robert regretted his decision not to visit M.N. more frequently, explaining that he wanted M.N. to experience a stable, two-parent home. In December 2008, M.N., accompanied by Kelly, traveled to Alabama to visit Robert.

In May 2009, Robert filed a motion to modify parenting time, visitation, and parenting rights, requesting (1) modification of the parties' visitation schedule and (2) joint custody of M.N. In June 2009, Kelly filed a petition to increase child support. Shortly thereafter, Robert entered into an agreement with Kelly that resulted in the following supervised visits with

M.N. (1) June 19 through June 28, 2009, in Alabama; (2) July 29 through August 2, 2009, in Alabama; (3) September 4 through September 7, 2009, in Oklahoma; (4) October 9 through October 12, 2009, in Alabama; and (5) November 6 through November 8, 2009, in Illinois.

Kelly subsequently notified Robert that his visitations with M.N. would resume under their February 2004 agreed visitation schedule.

In December 2009, Robert filed a motion for temporary child custody and visitation, seeking, in pertinent part, increased visitation with M.N. outside of Illinois. On May 14, 2010, Robert also filed a motion to deviate below the statutory child-support guidelines.

At a hearing on the parties' respective motions, held two weeks later, the trial court first entered an order--proffered by the parties--in which they agreed to certain matters. The court thereafter considered testimony from Robert and Kelly. The parties then agreed to provide evidence depositions and written arguments that addressed the remaining pertinent issues of visitation, child support, and Kelly's request for attorney fees.

The evidence presented showed, in part, that Robert was the sole shareholder and owner of Robert W.H. Mason, M.D., P.C. (the corporation), which was incorporated in January 2008. In August 2007, Robert and the corporation entered into a management-services agreement with Eye Health Partners of Alabama, Inc. (Partners). The contract terms required Partners to provide management services, including but not limited to (1) facilities, (2) medical supplies and equipment, (3) accreditation, (4) business operations, (5) personnel and policy, (6) premises liability, (7) insurance, (8) accounts receivables and payables, and (9) reports.

In exchange for those services, Robert and the corporation agreed to pay Partners the lesser of (1) \$1,248,000, or (2) 52% of all annual net cash receipts. The agreement also

required Partners to reimburse Robert for expenses associated with (1) professional liability, disability, and health insurance; (2) a \$250,000 term-life insurance policy; (3) continuing education; and (4) travel. In addition, Partners purchased and owned all reasonable equipment Robert used in his practice. In 2009, (1) Robert's income-tax return showed a gross income of \$371,808 and (2) the corporation's 2009 tax returns reflected income of \$520,295.

Kelly is employed as a training specialist at an institute for children. In 2008, Kelly earned \$34,054. In her written closing argument, Kelly proffered, in pertinent part, a child-support calculation labeled exhibit A, which reflected the corporation's 2009 income less (1) federal, state, social security, and local taxes; (2) retirement contributions; and (3) other cash items.

In November 2010, the trial court entered an order, (1) granting Robert an annual 14-day period of visitation and a separate 7-day period of visitation during the summer and (2) requiring Robert to pay Kelly \$5,086 per month for child support and \$7,500 toward Kelly's attorney fees.

This appeal followed.

## II. ANALYSIS

### A. The Trial Court's Child-Visitation Determination

#### 1. *The Applicable Statute and the Standard of Review*

Section 607(c) of the Illinois Marriage and Dissolution of Marriage Act, pertaining to modification of orders granting visitation rights, provides as follows:

"The court may modify an order granting or denying visitation rights of a parent whenever modification would serve the best

interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(c) (West Supp. 2009).

A trial court is vested with wide discretion in resolving visitation issues. *In re Marriage of Minix*, 344 Ill. App. 3d 801, 803, 801 N.E.2d 1201, 1203 (2003). A reviewing court "will not interfere with the trial court's visitation determination unless an abuse of discretion occurred or where manifest injustice has been done to the child or parent." *Id.*

## *2. Robert's Child-Visitation Claim*

Robert first argues that the trial court abused its discretion by denying his request for six continuous weeks of summer visitation with M.N. We disagree.

In its November 2010 order, the trial court provided the following rationale for its (1) denial of Robert's request for six continuous weeks of summer visitation and (2) grant of an annual 14-day and separate 7-day period of visitation during the summer:

"It is clear to this Court that with respect[] to visitation, the parties are willing only to seek the achievement of their own interests. [Robert] seeks immediate and sweeping involvement in [M.N.'s] life, giving very little consideration to the profound and intimate changes that involvement will create. Likewise, [Kelly] is only willing to involve [Robert] in a fashion that will work little or no change in [M.N.'s] life. [Robert] has shown and [Kelly] has not contested that he can and wants to be a loving and supporting

parent \*\*\*. Change in the lives of all involved parties is unavoidable."

As part of his claim, Robert contends that the trial court's order "restricts [his] visitation without a finding of serious endangerment." However, we note that if the court had made such a finding, it would have been inconsistent with its determination that "[Robert] can and wants to be a loving and supporting parent to [M.N.]" because an endangerment finding portends that the noncustodial parent is not suitable for visitation. See *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 696, 917 N.E.2d 5, 11 (2009) ("the more stringent endangerment standard \*\*\* place[s] a greater burden on a party seeking a reduction in a parent's visitation time where the reduction is based on reasons pertaining to perceived deficiencies of the parent, as opposed to reasons pertaining directly to the child's best interests").

Here, the evidence shows that M.N. has two loving parents whose judgment regarding which visitation schedule would provide for M.N.'s best interest, was, unfortunately, clouded by their own self-interests--that is, Kelly's interest in maintaining her relationship with M.N. and Robert's interest in establishing his relationship with M.N.--at the other party's expense. In this regard, we consider the trial court's visitation judgment as an appropriate starting point from which the parties, after the passage of time, may seek further modifications as they both continue to cultivate their relationship with M.N., and in the process, provide further for *her best interest*. See *Chehaiber*, 394 Ill. App. 3d at 696, 917 N.E.2d at 11 (the amount of reasonable visitation to which the noncustodial parent is entitled may change, as circumstances progress; section 607(c) accounts for this by allowing modification of visitation in accord with the child's best interest).

Accordingly, we reject Robert's argument that the trial court erred by denying his request for six continuous weeks of summer visitation with M.N.

## B. The Trial Court's Child-Support Determination

Robert also argues that the trial court abused its discretion by (1) denying his motion for a downward deviation of child support and (2) not considering certain deductions when calculating his child-support obligation. We address Robert's contentions in turn.

### 1. *The Standard of Review*

Because a motion to modify child support must be decided on the unique facts and circumstances presented in each case, a reviewing court will not disturb that determination absent an abuse of discretion. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1020, 785 N.E.2d 172, 174 (2003). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010).

### 2. *The Trial Court's Downward-Deviation Determination*

#### a. The Applicable Statute

Section 505(a) of the Act (750 ILCS 5/505(a) (West 2008)) creates a rebuttable presumption that a specified percentage of a noncustodial parent's income represents an appropriate child-support award. *In re Keon C.*, 344 Ill. App. 3d 1137, 1141, 800 N.E.2d 1257, 1261 (2003). In the case of one child, section 505(a)(1) of the Act provides that the default minimum child-support amount is 20% of the noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2008).

" [A] determination of child support under the Act begins with the presumption

that the guidelines will be applied. Compelling reasons must exist in order to overcome that presumption and permit the court to deviate from the guidelines.' " *Garrett*, 336 Ill. App. 3d at 1022, 785 N.E.2d at 175 (quoting *In re Marriage of Stanley*, 279 Ill. App. 3d 1083, 1085, 666 N.E.2d 340, 341 (1996)).

#### b. Robert's Downward-Deviation Claim

Robert argues that the trial court abused its discretion by denying his motion for a downward deviation of child support. We disagree.

In his brief to this court, Robert cites numerous cases for various propositions in support of his argument that the trial court abused its discretion by denying his motion for a downward deviation of child support. In addition to summarizing the conclusions in those various cases in his brief to this court, Robert then asserted the following: (1) "it cannot be denied that the support obligation, exclusively for the benefit of [M.N.], will be used to support [M.N., Kelly], and others in her household"; (2) "a 20[%] support obligation will not be used for its overall purpose, to support [M.N.], but will ultimately be used to support [Kelly's] entire family especially since she is already receiving support for her two other children from their father"; (3) "the standard of living [M.N.] would have enjoyed had the parties pursued a relationship does not require \$5,086 per month"; and (4) no justification exists "for imposing a support obligation on [Robert] approaching anywhere near 20[%] of his net income."

Despite Robert's pronouncements, he does not provide any evidence to support his contention that Kelly has expended child-support payments in an inappropriate manner. Indeed, Robert admits in his reply brief that he had "no way to know" the effect of what was happening to the child support that he paid Kelly. Thus, we view Robert's first three contentions as

supposition, which this court will not entertain.

As to Robert's last contention, we remind him of the 20% statutory default we have previously highlighted with regard to child-support determinations. Because we conclude that Robert has failed to meet his burden of providing any compelling reason why the trial court should have deviated from the 20% statutory presumption, we reject his argument that the court abused its discretion by denying his motion for a downward deviation of child support.

### *3. The Trial Court's Child-Support Calculation Determination*

#### *a. The Applicable Statute*

Section 505(a)(3)(h) of the Act, provides as follows:

"(3) 'Net income' is defined as the total of all income from all sources, minus the following deductions:

\* \* \*

(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification

upon termination of such payment period." 750

ILCS 5/505(a)(3)(h) (West 2008).

b. Robert's Child-Support Calculation Claim

Robert argues that the trial court abused its discretion by not considering certain deductions when calculating his child-support obligation. Essentially, Robert contends that in calculating his net income from which it determined his monthly child-support obligation of \$5,086, the court did not deduct his (1) monthly education-loan payment of \$847 per month and (2) "legitimate" business expenses. We disagree.

In support of his claim, Robert contends that with regard to his net income, the trial court failed to provide a detailed analysis of the deductions it considered in calculating that income under section 505 of the Act. However, the record shows that the court heard and considered Robert's testimony that he had over \$100,000 in student-loan debt, on which he was paying approximately \$848 per month.

With regard to his claim that the trial court did not deduct his legitimate business expenses, Robert essentially asserts, without any citation to any portion of the record, that the court did not take into account that his corporation may have "other legitimate business expenses." Despite his claim, Robert fails to identify what those "other legitimate business expenses" are except to note the 2010 purchase of medical equipment for \$74,000. However, even if we were to find Robert's argument persuasive--which we do not--and that the purchase of the medical equipment was a legitimate business expense, it would not result in a monthly deduction from respondent's net income, because the record shows that Partners was responsible for that purchase. Moreover, even if Robert was responsible for that purchase, he could not

deduct monthly payments that were due on that debt under section 505(a)(3)(h) of the Act because the equipment in question was purchased outright.

In its November 2010 order in this case, the trial court provided the following rationale for its net-income calculation:

"A review of the financial records, including deposition testimony provided by a representative of Eye Health Partners of Alabama Inc., describing the services provided (both financial and otherwise to [Robert]) lead this court to adopt the calculations offered by [Kelly] in her [e]xhibit A. [Robert's] child[-]support [obligation] is established in the amount of \$5,086[] per month.  
\*\*\*.

As a result of the Court's finding, an arrearage in child support is established in the amount of \$74,502. [Robert] is ordered to satisfy said arrearage at a rate of \$1,500 per month."

(The trial court's arrearage finding was based on the inclusion of an arrearage amount accumulated from February 2004 through May 2009 and Kelly's request that any new child-support award be retroactive to June 2, 2009, which represents the date she filed her petition to increase child support.)

Here, we conclude that the trial court considered the relevant evidence--which we note was extensive--in determining the appropriate child-support obligation. Accordingly, we reject Robert's argument that the court abused its discretion by not considering certain deductions when calculating his child-support obligation.

## C. The Trial Court's Attorney-Fee Determination

### 1. *The Applicable Statute and Standard of Review*

Section 508(a) of the Act, provides, in pertinent part, the following:

"The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West Supp. 2009).

"Generally, attorney fees are the responsibility of the party who incurred them, although section 508 of the \*\*\* Act does allow the court to order a party to pay another party's fees." *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 709, 850 N.E.2d 880, 886 (2006). A trial court's decision to award or deny attorney fees will be reversed only if the court abused its discretion. *In re Marriage of Reimer*, 387 Ill. App. 3d 1066, 1076, 902 N.E.2d 132, 140 (2009).

### 2. *Kelly's Attorney-Fee Claim*

Kelly argues that the trial court abused its discretion when it ordered Robert to pay only \$7,500 of her attorney fees. In particular, Kelly contends that the extreme disparity in the parties' income and Kelly's inability to pay her attorney fees warrants Robert's payment of her attorney fees in *toto*, which she approximates is \$28,780. We disagree.

Relying on this court's decision in *In re Marriage of Davis*, 292 Ill. App. 3d 802, 812, 686 N.E.2d 395, 403 (1997), Kelly claims that although Robert "may argue that he is unable to pay a lump sum," this court has previously concluded monthly attorney-fee installments are permissible. However, the issue before us is not whether this court believes imposing install-

ment payments is a prudent or warranted action in this case, but instead, whether no reasonable person would take the view adopted by the trial court when it ordered Robert to pay \$7,500 in partial satisfaction of Kelly's attorney fees.

In this case, we note that although the trial court did not provide its rationale for its determination, the amount imposed represents approximately 25% of Kelly's attorney-fee debt, which Robert was required to pay in a lump sum within 90 days of the court's November 2010 order. Coupled with the requirement that Robert pay Kelly \$6,586 per month (\$5,086 per month for current child-support and \$1,500 per month in arrearage) and Robert's own obligation to pay his attorney fees (estimated at \$60,000) and monthly living expenses, we do not conclude that the court's determination was an abuse of discretion.

### III. CONCLUSION

In closing, we note that in many cases before this court that involve custody, visitation, or support of children, parents often attack each other's child-rearing abilities or use their children as weapons, which inflicts long-lasting harm and is contrary to the children's best interest. That situation was not the case here, and we commend Kelly and Robert for their respectful, accommodating behavior toward each other. We also commend the trial court for its thorough and comprehensive order, which we found especially helpful.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.