NOTICE
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2011 IL App (4th) 110034-U

Filed 9/21/11

NO. 4-11-0034

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES ex rel. MICHELLE BECKER, n/k/a MICHELLE HAMILTON,	)	Appeal from Circuit Court of McLean County No. 93F185
Petitioner-Appellee,	)	
v.	)	
HERBERT J. REICHELT,	)	Honorable Elizabeth A. Robb, Judge Presiding.
Respondent-Appellant.	)	

JUSTICE POPE delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: (1) We reverse and remand the cause for the recalculation of Herbert's 2010 gross monthly income.

(2) The trial court did not err in refusing to deduct Herbert's automobile loan payments in calculating his child-support payment because the loan did not constitute a reasonable and necessary expense for the production of income where he did not present evidence to show he purchased the automobile as a requirement of his employment.

(3) During the hearing on Herbert's motion to reconsider, the trial court did not err in refusing to consider "new evidence" regarding Herbert's use of his vehicle where such evidence was available during the original hearing and Herbert did not explain why it was not introduced at that time.

(4) Herbert forfeited his argument the trial court erred in refusing to consider the minor's income when calculating child support where Herbert failed to make an offer of proof as to the evidence he sought to introduce.

¶ 2 In March 2010, the Illinois Department of Healthcare and Family Services

(Department) filed a motion on behalf of petitioner, Michelle Hamilton n/k/a Michelle Becker, to increase the amount of child support respondent, Herbert J. Reichelt, was required to pay on the ground his income had increased. In June 2010, the trial court granted the Department's petition and increased Herbert's child-support obligation to $155.28 per week.

¶ 3 Herbert, proceeding *pro se*, appeals, arguing the trial court erred in (1) calculating his gross monthly income, (2) refusing to include his auto-loan payments as a deduction in calculating his child-support payment, (3) refusing to consider new evidence relating to the use of his vehicle, and (4) refusing to consider income earned by his daughter in calculating his child-support obligation. We affirm in part and reverse in part and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On May 5, 1993, the Department filed a petition to determine the existence of a father-child relationship between Amanda (born December 20, 1992) and Herbert. Thereafter, a blood test confirmed Herbert was Amanda's father.

¶ 6 On November 18, 1993, the trial court ordered Herbert to pay $150.06 twice monthly in child support. The court also ordered Herbert to maintain health insurance for Amanda.

¶ 7 On September 27, 2007, by agreement of the parties, the trial court reduced Herbert's payment obligation to $72.21 per week and eliminated the requirement he provide health insurance for Amanda.

¶ 8 On March 5, 2010, the Department filed a motion seeking, *inter alia*, an increase in Herbert's child-support obligation and an order directing Herbert to again provide health insurance for Amanda. The parties did not dispute Herbert's income had increased.

¶ 9 During the June 24, 2010, hearing on the Department's petition, the Department introduced Herbert's most recent pay statement, which reflected payment on June 1, 2010, for work performed between May 1, 2010, and May 31, 2010. The Department submitted a proposed child-support-calculation form based on the pay statement. The Department's form showed $5,000 in gross monthly wages.

¶ 10 Michelle testified she worked on average 20 hours a week and made $17,000 in 2009. Herbert, who was proceeding *pro se* and directing the examination of Michelle, asked whether their daughter had a job. The Department objected to the question's relevance. Herbert argued their daughter's job would qualify as a financial resource under "Chapter 750, Act 5, 505." The trial court sustained the Department's objection.

¶ 11 During Herbert's testimony, Herbert tendered a payment schedule for dental work in the amount of $1,302.99 and stated he pays "on average a hundred dollars a month for reimbursement of medical expenses necessary to preserve [his] life or health." Herbert requested a deduction for those dental expenses. Herbert also tendered documents showing a $235.44 monthly payment obligation for his vehicle. Herbert testified his car was required for his position. Specifically, Herbert testified, "I'm required to travel, not only to and from work, but *** also in the course of my business. I am a development officer for Lincoln College. My role is to visit donors and prospective donors and to solicit donations to the college." Herbert also presented a $150.00 mileage-reimbursement statement from Lincoln College for "mileage 4/16/10" that Herbert maintained showed he used the car for work. However, Herbert argued he was "not being reimbursed for the car." Instead, he was being "reimbursed for the use of the car back and forth during that time."

¶ 12 Herbert also offered his own child-support-calculation form. It showed a gross monthly income of $4,166.67, a figure he testified he took from his last paycheck.

¶ 13 The Department acknowledged its figures were different from Herbert's figures and stated the following:

> "I'm using his most current paycheck stub that he provided, period ending May 31st, 2010. It appears he's paid on a monthly basis[,] so I took the year[-]to[-]date amount of [$]25,000, divided that by five to come up with a monthly gross wage, and that amount is $5,000."

¶ 14 Following the hearing, the trial court granted the Department's petition. The court stated it was using the Department's $5,000-gross-per-month figure to calculate Herbert's income and denied Herbert's request to deduct his dental expenses and auto-loan payments. The court ordered Herbert to pay $155.28 per week in child support and to provide health insurance for Amanda. The child-support order stated these obligations would terminate on December 20, 2011.

¶ 15 On July 1, 2010, Herbert filed a motion to reconsider, arguing (1) the trial court's rulings regarding child support and Amanda's medical insurance were not in Amanda's "best interest" and (2) "errors were committed that warrant reconsideration, a modification of Judgment, a retrial or rehearing and a vacated Judgment, and that the Judgment was rendered contrary to the manifest weight of the evidence and without regard to statutory provisions."

¶ 16 During a December 16, 2010, hearing on Herbert's motion, Herbert argued the Department erred in concluding he made $5,000 a month. Specifically, Herbert stated, "I do not,

not from the pay stub, not from any facts in that file [make $5,000 per month], so the question is, well, where did the [$]5,000 monthly amount come from?" The Department replied and argued the following:

> "I took that from a paycheck stub that he provided to us in Court, pay period ending May thirty-first of 2010, and I have that paycheck stub here. I'm not sure where it is within the exhibits of the file, but year to date for a period ending May thirty–first, 2010, the income was [$]25,000 with two cents. I divided that by five, just like it states on that child support calculation work sheet up at the top. Since he does get paid monthly, we were averaging this out monthly, and if you divide that by five, it's $5,000, which is how we got to that figure."

Herbert responded, "I do not make $60,000 a year. If you look at the pay stub, it will tell you I make $4,166 a month, so essentially, almost an additional thousand dollars has been charged for child support that, that I don't make." In addition, Herbert argued, without explanation, the trial court's decision not to consider Amanda's income in determining the amount of child support "contradicts the statute."

¶ 17 Herbert also argued the trial court erred in failing to consider his auto-loan payments as a deduction in calculating his income. In support of his argument, Herbert attempted to introduce "a document that existed prior to the hearing that [he] was not aware of." Specifically, Herbert wanted to introduce a job description for his position as a "development officer," which he argued showed he needed a vehicle for the position. The Department objected on the ground Herbert should not be allowed to introduce new evidence at the hearing on his

motion to reconsider.

¶ 18 Following the hearing, the trial court denied Herbert's motion. Specifically, the court accepted the Department's calculation of Herbert's gross income based upon the evidence submitted at the original hearing. The court stated it looked again at the pay stub for the pay period ending May 31, 2010, and found it showed the year-to-date amount was $25,0002. The court asked the Department to recheck its math. The Department stated it did so and that the numbers looked fine. The court also refused to consider Herbert's "new evidence" on the ground it was available at the time of the original hearing, and Herbert failed to introduce it at that time. The court concluded the hearing by denying Herbert's motion for reconsideration.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Herbert argues the trial court erred in (1) calculating his gross monthly income, (2) refusing to include his auto-loan payments as a deduction in calculating his child-support payment, (3) refusing to consider new evidence relating to the use of his vehicle, and (4) refusing to consider income earned by his daughter in calculating his child-support obligation.

¶ 22 A. Standard of Review

¶ 23 "The modification of child-support payments lies within the sound discretion of the trial court, and the trial court’s modification will not be disturbed on appeal, absent an abuse of discretion." *In re Marriage of Bussey*, 108 Ill. 2d 286, 296, 483 N.E.2d 1229, 1233 (1985). The trial court's findings as to net income are also reviewed for an abuse of discretion. *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 675, 840 N.E.2d 694, 700 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial

court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005).

¶ 24 B. Herbert's Income

¶ 25 Herbert argues the trial court erred in calculating his gross monthly income. Specifically, Herbert contends his income should have been calculated over six pay periods.

¶ 26 Section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) requires the trial court to set the minimum amount of child support for one child at 20% of the noncustodial parent's net income. *In re Marriage of Rogers*, 213 Ill. 2d 129, 133, 820 N.E.2d 386, 388 (2004); 750 ILCS 5/505(a)(1) (West 2008). "The starting point for determining a child support award is to determine the noncustodial parent's net income." *Breitenfeldt*, 362 Ill. App. 3d at 675, 840 N.E.2d at 700. Determining "net income" in a child-support context is a straightforward, mechanical process, explicitly delineated by the legislature in section 505(a)(3) of the Dissolution Act. *In re Marriage of Boland*, 308 Ill. App. 3d 1063, 1067, 721 N.E.2d 815, 818 (1999). Section 505(a)(3) defines "net income" as the total of all income from all sources minus the following deductions: (1) state and federal income tax, (2) social-security withholdings, (3) mandatory retirement contributions, (4) union dues, (5) dependent and individual health insurance premiums, (6) prior obligations of support or maintenance, and (7) expenditures for repayment of debts incurred for the production of income. *Rogers*, 213 Ill. 2d at 133, 820 N.E.2d at 388 (citing 750 ILCS 5/505(a)(3) (West 2008)).

¶ 27 In this case, the trial court calculated Herbert's monthly gross income based on five monthly pay periods. The only evidence of Herbert's income provided to the court was a single pay stub from June 1, 2010, showing his year-to-date earnings for the May 1, 2010, through May 31, 2010, pay period. The court concluded this pay period was the fifth such pay period of 2010.

Herbert argues the wage statement used by the court shows wages actually paid during the *six* payroll periods, *i.e.*, December 1, 2009-December 31, 2009 (deposited January 1, 2010) through May 1, 2010-May 31, 2010 (deposited June 1, 2010).

¶ 28 While it is difficult to say the trial court abused its discretion based on the little evidence provided, it appears Herbert's 2010 year-to-date earnings were based on six months of work, not five. The record reflects the parties agreed Herbert is paid once a month. The June 1, 2010, pay stub also shows Herbert is paid once a month. It appears from the June 1, 2010, pay stub Herbert was paid on the first of the month for wages earned during the preceding month. As such, Herbert's first pay date in 2010 would have been January 1, 2010, and been comprised of wages earned from December 1, 2009, through December 31, 2009. Thus, from January 1, 2010, through June 1, 2010, Herbert was paid six times. As a result, it appears Herbert's 2010 year-to-date earnings were earned over six months, instead of five months. Dividing Herbert's year-to-date gross income of $25,000.02 by six yields a monthly income of $4,166.67, which is the exact figure shown on his pay stub as his monthly gross income. Moreover, multiplying $4,166.67 by 12 months yields a yearly gross income of $50,000.04, *i.e.*, the amount Herbert argues he earns and not the $60,000 figure arrived at by the Department.

¶ 29 C. Herbert's Automobile Loan

¶ 30 Herbert argues the trial court erred in refusing to include his auto-loan payments as a deduction in calculating his child-support payment. Specifically, he contends the court should have deducted his loan payments because they are expenditures for repayments of debt that represent a reasonable and necessary expense for the production of income. We disagree.

¶ 31 Section 505(a)(3) of the Dissolution Act (750 ILCS 5/505(a)(3) (West 2008))

defines "net income" as "'the total of all income from all sources,'" subject only to the specifically enumerated deductions. *Gay v. Dunlap*, 279 Ill. App. 3d 140, 146, 664 N.E.2d 88, 93 (1996). The statutory definition of net income, not the federal–tax definition, is to be used in determining-net income for child-support purposes. *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 732, 661 N.E.2d 505, 509 (1996). Thus, a deduction allowable for income-tax purposes may not be allowable for the calculation of net income. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 109, 735 N.E.2d 1037, 1044 (2000). Section 505(a)(3)(h) provides for a deduction from gross income for expenditures for repayment of debts only insofar as they constitute reasonable and necessary expenses for the production of income. 750 ILCS 5/505(a)(3)(h) (West 2008).

¶ 32 In *Gay*, this court construed section 505(a)(3)(h) of the Act and found, in relevant part, as follows:

> "[S]imply because an expense falls into a category of a debt repayment does not mean it is deductible. Qualifying as a repayment of debt is a necessary, but not a sufficient, condition for deductibility under subsection (a)(3)(h). Once this hurdle is overcome, *the proponent of the deduction must also show the debts being repaid 'represent reasonable and necessary expenses for the production of income*.' [Citation.]
>
> * * *
>
> By the word 'necessary' we conclude the legislature did not intend only to describe those expenses without which no income could be generated. 'Necessary' admits of a number of different

> degrees of meaning ([citation]), and we cannot assume the legislature meant it so restrictively in the absence of some more definitive indication. However, it would be mere surplusage if it meant nothing more than simply those expenses which the spender in good faith believes will increase his income. We conclude the legislature intended to describe *those expenses outlaid by a parent with a good-faith belief his or her income would increase as a result, and which actually did act to increase income*, or would have done so absent some extenuating circumstance." (Emphases added.) *Gay*, 279 Ill. App. 3d at 148-49, 664 N.E.2d at 94-95.

¶ 33 In this case, Herbert did not present evidence demonstrating his vehicle was necessary for the production of income. Even if the expenditures are shown to be for repayment of debts " 'the proponent of the deduction must also show the debts being repaid "represent reasonable and necessary expenses for the production of income." ' " *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1078, 679 N.E.2d 856, 860-61 (1997) (quoting *Gay*, 279 Ill. App. 3d at 148, 664 N.E.2d at 94, quoting 750 ILCS 5/505(a)(3)(h) (West 1992)). While Herbert testified he drove to appointments as part of his employment, he did not detail what percentage of his job involved the use of a vehicle. Further, the mileage-reimbursement statement he tendered does not demonstrate his vehicle was a necessary condition of his employment. Instead, it details mileage reimbursement in the amount of $150 for a *single* business trip on April 16, 2010. Further, the loan origination documents, contained in the record, show the vehicle's proposed use as being "Personal" and not "Business." We note Herbert is a salaried employee, *i.e.*, he is not

self-employed. Moreover, Herbert's payments go toward the purchase of a vehicle Herbert will eventually own independent of his employment. The trial court did not err in refusing to deduct Herbert's auto-loan payments in calculating his income for child-support purposes.

¶ 34 D. New Evidence

¶ 35 Herbert argues the trial court erred in refusing to consider new evidence relating to his job description and the use of his vehicle. Herbert's *entire* argument in this regard on appeal consists of the following sentence, "Trial court was in error in denying exhibit that was newly discovered and had existed at the time of hearing on June 24, 2010, but was not available to Respondent/Appellant." We disagree.

¶ 36 The purpose of a motion to reconsider is, *inter alia*, to bring to the trial court's attention newly discovered evidence not available at the time of the original hearing. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324, 943 N.E.2d 752, 758 (2010) (quoting *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004)). "A trial court's decision to grant or deny a motion to reconsider lies within its sound discretion, and this court will not disturb such a ruling absent an abuse of discretion." *Simmons*, 406 Ill. App. 3d at 324, 943 N.E.2d at 758. The party seeking to introduce new evidence must "provide a reasonable explanation for why the evidence was not available at the time of the original hearing." *Stringer*, 351 Ill. App. 3d at 1141, 815 N.E.2d at 481 (citing *Woolums v. Huss*, 323 Ill. App. 3d 628, 640, 752 N.E.2d 1219, 1229 (2001)). In other words, there must be a showing of due diligence. See *In re Ashley F.*, 265 Ill. App. 3d 419, 426, 638 N.E.2d 368, 373 (1994).

¶ 37 In this case, the "new evidence" Herbert sought to introduce could have been discovered prior to the original hearing through the exercise of Herbert's due diligence. Herbert

did not offer *any* explanation why it was unavailable other than he was previously unaware of it. A party's failure to provide an explanation regarding why new evidence was unavailable at the prior hearing is a sufficient ground for denying a motion to reconsider. See *Gardner v. Navistar Intern Transp. Corp.*, 213 Ill. App. 3d 242, 248-49, 571 N.E.2d 1107, 1110-1111 (1991). Thus, the trial court did not err in refusing to consider Herbert's "new" evidence.

¶ 38 E. Amanda's Income

¶ 39 Herbert argues the trial court erred in refusing to consider income allegedly earned by his daughter in calculating his child-support obligation. Specifically, Herbert contends, "The court was in error in disallowing testimony regarding minor child's income during June 24, 2010[,] hearing on Motion to Modify, as not relevant to proceedings regarding child support modification where deviations from the guidelines were requested to be considered and requested argument allowed." We disagree.

¶ 40 During Herbert's *pro se* examination of Michelle, the following colloquy took place:

> "Q. [HERBERT:] And you said Amanda Reichelt is 17, correct?
>
> A. [MICHELLE:] Correct.
>
> Q. Does Amanda have a job?
>
> MS. ORTEGA [(Attorney for the Department)]: Judge, objection. I don't see how this is relevant at all to what we're here for today.
>
> THE COURT: Objection. That objection is sustained.

[HERBERT]: Your Honor, if I might, Chapter 750, Act 5, 505 specifically states that the financial resources and needs of the child shall be considered. I'm asking that also the financial needs of the custodial parent and the non-custodial parent, I'm asking that as well, so if I might, Your Honor, those are very relevant factors.

MS. ORTEGA: Judge, if he's asking whether or not the minor is working, it's still a minor. We're asking him to pay [child] support. If the minor does have a job or does not have a job, that should still not have any effect as to what he would be ordered to pay.

THE COURT: Okay. I'm sustaining the objection as to the employment and the income that the minor might earn from that employment.

[HERBERT]: I'm sorry, you said you're sustaining the objection?

THE COURT: I am sustaining the objection.

[HERBERT]: Thank you, Your Honor."

¶ 41 Under section 505(a)(2) the trial court may consider the following factors in determining whether to deviate from the support guidelines: (1) the financial resources and needs of the child, (2) the financial resources and needs of the custodial parent, (3) the standards of living the child would have enjoyed if the parents were married, and (4) the physical and emotional condition of the child and educational needs of the child. 750 ILCS 5/505(a)(2) (West

2008).

¶ 42 However, Herbert has not cited a single case where the trial court offset the amount of support as a result of a child's employment. Even if we were to accept Herbert's argument his child's job amounted to a "financial resource" for section 505(a)(2) purposes, Herbert failed to make an offer of proof as to the evidence he wished to introduce concerning Amanda's purported employment or income. "Generally, a party who fails to make an offer of proof as to the evidence it intended to introduce waives any claim that the evidence was improperly excluded." *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 653, 801 N.E.2d 18, 26 (2003). While we recognize Herbert was proceeding *pro se*, such litigants are held to the same rules as litigants represented by counsel. See *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 534, 834 N.E.2d 43, 48 (2005) (a party's *pro se* status does not require application of a "more lenient standard"); *Boeger v. Boeger*, 147 Ill. App. 3d 629, 631, 498 N.E.2d 814, 815 (1986) ("A reviewing court will not apply a more lenient procedural standard to *pro se* litigants than is generally allowed attorneys"). Under these circumstances, Herbert forfeited his argument with regard to this evidence.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm in part and reverse in part and remand with directions to recalculate (1) Herbert’s 2010 gross income and (2) the amount of child support to be paid based on the recalculated income.

¶ 45 Affirmed in part; reversed in part and cause remanded with directions.