

No. 1-11-2876

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> MARRIAGE OF ANDREW RURAK,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
and	)	No. 05 D 30179
	)	
LUCY RURAK, n/k/a LUCY TAJAK,	)	Honorable
	)	Veronica B. Mathein,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Presiding Justice McBride and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court erred in allocating college expenses that accrued prior to the date of the petition seeking such allocation. The evidence and findings of the Circuit Court were insufficient to allow a proper allocation of college expenses and therefore a new evidentiary hearing ordered.

¶ 2 Respondent Lucy Rurak, now known as Lucy Tajak, appeals from an order of the circuit court of Cook County that she pay 40% of the college expenses of her daughter, Dorothy Rurak, for Dorothy's five semesters at Waynesburg University and that her ex-husband, petitioner Andrew Rurak, pay 60% of those expenses. Lucy contends that it was error for the circuit court to order payment of any expenses that were incurred prior to Andrew's filing of his petition for

those expenses. Lucy also contends that she is entitled to a new hearing because Andrew failed to present sufficient evidence from which the court could determine necessary statutory factors, such as the parties' financial resources. Finally, Lucy contends that she is entitled to a new hearing because the court permitted Andrew's sister to testify although she had not been disclosed to Lucy prior to the hearing.

¶ 3 Andrew and Lucy were married on September 22, 1980. They had two daughters, Magdalena, born September 29, 1983, and Dorothy, born June 16, 1989. A judgment of dissolution of their marriage was entered on October 15, 2007. Subsequently, the circuit court entered an order allocating Dorothy's college expenses from Penn State University, which she attended for three semesters from fall 2007 through fall 2008. No issue is raised concerning that order, which allocated those expenses 60% to Andrew and 40% to Lucy. Dorothy transferred to Waynesburg University in Pennsylvania for her final five semesters of college, from spring 2009 through spring 2011. After Dorothy had completed three of those semesters, Andrew filed a petition on June 4, 2010, seeking allocation of Dorothy's expenses for Waynesburg, including tuition and room and board.

¶ 4 A hearing on Andrew's petition was held on June 6, 2011. The evidence establishes that Dorothy graduated from Waynesburg in June 2011, several days before the hearing was held. Andrew testified that he had paid for some of Dorothy's expenses by checks which he sent to Dorothy, but he had paid the remainder of her expenses by giving money to his sister, Mary Ciniewicz, who then paid them. Included in the money he gave Mary was \$73,000 from his retirement fund, sent to Mary in a cashier's check in March or April of 2008. Andrew testified that he had proceeded in this manner because he did not have "finance capabilities" and Mary dealt with finances in her job, working as a bank vice-president.

¶ 5 Mary Ciniewicz testified that she was a vice-president of The Bank of New York Mellon, where she managed financial reporting. At Andrew's request she had paid Dorothy's tuition at

Waynesburg from funds supplied by Andrew. He sent her \$73,000 from his retirement fund and she placed that money in a joint account bearing her name and Andrew's name. Mary identified checks she had used from that account to pay for tuition for semesters beginning with the spring of 2009 and ending with the spring of 2011, when Dorothy graduated. According to Mary, Dorothy transferred to Waynesburg because it was "closer" and because it was a better school in her field. Mary had not used her own money to pay for any of Dorothy's college expenses.

¶ 6 Lucy testified that she had no relationship with Dorothy. The last time she had spoken to her was the first day after Lucy's divorce. She did not know why Dorothy attended Penn State or Waynesburg and did not know if Dorothy paid in-state or out-of-state tuition to those schools. No evidence was adduced regarding the parties' respective incomes or their ability to pay for Dorothy's college expenses.

¶ 7 At the close of all the evidence, the court stated: "Well, how am I going to ever decide who has to pay what since I don't know what anyone earns and I don't know what their expenses are?" Lucy's attorney argued that the burden was on Andrew to establish the income of the parties for purposes of allocation of expenses. Andrew's attorney stated in argument to the court that Andrew had spent a total of \$80,070 on tuition and expenses for Dorothy at Waynesburg. Andrew's attorney also suggested that the court should use the same percentages used in its original order, in which it allocated the Penn State expenses at 60% for Andrew and 40% for Lucy. The court stated that since it did not have "any information regarding [the parties'] current income and expenses," it had considered allocating them at 50% for each party. But the court then held that since Andrew had offered to pay 60%, the allocation would be 60% to be paid by Andrew and 40% to be paid by Lucy. The court specifically stated that since it did not have anything on which to base this division or any "current information," it was basing the allocation of expenses on the allocation it had ordered for Penn State expenditures. An order was entered on June 6, 2011, allocating 60% of Dorothy's expenses to Andrew and 40% to Lucy. Lucy's

subsequent motion to reconsider was denied and this appeal ensued.

¶ 8 Andrew has not filed a responsive brief, but we will consider the appeal on Lucy's brief and the record. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008); *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We first consider Lucy's claim that the order erroneously allocated expenses from Dorothy's first three semesters at Waynesburg, which were completed prior to the filing of the petition for allocation of Dorothy's Waynesburg expenses. Because we are concerned with the construction of provisions of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/101 *et seq.* (West 2010)), our review is *de novo*. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 9 (citing *In re Andrew B.*, 237 Ill. 2d 340, 348 (2010)).

¶ 9 We find that our determination of this issue is controlled by *Petersen*. In that case a 1999 divorce decree for Kevin and Janet Peterson reserved the issue of the allocation of education expenses for the couple's three sons. *Petersen*, ¶ 4. Subsequently, Janet filed a petition to allocate the children's college expenses, the majority of which antedated the petition's filing date. *Petersen*, ¶¶ 5, 6. The circuit court ordered Kevin to pay 75% of those expenses. *Petersen*, ¶ 6. On appeal, our supreme court held that the circuit court had erroneously allocated those expenses that accrued prior to the filing of the allocation petition. *Petersen*, ¶ 18. The supreme court noted that the payment of children's college expenses was a form of support under section 513(a) of the Act (750 ILCS 5/513(a) (West 2010)) and that under section 510(a) of the Act, provisions of a divorce decree regarding support payments could only be modified for expenses accruing subsequent to due notice of the filing of the modification petition (750 ILCS 5/510(a) (West 2010)). *Petersen*, ¶¶ 10-13. Janet contended that the ban on retroactive modification of expenses did not apply because the divorce decree had reserved the issue of college expenses and therefore she was not seeking to modify the allocation of such expenses. But the court ruled that her petition sought to change the obligations of the parties concerning college expenses, which

would constitute a modification of those obligations under the plain meaning of the term "modify." *Petersen*, ¶¶ 16-18. Accordingly, it held that the circuit court could only order an allocation of those college expenses that accrued after the filing of the petition for allocation. *Petersen*, ¶ 18.

¶ 10 We find the reasoning of the *Petersen* court to be applicable to the case at bar. Here, the original divorce decree was silent as to the parties' obligations concerning support for the college education of their children. A subsequent order set out those obligations as they pertained to Dorothy's three semesters at Penn State.<sup>1</sup> But when, in June 2010, Andrew petitioned for an allocation of Dorothy's expenses for her five semesters at Waynesburg, he was again seeking to modify the support obligations of the parties. Under section 510(a) of the Act (750 ILCS 5/510(a) (West 2010)), the only obligations that could be modified were those relating to expenses accruing after the date of Andrew's petition. Dorothy attended Waynesburg for two final semesters after the filing of that petition, in the fall of 2010 and the spring of 2011. Andrew was therefore only entitled to an allocation of the expenses relating to those two semesters. For this reason we reverse the circuit court's order and remand for a new hearing.

¶ 11 The record before us does not include any evidence or any findings justifying the expense of Waynesburg University over a local Illinois school. On remand, the factors that should be evaluated include the programs offered, the relative cost of the school, the cost of housing, whether the school met Dorothy's goals, the benefits Dorothy received from the school and whether a private school was necessary where adequate public schools existed. *In re Marriage of Schmidt*, 292 Ill. App. 3d 229, 237 (1997). In that the evidentiary record is devoid of any such information and considering that equity demands that some allocation of college expenses be made, we hold that a new evidentiary hearing should be held. The court should also consider the

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<sup>1</sup> As we have noted, no issue is raised in this appeal concerning the validity of that order.

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financial resources of the parties (*Schmidt*, 292 Ill. App. 3d at 237) and other factors set out by statute (750 ILCS 5/512(b) (West 2010)). Finally, the court should take into account, as part of its equitable considerations, the fact that Andrew will not be reimbursed for any of the cost of the first three semesters Dorothy spent at Waynesburg. See *Petersen*, 2011 IL 110984, ¶ 25. As we remand this matter for a new evidentiary hearing, we do not find it necessary to reach the question of whether it was error to allow Mary Ciniewicz to testify without prior notice.

¶ 12 Reversed and remanded with directions.