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2012 IL App (3d) 110747-U

Order filed November 6, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF STACEY L.	)	Appeal from the Circuit Court
BALGEMANN, n/k/a STACEY L.	)	of the 21st Judicial Circuit,
STEWART,	)	Kankakee County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-11-0747
and	)	Circuit No. 07-D-217
	)	
STEPHEN W. BALGEMANN,	)	Honorable
	)	Michael D. Kramer,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justice Wright concurred in the judgment.  
Justice Holdridge dissented.

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**ORDER**

- ¶ 1 *Held:* Trial court did not abuse its discretion in modifying child support where child support obligor's income had increased by 24% since last support order was entered. Trial court did not abuse its discretion in calculating obligor's net income where obligor failed to provide court with the amount his wife paid for health insurance premiums on behalf of himself and his children.
- ¶ 2 Petitioner Stacey Stewart filed a motion to modify child support, alleging that a substantial change in circumstances had occurred since her ex-husband, respondent Stephen Balgemann, had

been previously ordered to pay bi-weekly child support of \$610.10. Following a hearing, the trial court agreed that a substantial change in circumstances had occurred and increased Balgemann's bi-weekly child support obligation to \$758.92. Balgemann appeals, arguing that the trial court erred in (1) finding that a substantial change of circumstances occurred, and (2) calculating his net income. We affirm.

¶ 3 In December 2004, the trial court entered a judgment of dissolution, dissolving the marriage of Stewart and Balgemann. Stewart was given residential custody of the parties' three minor children. At the time of the dissolution, Balgemann was unemployed and was ordered to pay \$600 in monthly child support based on unemployment compensation. In November 2008, the trial court entered a modified order setting Balgemann's bi-weekly child support payments at \$610.10.

¶ 4 In December 2009, Stewart filed a motion to modify Balgemann's child support obligation. In her motion, Stewart alleged that a substantial change in circumstances had occurred since the prior child support order was entered because (1) Balgemann was earning substantially more income than he had previously, and (2) the costs of raising the children had "increased substantially."

¶ 5 A hearing on the motion was held in June 2011. At the hearing, Stewart admitted into evidence Balgemann's pay check stubs and tax returns showing that Balgemann's net income had increased to \$2,371.64 bi-weekly. Balgemann testified at the hearing that he received two pay increases since the previous child support order was entered. He testified that he had remarried, and his new wife has two dependent children. Balgemann testified that his wife earns only \$20,000 per year and cannot support herself and her children without help from him.

¶ 6 Balgemann's wife maintains medical insurance for the entire family, including Balgemann's children. When asked if covering Balgemann's children increased the cost of the insurance

premiums, Balgemann responded, "I don't know that information." Balgemann argued that any increase in child support would be a hardship on him and his new family.

¶ 7 Following the hearing, the trial court granted Stewart's motion to modify, finding that a substantial change in circumstances had occurred based on Balgemann's increase in income. The court increased Balgemann's child support obligation to \$758.92 bi-weekly, effective as of the date of Stewart's motion. The court ruled that Balgemann's net income did not include any deduction for medical insurance premiums because Balgemann presented no evidence that having his children included on his wife's policy increased the premium cost. Balgemann filed a motion to reconsider, which the trial court denied.

¶ 8 I. Substantial Change in Circumstances

¶ 9 A custodial parent may petition for an increase in the child support obligation of the noncustodial parent upon a showing of a "substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2008). To establish a substantial change in circumstances, the petition must show an increase in the noncustodial parent's ability to pay and an increase in the needs of the children since the previous court order. *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343 (2004). A court may presume that the needs of children have increased based on the fact that the children have grown older and the cost of living has increased. *Id.* A trial court's decision concerning modification of child support will not be disturbed on appeal absent an abuse of discretion. *Id.*

¶ 10 A

¶ 11 Balgemann first contends that the trial court erred in finding that a substantial change in circumstances had occurred because Stewart presented no evidence that the needs of the children had increased since the 2008 child support order.

¶ 12 A court may presume that the expenses associated with the raising of children increase each year. *In re Marriage of Falat*, 201 Ill. App. 3d 320, 327 (1990). Here, over a year had passed between the trial court's order setting child support at \$610.10 and Stewart's motion to modify child support. At the time of the hearing on Stewart's motion, over two-and-a-half years had passed since the child support order was entered. Given this passage of time, we can presume that the children's needs had increased as they grew older and the cost of living increased. See *Adams*, 348 Ill. App. 3d at 343 (appellate court presumed that child's needs increased during three-year period between child support order and modification).

¶ 13 At the hearing, Balgemann testified that his income had increased. He did not present any evidence rebutting the presumption that the children's needs had increased. Thus, the trial court did not abuse its discretion in finding that there was a substantial change in circumstances justifying an increase in child support.

¶ 14 B

¶ 15 Balgemann next contends that the trial court erred in finding that his salary had substantially increased. He contends that his income had only increased by 2%.

¶ 16 Balgemann's position is not supported by the record. The evidence at the hearing established that Balgemann's income had increased by 24% since the trial court entered its child support order in 2008. Such a change in income supports a finding that there was a substantial change in circumstances. See *In re Marriage of Garrett*, 336 Ill. App. 3d 1018 (2003) (22% increase in child support obligor's salary established substantial change in circumstances). Thus, the trial court's finding of a substantial change in circumstances was not an abuse of discretion.

¶ 17 C

¶ 18 Balgemann additionally argues that the trial court should have determined that his increase in income did not amount to a substantial change in circumstances because his increased income is offset by his financial responsibilities to his new wife and family.

¶ 19 The additional responsibilities associated with remarriage do not establish a substantial change in circumstances justifying a downward modification of child support payments. *Roqueplot v. Roqueplot*, 88 Ill. App. 3d 59, 63 (1980). An obligor's first obligations to support his children take precedence over obligations that arise from a subsequent marriage. *Id.*

¶ 20 Here, the trial court set Balgemann's child support obligation in accordance with the statutory guidelines when it granted the modification. See 750 ILCS 5/505(a)(1) (West 2008). The statutory guidelines create a rebuttable presumption that the specified percentage of the supporting parent's income represents an appropriate child support award. *Adams*, 348 Ill. App. 3d at 343. The guidelines apply regardless of whether the obligor is remarried. See *Roqueplot*, 88 Ill. App. 3d at 63.

¶ 21 Balgemann chose to become remarried fully aware of his obligations to support his three children. Balgemann's child support obligations take precedence over his self-imposed obligations to his new wife and family. See *Roqueplot*, 88 Ill. App. 3d at 63. The trial court did not abuse its discretion in finding a substantial change in circumstances despite Balgemann's voluntarily decision to increase his financial responsibilities by remarriage.

¶ 22 II. Calculation of Net Income

¶ 23 Finally, Balgemann argues that the trial court erred in calculating his net income. He argues that the trial court should have deducted from his gross income the medical insurance premiums paid by his wife for his children.

¶ 24 The Act defines "net income" for purposes of determining child support, as the total of all income from all sources, minus a list of specified deductions, including "dependent and individual health/hospitalization insurance premiums." 750 ILCS 5/505(a)(3) (West 2008). A trial court's findings regarding net income will not be reversed absent an abuse of discretion. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009).

¶ 25 In this case, Balgemann testified that his new wife pays the health insurance premiums for his entire family, including his children. When asked what portion of those premiums were attributable to Balgemann's children, Balgemann responded, "I don't know that information." Because there was no evidence of any amount attributable to "dependent and individual health/hospitalization insurance premiums," the trial court did not err in determining that Balgemann's net income should not include a deduction for such premiums.

¶ 26 The order of the circuit court of Kankakee County is affirmed.

¶ 27 Affirmed.

¶ 28 JUSTICE HOLDRIDGE, dissenting.

¶ 29 I would hold that the trial court erred in finding that the petitioner had established that a substantial change in circumstances occurred warranting an increase in child support. I, therefore, respectfully dissent. As the majority points out, to establish a substantial change in circumstances, the petitioner must show an increase in the noncustodial parent's ability to pay *and* an increase in the needs of the children since the court's previous order. *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343 (2004). A trial court's decision concerning modification of child support will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 192 (2003). A trial court's decision concerning modification of

child support will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 192 (2003).

¶ 30 A court may presume that the financial needs of children increase as they grow older and the cost of living increases. *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343 (2004); *In re Marriage of Schmerold*, 88 Ill. App. 3d 348, 355 (1980). However, this presumption is subject to limitations. While the *Adams* court held that a court *may* presume that the financial expenses for children increase with the passage of time as children get older and the cost of living increases, this presumption does not do away with the need to establish a substantial change in the financial circumstances of the children. Rather, it provided a mechanism, the increase in expenses as children get older, that could establish a substantial change in the financial circumstances of the children.

¶ 31 My review of the relevant authority interpreting the presumption that the passage of time alone can establish increased financial needs leads me to find that the trial court abused its discretion in ordering a substantial increase in Stephen's child support obligation (24.8%) just 13 months after establishing his child support obligation where the record contained no evidence of an increase in the financial expenses of the children. As this court stated in *Adams*, the petitioner must show an increase in the noncustodial parent's ability to pay *and* an increase in the needs of the children since the court's previous order. *Adams*, 348 Ill. App. 3d at 343. Here, the record is void of any facts in support of such a presumption. Only a year and a month had passed since Stacey filed her last petition to increase Stephen's child support obligation. To merely presume that the financial expenses of the children had increased substantially in one year at all, let alone by almost 25%, was an abuse of the trial court's discretion.

¶ 32 Moreover, the authority cited by the majority does not support the conclusion that our courts have done away with the requirement that a petitioner seeking an increase in child support must show a financial change in the circumstances of the children, as well as a substantial change in the ability of the noncustodial parent to pay. Our courts have permitted an increase in child support without a showing of increased financial need where the petitioner established that the original child support order was woefully inadequate, thus justifying an *equitable* action by the court to increase the noncustodial parent's support through a modification based solely upon a substantial increase in his ability to pay. *Legan v. Legan*, 69 Ill. App. 3d 304, 309 (1979). Similarly, our courts have also found an increase in child support justified where the custodial parent had not established an increase in the financial expenses of the children when she established a decrease in her ability to provide for the children due to her current husband's loss of employment. *In re Marriage of Mitteer*, 241 Ill. App. 3d 217, 228 (1993). Additionally, our courts have found that an exception to the requirement that the petitioner establish that a substantial increase in the financial expenses of the children exists where the petitioner can establish that the noncustodial parent's increase in income has created a "substantial imbalance" between the child's current needs and the obligor's support capabilities. *Wilson v. Wilson*, 166 Ill. App. 3d 1035, 1037 (1988).

¶ 33 After reviewing the record, I find nothing therein to establish that: (1) the children have experienced a significant increase in financial expenses; (2) the passage of time supports an inference that the financial expenses of the children have substantially increased; (3) equitable considerations favor an increase of 24.8% in child support without the need for a specific finding that the children's expenses have substantially increased; or (4) a substantial imbalance exists

between Stephen's increased net income from all sources and his children's current financial needs. Absent facts in the record to support one of the findings, I would find that the trial court abused its discretion in completely dispensing with the requirement that Stacey establish both an increase in Stephen's ability to pay child support *and* an increase in the financial needs of the children.

¶ 34 Here, only 13 months had expired before the petitioner filed the instant petition seeking an increase in child support. If the passage of a year and a month allows a court to presume that the financial needs of the children have increased due to their growing older, then the majority is essentially authorizing annual petitions for an increase in child support. I do not agree with that approach. I would, therefore, reverse the ruling of the circuit court ordering an increase in child support without a finding that the children's financial needs had increased. On that basis, I dissent.