

No. 1-12-2609

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FLORENCE MASON, on behalf of Kyle Raymond)	Appeal from the Circuit
Thicklin, a minor,)	Court of Cook County.
)	
Petitioner-Appellee,)	
)	No. 00 D 650020
v.)	
)	
JERRY DILLON,)	Honorable
)	Camille E. Willis,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court regarding child support was affirmed.

¶ 2 The respondent, Jerry Dillon, appeals *pro se* from the circuit court order which reduced his monthly child support obligation from \$825 to \$729.91, retroactively to March 6, 2008. The respondent contends that the circuit court erred by: (1) failing to deduct other child support obligations in its calculation of his net income; (2) ordering the reduction retroactively to March 6, 2008, instead of May 18, 2005, which was the date of his initial petition for modification of support;

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and (3) ordering him to produce bank records from his dental practice. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The record establishes the following relevant facts. On January 8, 2002, the respondent, a dentist who holds an interest in his professional dental practice and several other business entities, was ordered to make monthly payments in the amount of \$825 for the benefit and support of the parties' minor child, Kyle. On May 18, 2005, the respondent filed a petition to modify the child support order pursuant to sections 505 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505, 5/510 (West 2004)). The respondent alleged that, after the January 8, 2002, support order was entered, he was found to be the father of two other children and ordered to pay child support for each of those children. He requested that the court factor these additional support orders into consideration and reduce his obligation for Kyle.

¶ 4 A February 8, 2008, court order states that the matter was up for status; the respondent's petition to modify child support was withdrawn; and the matter was to be removed from the court's status call. On March 6, 2008, the respondent filed an amended petition to modify child support. The record contains court orders in the respondent's other child support cases; an April 4, 2005, order shows that he was obligated to pay \$335 per month for one child, and a December 4, 2008, order shows that he was obligated to pay \$168.80 per week, retroactive to June 6, 1999, for another child. On March 9, 2009, the circuit court granted the respondent's petition, reducing his monthly obligation from \$825 to \$729.91. The court continued the matter for the determination of the retroactivity date of the modification. Before a retroactivity date was determined, the respondent appealed. This court dismissed that appeal for lack of jurisdiction, finding that the March 9 order

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was not final, because it reserved the retroactivity determination. *In re Matter of K.T.*, No. 1-09-0871 (2010) (unpublished order under Supreme Court Rule 23).

¶ 5 On May 10, 2010, the respondent filed a *pro se* "Motion to Correct Errors," stating that the court miscalculated his net income by failing to include the amount of his other two child support obligations. The petitioner subsequently filed an amended petition for a rule to show cause against the respondent, asserting, *inter alia*, that he had failed to disclose required financial information in the affidavit supporting his motion to modify child support. On August 25, 2010, the circuit court granted the petitioner leave to conduct limited discovery on the issues raised in the petition for a rule to show cause. In response to the petitioner's discovery requests, the respondent tendered the tax returns for 2007, 2008, and 2009 filed by himself, individually, and by Dillon Dental Services, and Jerkytt Enterprises. He also tendered the 2008 tax return filed by D&M Enterprises.

¶ 6 In April 2011, the petitioner sought to vacate the March 2009 judgment modifying the amount of the respondent's child support obligation. Her petition, which was filed under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), claimed, *inter alia*, that the respondent had submitted fraudulent information in establishing his right to a modification because he had failed to accurately disclose his income derived from the business entities in which he held an ownership interest. While that petition was pending, the petitioner subpoenaed the respondent's bank to produce documents of "[a]ny and all transactions for any and all accounts held in the name of" Dillon Dental Services, Jerkytt Enterprises, D&M Enterprises, and the respondent, for the time period beginning on January 1, 2007, to the "present."

¶ 7 In response to the petitioner's subpoena, the respondent filed a *pro se* "EMERGENCY

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MOTION FOR INJUNCTIVE RELIEF," requesting that the court quash the subpoena *duces tecum* issued to his bank. The respondent's motion asserted that production of the subject bank records would result in disclosure of the names, addresses, and telephone numbers of his patients, which the respondent alleged constituted confidential information protected by the physician-patient privilege (see 735 ILCS 5/8-802 (West 2010)).

¶ 8 On May 10, 2011, the circuit court denied the motion to quash the subpoena and for injunctive relief. The respondent appealed from that order, and this court dismissed that appeal for lack of jurisdiction, finding that the order was not injunctive in nature and therefore not appealable under Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). *Mason v. Dillon*, 2011 IL App (1st) 111124-U.

¶ 9 On May 16, 2012, the circuit court denied the petitioner's section 2-1401 petition to vacate the March 9 modification order. After a hearing on the retroactivity of the child support modification on July 30, 2012, the circuit court ordered that the March 9, 2009, order reducing support to \$729.91 was retroactive to March 6, 2008, "concurrent with Respondent's filing of his Amended Motion to Modify Child Support, over Respondent's continuing objection" The court stated that the respondent's March 6, 2008, petition superceded his May 18, 2005, petition. This appeal followed.

¶ 10 The respondent first argues that the circuit court erred in calculating his net income when it ruled on his petition by failing to deduct his other child support obligations. He argues that section 505 of the Act (750 ILCS 5/505(a)(3)(g) (West 2012)) allows the court to deduct "[p]rior obligations of support or maintenance actually paid pursuant to a court order" when calculating net income.

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¶ 11 The amount of an award of child support is within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion. *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 92, 693 N.E.2d 1282 (1998). The record in this case contains no reports of proceedings or any other documentation that reveals the circuit court's determination of the respondent's net income or any additions or deductions that it factored into its calculation of his net income and its determination of the \$729 amount. The record also does not contain any evidence that the respondent "actually paid" his other support obligations. It is the appellant's burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill.2d 389, 391-92, 459 N.E.2d 958 (1984); *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 30, 957 N.E.2d 469. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* Therefore, under *Foutch*, we must presume that the circuit court's order conforms with the law and had a sufficient factual basis.

¶ 12 Next, the respondent asserts that the circuit court erred in determining the March 6, 2008, retroactive date. He argues that the circuit court should have made the modification retroactive to May 18, 2005, the date of his initial petition to modify child support. A trial court's decision regarding retroactivity of child support is generally reviewed for an abuse of discretion. *In re Marriage of Streur*, 2011 IL App (1st) 082326, 955 N.E.2d 497. "A clear abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Blum v. Koster*, 235 Ill. 2d 21, 36, 919 N.E.2d 333 (2009).

¶ 13 The fact that the respondent's original petition was withdrawn is not necessarily controlling when he files an amended petition which relates back to the original petition, because the operative date in making a retroactive award of child support may be the date the opposing party is put on notice that a modification is being sought. See *In re Marriage of Duerr*, 250 Ill. App. 3d 232, 239, 621 N.E.2d 120 (1993). However, the July 30 order states that, upon hearing the matter, the circuit court determined that the "May 18[,] 2005[,] motion to modify support [was] superceded by the March 6[,] 2008[,] Amended Motion to Modify Child Support." The court's order indicates that it heard the parties' arguments on the retroactivity date, considered the May 18, 2005, retroactivity date, and instead chose to use the March 6, 2008, date, over the respondent's objections. The record does not contain the transcripts from the July 30 hearing for us to discern the circuit court's reasoning behind its ruling. Again, it is the appellant's burden to present a sufficiently complete record, and in the absence of such a record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill.2d 3at 391-92; *Baniak*, 2011 IL App (1st) 092017, ¶ 30. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* Therefore, under *Foutch*, we must presume that the circuit court's order conforms with the law and had a sufficient factual basis.

¶ 14 Finally, the respondent contends that the circuit court erred in ordering him to produce bank records from his dental practice, which he alleges contained confidential information protected by the physician-patient privilege (see 735 ILCS 5/8-802 (West 2010)). The record does not contain any evidence that the circuit court ordered documents containing any protected patient information or any evidence that the respondent actually produced such information. Rather, the record only

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contains the tax returns that the respondent produced, which do not contain patient information. Again, it is the appellant's burden to present a sufficiently complete record of the proceedings, and in the absence of such a record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill.2d at 391-92; *Baniak*, 2011 IL App (1st) 092017, ¶ 30. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* Therefore, under *Foutch*, we must presume that the circuit court's discovery order conforms with the law and had a sufficient factual basis

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.