

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).

2013 IL App (4th) 120936-U

NO. 4-12-0936

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 6, 2013
Carla Bender
4th District Appellate
Court, IL

CAROLYN CAMPBELL,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	Champaign County
JAMES WALKER,)	No. 94L1296
Respondent-Appellee.)	
)	Honorable
)	Arnold F. Blockman,
)	Holly F. Clemons,
)	Judges Presiding.

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

ORDER

¶ 1 *Held:* In affirming the trial court's denial of the petitioner's motion—which sought to increase the monthly payments that the respondent was making toward satisfaction of his child-support arrearage—the appellate court concluded that section 14(i-5) of the Illinois Parentage Act of 1984 did not apply to petitioner's request.

¶ 2 The issue before us concerns whether section 14(i-5) of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/14(i-5) (West 2010)), which mandates that a supporting parent must continue making payments of expired trial-court-ordered child support to satisfy an existing child-support arrearage, applies to the facts of this case. We conclude that it does not.

¶ 3 In May 2012, petitioner, Carolyn Campbell, filed a motion for determination of support obligation. Citing section 505(g-5) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/505(g-5) (West 2010)), Campbell sought to increase the child-

support-arrearage payment of respondent, James Walker, to \$679—the amount Campbell had been receiving in social security disability dependency benefits before their child reached adulthood.

¶ 4 Following an August 2012 hearing, the trial court denied Campbell's motion, finding, in part, that section 505(g-5) of the Marriage Act did not apply because no child-support order was in effect at the time the parties' child reached adulthood.

¶ 5 Campbell appeals, arguing that the trial court erred by denying her motion for determination of support obligation. We note that although the parties and the court relied on section 505(g-5) of the Marriage Act, which applies to parents who were married, instead of section 14(i-5) of the Parentage Act, which applies to parents who were not married—as in this case—the language contained in both statutes is identical. Therefore, given that the \$679 monthly payment to Campbell was a social security disability dependency benefit instead of trial-court-ordered child-support, we disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 Although the following background summarizes the parties arguments and the trial court's findings, which were based on section 505(g-5) of the Marriage Act, our analysis is governed by section 14(i-5) of the Parentage Act, which, as previously noted, is identical to section 505(g-5) of the Marriage Act.

¶ 8 On March 6, 1984, Campbell gave birth to Marquis Johnson. In September 1994, Campbell filed a petition to determine the parent-child relationship, requesting, in part, child support from Walker. At a July 16, 1996, hearing, Walker (1) admitted that he was Johnson's biological father and (2) informed the trial court that he was receiving monthly social security

disability benefits. During the hearing, the court "directed [Walker] to add [Johnson] as a beneficiary of his benefits." Thereafter, the court entered judgment for Campbell based on Walker's admission and continued the hearing to determine Walker's retroactive child-support obligation. Walker later complied with the court's direction, and as a result, Campbell began receiving social security disability dependency benefits for Johnson.

¶ 9 Following a May 1998 hearing, the trial court entered a written order, finding that Walker owed Campbell \$54,240 in child support for the period March 6, 1984, to July 16, 1996. (The court's total award over that 148-month period averaged approximately \$366 per month.) In September 1998, the court ordered Walker to pay \$62 monthly toward satisfaction of that debt.

¶ 10 In February 2000, Campbell filed a motion to modify Walker's contribution, requesting that the trial court increase Walker's monthly child-support-arrearage payment to \$200 based on a "change in circumstances in *** Walker's ability to pay." In April 2000, the court increased Walker's monthly child-support-arrearage obligation to \$70. Campbell appealed, and this court affirmed, concluding that the court did not abuse its discretion because Walker "simply lack[ed] the income to make the \$200 monthly payment." *Campbell v. Walker*, No. 4-00-0711 (March 30, 2001) (unpublished order under Supreme Court Rule 23).

¶ 11 On March 6, 2002—Johnson's 18th birthday—Campbell stopped receiving social security disability dependency benefits for Johnson, which at that time totaled \$679 monthly. In March 2009, the trial court increased Walker's monthly child-support-arrearage payment to \$200.

¶ 12 In May 2012, Campbell filed a "motion for determination of support obligation on March 6, 2002, and application of 750 ILCS 5/505(g-5)[(West 2010)]." In her petition, Campbell, citing section 505(g-5) of the Marriage Act, sought to have the trial court increase

Walker's child-support-arrearage payment to \$679—the amount Campbell had been receiving in social security disability dependency benefits before Johnson reached adulthood.

¶ 13 In July 2012, the parties filed a stipulation of facts, in which they agreed, in part, as follows:

"No specific monthly amount was entered for prospective child support at [the] time the above referenced retroactive child support judgment was entered. No such prospective amount was set because *** WALKER was receiving Social Security Disability benefits and *** Johnson was a dependent of *** WALKER for purposes of said Social Security Disability benefits. The monthly dependent allowance received by *** CAMPBELL from Social Security was deemed as constituting *** Walker's current child[-] support obligation."

¶ 14 Following argument at an August 2012 hearing, the trial judge, Arnold F. Blockman, denied Campbell's motion, finding, in pertinent part, as follows:

"So it's the finding of the court that when [Johnson] turned 18 in 2002, there was no child[-]support order in effect. The parties had just reconciled to the fact that this subsidy from the disability payments was to substitute for the child[-]support obligation. There was no other child support order in effect at that time. *** [T]herefore, [the court declines] to find as a matter of law that at the present time the arrearage payment should be 679 dollars,

because that was the amount of the child[-support] payment, based on his disability income in 2002."

Thereafter, Judge Blockman (1) increased Walker's monthly child-support-arrearage payment to \$275, which was approximately 20% of Walker's net monthly income and (2) ordered Walker's counsel to prepare a written order.

¶ 15 In September 2012, Judge Holly F. Clemons signed the written order provided by Walker's counsel in Judge Blockman's absence. That order provided, in pertinent part, the following:

"The Motion for Determination of Support Obligation on March 6, 2002, and application of 750 ILCS 5/550(g-5) [(West 2010)] filed by [Campbell] on May 11, 2012, is hereby denied. This Court specifically finds that the above-referenced statute does not apply in that there was no specific child support obligation or periodic amount of child support in effect at the time [Johnson] turned 18 years old. Instead[,] at the time the parties' child turned 18 years old, [Walker's] Social Security Disability dependency allowance constituted child-support."

¶ 16 This appeal followed.

¶ 17 II. THE TRIAL COURT'S DENIAL OF CAMPBELL'S MOTION

¶ 18 A. Preliminary Matter

¶ 19 Prior to addressing Campbell's argument, we note that Walker did not file a brief with this court in response to Campbell's claim. In *First Capitol Mortgage Corp. v. Talandis*

Construction Corp., 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the options a reviewing court may exercise when, as here, an appellee fails to file a brief, as follows:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases[,] if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed."

¶ 20 In other words, the supreme court "has set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009) (citing *Talandis Construction Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495).

¶ 21 Given the issue presented and the record before us, we conclude that Campbell's

claim can be easily decided despite the absence of Walker's brief.

¶ 22 B. The Applicable Statute and the Standard of Review

¶ 23 Section 14(i-5) of the Parentage Act provides, as follows:

"If there is an unpaid arrearage or delinquency (as those terms are defined in the Income Withholding for Support Act) equal to at least one month's support obligation on the termination date stated in the order for support or, if there is no termination date stated in the order, on the date the child attains the age of majority or is otherwise emancipated, the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support but as periodic payment toward satisfaction of the unpaid arrearage or delinquency. That periodic payment shall be in addition to any periodic payment previously required for satisfaction of the arrearage or delinquency. The total periodic amount to be paid toward satisfaction of the arrearage or delinquency may be enforced and collected by any method provided by law for enforcement and collection of child support, including but not limited to income withholding under the Income Withholding for Support Act. Each order for support entered or modified on or after the effective date of this amendatory Act of the 93rd General Assembly must contain a statement notifying the parties of the requirements of this subsec-

tion. Failure to include the statement in the order for support does not affect the validity of the order or the operation of the provisions of this subsection with regard to the order. This subsection shall not be construed to prevent or affect the establishment or modification of an order for support of a minor child or the establishment or modification of an order for support of a non-minor child or educational expenses under Section 513 of the *** Marriage *** Act."

750 ILCS 45/14(i-5) (West 2010).

Because this case requires us to interpret section 14(i-5) of the Parentage Act, our review is *de novo*. *People v. Davis*, 2012 IL App (4th) 110305, ¶ 12, 966 N.E.2d 570, 574; see also *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11, 984 N.E.2d 540, 543 ("[T]he interpretation and application of a statute is a matter of law also subject to *de novo* review").

¶ 24

C. The Principles of Statutory Construction

¶ 25

The Supreme Court of Illinois has recently reiterated the principles of statutory construction, explaining as follows:

"The principles guiding our analysis are well established. Our primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning. [Citation.] In determining the plain meaning of statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it.

[Citation.] Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to extrinsic aids to statutory construction. [Citation.]

If the language is ambiguous, making construction of the language necessary, we construe the statute so that no part of it is rendered meaningless or superfluous. [Citation.] We do not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. [Citation.] The traditional canons or maxims of statutory construction are not rules of law, but rather are merely aids in determining legislative intent and must yield to such intent." (Internal quotations omitted.) *People v. Giraud*, 2012 IL 113116, ¶ 6, 980 N.E.2d 1107, 1109-10,

With these principles in mind, we turn to Campbell's argument.

¶ 26 D. Campbell's Claim of Error

¶ 27 Campbell argues that the trial court erred by denying her motion for determination of support obligation. We disagree.

¶ 28 We first note that the plain, unambiguous language of section 14(i-5) of the Parentage Act conveys clearly that if a child-support arrearage exists—equal to one month's support obligation—on the termination date of the trial court's child-support order, or if the court's order is silent as to a termination date, on the day the child attains the age of majority, then the child-support payment obligation remains an enforceable payment to satisfy the

arrearage balance. Section 14(i-5) continues that "[e]ach order for support entered or modified on or after the effective date of this amendatory Act of the 93rd General Assembly must contain a statement notifying the parties of the requirements of this subsection." The purpose of not permitting the court-ordered child-support payments to expire is obvious; it is senseless to release a supporting parent from his or her prospective child-support obligation when that important financial obligation remains outstanding in the form of an arrearage.

¶ 29 Underlying that purpose is the presumption that the trial court has entered a child-support order in accordance with the Marriage Act. See *Einstein v. Nijim*, 358 Ill. App. 3d 263, 265, 831 N.E.2d 50, 53 (2005) (section 14(a)(1) of the Parentage Act directs trial courts to determine a parent's child-support obligation in accordance with section 505 of the Marriage Act). In particular, that the court has calculated and levied the appropriate child-support obligation on the supporting parent by determining the supporting parent's net income and applying the appropriate mandatory statutory percentages, taking into account the numerous statutory factors listed if the court determines that a deviation from the statutorily mandated percentages is warranted. See 750 ILCS 5/505(a) (West 2010) (setting forth the mandatory percentages applicable to a supporting parent's net monthly income to determine that parent's child-support obligation and the appropriate factors to consider if the court finds that an upward or downward departure from the mandated percentages is warranted).

¶ 30 In this case, the parties concede that no child-support order was entered by the trial court. Instead, Campbell claims that the court satisfied the requirement of a child-support order when the court acknowledged—in its written order—that Walker's social security disability dependency benefits constituted child support. Campbell then urges this court to consider (1)

extrinsic evidence in support of her claim that the court's pronouncement is a "functional equivalent" of a child-support order and (2) other statutes in the Marriage Act that she claims "presumes custody" or "imputes income." We decline Campbell's invitation to do so because the statute at issue is not ambiguous. Accordingly, we need apply only the aforementioned plain language of that section.

¶ 31 Here, the trial court's mere acknowledgment that Campbell was receiving monthly social security disability dependency benefits does not constitute a child-support order. The plain, unambiguous language of section 14(i-5) of the Parentage Act requires the entry of a child-support order that is not present in this case, a fact that the parties concede. Given this omission, section 14(i-5) is not applicable.

¶ 32

III. CONCLUSION

¶ 33

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

¶ 34

Affirmed.