

No. 1-13-2269

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

<i>In re</i> MARRIAGE OF VICTORIA M. BAUMANN,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 02 D2 30639
)	
BRIAN P. BAUMANN,)	The Honorable
)	Jeanne M. Reynolds,
Respondent-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed in part for lack of jurisdiction; judgment affirmed in part on presumption of correctness where respondent failed to supply complete record to support his claims of error.
- ¶ 2 Respondent Brian Baumann, *pro se*, appeals from an order of the circuit court of Cook County denying his motion to vacate, rehear, or reconsider orders the court entered on April 12, 2013, April 15, 2013, and April 17, 2013.

¶ 3 The common law record filed on appeal shows that respondent was ordered to pay child support to Victoria Baumann (Victoria) pursuant to their 2003 judgment for dissolution of marriage. On December 12, 2012, respondent filed a *pro se* motion to modify the amount of child support he was ordered to pay. Therein, he alleged that a substantial change in circumstances had arisen in that his full-time employment had ended and his claim for unemployment benefits had been denied, thereby requiring a modification or abatement to the current order for support. On February 19, 2013, Victoria filed a petition for rule to show cause, arguing that respondent had intentionally failed to comply with the provisions of their dissolution agreement by, *inter alia*, failing to pay child support and his share of certain expenses relating to their three children.

¶ 4 On April 12, 2013, following a hearing on Victoria's petition for rule to show cause, the court found respondent in willful contempt of the court and entered a \$112,000 judgment against him for failure to pay child support and related expenses. The court also ordered respondent to produce \$3,000 or to release a mini racecar to Victoria by April 15, 2013, as well as to pay \$15,000 to Victoria by May 13, 2013, to avoid incarceration. The court also ordered respondent to pay his current amount of weekly child support *instanter*. The matter was continued to April 15, 2013, and, on that date, was continued to April 17, 2013. On April 17, 2013, the court entered an order stating that "a body attachment is ordered to seize [respondent] in open court for his failure to pay \$3,000 per prior contempt order." The court ordered that respondent could be released upon payment of a \$3,000 bond.

¶ 5 On May 10, 2013, respondent filed a "Motion to Vacate, Rehear, or Reconsider the Court's Orders of April 12, 2013, April 15, 2013, and April 17, 2013, and for Other Relief." On June 17, 2013, after a hearing held thereon, the trial court denied respondent's motion. In that

same order, the trial court stated that a hearing on respondent's December 2012 motion to modify child support payments would be held on August 22, 2013.

¶ 6 Respondent now appeals from the trial court's June 17, 2013 order denying his motion to vacate, rehear, or reconsider. Although Victoria has not filed a brief in response, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 7 On appeal, respondent first argues that the trial court abused its discretion in denying his request to modify the amount of child support he was ordered to pay Victoria, and contends that the court failed to conduct a hearing to determine if there was evidence of a substantial change in circumstances warranting modification of his child support payments. He further contends that the court failed to weigh all of the pertinent facts and circumstances in determining whether to modify the child support payments, such as the financial needs and resources of the noncustodial parent, and the actual needs of the custodial parent and the children.

¶ 8 We note however, that as of July 12, 2013, the date respondent filed his notice of appeal in this case, the trial court had not yet ruled on his motion to modify child support payments. As reflected in the court's June 17, 2013 order, from which respondent appeals, the hearing on respondent's motion to modify child support payments was not scheduled to take place until August 22, 2013. Accordingly, all of respondent's arguments pertaining to whether the trial court abused its discretion in relation to his motion to modify child support payments are irrelevant to the propriety of the trial court's June 17, 2013 order denying his motion to vacate, rehear or reconsider the trial court's April 2013 orders, all of which pertain to Victoria's petition for rule to show cause and the trial court's subsequent contempt order against respondent for his failure to pay child support and related expenses. To the extent respondent is attempting to appeal the trial

court's ruling on his motion to modify child support, we lack jurisdiction to consider his contentions as there is no final and appealable order in relation to that motion. Ill. Sup. Ct. R. 301 (eff. Feb. 1, 1994); *Renzulli v. Zoning Board of Appeals of City of Wood Dale*, 176 Ill. App. 3d 661, 662 (1988).

¶ 9 We now turn to the sole argument respondent raises in relation to the court's June 17, 2013 order. Here, we have a final, appealable order because the trial court imposed sanctions, and therefore respondent can appeal pursuant to Illinois Supreme Court Rule 304(b)(5). Ill. Sup. Ct. R. 304(b)(5) (eff. Feb. 26, 2010); *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1048-49 (2007). Respondent maintains that the court erred in denying his motion to vacate, rehear, or reconsider because it failed to make requisite findings of his ability to purge when it found him in civil contempt on April 12, 2013, and thus improperly ordered his incarceration on April 17, 2013. Respondent maintains that at the April 12, 2013 hearing, Victoria presented incomplete information regarding expenses and payments relating to their children; that the term "expenses" as used in their judgment for dissolution of marriage is not so specific and clear as to be susceptible to only one interpretation; and that he therefore should not have been held in contempt for failing to comply with the terms of that judgment.

¶ 10 We find, however, that we cannot reach the merits of respondent's arguments due to his failure to provide this court with a sufficient record for review of any possible error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). The record reflects that the trial court conducted a hearing on June 17, 2013, as well as on April 12, 2013, but the record filed on appeal does not contain any transcripts of these hearings, or any substitute report of proceedings pursuant to Supreme Court Rule 323 (eff. Dec. 13, 2005). Consequently, this court has no knowledge of what evidence or arguments were presented to the circuit court or the reasoning or rationale that

provided the basis for the court's rulings. Under these circumstances, this court must presume that the circuit court acted in conformity with the law and ruled properly after considering the evidence before it. *Webster v. Hartman*, 195 Ill. 2d 426, 433-34 (2001); *Foutch*, 99 Ill. 2d at 391-92.

¶ 11 For the foregoing reasons, we dismiss respondent's appeal insofar as it challenges the trial court's ruling on his motion to modify child support, and we affirm the judgment of the circuit court of Cook County insofar as respondent challenges the finding of contempt.

¶ 12 Appeal dismissed in part; affirmed in part.