

NOTICE

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2014 IL App (4th) 130699-U

NO. 4-13-0699

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 28, 2014

Carla Bender

4th District Appellate

Court, IL

In re: C.M.K., a Minor,)	Appeal from
STEPHANIE M. THOMAS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 07F9
PAUL M. KINSELLA,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where the record was inadequate to support respondent's claimed errors, we affirm the trial court's judgment modifying child support and ordering respondent to pay a portion of petitioner's attorney fees.

¶ 2 In June 2013, the trial court entered a final order on petitioner's motions to modify child support and for contribution to her attorney fees. Respondent, Paul M. Kinsella, appeals *pro se* from the court's judgment, claiming the court erred by (1) ordering him to pay a portion of petitioner's attorney fees, (2) ordering him to pay 20% of any bonus income as additional child support, (3) awarding petitioner retroactive support to a date predating respondent's employment, and (4) ordering him to pay one half of summer day-care costs. We affirm.

¶ 3 **I. BACKGROUND**

¶ 4 In January 2007, petitioner, Stephanie M. Thomas, filed a paternity action against respondent, seeking a determination of the existence of a father-child relationship between

respondent and C.M.K., born on September 24, 2006. She also sought sole custody. Respondent filed an answer and a counterpetition, also seeking sole custody of the minor.

¶ 5 In April 2007, the trial court entered a judgment of parentage, accepting the parties' stipulation that respondent was the father of C.M.K. Both parties were represented by counsel. Issues related to custody, visitation, and child support were litigated for several years. Beginning in April 2009, respondent proceeded *pro se*. By that time, the parties had agreed to allow petitioner sole custody of the child with respondent receiving reasonable visitation. However, the parties continued to litigate issues regarding visitation, discovery, child support, and custody.

¶ 6 In January 2013, petitioner filed a "petition for contribution to attorney's fees" pursuant to section 508 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/508 (West 2012)), claiming she had accrued approximately \$7,000 in attorney fees and she lacked sufficient means to pay them. She claimed respondent had "sufficient resources, including substantial income and assets" to pay the fees. Also pending at the time were (1) petitioner's motion to modify visitation, (2) respondent's motion to modify custody, (2) petitioner's motion to modify child support, and (3) petitioner's petition for adjudication of indirect civil contempt for respondent's failure to pay child-care expenses. Petitioner and respondent agreed to dismiss their motions regarding visitation and custody, respectively, after reaching an agreement on these issues. Sole custody of the minor remained with petitioner.

¶ 7 Beginning on February 28, 2013, the trial court conducted a hearing on the pending motions related to child support, indirect civil contempt, and attorney fees. According to the court's docket entry, the court considered evidence on this date, including the testimony of petitioner and respondent. The court continued the hearing for further evidence on April 19,

2013. The record before us includes only the transcript from the second day of the hearing, which includes primarily discussion regarding the introduction of exhibits and the parties' closing arguments. It does, however, include petitioner's testimony that she currently owes her attorney \$13,647.50 in fees.

¶ 8 After taking the matter under advisement, the trial court entered a written order on June 19, 2013, (1) finding respondent's failure to pay the child-care expenses was not willful or contemptuous, but nevertheless, ordering him to pay, (2) increasing respondent's child-support obligation to \$1,000 per month, and (3) ordering respondent to contribute \$3,500 toward petitioner's attorney fees pursuant to section 17 of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/17 (West 2012)). The court specifically found the order was not pursuant to the "leveling of the playing field" provisions of the Dissolution Act (750 ILCS 5/501(c-1) (West 2012)). Respondent filed a timely motion to reconsider, which the court denied. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 Respondent appeals *pro se*, claiming the trial court erred in (1) ordering him to pay a portion of petitioner's attorney fees, (2) ordering him to pay 20% of any bonus he receives as additional child support, (3) awarding retroactive child support before the date he was employed, and (4) ordering him to pay half of summer day-care costs without supporting documentation.

¶ 11 Our ability to review the trial court proceedings at issue in this appeal is limited. We have no verbatim transcript from the first day of the hearing on the pending motions that would demonstrate error as alleged by respondent. Nor do we have a bystander's report or a

statement of facts as alternative methods of a preserved record as provided in Illinois Supreme Court Rule 323 (eff. Dec.13, 2005).

¶ 12 To determine whether error occurred as argued by respondent, this court must have before it a record of the proceedings from the trial court. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Respondent, as the appellant, bears the burden to present a sufficiently complete record. Without a sufficiently complete record, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392. "A reviewing court may not guess at the harm to an appellant *** where a record is incomplete. This is not its role. Rather the reviewing court evaluates the record, as it is, for error. Where the record is insufficient or does not demonstrate the alleged error, the reviewing court must refrain from supposition and decide accordingly." *People v. Edwards*, 74 Ill. 2d 1, 7 (1978).

¶ 13 Not only is the record insufficient, but we are without the benefit of a brief filed by petitioner. However, reversal is not automatic when the party who received a favorable ruling in the court below fails to file a brief on appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-32 (1976). "[T]he burden remains on the appellant to show error." *Talandis*, 63 Ill. 2d at 132. This court is "not compelled to serve as an advocate for an appellee" (*In re Marriage of Purcell*, 355 Ill. App. 3d 851, 855 (2005)), but neither are we required to search the record for the purpose of sustaining the trial court's judgment (*Talandis*, 63 Ill. 2d at 133).

¶ 14 We must rely on the transcript from the second day of the hearing, the trial court's two-page order, and respondent's *pro se* brief in determining whether error occurred. According to respondent, he is employed as a portfolio manager and earns \$100,000 per year plus an

unspecified bonus. Petitioner is employed by Key Impact Sales and Service and earns \$42,000 per year. She is also part owner of a hair salon, earning an additional \$5,000 to \$10,000 per year. We address each of respondent's contentions of error.

¶ 15 A. Attorney Fees

¶ 16 First, respondent argues the trial court erred in ordering him to contribute to petitioner's attorney fees when she "is the party who precipitated the need for legal fees and lengthy litigation in this case by demanding sole custody when the[re] was no evidence that was in [the] best interest of the child."

¶ 17 Section 17 of the Parentage Act (750 ILCS 45/17 (West 2012)) authorizes the trial court to order a party to pay some or all of the other party's reasonable attorney fees in accordance with the relevant factors set forth in section 508 of the Dissolution Act (750 ILCS 5/508 (West 2012)). "An award of attorney fees will not be reversed absent an abuse of discretion. [Citation.]" *In re Keon C.*, 344 Ill. App. 3d 1137, 1146 (2003). " 'An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court.' " *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 41 (quoting *In re Marriage of Moore*, 307 Ill. App. 3d 1041, 1043 (1999)).

¶ 18 The trial court ordered respondent to pay a portion of petitioner's attorney fees in the amount of \$3,500 (approximately one half of the total incurred and requested). Respondent does not dispute he may have a *greater* ability to pay, but, he claims, petitioner demonstrated a *sufficient* ability to pay when she produced evidence of her investment account totaling over \$46,000. He also insists, with the child support she receives from him, petitioner's monthly income exceeds her expenses, allowing her the ability to pay her own fees. He contends petitioner precipitated the fees by insisting on sole custody, which has caused, according to him,

the proceedings to continue for almost six years. Finally, he argues, petitioner has, to this point, already paid her own attorney fees for prior services rendered.

¶ 19 Respondent earns at a minimum \$100,000 per year. He must also receive bonus compensation. Petitioner earns one-half of that amount. In its written order, the trial court indicated it took "into consideration all relevant factors" when it ordered respondent to pay \$3,500 of petitioner's attorney fees. Based on the record before us, given the disparate incomes of the parties, we find the court did not abuse its discretion in ordering respondent to pay half of petitioner's attorney fees. See *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1085 (1997) (ordering one party to pay the other party's attorney fees in light of their disparate incomes was not an abuse of discretion). "Since the trial court is in a much better position than is this court to make such a determination, we will not overturn the trial court's order with regard to attorney fees." *In re Marriage of Mantei*, 222 Ill. App. 3d 933, 942 (1991). We find no error in the court's award of attorney fees.

¶ 20 **B. Bonus Income**

¶ 21 Respondent next contends the trial court erred in ordering respondent to pay 20% of all bonuses to petitioner as additional child support. He claims the court's decision, without consideration of whether his bonus is \$1,000 or \$100,000, "lacks reasonableness and doesn't apply current case law on high-income earners." Instead, respondent claims "a much more beneficial arrangement" would require respondent to pay 20% of any bonus income into a college-savings account rather than to petitioner.

¶ 22 A reviewing court will not disturb a trial court's order on child support unless the trial court abused its discretion. *Blisset v. Blisset*, 123 Ill. 2d 161, 167 (1988). Again, we note "[a]n abuse of discretion occurs only when no reasonable person would take the view adopted by

the trial court." *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 815 (1992). Based on our deferential standard of review, we affirm.

¶ 23 Section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West (2012))) specifies that the trial court shall determine child support in accordance with section 505 of the Dissolution Act (750 ILCS 5/505 (West 2012)). Sections 505(a)(1) and (a)(2) require that the trial court set the minimum amount of child support for one child at 20% of the noncustodial parent's net income unless the court finds a reason to deviate from that percentage (750 ILCS 5/505(a)(1), (a)(2) (West 2012)). Net income, for purposes of additional child support, could include bonuses or commissions. See *In re Marriage of Anderson & Murphy*, 405 Ill. App. 3d 1129, 1138 (2010) (the trial court should order father to pay 28% of any bonus or commission he earns from his employer as child support).

¶ 24 Respondent asks this court to reverse the trial court and order a "more beneficial arrangement" by modifying the trial court's judgment to provide that 20% of any bonus income be paid into a college-savings fund rather than to petitioner directly as additional child support. Our job as a reviewing court is not to second-guess the trial court or suggest a different solution to the argument raised by respondent. Respondent's motion to reconsider the court's ruling included this claim; therefore, the court had the opportunity to consider respondent's suggested alternative. Respondent's motion was denied. We will not invade the province of the trial court without reason to do so. Based on the record before us, we cannot say the court's order requiring respondent to pay 20% of any bonus income was error. Respondent has failed to establish that the court's ruling on this matter constitutes an abuse of discretion, and we will not substitute our judgment here for that of the trial court. See *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1095 (1992).

¶ 25

C. Retroactive Child Support

¶ 26 Respondent begins this argument by claiming the trial court erred in ordering his child support payments retroactive to January 9, 2013, when his employment did not begin until January 21, 2013. However, he does not expound on this claim beyond the heading. Instead, he argues that, because the Illinois State Disbursement Unit (SDU) cannot accurately calculate a prorated amount of child support when the ordered amount is changed in the middle of the month, the increased amount should have been ordered to begin on February 1, 2013. He claims the SDU considers the previous ordered amount *plus* the new ordered amount when determining the amount due for the month. Respondent's child support obligation prior to January 2013 was \$360 per month. As a result, respondent claims, the SDU "incorrectly shows he owns [*sic*] an additional \$808[]."

¶ 27

Respondent has failed to produce any documentation to support the error of which he complains, as the record does not include the SDU's calculation of an arrearage or any indication thereof. "A party may generally not rely on matters outside the record to support its position on appeal. [Citation.] When a party's brief fails to comply with this rule, we may strike the entire brief. [Citation.] Alternatively, we may simply disregard the inappropriate material. [Citation.]" *Allstate Insurance Co. v. Kovar*, 363 Ill. App. 3d 493, 499 (2006). Without more, we cannot determine that any error occurred. Further, any indication of the existence of an arrearage, or how the SDU would have calculated any arrearage, is beyond the trial court's judgment and outside of the record before us.

¶ 28

D. Summer Daycare

¶ 29 Finally, respondent claims the trial court erred in ordering him to pay one half of the child's summer day-care cost without documentation of the accuracy of the amounts claimed.

The record does not contain any testimony or other evidence to support respondent's claim of error. The court's order states only that respondent "shall be responsible for *** 1/2 of all day care incurred during the summer." Respondent's allegations that petitioner has exaggerated the amounts of cash payments made to day-care providers is conclusory and without evidentiary support. Therefore, we must presume the trial court's judgment was entered in accordance with the evidence presented and applicable law. *People v. Probst*, 344 Ill. App. 3d 378, 385 (2003) (holding that where the failure of an appellant to include a report of proceedings deprives a reviewing court of the ability scrutinize the reasoning behind a trial court's decision, a reviewing court should affirm). This presumption of correctness is especially strong when, as here, there is an indication the court was "fully advised in the premises." *Boysen v. Antioch Sheet Metal, Inc.*, 16 Ill. App. 3d 331, 333 (1974) ("Of further significance is that the judgment order expressly provides that the trial court heard evidence and was fully advised in the premises. Such language raises the presumption that the judgment is supported by the evidence in absence of any contrary indication in the order or record."). Based on the inadequacy of the record in this case, and respondent's failure to adequately support his claim of error in his brief, we presume the court's judgment was correct.

¶ 30

III. CONCLUSION

¶ 31

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

¶ 32

Affirmed.