

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).

2014 IL App (4th) 140171-U

NO. 4-14-0171

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 26, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
CORRIE E. O'NEILL,)	Circuit Court of
Petitioner-Appellant,)	Sangamon County
and)	No. 09D802
CHRISTOPHER T. O'NEILL,)	
Respondent-Appellee.)	Honorable
)	April Troemper,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part, reversed in part, and remanded with directions, concluding the trial court (1) erred by deviating from the child-support guidelines and averaging the parties' calculations of the ex-husband's net income; (2) did not err by failing to order the ex-husband to contribute to the children's extracurricular and child-care expenses; and (3) erred by failing to order the ex-husband to reimburse the ex-wife for half of the children's health-insurance premiums.

¶ 2 In October 2009, the trial court entered a judgment dissolving the marriage of petitioner, Corrie E. O'Neill, and respondent, Christopher T. O'Neill. In January 2013, petitioner filed, *inter alia*, a petition to modify child support. In February 2014, the court entered an order (1) modifying respondent's child-support obligation to \$550 per month; and (2) denying petitioner's requests for contribution to the child-care, extracurricular, and health-insurance expenses she incurred on behalf of the children.

¶ 3 On appeal, petitioner contends the trial court erred in (1) deviating downward from the statutory child-support guidelines; (2) denying her request that respondent pay half of the children's child-care and extracurricular expenses; and (3) denying her request that respondent pay half of the children's health, dental, and vision insurance costs. We affirm in part, reverse in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In July 2000, the parties married in Sarasota County, Florida. The parties had two children, Brian (born September 22, 2000) and Mia (born December 30, 2004). In March 2009, the parties separated.

¶ 6 A. The Dissolution Proceedings

¶ 7 In September 2009, petitioner filed a petition for judgment of dissolution of marriage. In October 2009, the trial court entered an agreed judgment of dissolution of marriage. The court's judgment states the parties agreed respondent's annual net income from employment, for purposes of child support, was \$38,503.44. (Respondent's September 2009 affidavit of income, expenses, assets, and liabilities avers his 2008 *gross* income was \$38,503.44.) The judgment required respondent to pay petitioner \$600 per month in child support. Pursuant to the judgment, petitioner was to "continue providing medical, dental, and vision insurance for [the parties' children]." Further, the judgment required each party to pay half of any deductible and share equally any health-related expenses of the children not covered by insurance. The judgment was silent on the issue of the child-care, extracurricular, and school-related expenses.

¶ 8 B. The Postjudgment Proceedings

¶ 9 1. *The Petition To Modify Child Support*

¶ 10 On January 7, 2013, petitioner filed a petition to modify child support pursuant to section 510 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/510 (West 2012)). In her petition to modify child support, petitioner asserted a substantial change in circumstances warranted an increase in respondent's child-support obligation. Specifically, petitioner asserted respondent had changed employers and his income had increased substantially since 2009. Further, as the children had grown older, petitioner asserted, their needs had increased. Finally, petitioner asserted the parties' children participated in extracurricular activities and required child care during the summer, as both parties were employed outside the home. Petitioner sought an order (1) increasing respondent's child-support obligation consistent with the statutory guidelines; (2) requiring respondent to contribute toward the cost of health, dental, and vision insurance; (3) requiring respondent to contribute to the child-care and summer-camp needs of the children; and (4) requiring respondent to contribute to the extracurricular expenses of the children.

¶ 11 *2. The Evidentiary Hearing*

¶ 12 In October 2013, the cause proceeded to an evidentiary hearing on petitioner's petition, at which the following evidence was presented.

¶ 13 *a. Respondent's Testimony*

¶ 14 Petitioner first presented the testimony of respondent. Respondent testified he was currently employed by the Illinois Department of Corrections (DOC) at the Jacksonville Correctional Center and had been working there for approximately one year. Since respondent began working at the Jacksonville Correctional Center, DOC had hired 22 new employees to work at that facility. Respondent also worked once a month, on a standby basis, for Brink's,

delivering and guarding valuables. The record shows respondent worked for Brink's full-time before the parties divorced.

¶ 15 Respondent testified his base salary at DOC was \$3,818 per month, which totaled approximately \$45,800 per year. In addition to his base pay, respondent "occasionally" received overtime hours, which were not guaranteed. Respondent further testified his overtime hours "will *** probably go down" as a result of DOC hiring 22 new employees. As of October 31, 2013, respondent's year-to-date gross income from DOC was \$44,837.36, which included his overtime pay. Respondent acknowledged his year-to-date income was only \$1,000 short of his yearly base pay. Respondent earned approximately \$1,000 from Brink's through October 2013. Respondent also indicated that health insurance is available through his employment at DOC, but he did not provide insurance for the children.

¶ 16 Respondent testified he had been living with his parents since the parties separated in March 2009. Respondent's parents did not require him to pay for rent or utilities—he contributed only to the household food expenses for himself and the children, which totaled \$470 per month. When asked whether he had a plan for the future with regard to his living arrangements, respondent expressed he "would like to *** move out" of his parents' house. After respondent paid his bills, he was left with little discretionary money. Respondent testified an increase in his child-support obligation would set him back even further.

¶ 17 Respondent testified he and petitioner generally agreed on the children's extracurricular activities. With regard to summer camp, respondent testified he did not think summer camp was necessary. Respondent thought Brian had grown too old for summer camp. Further, respondent would most likely have time off during the week and could watch the children. (Respondent's work schedule at the time of the hearing allowed him time off on

Tuesdays and Wednesdays.) Finally, the parties had family members who were willing and able to take care of the children during the summer.

¶ 18 b. Petitioner's Testimony

¶ 19 Petitioner testified she was employed by the Illinois Department of Human Services as a claims adjuster. According to her affidavit of income, expenses, assets, and liabilities, petitioner's gross monthly income was \$5,468.68. She occasionally received overtime hours, but she did not include this income in her financial affidavit because her overtime hours varied greatly. In 2012, petitioner earned approximately \$53,272. In 2009, at the time she and respondent divorced, her and respondent's incomes were substantially similar. In addition to her employment income, petitioner received \$600 per month in child support from respondent.

¶ 20 Petitioner also testified she maintained the children's health and dental insurance, for which she had \$167.50 deducted from her pay each month. Since the parties' divorce, respondent had voluntarily paid half of the summer-camp fee for the children.

¶ 21 Petitioner testified the children were participating in the same extracurricular activities as they had been before the divorce. Brian and Mia both played year-round competitive soccer. Additionally, Brian played baseball in the spring and Mia played basketball in the winter. Brian used to play football but no longer participated. Petitioner testified that, as far as she knew, respondent did not object to the children's participation in sports.

¶ 22 Petitioner testified the children stopped attending Little Flower School prior to the 2012-2013 school year because the tuition was "dramatically" increased before the school year. Petitioner testified the children currently attend Chatham schools.

¶ 23 c. Charlotte Hindson's Testimony

¶ 24 Petitioner called her aunt, Charlotte Hindson, to testify regarding the children's after-school care. Hindson testified she meets the children when they get off the bus everyday and waits with them until petitioner gets home from work. Hindson had been helping the parties in this fashion for the past "couple years." Hindson provides this after-school care at no cost to the parties.

¶ 25 d. Respondent's Parents' Testimony

¶ 26 Respondent called his mother, Carol O'Neill, and father, John O'Neill, to testify in regard to petitioner's request to split child-care expenses. Carol testified, in 2008, she retired from the Illinois State Police. Since then, she picked the children up from school twice a week and watched them until petitioner got off work. Carol expressed her willingness to watch the children during the summer. John testified, since he retired from the Illinois Department of Veterans Affairs in 2002, he watched the children when the children were ill or off school, so neither parent would need to miss work.

¶ 27 3. *The Parties' Affidavits of Income and Expenses*

¶ 28 In 2009, before the original judgment of dissolution was entered, the parties executed affidavits of income, expenses, assets, and liabilities. In 2013, before the court entered its order modifying respondent's child-support obligation, the parties submitted new affidavits of income, expenses, assets, and liabilities. These affidavits provide the following information.

¶ 29 Respondent's 2009 affidavit of income, expenses, assets, and liabilities indicated, in 2008, his monthly gross income was \$3,204.73. Additionally, the affidavit showed respondent had \$1,888.21 in total monthly living expenses. This sum included \$906.79 in expenses incurred solely for the benefit of the children, including \$100 for clothing, \$81.79 for summer camp, \$100 for vacations, \$25 for entertainment, and \$600 for child support.

¶ 30 Respondent's 2013 affidavit of income, expenses, assets, and liabilities indicated his monthly gross income was \$4,064.61 and he had \$2,001.31 in total monthly living expenses. (We note respondent executed this affidavit in March 2013, seven months before the evidentiary hearing on petitioner's petition.) This sum contained \$457 in separate expenses incurred solely for the children, including \$75 for clothing, \$12 for grooming, \$50 for "activities," \$20 for "lessons and supplies," \$100 for summer camp, and \$200 for vacations. This \$457 did not include the \$600 in child support he was previously ordered to pay.

¶ 31 Petitioner's 2009 affidavit of income, expenses, assets, and liabilities indicated she earned a gross monthly income of \$3,698.77 and incurred \$2,471 in total monthly living expenses. This sum included \$879 in expenses incurred solely for the children, including \$100 for clothing, \$24 for grooming, \$415 for tuition at Little Flower School (petitioner's affidavit indicates tuition at Little Flower School is \$4,150 per year), \$300 for child care before and after school, and \$81.79 for summer camp (petitioner listed this as a one-time expense of \$981.50).

¶ 32 Petitioner's 2013 affidavit of income, expenses, assets, and liabilities indicated she earned a gross monthly income of \$5,468.68 and incurred \$3,812 in total monthly living expenses. This sum contained \$267.59 in separate expenses incurred solely for the children, including \$15 for clothing, \$20 for grooming, \$20.83 for "tuition," \$10 for school lunches for Mia, \$108.84 for "activities," \$80.42 for summer camp, and \$12.50 for religion classes. A comparison of petitioner's affidavits shows petitioner now incurs the expenses for "activities" and religion classes where she did not incur these expenses at the time the parties' divorced.

¶ 33 *4. The Exhibits Submitted by the Parties*

¶ 34 During the evidentiary hearing, petitioner submitted several exhibits for the trial court's consideration. Petitioner submitted a printout from the Illinois Transparency and

Accountability Portal (<http://accountability.illinois.gov>) showing respondent had earned \$44,837.36 through his employment at DOC as of October 31, 2013. See *People v. Peterson*, 372 Ill. App. 3d 1010, 1019, 868 N.E.2d 329, 336 (2007) (appellate court may take judicial notice of public records). Respondent submitted a memorandum from a DOC human-resources associate stating respondent's current base pay is \$3,818 per month.

¶ 35 Petitioner also submitted to the trial court several exhibits containing cancelled checks related to the children's educational supplies and extracurricular activities. Petitioner summarized these exhibits for the court in her closing argument, wherein she stated she "incurred \$1,409.94 in extracurricular and school related expenses for the minor children" since she filed her petition to modify child support.

¶ 36 *5. The Trial Court's Order*

¶ 37 In February 2014, after receiving written closing arguments from the parties, the trial court entered a written order resolving, *inter alia*, petitioner's petition to modify child support. The court found at the time the court entered its original judgment, respondent's annual net income was \$38,503.44, resulting in a monthly net income of \$3,208.62. At this time, the court ordered child support in the amount of \$600 per month.

¶ 38 The trial court noted the parties did not agree on respondent's monthly income for purposes of child support. Respondent determined his gross monthly income from DOC and Brink's was \$3,918.05, which resulted in a gross income of \$47,016 per year. Respondent calculated his statutory child-support obligation was \$708 per month based on this figure. Petitioner, on the other hand, determined respondent's gross annual income was \$54,805, which was a projection based on respondent's year-to-date income, including his overtime pay. She calculated respondent's statutory child-support obligation was \$880 per month based on this

figure. To resolve this discrepancy, the court averaged the parties' statutory net income child-support calculations and found respondent's statutory child-support obligation was \$794 per month.

¶ 39 The trial court then found deviation from the statutory child-support guidelines was appropriate. The court found respondent's net annual income was slightly less than it was in 2009, when the original judgment was entered. (The court relied on the original judgment, which stated respondent's net annual income for purposes of child support was \$38,503.44, or \$3,208.62 per month.) The court determined petitioner's financial resources weighed in favor of a downward deviation in child support, finding petitioner's (1) salary and income from child support totaled approximately \$72,800 per year, not including the overtime she was likely to receive; and (2) income had increased by approximately \$12,000 from the previous year. The court also determined the needs of the children weighed in favor of a downward deviation, finding petitioner's assertion that the needs of the children had increased was not supported by (1) petitioner's testimony the children were participating in the same extracurricular activities since the time the original judgment was entered; (2) petitioner's testimony that Brian was no longer going to play football; (3) the evidence showing the children no longer attended Little Flower School, which reduced the children's educational expenses from \$235 per month for tuition to \$20.83 per month, the average monthly fee for the children to attend Chatham schools; and (4) the evidence showing the children no longer required after-school care, which previously cost the parties \$75 per week. The court also found petitioner would receive a windfall if support was set at the statutory amount—she earned "at least \$11,000 more per year than [respondent] and the children's expenses have actually decreased over time." To set child support consistent with the statutory guidelines would result in petitioner having an additional

\$9,528 per year (\$794 per month multiplied by 12 months) at her disposal. Finally, the court noted respondent's desire to obtain his own house and that such would be in the children's best interests. Based on these findings, the court ordered respondent to pay \$550 per month in child support.

¶ 40 Additionally, the trial court denied petitioner's request that respondent be ordered to pay half of the children's health, dental, and vision insurance costs. The court ordered the parties to split equally the children's educational expenses, including school enrollment and related fees and school lunches. With respect to the children's extracurricular activities, the court ordered the parties to consult with each other before enrolling either of the children in a camp or sporting activity. After consultation, if the parties could not agree on an activity, the party wishing to still enroll the child in the activity or camp would bear the entire cost. Instead of ordering contribution to the insurance and extracurricular expenses, the court modified the child-dependency exemption for income-taxation purposes. Petitioner was allowed to claim Brian every year and Mia in even-numbered years, while respondent was allowed to claim Mia in odd-numbered years.

¶ 41 This appeal followed.

¶ 42 II. ANALYSIS

¶ 43 On appeal, petitioner contends the trial court erred by deviating downward from the statutory child-support guidelines and averaging the parties' calculations of respondent's net income. Additionally, petitioner argues the court erred by failing to order respondent to contribute to the children's child-care and extracurricular expenses. Finally, petitioner contends the court erred by failing to order respondent to pay half of the health, dental, and vision insurance costs of the children. We address petitioner's arguments in turn.

¶ 44

A. Child Support

¶ 45 Petitioner argues the trial court erred by (1) averaging the parties' calculations of respondent's net income, and (2) deviating downward from the statutory guidelines in setting child support pursuant to her petition to modify. We begin by discussing the applicable law and standard of review.

¶ 46

1. *Applicable Law and the Standard of Review*

¶ 47 Section 510(a)(1) of the Marriage Act allows the court to modify a party's child-support obligation where it finds the parties have undergone a substantial change in circumstances since the previous support order was entered. 750 ILCS 5/510(a)(1) (West 2012). Here, the parties do not dispute a substantial change in circumstances has occurred.

¶ 48

Once the party seeking the modification establishes a substantial change in circumstances, the trial court may modify the child-support obligation in accordance with section 505(a) of the Marriage Act (750 ILCS 5/505(a) (West 2012)). *In re Marriage of Rash & King*, 406 Ill. App. 3d 381, 388, 941 N.E.2d 989, 995 (2010). The decision to modify child support is within the court's sound discretion. *Id.* We will not disturb the court's decision absent an abuse of discretion. *Id.* An abuse of discretion occurs where no reasonable person would adopt the view taken by the court. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 41, 974 N.E.2d 417.

¶ 49

"Section 505 of the [Marriage] Act creates a rebuttable presumption the specified percentage of a noncustodial parent's income represents an appropriate child support award." *In re Marriage of Demattia*, 302 Ill. App. 3d 390, 393, 706 N.E.2d 67, 69 (1999). In this case, the parties have two children, which results in a presumption that 28% of respondent's net income is the appropriate child-support award. See 750 ILCS 5/505(a)(1) (West 2012).

¶ 50 Section 505(a)(2) of the Marriage Act allows the trial court to deviate from the child-support guidelines, stating:

"(2) The *** guidelines shall be applied in each case unless the court finds that a deviation *** is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, one or more of the following relevant factors:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical, mental, and emotional needs of the child;
- (d-5) the educational needs of the child; and
- (e) the financial resources and needs of the non-custodial parent.

If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines." 750 ILCS 5/505(a)(2) (West 2012).

The party seeking a deviation from the guidelines has the burden to overcome the presumption the guideline amount is appropriate. *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App.

3d 747, 752, 690 N.E.2d 1052, 1056 (1998). The presumption cannot be overcome absent compelling evidence showing deviation is appropriate. *Id.*

¶ 51 *2. Deviation From the Child-Support Guidelines*

¶ 52 Petitioner argues the trial court abused its discretion by deviating from the child-support guidelines. Specifically, petitioner contends respondent failed to present evidence compelling enough to overcome the presumption the guideline amount was appropriate. Further, petitioner argues, the trial court's findings did not justify a deviation from the child-support guidelines. We agree.

¶ 53 The undisputed evidence shows respondent's annual income—including his overtime pay—has increased by approximately \$16,000 since the parties divorced. In *Nale*, we explained, "[i]f the evidence shows a significant increase in both the obligor's income and the needs of the children, and does not provide any other evidence to suggest reduced support is appropriate, the trial court abuses its discretion by denying to increase child support to conform to the statutory guidelines." *Id.* at 754, 690 N.E.2d at 1057. The evidence before the court in this case does not suggest reduced support is appropriate.

¶ 54 In its written order, the trial court focused on petitioner's greater income. While the financial resources of the custodial parent are properly considered when ruling on child support (750 ILCS 5/505(a)(2)(b) (West 2012)), the appellate court has repeatedly rejected the idea a payor of child support should pay reduced child support based on the custodian's greater income (see *Nale*, 294 Ill. App. 3d at 754, 690 N.E.2d at 1057). Here, petitioner's greater income alone does not support the deviation from the guidelines.

¶ 55 The trial court also found the children's needs had not increased, noting the children (1) were participating in the same activities since the divorce, with the exception of

Brian no longer playing football; (2) stopped attending Little Flower School; and (3) no longer required after-school care. However, a comparison of petitioner's 2009 and 2013 affidavits of income and expenses shows petitioner now incurs \$108.84 in average monthly activity expenses for the children, where she incurred none at the time the parties divorced. Further, petitioner's food expenses for the household have increased from \$340 to \$480 per month. Additionally, as the children grow older, their needs will continue to increase.

¶ 56 The trial court also relied, in part, on its finding respondent's current net income was lower than it was when the original support order was entered. This finding is not supported by the record. In making its finding, the court, presumably, relied on the original judgment, which found respondent's *net* income for purposes of child support was \$38,503.44, or \$3,208.62 per month. However, the record shows respondent averred this was his *gross* income in his 2009 affidavit. Further, the record shows respondent's gross monthly income has increased from \$3,208.62 to approximately \$4,567, which is his combined pay from DOC and Brink's, including overtime. Given the evidence showing respondent's gross monthly income had increased by more than \$1,300, we fail to see how respondent's net income at the time of the original judgment was greater than it was when the court modified respondent's child-support obligation.

¶ 57 Additionally, the trial court found respondent's financial resources weighed in favor of a downward deviation. The court noted the fact respondent's custodial time was restricted because it was exercised at his parent's home and found an order setting support in accordance with the guidelines would hinder respondent's (1) chance of obtaining his own residence, and (2) ability to enjoy extra hobbies or professional sporting events with the children. Respondent had the burden to present compelling evidence to overcome the presumption the guideline support amount was appropriate. *Id.* at 752, 690 N.E.2d at 1056. Respondent failed to

present any evidence regarding his living arrangements other than his own self-serving testimony he "would like to move out" of his parents house. Respondent failed to present any evidence showing he had concrete plans to move out or made any actual effort to achieve residential independence. The court's finding was based on speculation and did not support a downward deviation from the child-support guidelines. Further, respondent has lived with his parents since the parties separated in March 2009 and has never been required to pay rent or utilities. Respondent's only monetary contribution to his parents' household expenses is \$470 per month, which includes \$350 for food and household supplies and \$120 for "eating out." Given the evidence of respondent's income, it is conceivable he could maintain his own residence. Respondent has chosen not to do so.

¶ 58 Moreover, the record shows respondent is left with enough disposable income each year to take the children to multiple professional sporting events and vacations, costing anywhere from \$2,400 to \$3,000. While we do not criticize respondent for spending time with his children in this manner, petitioner has made sacrifices to provide the children with a home of their own. Perhaps it is time respondent does the same.

¶ 59 The trial court also considered petitioner's financial resources and found petitioner would receive a windfall if it were to set respondent's support obligation at the statutory guideline. While petitioner earned more annually than respondent, petitioner has maintained the children's standard of living since the divorce. She maintains a home and pays for a majority of the children's expenses. Moreover, cases finding a windfall to the custodial parent are generally limited to those in which the parties earned substantially greater incomes than the parties in this case and both parents' individual incomes were more than sufficient to provide for the children's reasonable needs. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1023, 785 N.E.2d 172, 176

(2003); see also *Nale*, 294 Ill. App. 3d at 755, 690 N.E.2d at 1058 ("Cases in which the parents' high incomes have justified a deviation from the statutory guidelines have generally involved parents earning substantially more than the Nales," both of whom earned about \$50,000 annually.). In this case, petitioner's gross annual income was not substantially greater than respondent's—if respondent's overtime pay is included, petitioner's income exceeded respondent's by only \$11,000.

¶ 60 Finally, we are troubled by the fact the trial court deviated from the child-support guidelines in ruling on petitioner's petition to modify child support. The original judgment ordered respondent to pay \$600 per month in child support. Despite petitioner having shown respondent's increased ability to pay—his gross monthly income had increased by more than \$1,300 (\$4,567 less \$3,208.62)—the court deviated even further from the guideline amount, ordering respondent to pay only \$550 per month. Accordingly, we reverse the portion of the court's order finding a deviation from the child-support guidelines was appropriate.

¶ 61 *3. Respondent's Net Income*

¶ 62 Having found the trial court abused its discretion in deviating from the child-support guidelines, we must determine whether the trial court's determination of respondent's statutory child-support obligation was proper. Petitioner argues the court erred by averaging the parties' calculations of respondent's net income for purposes of child support. Specifically, petitioner contends respondent failed to include his overtime pay and relied only on his self-serving testimony his overtime hours will "probably go down" to justify his failure to include this income in his calculation. Further, the court failed to explain why it considered respondent's calculation, which did not account for approximately \$8,500 he earned in overtime pay through October 2013. We agree.

¶ 63 Section 505(a)(2) of the Marriage Act provides the trial court, if it elects to deviate from the child-support guidelines, must first determine the amount of support that would have been required under the guidelines. 750 ILCS 5/505(a)(2) (West 2012). When determining the noncustodial parent's net income for purposes of child support, "the relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made by the court." *In re Marriage of Rogers*, 213 Ill. 2d 129, 138, 820 N.E.2d 386, 391 (2004). If a party receives payments qualifying as income, "nothing in the law permits those payments to be excluded from consideration merely because like payments might not be forthcoming in the future." *Id.*

¶ 64 In this case, respondent submitted his calculation of net income and statutory support obligation, which excluded his overtime income from consideration solely on the basis he may not receive overtime in the future as a result of DOC's new hires. In doing so, he failed to provide the trial court with an accurate representation of his current economic situation. See *id.* In his affidavit, respondent averred his gross monthly income was \$3,918.05, which was his base salary at DOC plus a year-to-date average of his income from Brink's. The record shows while respondent's base salary at DOC is \$45,816 annually (\$3,818 per month multiplied by 12 months), his year-to-date income from DOC at the time of the October 2013 hearing was \$44,837.36.

¶ 65 By accepting his calculation, the trial court allowed respondent to benefit from providing inaccurate information to the court. Moreover, the court presumably averaged the parties' calculations based on respondent's testimony indicating he expected his overtime income to decrease as a result of DOC hiring 22 new employees. In doing so, the court relied on respondent's self-serving, speculative testimony, as respondent failed to present any objective

evidence showing his overtime hours had been or were likely to be reduced. Accordingly, we decline to order respondent to pay child support at the statutory amount calculated by the court and instead remand for the court to recalculate respondent's statutory child-support obligation. On remand, we expect respondent to provide the court with an accurate and up-to-date representation of his income and statutory deductions (see 750 ILCS 5/505(a)(3) (West 2012)) at the time of the October 2013 hearing.

¶ 66 B. Child-Care and Extracurricular Expenses

¶ 67 Next, petitioner contends the trial court erred by failing to order respondent to pay half of the children's child-care and extracurricular expenses.

¶ 68 Section 505(a)(2.5) of the Marriage Act provides:

"The court, *in its discretion*, in addition to setting child support pursuant to the guidelines and factors, may order either or both parents owing a duty of support to a child of the marriage to contribute to the following expenses, *if determined by the court to be reasonable*:

- (a) health needs not covered by insurance;
- (b) child care;
- (c) education; and
- (d) extracurricular activities." (Emphases added.) 750 ILCS 5/505(a)(2.5) (West 2012).

As previously stated, the decision to modify child support is within the trial court's sound discretion. *Rash & King*, 406 Ill. App. 3d at 388, 941 N.E.2d at 995. We will not disturb the trial court's ruling absent an abuse of discretion. *Id.*

¶ 69

1. *Extracurricular Expenses*

¶ 70 Petitioner argues the trial court abused its discretion by not ordering respondent to contribute half of the children's extracurricular expenses. Specifically, petitioner contends respondent's testimony showed he spends approximately \$70 per month in relation to these activities. By declining to order respondent to contribute to these expenses, petitioner argues, the court "reliev[ed] him of that obligation" and "place[d] an additional \$70.00 per month in his pocket." We disagree.

¶ 71 The record shows the trial court's original judgment did not require respondent to contribute to the extracurricular expenses. Since the divorce, however, the parties had voluntarily split those expenses. The court's February 2014 order merely maintained the status quo—the parties must split the extracurricular expenses equally provided they agree the activity is in the child's best interests. We fail to see how the court's order relieves respondent of the obligation to contribute to these expenses where respondent was never ordered to contribute in the first place. Further, the court tailored its order to provide for the reasonable extracurricular expenses of the children by requiring each party to contribute half of any expense incurred on behalf of the children to which both parties agree. We note both parties testified they agree on most, if not all, of these expenses. Given this testimony, we conclude the court did not abuse its discretion by declining to unconditionally order respondent to contribute to the children's extracurricular expenses.

¶ 72

2. *Child-Care Expenses*

¶ 73 In relation to the child-care expenses, petitioner argues the court abused its discretion by not ordering respondent to contribute to half of the cost of the children's summer camp. Specifically, petitioner argues summer camp is in the children's best interests, as it keeps

them active and social during the summer, as opposed to "sitting around watching [television] all day." Further, petitioner contends where, as here, the parties have substantially similar incomes and childcare is necessary, the court abuses its discretion by not ordering contribution to child-care expenses, citing *In re Marriage of Serna*, 172 Ill. App. 3d 1051, 527 N.E.2d 627, (1988).

¶ 74 In *Serna*, the petitioner's net monthly income was \$1,549.36, the respondent's net monthly income was \$1,470.12, and both parties worked full-time. *Id.* at 1053, 527 N.E.2d at 628. We held the trial court did not abuse its discretion by ordering contribution to these expenses where (1) the parties earned substantially similar incomes, and (2) child care was necessary. *Id.* at 1054, 527 N.E.2d at 629.

¶ 75 *Serna* is distinguishable. In this case, the parties' incomes are not substantially similar—petitioner's gross income is approximately 20% greater than respondent's. Moreover, summer camp is not necessary. Respondent testified he can watch the children on Tuesdays and Wednesdays, which are his days off during the week. Respondent's parents are both retired and willing to care for the children. Petitioner also asserts respondent's parents "are not appropriate child[care] providers." This assertion is without merit given the fact petitioner has allowed respondent's parents to watch the children on numerous occasions before and after the divorce.

¶ 76 Additionally, the trial court modified the child-dependency exemption for purposes of income taxation in lieu of ordering respondent to contribute to the child-care and extracurricular expenses. The modification allowed petitioner to claim Brian every year and Mia every other year. Petitioner contends the exemption will amount to approximately \$1,400 every other year, which is not enough to offset the cost of the summer camp and extracurricular activities. While we recognize the modification of the child-dependency exemption may not fully offset the extracurricular and child-care expenses related to the children, the court found a

way to defray petitioner's expense for summer camp without forcing respondent to contribute to something to which he does not agree. The court did not abuse its discretion in failing to order respondent to contribute to the cost of the children's extracurricular activities and summer camp.

¶ 77 C. The Children's Health, Dental, and Vision Insurance

¶ 78 Finally, petitioner contends the trial court erred by failing to order respondent to pay half of the children's health, dental, and vision insurance premiums. Specifically, petitioner contends the court has no discretion to order contribution to the children's health-insurance expenses; rather, contribution by the support obligor is mandatory. In support of this proposition, petitioner cites section 505.2(c)(2.5) of the Marriage Act (750 ILCS 5/505.2(c)(2.5) (West 2012)) and *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 775 N.E.2d 282 (2002).

¶ 79 In *Seitzinger*, this court recognized "[t]he duty to provide health insurance is an integral part of a parent's current and future support obligations." *Id.* at 113, 775 N.E.2d at 290 (citing *Franson v. Micelli*, 172 Ill. 2d 352, 356, 666 N.E.2d 1188, 1189 (1996)). Moreover, we held where health insurance is available to the child-support obligor through his or her employer, but he or she is not ordered to provide insurance coverage, the noncustodial parent is required under section 505.2(b) of the Marriage Act (750 ILCS 5/505.2(b) (West 2012)) to provide contribution upon request of the child-support obligee. *Seitzinger*, 333 Ill. App. 3d at 113, 775 N.E.2d at 290.

¶ 80 The record indicates health insurance for the children was available through respondent's employer. Because such insurance was available, respondent was required under section 505.2(b) of the Marriage Act to contribute to the children's health-insurance premiums upon petitioner's request. *Id.* In this case, petitioner requested that respondent be ordered to contribute to half of the children's health-insurance premium. The trial court, however, failed to

order respondent to contribute to half of the children's health-insurance premium. Accordingly, we reverse the portion of the court's order denying petitioner's request that respondent be ordered to contribute to half of the children's health-insurance premiums.

¶ 81 We find it important to note that although we are remanding this matter, doing so in no way diminishes the value of the trial court's detailed order explaining the basis for its decision. We appreciate such efforts and recognize the time the trial court invested in providing the thorough written order, which greatly aided our review of this matter.

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated, we affirm in part and reverse in part the trial court's judgment. On remand, we direct the court to recalculate respondent's net income for purposes of child support based on respondent's economic situation at the time of the October 2013 hearing. Additionally, we direct the court to determine whether respondent's obligations should be retroactive to the date petitioner filed her petition to modify child support. Finally, the court is directed to order respondent to reimburse petitioner for half of the children's health, dental, and vision insurance premiums.

¶ 84 Affirmed in part and reversed in part; cause remanded with directions.