

**NOTICE**  
Decision filed 06/26/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130298-U

NO. 5-13-0298

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
CHERYL H. VOGT,	)	Monroe County.
f/k/a Cheryl H. Dossett,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 10-D-94
	)	
STEVEN D. DOSSETT,	)	Honorable
	)	Richard A. Aguirre,
Respondent-Appellant.	)	Judge, presiding.

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JUSTICE SCHWARM delivered the judgment of the court.  
Presiding Justice Welch and Justice Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where trial record was incomplete, appellate court must presume that the circuit court's order requiring the respondent to pay child's educational expenses and denying his petition to modify child support was in conformity with the law and had a sufficient factual basis.

¶ 2 The respondent, Steven D. Dossett, filed in the circuit court of Monroe County a petition to modify his child support obligation. The petitioner, Cheryl H. Vogt, filed a petition for educational expenses. The circuit court denied Steven's petition but granted Cheryl's petition and ordered Steven to pay 85% of their eldest child's college expenses.

For the reasons set forth below, we affirm the judgment of the circuit court.

¶ 3

### I. BACKGROUND

¶ 4 The parties were married on May 8, 1993. Three children were born of the marriage: H.D., born on October 7, 1994; M.D., born on March 11, 1997; and S.D., born on November 24, 1999. On February 16, 2011, the circuit court entered its order dissolving the marriage. The circuit court incorporated the parties' marital settlement agreement into the judgment of dissolution of marriage. The marital settlement agreement provided that Cheryl would be awarded sole custody of the children. The agreement further provided:

"[Steven] shall pay to [Cheryl] the sum of \$1,300.00, per month, for support of the parties' minor children until such time as the youngest child, namely, [S.D.], reaches nineteen (19) years of age or graduates from high school, whichever occurs first.

\*\*\* Said sum represents the approximate statutory thirty-two percent (32%) of [Steven's] net income for child support less the statutory deductions."

Following the above typewritten language, there was an additional handwritten portion which stated: "[Steven] shall have the right to petition court for reduction in child support when children reach age 19."

¶ 5 In July 2012, when H.D. was 17 years of age, Steven filed a petition to modify child support, alleging, as a substantial change of circumstances, that H.D. would be emancipated on October 7, 2012, and graduate high school in December 2012. On October 23, 2012, Cheryl filed a petition for college expenses for H.D., who planned to

attend Southwestern Illinois College in the spring of 2013, but planned to remain living with Cheryl. Cheryl alleged that her annual income was \$32,800 and that H.D. was eligible to receive an annual federal Pell grant of approximately \$5,500. Cheryl requested the court to enter an order dividing the payment of H.D.'s educational expenses.

¶ 6 Cheryl filed a financial statement, reporting a net monthly income of \$1,850 and net monthly expenses of \$3,846.74. The record also includes H.D.'s affidavit regarding nonminor maintenance and educational expenses. In her affidavit, H.D. reported a checking account balance of \$100. She reported expenses as follows: \$80 for car insurance; \$250 for gas, oil, and repairs; \$200 for food at home; \$100 for food away from home; \$5,824 for tuition and fees for the school year; \$2,176 for school books for the year; \$100 for entertainment; and \$50 for other supplies. She reported total monthly expenses of \$1,547.

¶ 7 Although there is no record of proceedings regarding the hearing on the parties' petitions, the circuit court entered its order on February 13, 2013, noting that it had heard testimony and reviewed exhibits at the hearing. The circuit court found that Steven's gross earnings in 2012 were \$74,890 and that Cheryl's gross earnings in 2012 were \$32,856. Consistent with H.D.'s affidavit of record, the circuit court noted that H.D. claimed \$1,547 as her monthly expenses while attending school and living at home with her mother and that this figure was a monthly proration of annual college expenses of \$18,564, which included tuition and fees of \$5,824 and book fees of \$2,176. The circuit

court further noted that H.D. was scheduled to receive Pell grants and student loans totaling \$9,500. The circuit court ordered Steven to fund 85% of the educational expenses shortfall, with Cheryl to fund 15%. The circuit court defined "shortfall" to be the sum left after deduction for Pell grants and student loans in excess of \$2,750 per semester. The circuit court denied Steven's petition to reduce child support.

¶ 8 On March 13, 2013, Steven filed a motion to reconsider. On May 22, 2013, at a hearing on the motion to reconsider, which was transcribed and is part of the record on appeal, the circuit court noted that Steven had underrepresented his income. Finding it was unnecessary to reduce the child support percentage only to increase the support amount in light of Steven's actual income, the circuit court denied Steven's motion to reconsider. On June 10, 2013, Steven filed a timely appeal.

¶ 9

## II. ANALYSIS

¶ 10 On appeal, Steven argues that the circuit court erred in denying his petition to modify because H.D. had reached the age of majority. Steven also argues that the circuit court erred in apportioning 85% of H.D.'s educational expenses to him because its order resulted in Steven paying twice for H.D.'s living expenses and because the circuit court failed to consider the proper factors.

¶ 11 We note first that Steven has failed to provide this court with a complete record on appeal. Supreme Court Rules 321 and 324 require an appellant to provide a complete record on appeal, including a bound and certified copy of the report of proceedings and any documentary exhibits offered and filed by any party. See Ill. S. Ct. R. 321 (eff.

Feb.1, 1994); R. 324 (eff. May 30, 2008). In the absence of a verbatim transcript of the proceedings, Supreme Court Rule 323 authorizes an appellant to prepare a bystander's report or an agreed statement of facts. Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 12 It is well settled that:

"[A]n appellant has the 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 trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant."

*Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

See also *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009).

¶ 13 Because the record contains no verbatim transcript of the hearing on the parties' petitions, no bystander's report, and no agreed statement of facts, we do not know what evidence, if any, was presented, or what legal arguments were made prior to the circuit court's order denying Steven's petition to modify and granting Cheryl's petition for educational expenses. The docket sheet of the record on appeal references exhibits in a manila envelope, but no such exhibits are included in the record. Although Steven included additional materials in his appendix on appeal, providing what are claimed to be copies of exhibits within an appendix to an appellate brief is not permitted, if those exhibits are not included in the certified record. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000); see also *People v. Gacho*, 122 Ill. 2d 221, 254

(1988) (simply attaching document as an appendix to an appellant's brief is an improper means of supplementing the appellate record; only evidence appearing in the trial record may be considered on appeal).

¶ 14 " 'From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.' " *In re Marriage of Gulla*, 234 Ill. 2d at 422 (quoting *Foutch*, 99 Ill. 2d at 391). " 'An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding.' " *In re Marriage of Gulla*, 234 Ill. 2d at 422 (quoting *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001)). Without an adequate record preserving the claimed errors, we must presume the circuit court's order had a sufficient factual basis and that it conformed with the law. See *Foutch*, 99 Ill. 2d at 391-92; *In re Marriage of Gulla*, 234 Ill. 2d at 422-24.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons stated, we affirm the judgment of the circuit court of Monroe County.

¶ 17 Affirmed.