

No. 1-13-2099

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ANITA GOODRICH n/k/a ANITA LYLES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 06 D 2373
	)	
AVERY GOODRICH, JR.,	)	Honorable
	)	Naomi H. Schuster,
Defendant-Appellee.	)	Judge Presiding.

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

**O R D E R**

¶ 1 Held: The trial court did not abuse its discretion in denying petitioner's motion to increase respondent's child support obligations.

¶ 2 Petitioner, Anita Goodrich, n/k/a Anita Lyles, appeals the denial of her motion to increase the child support obligations of her former husband, respondent, Avery Goodrich, by the circuit court of Cook County. She contends that the court erred in entering that judgment, and in failing to make a finding for the deviation from guideline support pursuant to section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/505(a)(1) (West 2010)).

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¶ 3 The record shows that the parties were married on November 4, 1995, and that two children were born to the marriage. A judgment for dissolution of marriage was entered on July 13, 2007, and the parties were awarded joint custody of the minor children pursuant to a joint parenting agreement. Respondent was ordered to pay \$1,275 per month to petitioner as child support, which was described as equivalent to 28% of his "current net earnings."

¶ 4 On August 29, 2008, petitioner filed a petition to increase child support, alleging that respondent was earning substantially more income than when the child support order was entered, and that the children's needs had increased. The court entered an order by agreement of the parties on April 1, 2009, increasing respondent's child support obligation to \$1,339.31 per month, based on respondent's net income of \$4,782.26 per month.

¶ 5 On December 20, 2009, respondent filed a petition for temporary modification of child support requesting a reduction in his support obligations because he had been discharged from his employment as an attorney at a law firm. He maintained that he had since been retained by three private clients for services, but was experiencing substantial financial hardship, and was without sufficient income to continue his current monthly child support payments. Respondent requested that the court reduce his obligations to \$400 per month, until he became gainfully employed. Respondent attached a Rule 13.3.1 affidavit listing a gross monthly income of \$1,532 from unemployment benefits, and \$390 from private practice.

¶ 6 After a hearing on March 12, 2010, the court granted him a temporary reduction in his child support obligations to \$600 per month. The matter was then set for status review on June 15, 2010, and, after a hearing on August 31, 2010, the court ordered respondent's obligations to remain at \$600 per month.

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¶ 7 On the same date, respondent filed a new motion for temporary modification of child support. In it, he alleged that he had gained employment with a law firm, and had an employment agreement under which he would receive the greater of 75% of the fees he generated, or \$1,000 per month. Respondent alleged that over the past three months, he had "grossed" \$3000. He contended that he was not financially able to maintain payments of \$600 per month, and requested that the court modify his obligation to 28% of his net income. He also attached a revised Rule 13.3.1 statement, showing a gross monthly income of \$1000, and net monthly income of \$280.58 after taxes and his support obligation. The court granted petitioner 28 days to respond to the petition for temporary modification, and set the matter for status of respondent's financial circumstances.

¶ 8 On December 17, 2010, petitioner filed a petition for a rule to show cause against respondent for delinquent child support payments. Respondent responded that he had not yet been able to generate more than \$1000 monthly for the firm, and he had recently been informed that the firm could no longer afford to compensate him in that amount. He maintained that his current obligation of \$600 per month was "more than 68% of Respondent's net income to date" and that modification was necessary to reflect his "true and current financial condition. Respondent denied that his actions were "willful contumacious, and without just cause[.]" On March 8, 2011, petitioner's petition for rule to show cause was denied.

¶ 9 On May 18, 2012, petitioner filed a motion to increase child support, followed by an amended motion on June 19, 2012. Petitioner alleged that there was a substantial change in circumstances because respondent had started a consulting firm, and had received a large family inheritance. Petitioner requested that respondent's obligations be returned to \$1,339 per month.

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¶ 10 Respondent filed an answer on June 26, 2012, contending that he had not received any income or salary from the consulting firm. He denied receiving a large family inheritance, but stated that even if it were true, the proceeds of an inheritance should not properly be the basis for an increase in child support. Respondent requested that his obligations be set at 28% of the average of his net earnings over the past three years. Respondent subsequently filed a Rule 13.3.1 disclosure statement, dated November 2012, in which he claimed gross monthly income of \$1,875 per month, and net monthly income of \$1,619 per month.

¶ 11 On December 12, 2012, petitioner filed another petition for a rule to show cause, contending that respondent had failed to make child support payments, and that, to date, "\$2,292.05 remains unpaid in support." In his January 16, 2013, response, respondent denied that he failed to make the \$600 monthly payments, and affirmatively stated that it was necessary for that amount to be modified downward because his gross income as of November 26, 2012, was approximately \$22,500, and his support obligations as well as obligations to provide for the children's health insurance caused him significant financial hardship. Respondent reiterated his request for the court to set his child support obligations at 28% of his net average income over the past three years.

¶ 12 On March 13, 2013, after a two-day hearing on petitioner's motion to increase child support, the court entered an order denying the motion. The court also denied petitioner's motion to reconsider on June 7, 2013.

¶ 13 The transcript of the hearing which resulted in a denial of the motion to increase child support has not been included in the record on appeal. However, on August 2, 2013, petitioner filed a motion "for entry of trial exhibits and bystander's report." In support of that motion, petitioner stated, in total:

"1. The court conducted a hearing [and] entered an order denying the Petitioner's motion to modify support.

2. On January 16, 2013, the Respondent testified there was a substantial change in circumstances in his income since the entry of the court last [sic] order for support.

3. The Respondent testified all exhibits entered were genuine and the court entered the exhibits without objection.

Wherefore the Petitioner requests this Honorable court Order:

A. The testimony of the Respondent as stated and all exhibits tendered at hearing to be part of the record on appeal. "

On August 14, 2013, the trial court entered an order granting petitioner's motion and entering the "allegations of the motion \*\*\* as the bystander's statement."

¶ 14 On appeal, petitioner contends that the court erred in denying her motion to increase child support, and by failing to make findings for its decision. Respondent has not filed a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 15 As an initial matter, petitioner maintains that this court should apply *de novo* review because we are "reviewing the circuit court's application of the law to the facts[.]" We disagree. Because a motion to modify child support must be decided on the unique facts and circumstances presented in each case, a reviewing court will not disturb that determination absent an abuse of discretion. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1020 (2003). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 16 In this case, respondent was initially ordered to pay \$1,275 in child support, the equivalent of 28% of his net earnings at the time. Throughout the course of these proceedings, the parties filed various motions to modify the child support order, with respondent seeking

downward modifications based on his reduced income, while petitioner requested modifications to increase respondent's support obligation.

¶ 17 A court has the power to modify a child support order "upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2010). The burden of demonstrating a substantial change in circumstances is on the party seeking a modification of child support.

*People ex rel. Hines v. Hines*, 236 Ill. App. 3d 739, 744-45 (1992). If the court determines that there has been a substantial change in circumstances and a modification of child support is required, the court should consider the factors set forth in section 505 of the Act in determining an appropriate modification. *In re Marriage of Stockton*, 169 Ill. App. 3d 318 325 (1988).

¶ 18 Section 505(a)(1) of the Act establishes guidelines to determine child support and provides that the minimum amount of support for two children is 28% of the noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2010). If a trial court deviates from guideline-level support, it must make express findings to support that deviation. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). Here, petitioner contends that the court erred by denying her motion to increase child support, and by failing to make findings on that decision, which, she claims, set respondent's obligations at a level which deviated from the statutory guidelines.

¶ 19 The "bystander's report" provided in this case does not fully describe the evidence presented at trial, or the trial court's ruling. Although the record indicates that the court conducted a two-day hearing on petitioner's motion, the bystander's report reduces this hearing to three sentences, describing only that respondent testified that there was a substantial change in circumstances and that a number of exhibits were genuine, and that the court entered them without objection and denied petitioner's motion. This threadbare "bystander's report" is clearly insufficient to allow meaningful review of the trial court's judgment.

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¶ 20 Where the record on appeal is incomplete, the reviewing court must apply every possible presumption favoring the trial court's judgment (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984)), including that the proceedings were regular and fair, and that the trial court ruled correctly in accordance with the law and with a sufficient factual basis (*Smolinsky v. Voita*, 363 Ill. App. 3d 752, 757-58 (2006); *Lisowski v. MacNeal Memorial Hosp. Ass'n*, 381 Ill. App. 3d 275, 282 (2008)). As applied here, the inadequacy of the record in this appeal requires affirmance of the judgment entered.

¶ 21 Given our inability to determine that the court found a substantial change in circumstances, such that a modification would be appropriate, we are also precluded from concluding that the court erred by not making findings for a deviation from the statutory child support guidelines. *People v. Stoffel*, 239 Ill. 2d 314, 327 (2010) ("The trial court is presumed to know and follow the law").

¶ 22 Petitioner, nonetheless, maintains that "[i]t is undisputed the Respondent testified there was a substantial change in circumstances since the last order" and that "the record and evidence only shows a substantial change in circumstances[.]" Presumably, petitioner is contending that, because the parties agreed there was a substantial change, the court was required to find such a change, and move onto the second step in the analysis, in which it would consider statutory factors in determining an appropriate support amount. However, the record is clear that, although both parties contended that a change had occurred, they disagreed about what that change was, and whether it required a downward or upward adjustment of respondent's \$600 monthly support obligations. Under these circumstances, the court could reasonably have determined that no substantial change in circumstances had occurred, and denied petitioner's motion to modify on that basis.

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¶ 23 We also observe that there is nothing in the record to indicate that respondent's \$600 monthly obligation actually deviated from the statutory child support guidelines. It is apparent that both parties requested the court to enter guideline-level support, but they disagreed on the amount of respondent's income, and that question was before the court for resolution. Petitioner maintains that "[r]espondent's gross income is reasonably believed to be \$204,000.00 for 2012" and, in support, she cites her own motion to reconsider, which, in turn, cited exhibits that were entered at the hearing, including a number of bank statements in the names of respondent's consulting company and law practice, as well as a spreadsheet listing clients and amounts paid. Petitioner, however, provides no explanation for how she arrived at this figure based on these documents.

¶ 24 Petitioner also contends that respondent's "2011 income was \$52,162.00[.]" taking this number from respondent's 2011 tax return. We note, however, that this figure represents respondent's gross, not net, income (750 ILCS 5/505(a)(1) (West 2008)(setting guideline support for two children at 28% of the noncustodial parent's *net* income), and it includes a \$25,000 IRA distribution (Compare *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 466-67 (2005) ("IRA disbursements are 'income' for purposes of calculating 'net income' under section 505 of the Act") and *In re Marriage of O'Daniel*, 382 Ill. App. 3d 849-50 (2008) (finding that IRA distributions that are a return of contributions do not constitute income for child-support purposes)). As a consequence, we cannot conclude on this record that the court actually deviated from the statutory guidelines, and the statutory requirement that it make express findings for its decision was not triggered.

¶ 25 For the reasons stated, we affirm the order of the circuit court of Cook County denying petitioner's motion to modify child support.



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¶ 26 Affirmed.