

No. 1-14-0343

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

LAURA ASHLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 03 D 11615
)	
RONALD W. ASHLEY,)	Honorable
)	Barbara Meyer,
Defendant-Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *Held:* The circuit court did not abuse its discretion in modifying the amount petitioner was to pay in child support payments for the 10-month period between January and October 2010.

¶ 2 Respondent Laura Ashley (Laura) appeals *pro se* from the circuit court's August 27, 2013 judgment which modified the amount petitioner Ronald Ashley (Ronald) was to pay in child support payments for the 10-month period between January and October 2010. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The record shows that Laura and Ronald were married on June 27, 1987, and that three children were born to the marriage, namely Justin, born on October 3, 1990, Jordan, born on February 3, 1994, and Vanessa, born on April 3, 1995. On June 21, 2005, the circuit court entered a judgment for the dissolution of their marriage. The divorce judgment ordered Ronald to pay unallocated support to Laura in the amount of \$705 per week for 54 months, terminating on January 1, 2010. Thereafter, Ronald would pay child support per the statutory guidelines based on his gross income of \$90,000 per year.

¶ 4 On December 29, 2009, Ronald filed a motion to set child support effective January 1, 2010, pursuant to the divorce judgment entered on June 21, 2005. Ronald noted that the unallocated support he was ordered to pay pursuant to the divorce judgment was ending on January 1, 2010, as of that date there would be two minor children of the marriage, his gross income per year was \$73,220, and his net income per year was \$53,149. He requested that his child support payments be set at \$1,240 per month, which was 28% of his net income.

¶ 5 On September 29, 2010, the circuit court entered a written order setting the amount of child support owed by Ronald to \$258.72 every other week, beginning October 7, 2010, based on its finding that his net income was \$924 every other week.

¶ 6 In an August 27, 2013 order, the order on appeal, the court corrected its September 2010 order to provide that the child support payments of \$258.72 every other week had a start date of January 2, 2010, not October 7, 2010. Laura subsequently filed a motion to "strike" the August 27, 2013 order. The court denied Laura's post-judgment motion and she filed a notice of appeal.

¶ 7 As a threshold matter, we note that in his *pro se* brief, Ronald correctly observes that Laura's appellate brief is significantly deficient under Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013), and, thus, her appeal is subject to dismissal (see *McCann v. Dart*, 2015 IL App (1st

141291, ¶ 20). However, we elect to consider the order on appeal because we have sufficient response briefs from both Ronald and the Illinois Department of Healthcare and Family Services as an intervenor, and the relevant documents are in the record on appeal. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 510-11 (2001).

¶ 8 We review a circuit court's determination of the appropriate amount of child support for an abuse of discretion. *In re Marriage of Moorthy and Arjuna*, 2015 IL App (1st) 132077, ¶ 41. An abuse of discretion occurs where no reasonable person could agree with the court's determination. *Id.*

¶ 9 Laura's first argument on appeal, that Ronald failed to seek a modification of his support obligation, represents her misunderstanding of the proceedings below, and is contradicted by the record. The June 2005 divorce judgment provided that after Ronald's obligation to pay \$705 per week in unallocated support terminated on January 1, 2010, he would no longer pay maintenance to Laura and his child support payments would be based on the statutory guidelines.

Accordingly, in December 2009, Ronald filed a motion requesting that the court determine his child support obligations under the statutory guidelines. In September 2010, the court determined that Ronald would pay \$258.72 every other week in child support beginning on October 7, 2010. This amount was calculated by multiplying Ronald's net income of \$924 every other week by 28% where only two of the children from the marriage were minors as of 2010. See 750 ILCS 5/505(a)(1) (West 2010) (setting out the guidelines used to determine child support). Following several more years of disputes between Laura and Ronald, the circuit court on August 27, 2013, corrected its September 2010 order to provide that the child support payments of \$258.72 every other week had a start date of January 2, 2010. As pointed out in the appellate brief of the Illinois Department of Healthcare and Family Services, this correction was necessary because no

previous order had addressed what amount Ronald owed between January 1, 2010 (when the unallocated support payments terminated), and October 7, 2010 (when the allocated child support payments began).

¶ 10 As shown above, Laura is mistaken that Ronald should have been required to continue paying the \$705 per week as ordered by the divorce decree because he failed to seek a modification of his support obligation. The divorce judgment clearly specified that those payments would terminate on January 1, 2010, and Ronald filed a motion to set child support in December 2009. Although the circuit court initially ordered that the new child support payments would begin on October 7, 2010, it had the authority on August 27, 2013, to make the modification retroactive to January 2, 2010, in order to address what Ronald owed for the 10-month period between January and October 2010. See *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 33 (circuit court can retroactively modify support payments back to the date when the nonmoving party received notice of motion to modify). Moreover, Laura's assertion that Ronald made no payments between January 1, 2010, and October 7, 2010, is contradicted by the record which contains a support calculation worksheet submitted by the State of Illinois Child Support Services, showing that Ronald paid \$10,199.79 in child support in 2010, which was more than he owed for that year ($\$258.72 \times 26 = 6,726.72$).

¶ 11 Alternatively, Laura contends that Ronald should have paid 28% of his income based on a \$90,000 per year income because the divorce judgment reflected that the circuit court had anticipated that Ronald's gross income would be \$90,000 in 2010. However, the statutory guidelines require that child support be calculated based on net income, not gross income. 750 ILCS 5/505(a)(1) (West 2010). Nevertheless, although the court could speculate in 2005 what Ronald's income would be in 2010, the guidelines are based on the obligor's actual income. See

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750 ILCS 5/505(a)(3) (West 2010); *Moorthy*, 2015 IL App (1st) 132077, ¶ 40 (circuit court focuses on parent's economic situation at the time child support calculations are made); *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 231 (2008) (same). Therefore, the circuit court did not abuse its discretion in entering its August 27, 2013 order correcting its September 29, 2010 order.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 13 Affirmed.