2015 IL App (2d) 150007-U
No. 2-15-0007
Order filed October 19, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DEBRA AURAND, Petitioner-Appellant, and TIMOTHY W. AURAND, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 06-D-320 Honorable Ronald G. Matekaitis, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly refused to modify respondent's child-support obligation retroactive to a date before petitioner filed her petition to modify, as such retroactivity was not statutorily permitted.

¶ 2 The marriage of petitioner, Debra Aurand, and respondent, Timothy W. Aurand, was dissolved in 2008. In July 2012, after respondent's obligation to pay unallocated family support expired, the trial court ordered respondent to pay semi-monthly child support. On December 26, 2013, petitioner filed a "Petition to Set Child Support." The trial court treated the petition as one to modify child support and granted the petition in part, modifying child-support payments

retroactively to January 1, 2014. The court denied petitioner's request to recalculate child support retroactively to July 2012. Petitioner filed a motion for reconsideration, which the trial court denied. Petitioner filed a *pro se* notice of appeal and now contends that the trial court erred in failing to recalculate child-support payments retroactively to July 2012. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The terms of the 2008 judgment of dissolution provided that respondent would pay petitioner $4,950 per month in unallocated family support for 48 months.

¶ 5 On May 3, 2012, as respondent's obligation to pay unallocated family support was about to expire, respondent filed a petition asking the court to terminate his obligation effective May 12, 2012, and to set child support at an amount equal to 32% of his net income as required under section 505(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505(a) (West 2012)). Respondent attached to the petition his affidavit of income and expenses, showing a monthly net income of $6,819 and monthly expenses of $4,726.

¶ 6 On July 12, 2012, the trial court conducted a hearing on the petition. Petitioner, a certified public accountant, testified generally that respondent, a college professor, had overstated his federal and state income taxes and thus had inaccurately projected his net income for child-support purposes. She also testified that respondent, in addition to his base teaching salary, earned income from extra teaching assignments and consulting work.

¶ 7 Following the hearing, the trial court, using respondent's affidavit, ordered that, effective July 16, 2012, respondent was to pay $1,159.50 in child support to petitioner on the first and fifteenth of each month. In addition, the court ordered that, on June 15 and January 15 each year, respondent was to pay 32% of the additional net income he received from extra teaching

assignments and, further, respondent was to provide petitioner with income records sufficient to determine this amount.

¶ 8 Almost 18 months later, on December 26, 2013, petitioner filed a "Petition to Set Child Support" under section 505(a) of the Act. She argued that "[r]espondent, when testifying in Court on July 12, 2012 (see attached report of proceedings attached hereto as Exhibit 'A'), grossly overestimated his Federal and State Income Taxes, thereby allowing child support to be set at a substantially lower amount than set by statute." Petitioner argued that respondent's actual net income for child-support purposes was $120,833 and that, therefore, respondent's semi-monthly child-support payment should have been $1,611.78. She asked that the court order respondent to pay "statutory child support, nunc pro tunc from June 1, 2012 to the present for the Respondent's untruthful or inaccurate statements of his deductions and net take home pay."

¶ 9 A hearing on the petition took place on May 20, 2014, and on July 16, 2014. Following the hearing, on September 23, 2014, the trial court ordered as follows. First, the court granted petitioner's petition, in part, as a petition to modify child support. The court found that respondent's 2013 income for child-support purposes, including extra teaching assignments and consulting, was $112,491. Using this figure, the court modified child-support payments retroactive to January 1, 2014. The court ruled that, going forward, in order to ensure that petitioner received the statutory amount of child support, the parties were to present each other with their calculations of respondent's previous year's net income by May 30 and settle any overpayments or deficiencies by June 15. Second, the court denied petitioner's request to recalculate child support retroactive to July 12, 2012, finding no basis to do so. The court found that, although respondent's figures might have turned out to be incorrect, respondent did not commit fraud.

¶ 10 Petitioner filed a motion for reconsideration, which the trial court denied. Thereafter, petitioner filed a timely *pro se* notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 The issue on appeal is whether the trial court erred in denying petitioner's request to recalculate child-support payments retroactively to July 12, 2012.

¶ 13 The trial court treated petitioner's petition as one for modification of child support. The issue of a retroactive modification of child support is addressed in section 510(a) of the Act (750 ILCS 5/510(a) (West 2012)), which provides in relevant part as follows:

> "[T]he provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification."

Thus, under the Act, "the earliest point to which retroactive modification of maintenance or support payments may be ordered is the date on which the nonmoving party receives 'due notice' from the moving party of the filing of the modification petition." *In re Marriage of Hawking*, 240 Ill. App. 3d 419, 426 (1992).

¶ 14 Here, petitioner filed her petition on December 26, 2013, and, under the child-support payment schedule then in effect, the next payment was due on January 1, 2014. On September 23, 2014, the trial court granted petitioner's petition and modified child support effective January 1, 2014, and ordered respondent to pay petitioner the additional amount owed as a result of the retroactive modification. Under section 510(a) of the Act, December 26, 2013, was the earliest date to which the court could have retroactively modified child support. See *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 33 (trial court can retroactively modify support payments

back to the date when the nonmoving party received notice of motion to modify). Accordingly, we find no error in the court's ruling.

¶ 15 Petitioner's arguments on appeal do not warrant reversal of the trial court's order. Petitioner argues generally that the court erred in finding no dishonesty in respondent's net-income calculations provided at the July 2012 hearing and that the court should have used its equitable powers to revisit those calculations and order the payment of an arrearage. However, petitioner has failed to cite any authority to warrant a departure from the provisions of section 510(a) of the Act. We note that petitioner made no argument in her initial brief that the trial court erred in treating her "Petition to Set Child Support" as a petition to modify under section 510(a). It is only in her reply brief that she argues (in response to respondent's argument that the court's treatment of the petition was proper) that the court misapprehended the nature of her petition given that she sought relief *nunc pro tunc*. However, as respondent points out, a *nunc pro tunc* order is proper only to correct the record of judgment, not to alter the actual judgment of the court. See *In re Marriage of Takata*, 304 Ill. App. 3d 85, 92-93 (1999) (finding that a judicial error in determining a spouse's net income for purposes of child support cannot be corrected with a *nunc pro tunc* order). Here, petitioner asked that the net-income determination be altered, so a *nunc pro tunc* order would not have been proper.

¶ 16 Petitioner further argues in reply that, even if *nunc pro tunc* does not apply, relief is available under section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2012)). However, any argument as to whether relief is warranted under section 2-1401 of the Code has been forfeited, because petitioner fails to support this claim with relevant authority. "A failure to cite relevant authority *** can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Where an appellant has failed to support his or

her arguments with citations to authority, this court will not research the issues on the appellant's behalf. See *Kic*, 2011 IL App (1st) 100622, ¶ 23 (noting that this court "is not a depository in which the appellant may dump the burden of argument and research" (internal quotation marks and citation omitted)); *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) ("[T]his court will not become the advocate for, as well as the judge of, points an appellant seeks to raise.").

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County.

¶ 19 Affirmed.