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2015 IL App (3d) 150031-U

Order filed October 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
MALIA R. LAIRD f/k/a	)	Will County, Illinois,
MALIA R. FAMULSKI,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0031
	)	Circuit No. 07-D-434
and	)	
	)	
KRIS FAMULSKI,	)	Honorable
	)	Robert P. Brumund,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Schmidt and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion when it refused to modify Famulski's child support obligation.

¶ 2 In February 2014, respondent, Kris Famulski, filed a motion to modify his child support payments to his former wife, petitioner, Malia R. Laird. After a hearing, the trial court denied Famulski's motion, and Famulski appealed. We affirm.

¶ 3 **FACTS**

¶ 4 On March 9, 2007, Laird filed a petition for dissolution of marriage. The petition stated that Laird and Famulski were married on March 21, 1998, and the parties had one marital child.

¶ 5 On March 14, 2008, the trial court entered a judgment for dissolution of marriage. On the same date, the court also entered into the record a parenting agreement and marital settlement agreement. The parenting agreement awarded sole custody of the parties' minor child to Laird. The marital settlement agreement directed Famulski to pay \$750 per month as child support to Laird.

¶ 6 On February 13, 2014, Famulski filed a motion to modify child support. In support, Famulski alleged that a substantial change in circumstances occurred, namely, Famulski's employment at Bridgeview Bank was terminated.

¶ 7 On December 16, 2014, the court held a hearing on Famulski's motion. Famulski testified that he was paying \$750 per month in child support, which was based on his prior net income of \$50,000 per year. At the time the marital settlement agreement was entered, Famulski owned Capital Mortgage Services, CountryView Enterprises, Inc. (CountryView), and a commercial real estate property. Famulski also earned between \$5,000 and \$7,000 per year preparing tax returns.

¶ 8 Capital Mortgage Services was a loan originator. As a result of the 2008 decline in the financial markets, Famulski closed Capital Mortgage Services.

¶ 9 CountryView was incorporated in 2003 and operated a small bed and breakfast that was located at 3983 NE Miner Road, Galena (Miner Road property). CountryView did not consistently rent out the Miner Road property, and it had taken a loss for nearly every year since its incorporation. CountryView did not include any depreciation or mortgage payments on its

tax return because it did not own the five-bedroom house, cabin, or property where the business was located.

¶ 10 Famulski considered the Miner Road property his primary residence, and he lived at the property on the weekends. During the week, Famulski stayed with his girlfriend. Because Famulski lived at the Miner Road property, the property that CountryView operated as a bed and breakfast, he split the utility expenses with CountryView. Famulski had an advertisement for the business on his personal car. CountryView's 2014 income statement included an automobile expense, which Famulski explained was an expense for his driving costs that were connected to the maintenance of the property. Famulski personally paid the mortgage on the Miner Road property.

¶ 11 In February 2014, Famulski transferred 50% of his interest in the Miner Road property to his daughter. Famulski's daughter did not purchase the interest, and she refinanced the \$374,000 mortgage, which reduced the monthly payment from approximately \$3,000 to \$2,000. After the refinance, the mortgage named only Famulski's daughter as the borrower.

¶ 12 The 2013 income tax return for CountryView showed an ordinary business income of \$375. Famulski stated that, in 2013, CountryView had also received a \$3,800 conservation reserve program farm subsidy. CountryView's 2014 income statement showed a net loss of \$702.

¶ 13 Famulski stated that the commercial real estate was located at 5838 South Archer Avenue, Chicago (Archer Avenue property). The property was owned by Archer Management, L.L.C. Famulski held a 99% interest in the company. Archer Management leased the office spaces at the Archer Avenue property. Famulski stated that the building did not generate much profit as the rent covered the mortgage, upkeep expenses, utilities, and other expenses. The

mortgage payment for the property was \$3,600 per month. In 2013, Archer Management had three tenants that paid a total of \$3,700 in rent each month. At the time of the hearing, the building had two open units which had previously been rented by commercial tenants at the rate of \$800 and \$600 per month. The 2013 federal tax return for Archer Management showed an ordinary business loss of \$1,372.

¶ 14 Famulski also testified that he held a 10% interest in the tax preparation business F & W Business Solutions (F & W). Famulski's partner, William Woolf, held the remaining 90% interest. F & W occupied one of the units in the Archer Avenue property, but did not pay rent. Famulski worked to generate new business for F & W, but he was not paid by F & W and his ownership interest in the company did not generate any income.

¶ 15 In 2013, Famulski was also employed as a loan originator at Bridgeview Bank. Famulski's 2013 federal tax return showed his adjusted gross income as \$25,334. Famulski earned \$5,439 of the income preparing tax returns for individual clients. Additionally, \$2,190 of other income included in his gross income was derived from a one-time move-out fee that Chase Bank paid to Famulski after it foreclosed on Famulski's Plainfield home.

¶ 16 On January 17, 2014, Famulski's employment with Bridgeview Bank was terminated. After his termination, Famulski received unemployment income of \$832 every two weeks for a period of six months. Famulski said that after Capital Mortgage Services failed and his employment with Bridgeview Bank was terminated, he decided not to pursue another position in the mortgage industry. Instead, Famulski focused on increasing his accounting business. In March 2014, Famulski also started teaching concealed carry firearm safety courses. A 2014 income statement for Famulski's firearm safety business documented a net income of \$1,840.

¶ 17 On cross-examination, counsel for Laird introduced into evidence a list of Famulski's tax preparation clients. Famulski stated that the document was a complete list of his 198 clients who had paid for tax preparation services in 2014. Famulski charged the clients between \$40 and \$80 for the tax return preparation. Famulski told the court that he did not keep track of the amount that he charged each individual client. Famulski also testified that he had been involved in the mortgage industry for more than 10 years, and he previously operated a "lucrative" mortgage-related business.

¶ 18 At the conclusion of the hearing, the trial court stated:

"I've used this statement quite often: I was born at night, but it wasn't last night.

For a man who is an accountant to come into this Court under oath and testify that he keeps absolutely no records as to how much he receives from 198 clients, except his memory when he files a tax return a year later, is unbelievable.

It's, it's—to have a vacation home worth \$350,000 that he operates as a business, doesn't depreciate it, doesn't show the cost of maintaining it—the mortgage.

I mean, I'll go a step further. To quit your job and—I, I can't really tell how much he's—you claim he's only made 1200 a month or about 18,000, maybe a little less, about 15,000—although, agreeing with [counsel for Laird] there was at least 12 to 14,000 in tax preparation, who—another \$10,000 in income or money available to him in depreciation. And who knows what other games were played with—on these tax returns.

I, I just—unfortunately, my knowledge of taxes is a little better than I think Mr. Famulski expected me to be.

The motion is denied."

Famulski appeals.

¶ 19

## ANALYSIS

¶ 20

Famulski argues that the trial court erred by: (1) not finding a substantial change in circumstances to warrant a modification of the child support order; and (2) finding that any change in Famulski's economic circumstances was made in bad faith. We disagree.

¶ 21

A child support obligation is modifiable upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2014). The party seeking the modification bears the burden of demonstrating a substantial change in circumstances. *People ex rel. Hines v. Hines*, 236 Ill. App. 3d 739, 744-45 (1992). In modifying the child support obligation, the trial court considers the factors delineated in section 505 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/505(a)(2) (West 2014). These factors include: the financial resources and needs of the child and parents, the physical, mental, emotional, and educational needs of the child, and the standard of living the child would have enjoyed had the marriage not been dissolved. *Id.* The trial court may consider any substantial economic reversal resulting from a moving party's change in employment so long as the party seeking the modification shows good faith for voluntarily changing his employment. *In re Marriage of Imlay*, 251 Ill. App. 3d 138, 140 (1993). A court has "the authority to compel [a party] to pay child support at a level commensurate with their earning potential" and "may impute additional income to a noncustodial parent who is voluntarily underemployed." *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344 (2004). Motions to modify child support are decided on the individual facts and circumstances of each case. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1020 (2003).

¶ 22 The decision to modify a child support order lies within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 631 (2008). An abuse of discretion occurs where no reasonable person would agree with the trial court's decision not to modify the child support obligation. *Id.*

¶ 23 We acknowledge that the trial court, in denying Famulski's motion to modify, did not expressly find that Famulski failed to make a showing of a substantial change in circumstances. However, absent an indication in the record to the contrary, we presume that the trial court knows and follows the law. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72.

¶ 24 Furthermore, after reviewing the record, we find that the trial court's oral ruling implicitly found that Famulski had not demonstrated a substantial change in circumstances. In particular, we note that in 2008, Famulski generated income from his interests in Capital Mortgage Services, CountryView, and the Archer Avenue property, and he prepared tax returns for individual clients. In 2014, Famulski retained interests in CountryView and the Archer Avenue property, and he continued to prepare tax returns for individual clients. However, Famulski no longer owned and operated Capital Mortgage Services. Instead, Famulski worked for another entrepreneurial enterprise, F & W. Famulski held a minority interest in F & W and worked at the company to generate new business, but he did not receive payment for his work. While Famulski emphasizes that his change in employment, and the resultant income decrease supported a modification of the child support order, we note that Famulski voluntarily sought this lower paying position and did not pursue another position in the mortgage lending field where he was previously able to earn between \$25,000 and \$50,000. This voluntary underemployment militated against a finding of a substantial change in circumstances. See *Adams*, 348 Ill. App. 3d at 344. We further note that while Famulski relies on his purported

\$32,000 decrease in income between 2008 and 2013, the trial court found that he was not a credible witness. We hold that the record supports this credibility finding and reassert that the court may compel Famulski to pay child support at a level that is commensurate with his earning potential.

¶ 25 Famulski also argues that the trial court abused its discretion by finding that his change in economic circumstances was made in bad faith. In particular, Famulski contends that contrary to the court's findings, he did not "quit" his job at Bridgeview Bank, the Miner Road property was not a "vacation home" and the court's finding that he had "played games" on his tax returns regarding the operation of CountryView was unsupported, and he kept a record of his tax preparation clients. We reject each of the above arguments.

¶ 26 First, while the record established that Famulski did not voluntarily quit his job at Bridgeview Bank, we note that the record supported the trial court's implicit finding that Famulski was underemployed at the time of the hearing. Second, Famulski's testimony that he stayed at the Miner Road property on the weekends and lived with his girlfriend during the week supported the court's classification of the property as a "vacation home." Famulski's testimony regarding his transfer of 50% ownership in the Miner Road property to his daughter in exchange for no consideration, and Famulski's failure to depreciate this asset or deduct the mortgage and business expenses supported the court's suspicion regarding Famulski's accounting practices. Finally, the court's suspicion regarding Famulski's tax preparation business was supported by Famulski's testimony that he did not record the amount he charged each of his tax preparation clients. Therefore, the trial court's factual findings were sustained by the record and were not the result of an abuse of discretion.

¶ 27

## CONCLUSION



¶ 28           The judgment of the circuit court of Will County is affirmed.

¶ 29           Affirmed.