

**NOTICE**

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2015 IL App (4th) 140224-U

NO. 4-14-0224

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 11, 2015

Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: MARRIAGE OF	)	Appeal from
RACHAEL WALDEN,	)	Circuit Court of
Petitioner-Appellee and	)	Piatt County
Cross-Appellant,	)	No. 10D40
and	)	
SCOTT WALDEN,	)	Honorable
Respondent-Appellant and	)	Dan L. Flannel,
Cross-Appellee.	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court (1) affirmed (a) the trial court's division of marital property, (b) the court's award of the income-tax exemptions for the parties' minor children, (c) the court's child-support arrearage calculation and credit to respondent for payments made directly to petitioner, (d) the court's refusal to modify respondent's child-support obligation based on his unemployment; but (2) reversed the trial court's judgment inequitably allocating the marital debts and considering respondent's criminal restitution obligation a marital debt.

¶ 2 In May 2012, the trial court entered a judgment dissolving the marriage of petitioner, Rachael Walden, and respondent, Scott Walden. The judgment resolved the grounds for the dissolution but reserved all ancillary issues, including child custody and visitation determinations, child support, maintenance, and the division of marital property. In November 2013, the court entered its judgment on the ancillary issues.

¶ 3 Scott appeals, arguing the trial court abused its discretion by (1) allocating Scott 80% of the marital debt and allocating only 20% to Rachael; (2) refusing to award Scott his personal property; (3) *sua sponte* awarding Rachael the dependency tax exemptions for all three minor children; (4) failing to credit Scott for \$4,118.51 in child support paid directly to Rachael; and (5) refusing to modify Scott's child-support obligation on the basis of his unemployment. Rachael cross-appeals, arguing the court abused its discretion in allocating Rachael 20% of Scott's business debts and criminal restitution. We affirm in part, reverse in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in June 2000 in Charleston, South Carolina. The parties had three children: D.W., age 14; R.W., age 13; and C.W., age 10. The parties lived in Ohio at the time they were married and moved to Monticello, Illinois, in 2007 or 2008. In October 2010, Rachael filed a petition for dissolution of marriage. In May 2012, the trial court entered a judgment resolving the grounds for the dissolution of marriage and reserving all ancillary issues, including child custody and visitation determinations, child support, maintenance, and the division of marital property.

¶ 6 In September and October 2012, the trial court held a three-day trial relating to these ancillary issues. There is no report of proceedings or transcript for this three-day trial in the record. Following the third day of trial, the court ordered the parties to submit written arguments regarding custody and visitation. The court ultimately awarded Rachael custody of the three minor children and granted Scott visitation. The court alerted the parties as to the custody determination through an October 2012 memorandum, hoping "that once the parties and counsel have digested the [c]ourt's decision concerning custody[,] the remaining issues [were] readily

amenable to resolution between the parties." Thereafter, the court reopened proofs and held an October 2013 evidentiary hearing to address financial issues, including the division of marital property and Scott's purported child-support arrearage. The record contains a transcript of this hearing. We recount only the facts necessary for resolution of this appeal.

¶ 7 A. Marital Debt

¶ 8 At the time Rachael filed the petition for dissolution of marriage, Rachael was a registered nurse working for Kirby Hospital and the Piatt County Nursing Home. Scott was employed as a union electrician. Scott worked for Bullock Garages and started a side business, Walden Services. When Scott's job with Bullock Garages ended, in April 2010, Scott was charged with seven felony counts, including two counts of home-repair fraud, three counts of forgery, and two counts of theft by deception. In August 2011, Scott pleaded guilty to aggravated home-repair fraud and received 48 months' probation. He was ordered to pay \$81,730 in restitution.

¶ 9 At the October 2013 hearing on financial issues, Scott testified the parties both deposited their income into a joint checking account, which Rachael used to pay the family's bills. Scott testified the parties had numerous outstanding marital debts, collected in respondent's group exhibit No. 5. Scott also testified respondent's group exhibit Nos. 6 and 7 included copies of various bills for debts incurred during the course of the marriage. The bills in exhibit No. 5 include, among others, Comcast, hauling services, Time Warner, taxes owed to the State of Ohio, Dish Network, Schoonover Sewer Service, Terminix, Berg Tanks, Staley Concrete, the Vermilion County State's Attorney Bad Check Restitution Program, various credit cards, hospital bills, and money Scott owed to the Illinois Department of Employment Security. The marital

debts outlined by Scott included the \$81,730 owed in restitution for his aggravated-home-repair-fraud conviction.

¶ 10 Scott testified all the debts were for items or purchases necessary during the marriage. Rachael testified she had never seen many of the bills contained in exhibit No. 5—some of the bills were for Scott's side business, and some were related to Scott's felony conviction. In her proposed judgment, Rachael denied the existence of any remaining marital debt.

¶ 11 The trial court found:

"[T]he evidence presented concerning ultimate responsibility for said debts is conflicting, and due to the period of separation of the parties, difficult to individually assign responsibility. Therefore, the [c]ourt has determined to allocate responsibility for all indebtedness on a percentage basis between the parties. In view of the [c]ourt's distribution of assets, it is the [c]ourt's finding and it is ordered that the [r]espondent be responsible for 80 percent of all outstanding indebtedness and the [p]etitioner be responsible for 20 percent of all outstanding indebtedness incurred during the marriage and up through the date of separation of the parties."

Rachael filed a motion to reconsider, alleging the court "miscategorized [*sic*] the fines and penalties to be paid by Scott Walden" in connection with his felony conviction. At the hearing on the motion, Rachael raised the question of whether the court intended to order her to pay 20% of Scott's criminal restitution and business debts. The court denied the motion to reconsider without specifically addressing this question.

¶ 12 While this appeal was pending, Scott filed for bankruptcy. This court stayed proceedings until a notice of discharge was filed in January 2015. Scott, in his reply brief, acknowledges some debts were discharged and some debts were not. Scott further acknowledges this "complicates" matters, but he does not indicate what debts were discharged or considered by the bankruptcy court.

¶ 13 B. Personal Property

¶ 14 In September 2010, Rachael obtained an emergency order of protection against Scott. According to Scott, because of the order of protection, he did not have an opportunity to collect various belongings, including furniture, electronics, tools, and various gifts he received. At the October 2013 hearing, Rachael testified she did not have any of Scott's belongings in her possession. In pertinent part, the judgment on ancillary issues provides: "Each of the parties is awarded that personal property now in their respective possession and there shall be no order directing either party to return property to the other."

¶ 15 C. Dependency Tax Deductions

¶ 16 In January 2012, Scott filed a petition requesting the trial court award him the dependency tax exemptions for all three children for his 2011 taxes. Scott alleged Rachael filed her taxes for 2010 and claimed all three children without notifying Scott. In March, Scott filed a petition alleging Rachael filed her 2011 taxes and again claimed all three dependent children. Scott requested the court order Rachael to pay Scott half the difference between her 2010 and 2011 income tax returns and Scott's 2010 and 2011 income tax returns. A hearing was set to address this matter, along with multiple other motions Scott filed, in March 2012. An agreed order entered after the March 2012 hearing is silent as to the tax returns.

¶ 17 In December 2012, Scott filed a motion alleging Rachael claimed all three children on her 2010 and 2011 taxes and requesting the court grant him the three exemptions on his 2012 taxes. At a December 2012 hearing, the trial court instructed both parties to refrain from filing taxes for the year 2012 until the court resolved the dependent-exemption issue. The clerk's minutes for May 22, 2013, read: "Conference conducted in chambers with counsel and the court. Arguments heard and considered regarding the income tax exemptions for the minor children. Respondent awarded the income exemptions for [C.W.] and [R.W.] for 2012 and the future years. Petitioner is granted the income exemption for [D.W.] for 2012 and future years."

¶ 18 In her closing argument on ancillary issues, filed in June 2013, Rachael asserted Scott was behind on child-support payments and unemployed, and Rachael requested the trial court award her the income-tax exemptions for all three minor children. In his response, Scott alleged Rachael filed her 2012 taxes in April 2013 and claimed all three dependent exemptions. Scott requested the court order Rachael to refile her taxes and release the exemptions to him. In the judgment on ancillary issues, the court awarded Rachael the income-tax exemptions for all three children for all taxes due subsequent to the parties' separation.

¶ 19 D. Child-Support Arrearage

¶ 20 During the October 2013 hearing, Rachael testified she estimated Scott's arrearage to be in excess of \$10,000. The record shows an agreed temporary order entered on December 21, 2010. The parties agreed, in part, Scott would pay 32% of his income for child support, commencing December 10, 2010. The record shows no evidence of Scott's income at the time. In October 2011, Rachael filed a petition for adjudication of indirect civil contempt, alleging Scott failed to pay child support according to the agreed order and had an arrearage of \$3,553.34.

In December 2011, Scott's counsel filed an order of withholding, directing Scott's employer to withhold \$136.44 per week for child support.

¶ 21 Following the October 2013 hearing, the parties submitted written closing arguments. These arguments reflect conflicting views of the amount of the arrearage due, with Rachael arguing an arrearage of \$7,566.76 and Scott arguing an arrearage of \$844.93. Rachael's final proposed judgment on ancillary issues asserted an arrearage of \$7,343.80. Scott's proposed judgment did not mention an arrearage and simply asserted he is entitled to a credit of \$4,118.51. Respondent's group exhibit Nos. 2 and 3 contain money orders showing payments made directly to Rachael for child support. Respondent's group exhibit No. 2 contains 15 money orders for \$136 and 2 money orders for \$272, for a total of \$2,584 in child support paid directly to Rachael. Respondent's group exhibit No. 3 contains seven money orders (and one duplicate) for \$136, for a total of \$952. All told, the two exhibits reflect payments of \$3,536. The court, after crediting Scott for direct payments to Rachael, found he had a child-support arrearage of \$3,225.29, to be retired by an additional payment of \$27.28 per week.

¶ 22 E. Modification of Child Support

¶ 23 In September 2012, following the dissolution of marriage on the grounds only, Scott filed a financial affidavit showing a weekly income of \$490 from his employment with Professional Labor Supply (PLS) and unemployment. In his closing argument, he asserted he worked for 490 of the prior 500 work days.

¶ 24 In March 2013, Scott filed a motion to modify his child-support obligation. Scott alleged he had lost his job with PLS and his sole income came from unemployment benefits. In his motion to modify child support, and in all subsequent filings, Scott offered no explanation as to the circumstances of losing his job with PLS, whether it was involuntary, or what date he

became unemployed. The court ruled Scott's child-support obligation would remain \$136.44 per week.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, Scott argues the trial court abused its discretion in (1) allocating 80% of the marital debts to Scott and not specifying which bills were allocated to each party; (2) awarding each party the personal property in their possession at the time of the judgment; (3) awarding Rachael the right to claim all three children for purposes of the dependency tax exemption; (4) failing to properly credit Scott for child-support payments made directly to Rachael; and (5) refusing to modify Scott's child-support obligation. Rachael, on cross-appeal, argues the court abused its discretion in allocating any of the debt to her where (1) she did not know the debts existed; (2) the debts were Scott's business debts, not marital debts; and (3) she should not be held accountable for Scott's criminal restitution. Rachael also asserts Scott's discharge in bankruptcy renders many of his arguments regarding the allocation of debt moot.

¶ 28 We address these arguments in turn.

¶ 29 A. Allocation of Marital Debt

¶ 30 Scott and Rachael both assert the trial court erred in allocating the marital debt. Scott argues the trial court abused its discretion in assigning him 80% of the marital debts and Rachael only 20% of the marital debts without considering the necessary statutory factors. See 750 ILCS 5/503(d) (West 2012). Scott further argues the court abused its discretion in failing to specifically assign the marital debts. Scott argues this court should remand and order the trial court to divide the debts 50% to Rachael and 50% to Scott, to specify which bills each party is responsible for, and to determine how the bills should be paid. On cross-appeal, Rachael argues



the court abused its discretion in ordering her to pay a percentage of Scott's criminal fines and restitution and business debts.

¶ 31 It is well settled that debts incurred during marriage are to be allocated equitably upon dissolution. *In re Marriage of Lees*, 224 Ill. App. 3d 691, 693, 587 N.E.2d 17, 19 (1992). The allocation of marital property and marital debt need not be mathematically equal. *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071, 838 N.E.2d 981, 985 (2005). We review the allocation of marital debts for an abuse of discretion. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658, 698 N.E.2d 1084, 1090 (1998). An abuse of discretion exists only where no reasonable person would take the trial court's view. *Id.*

¶ 32 Rachael filed a motion for reconsideration and expressly argued before the trial court a portion of Scott's criminal fines and restitution should not be allocated to her. The court did not specifically address this argument but denied the motion, saying, "I can assure the parties and counsel that I considered all of the evidence in this case, and when I reached the allocation, that was based upon all the evidence presented. It sounds like to me the complaint is that the petitioner doesn't like the eighty/twenty split. I can understand that thinking on her behalf, but those things were taken into account." Based upon this statement, it appears the court considered Scott's criminal fines and restitution as part of the marital debt.

¶ 33 Rachael relies on a New York case, *Capasso v. Capasso*, 517 N.Y.S.2d 952 (1987), to support her argument Scott's criminal fines and restitution should not be levied against her as an innocent spouse. The court in *Capasso* does not devote a great deal of space to dealing with the question whether the ex-wife should have to share in the ex-husband's criminal fine. The *Capasso* court stated: "Of course, it hardly need be said that the wife should not have to share in the \$500,000 fine to which the husband was sentenced. Nor should she have to share in

any civil fraud or other penalties imposed by [the Internal Revenue Service] on account of the acts charged in the indictment." *Id.* at 968. The *Capasso* court went on to hold the wife would have to share in liability for any taxes or interest related to their joint income tax returns, but penalties associated with the ex-husband's tax fraud would be attributable to him alone. *Id.* at 968-69. Rachael also points to a United States Supreme Court case in which the court held criminal forfeiture to be an *in personam* judgment against a person, as opposed to civil forfeiture, which attaches to particular property. *Alexander v. United States*, 509 U.S. 544, 559 n.4 (1993).

¶ 34 Although no court in Illinois has addressed this point, we find the cases Rachael relies upon persuasive. We also find persuasive the opinion from the Court of Civil Appeals of Oklahoma in *Thompson v. Thompson*, 105 P.3d 346 (2004). In *Thompson*, the wife argued her criminal restitution was marital debt and should be divided equitably because the husband unwittingly benefitted from her criminal activity resulting in greater income. *Id.* at 352. The *Thompson* court stated, "It is also significant that the restitution [w]ife owed was not for a civil settlement or judgment. The restitution was clearly part of her criminal penalty. \*\*\*[S]everal other courts that have addressed similar questions have held that debts from criminal activities are not marital debts." *Id.* at 353 (citing *Harasym v. Harasym*, 418 Pa. Super. 486, 614 A.2d 742, 746 (1992); *Curda-Derickson v. Derickson*, 266 Wis. 2d 453, 668 N.W.2d 736 (2003)).

¶ 35 What constitutes marital debt is not as simple as determining when the debt was incurred. As is the case with many decisions that confront the trial court, determining whether a divorcing party should be held liable for criminal fines or restitution imposed against a spouse must be done based on the facts and circumstances of each individual case. Here, Rachael denied any knowledge of Scott's illegal activities and criminal charges were never initiated against her. According to Rachael, she was not a co-owner of the business, received no money

from the business, and was in no way involved in the business. Given Rachael's lack of culpability, Scott may not evade a portion of his criminal liability by passing it off to Rachael. Upon consideration of the facts in this case, we find it was an abuse of discretion to consider Scott's restitution and fines marital debt.

¶ 36 To the extent the trial court considered the criminal fines and restitution marital debt and allocated its payment between Scott and Rachael, we find it abused its discretion. We reverse and remand for the court to consider the allocation of marital debts exclusive of the monies owed personally by Scott related to his criminal conviction. As to the business debt incurred during the marriage, the court properly considered those debts marital. However, we are mindful the amount of marital debt may have decreased following Scott's discharge in bankruptcy. On remand, we direct the court to consider the bankruptcy discharge, specifically identify the marital debts, and equitably assign specific marital debts to each party, thereby avoiding further litigation.

¶ 37 B. Scott's Personal Property From the Marital Residence

¶ 38 Scott contends the trial court erred in awarding each party the personal property already in their possession. We review the court's decision for an abuse of discretion. *Nelson*, 297 Ill. App. 3d at 658, 698 N.E.2d at 1090. Again, an abuse of discretion exists only where no reasonable person would take the trial court's view. *Id.*

¶ 39 Here, the testimony regarding Scott's personal property left in the marital home conflicts. Scott testified he had been unable to retrieve his belongings after Rachael obtained the emergency protective order. When asked to confirm Scott's lack of access to the marital home, Rachael disputed Scott's testimony. Rachael further testified she did not have any of Scott's personal belongings in her possession at the time of the October 2013 hearing.

¶ 40 "Determinations regarding credibility and weight of testimony should be given deference upon review because it is the trial judge who enjoys the best position from which to observe the demeanor of witnesses." *Moniuszko v. Moniuszko*, 238 Ill. App. 3d 523, 531, 606 N.E.2d 468, 473 (1992). See also *In re Marriage of Benz*, 165 Ill. App. 3d 273, 280, 518 N.E.2d 1316, 1319-20 (1988). This is particularly true when the record contains no transcript from the three-day trial. The appellant has the burden to present a sufficiently complete record. "Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law. [Citations.] 'Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.' [Citation.]" *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157, 839 N.E.2d 524, 532 (2005). We cannot say the trial court abused its discretion in crediting Rachael's testimony and ordering the parties to retain the personal property already in their possession.

¶ 41 C. Dependency Tax Deductions

¶ 42 Scott argues the trial court abused its discretion in *sua sponte* raising the issue of income-tax exemptions and awarding Rachael the tax deductions for all three minor children after having determined the issue in May 2013. Rachael argues the May 2013 determination was a temporary order and the court properly awarded her the exemptions because she is the custodial parent and Scott is now unemployed. The allocation of tax exemptions for minor dependents is reviewed for an abuse of discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 41, 974 N.E.2d 417. As stated before, a trial court abuses its discretion only where no reasonable person would adopt the view taken. *Id.*

¶ 43 Scott argues the trial court may not *sua sponte* modify the tax-exemption allocation without a party filing a motion to modify the allocation. Scott's assertion the tax-exemption allocation was not at issue before the trial court is not well taken. The clerk's minutes reflect the court's award to Scott of two exemptions. However, Rachael argued in her June 2013 written closing argument the court should award all three exemptions to her. In support of this argument, Rachael argued Scott was not current on his child-support payments and was unemployed. "The allocation of the tax exemption is an element of support, over which a trial court has considerable discretion." *In re Marriage of Fowler*, 197 Ill. App. 3d 95, 100, 554 N.E.2d 240, 243 (1990). The allocation should be based on which parent contributes the majority of support. *In re Marriage of Moore*, 307 Ill. App. 3d 1041, 1043, 719 N.E.2d 326, 328 (1999). Given Scott's child-support arrearage and history of untimely payment of child support, we cannot say the court abused its discretion in awarding the dependency tax exemptions to Rachael.

¶ 44 D. Credit for Child-Support Payments

¶ 45 Scott next contends the trial court erred in calculating his child-support arrearage. "The determination of the amount of a child support arrearage is a factual issue; therefore, we will disturb the decision of the trial court only if the decision is contrary to the manifest weight of the evidence." *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399, 806 N.E.2d 727, 730 (2004). *Smith* relied on a Fourth District case where a party defended against a child-support-arrearage claim, arguing he partially paid his obligation. *Id.* (citing *In re Marriage of Jorczak*, 315 Ill. App. 3d 954, 735 N.E.2d 182 (2000)). The *Smith* court stated:

"The Appellate Court, Fourth District, initially noted that the mother was not an injured party seeking recompense for injury, but

instead a judgment [creditor] seeking satisfaction of the obligation created by the dissolution judgment. [Citation.] The court held that, once the mother established the existence of the obligation itself, the father bore the burden of establishing the extent of any payments he made. [Citation.]" *Id.*

The *Smith* court held the wife's reference to the judgment and child-support order established the existence of a child-support obligation. Once the obligation is established, the burden shifts to the obligated party to prove payment. *Id.*

¶ 46 Here, Rachael testified Scott made a few child-support payments but was substantially behind on his total child-support payments. During the October 2013 hearing, Rachael testified she estimated Scott's arrearage to be in excess of \$10,000. Moreover, the record shows an agreed order entered on December 21, 2010, required Scott to pay 32% of his net income for child support, commencing December 10, 2010. The record shows no evidence of Scott's income at the time; however, the parties appear to agree the child-support obligation totaled \$136.44 per week. The subsequent order to withhold income, prepared and filed by Scott's counsel, supports this sum, ordering the withholding of \$136.44 per week for child support.

¶ 47 The parties' closing arguments reflect conflicting views of the amount of the arrearage due, with Rachael arguing an arrearage of \$7,566.76 and Scott arguing an arrearage of \$844.93. We also note Rachael's final proposed judgment on ancillary issues argues an arrearage of \$7,343.80, while Scott's proposed judgment does not mention an arrearage and simply asserts he is entitled to a credit of \$4,118.51—the same credit Scott claims the trial court erred in failing to award him. Given the state of the record, we "must presume the circuit court's order had a

sufficient factual basis and that it conforms with the law." *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009). The record clearly shows an arrearage exists and the resolution over the conflicting views of the amount of the arrearage lies with the trial court as the finder of fact. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 391, 775 N.E.2d 1045, 1054 (2002). Here, the court credited Rachael's calculation of the arrearage and we conclude it was not error to do so. See *In re Marriage of Dwan*, 108 Ill. App. 3d 808, 814, 439 N.E.2d 1005, 1009 (1982).

¶ 48 Scott argues the trial court abused its discretion by failing to give him credit for \$4,118.51 in payments he made directly to Rachael. In his brief, Scott claims respondent's group exhibit Nos. 2 and 3 reflect money orders totaling \$4,118.51 Scott paid in child support directly to Rachael. To the contrary, respondent's group exhibit No. 2 contains 15 money orders for \$136 and 2 money orders for \$272, for a total of \$2,584 in child support paid directly to Rachael. Respondent's group exhibit No. 3 contains seven money orders (and one duplicate) for \$136, for a total of \$952. All told, the two exhibits reflect payments of \$3,536.

¶ 49 Regardless, Scott does not contest the trial court's determination of the initial amount of arrearage. Scott contends the court erred in not granting him credit in the amount of \$4,118.51. In pertinent part, the judgment reads: "The Court find[s] that the Respondent has a child support arrearage, which, after credit for direct payments to the Petitioner, is found to be \$3,225.29." In making this finding, the court took the amount of the arrearage from Rachael's proposed judgment (\$7,343.80) and credited Scott for the full amount he requested in his proposed judgment (\$4,118.51), resulting in the remaining arrearage reflected in the judgment on ancillary issues (\$3,225.29). The court credited Scott for payments in the amount of \$4,118.51, and Scott requests this court grant him relief *he already received*. See *In re Adoption of*

*Walgreen*, 186 Ill. 2d 362, 365, 710 N.E.2d 1226, 1227 (1999) (case moot where court cannot grant any relief not already received). There is no relief this court can offer Scott. Accordingly, we find this issue moot.

¶ 50 E. Modification of Child Support

¶ 51 Scott argues the court abused its discretion in refusing to reduce Scott's child-support obligation following Scott's unemployment. Rachael argues the court was not required to reduce Scott's support obligation and alleges Scott voluntarily left his employment with PLS after he did not get custody of the three minor children. Scott responds, asking this court to strike that portion of Rachael's brief because there is no citation to the record. Scott further asserts his financial affidavit reflects his unemployment. While we decline to strike that portion of Rachael's brief, we limit our consideration to the record before us.

¶ 52 The modification of a child-support obligation is within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. *In re Marriage of Horn*, 272 Ill. App. 3d 472, 476, 650 N.E.2d 1103, 1106 (1995). The burden of providing a sufficient record of trial proceedings to support a claimed error lies with Scott as appellant. *In re Marriage of Kolessar*, 2012 IL App (1st) 102448, ¶ 28, 964 N.E.2d 1166. Without such a record, "we presume that the trial court's judgment conformed with the law and facts and was not an abuse of discretion." *In re Marriage of Newberry*, 346 Ill. App. 3d 526, 531, 805 N.E.2d 640, 644 (2004).

¶ 53 On appeal, Scott contends his financial affidavit, filed before the custody determination, reflected his unemployment and "[t]here is no suggestion in the evidence or testimony" Scott's unemployment "was to evade financial responsibilities for supporting the children." See *In re Marriage of Imlay*, 251 Ill. App. 3d 138, 142-43, 621 N.E.2d 992, 995



(1993) (the absence of evidence showing a motive to evade financial responsibility for the support of his children does not, without more, establish his good faith). Of the trial court proceedings counsel preserved in the record before this court, nothing shows Scott presented any evidence of good faith regarding his change of employment. Scott also ignores the fact the financial affidavit he points to shows a weekly net income of \$490. Statutory guidelines provide for 32% of a person's income for child support for three children. 750 ILCS 5/505(a)(1) (West 2012). Thus, his statutory support is \$156.80 per week, even though he paid only \$136.44 per week. Scott fails to direct this court to anything in the record to justify his claim that support should be set at \$117.25. Therefore, we cannot say the trial court abused its discretion in refusing to modify Scott's child-support obligation where the statutory guidelines, based on the affidavit to which Scott directs this court, provided for a greater sum.

¶ 54

### III. CONCLUSION

¶ 55 For the reasons stated, we affirm in part, reverse in part, and remand for further proceedings.

¶ 56 Affirmed in part and reversed in part; cause remanded with directions.