

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).

2015 IL App (4th) 150066-U

NO. 4-15-0066

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 4, 2015

Carla Bender
4th District Appellate
Court, IL

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| In re: MARRIAGE OF |) | Appeal from |
| TAMARA A. STONEBURG, |) | Circuit Court of |
| Petitioner-Appellee, |) | Macon County |
| and |) | No. 08D239 |
| BRADLEY D. STONEBURG, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | James R. Coryell, |
| |) | Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) This court lacks jurisdiction to consider the contempt finding, as respondent's notice of appeal did not specify that order.
- (2) The trial court did not abuse its discretion in denying respondent's second request to reopen the case.
- (3) Respondent's appeal does not warrant sanctions.

¶ 2 In January 2015, the trial court denied the request of respondent, Bradley D. Stoneburg, to reopen proofs to allow him to submit records to refute claims he did not comply with a child-support order. Bradley appeals, arguing (1) the order finding him in contempt was improper, and (2) the trial court erred in denying his request to reopen proofs. Petitioner, Tamara A. Stoneburg, seeks sanctions, arguing the appeal is frivolous. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2009, the trial court entered a judgment of dissolution of the marriage of Tamara and Bradley. Two children were born to the marriage. Tamara was granted full custody. Bradley was ordered to provide child support.

¶ 5 In October 2011, the trial court found Bradley in willful and contumacious contempt and ordered him to bring child support current within 30 days. A schedule was set for the repayment of past-due amounts.

¶ 6 Nearly three years later, on September 10, 2014, Tamara filed a petition for adjudication of indirect civil contempt. Tamara alleged Bradley was \$8,571.11 in arrears on his child-support obligation and \$1,140.18 in arrears on his arrearage account. A hearing was for set October 8, 2014.

¶ 7 On September 30, 2014, Bradley responded to Tamara's petition. Bradley denied he refused to comply with the October 2011 order and was in arrears. Bradley wrote "support payments have been made both on the current order and on the arrearage accounts both through the State Disbursement Unit and the Circuit Clerk of Macon County."

¶ 8 On October 8, 2014, a hearing was held on Tamara's petition. No transcript appears in the record. The docket sheet states the following:

"Cause called for hearing on Plaintiff's Petition for Indirect Civil Contempt. Witness sworn; evidence heard. Certified copies of clerk's records are admitted into evidence. Judicial notice taken. Court finds that Plaintiff has satisfied her initial burden of showing *prima facie* case of contempt and burden shifts to the defendant to show cause.

Bradley's exhibits 1, 2 and 3 admitted without objection.

Cause taken under advisement."

¶ 9 One day later, Bradley filed a motion for leave to reopen the hearing on the petition for adjudication of indirect civil contempt. According to the motion, Bradley asserted he, at the hearing, testified the records of the State Disbursement Unit showed payments of support that were not evidenced on Tamara's exhibits. Bradley acknowledged he did not produce those documents at the October 8, 2014, hearing. Bradley stated he did, however, attempt to testify regarding the contents of the records, but the trial court ruled such testimony hearsay. Bradley maintained the records were not available as of the October 8 hearing.

¶ 10 On November 19, 2014, the trial court held a hearing on Bradley's motion to reopen the evidence. The docket sheet indicates the motion was denied but dismissed without prejudice. The trial court reasoned the records were readily available to all parties before the original trial date but not presented as proof by Bradley.

¶ 11 On November 21, 2014, Bradley filed a motion for leave to reopen the hearing on petition for adjudication of indirect civil contempt. Bradley alleged he, since the October 8, 2014, hearing, came into possession of the records he needed to support his claims. He attached the proffered records to his motion.

¶ 12 On November 24, 2014, the trial court entered a written order finding Bradley willfully failed to comply with the October 2011 court order. The court found Bradley had been employed full-time for three years, with some periods of layoffs for medical reasons, and Bradley did not file a petition to reduce support during that time period. The court concluded Bradley stopped making payments or reduced payments to an amount he deemed acceptable.

The court ordered Bradley to pay a lump sum of \$3,000 within 30 days, to remain current on child support, pay \$200 per month toward arrearages, and pay \$750 for Tamara's attorney fees.

¶ 13 In December 2014, Tamara filed her response to Bradley's second attempt to reopen the contempt hearing. Tamara alleged, between the filing of her September 10, 2014, petition and the October 8, 2014, hearing, Bradley had sufficient time to prepare the records he wished to present. Tamara asserted the Illinois State disbursement records Bradley attached to his motion were online and available to all payees and payors. Tamara further alleged no new allegations were included in the newest motion.

¶ 14 In January 2015, a hearing was held on Bradley's petition. The trial court asked Bradley's counsel the reason the records were not presented at the original hearing. Counsel responded, "Because, Judge, frankly, I didn't have those records. I had thought that I did, but I found out further that there are other records that we didn't have available to us at the time. I have now found out that they are there. I can show the records, in fact, attached do show that payments were made for each of those—each of those blank items in the Circuit Clerk's office ***."

¶ 15 Tamara's counsel responded there was no evidence, such as cancelled checks or receipts for cash payments, to show Bradley made the payments. Counsel asserted three individuals in the circuit clerk's office made the computations and checked their records twice. Counsel emphasized Bradley's counsel did not seek a continuance at the October 8 hearing. Counsel further explained when the circuit clerk received cash, the clerk's office would send a check to the State Disbursement Unit, making it appear like a double payment.

¶ 16 The trial court found no good explanation for the failure to introduce the

documents at the first hearing. The court denied Bradley's motion for leave to reopen.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Bradley first argues the contempt order is erroneous. Bradley maintains the trial court did not find he had the ability and means to pay.

¶ 20 We do not have jurisdiction over this claim. In his notice of appeal, Bradley stated he was appealing the January 8, 2015, order denying his motion to reopen proofs with prejudice and he sought reversal of the January 8, 2015, order and a remand with directions to grant the motion to reopen and stay further proceedings until the matter could be heard. Bradley did not specify the November 2014 contempt order. This court does not acquire jurisdiction to review judgments not specified in the notice of appeal. *Dowell v. Bitner*, 273 Ill. App. 3d 681, 688, 652 N.E.2d 1372, 1377 (1995).

¶ 21 Bradley next challenges the trial court's decision not to reopen proofs. Bradley contends, without citation to the record, a string of judicial changes resulted in error. According to Bradley's allegations, with no citation to the record, Judge Kitty McCarthy ruled on Tamara's petition for indirect civil contempt in November 2014 and on his initial motion to reopen proofs, denying the latter without prejudice. Before Bradley filed his second motion to reopen the case, Judge McCarthy retired, and the case was assigned to Judge R.C. Bollinger, who had recused himself earlier. The case was then transferred to Associate Judge James R. Coryell for the hearing on the second motion to reopen the case. Bradley argues "Judge Coryell had no knowledge of the extensive background of the case and was unfamiliar with prior proceedings." Bradley maintains, had Judge Coryell looked at the exhibits and listened to counsel's arguments,

he would have reached the opposite conclusion.

¶ 22 We find no error. The record shows Judge Coryell, who was assigned to consider Bradley's second attempt to reopen proofs, conducted a fair proceeding. Before ruling, Judge Coryell requested arguments from counsel and questioned the reasons evidence was not earlier provided. Nothing on record indicates Judge Coryell lacked knowledge of the issues and acted inappropriately.

¶ 23 The order itself does not show error and is not an abuse of discretion. See *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141, 815 N.E.2d 476, 482 (2004) ("The decision whether to grant a motion to reopen proofs lies within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion."). A trial court may properly deny evidence offered for the first time in a posttrial motion if that evidence could have been produced earlier. *Id.* at 1142, 815 N.E.2d at 482. Here, Bradley had multiple opportunities to present this evidence in a timely manner. There were several weeks between the filing of the petition for indirect civil contempt and the October 8, 2014, hearing. At that time, Bradley should have known he did not have the evidence he needed in support of his claims and could have requested a continuance. Instead, Bradley elected to proceed. Before an order was entered finding him in contempt, Bradley filed a motion to reopen proofs, but he did not include the documents. No error is shown.

¶ 24 Last, Tamara filed a motion with this court seeking sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), as a frivolous action not taken in good faith. Tamara maintains the applicable case law shows the decision is not an abuse of discretion and seeks damages, costs of appeal, and other expenses.

¶ 25 We find the circumstances of the case do not warrant sanctions. The motion is
denied.

¶ 26 III. CONCLUSION

¶ 27 We affirm the trial court's judgment. We deny the motion for sanctions.

¶ 28 Affirmed.