

NOTICE

Decision filed 07/16/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140406-U

NO. 5-14-0406

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
CHRISTY CERMINN,	)	Monroe County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 12-D-15
	)	
MATTHEW CERMINN,	)	Honorable
	)	Richard A. Aguirre,
Respondent-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE CATES delivered the judgment of the court.  
Justices Schwarm and Moore concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court did not abuse its discretion in modifying child support based on increased expenses associated with the children and an increase in Father's salary based on a prior misstatement of income.
- ¶ 2 Respondent, Matthew Cerminn (Father), appeals from the judgment entered by the circuit court of Monroe County increasing his child support obligations. We affirm.
- ¶ 3 The marriage of Father and Mother, Christy Cerminn (Petitioner), was dissolved May 16, 2012. As part of the dissolution, Father and Mother entered into a joint parenting agreement granting them joint custody of the parties' two minor children with

Mother being the primary residential parent. Father, in turn, was required to pay child support of \$600 per month plus one-half of the children's day care expenses, extracurricular expenses, school registration and activities fees, and clothing and shoe costs.

¶ 4 On November 7, 2013, Mother filed a petition to modify child support claiming increased expenses for the minor children and increased income for Father. Mother requested that Father be ordered to pay 28% of his net income rather than \$600 plus one-half of the children's expenses other than daycare. After a hearing on the petition to modify, the court granted the motion and ordered Father to pay \$1,614 per month, retroactive to November 7, 2013. All obligations to pay any other expenses listed in the judgment of dissolution of marriage were relieved. After Father's motion to reconsider was denied, Father filed this appeal.

¶ 5 Father argues on appeal that his income has not increased. He also asserts that there was no substantial evidence presented to show that the expenses of the children had increased, and even if their expenses had increased, he already paid half of that increase as required by the original judgment. Father believes the court's decision was an abuse of discretion and against the manifest weight of the evidence given that there was no showing of his increased ability to pay or that the needs of the children had increased.

¶ 6 The evidence presented at the hearing on Mother's motion to modify revealed that Father is employed by the Illinois Army National Guard at Southern Illinois University in Edwardsville as a recruiter. Mother is a school social worker. During the summer, Mother is not working for the most part and keeps the children home during the day so

the parties do not have the expense of daycare. Out of 668 days between the dissolution and the hearing on the motion to modify, Mother had the children 430 of those days. The evidence also revealed that, after the dissolution, Mother initially continued to live in the marital home. When this arrangement no longer worked for the parties, Mother and the children stayed with friends for several weeks. At the end of this period, Mother and the children shared an apartment with Mother's sister until the house she purchased was ready. Moving into the house substantially increased Mother's monthly housing costs. As a result, in order to cut expenses, Mother was forced to eliminate some of the "extras" such as eating out with the children. Mother further testified that the current arrangement of splitting expenses was causing problems. Mother frequently had to discuss with Father the feasibility of making purchases, she had to keep receipts for everything, and then she often had to wait weeks for reimbursement. Mother also pointed out that while some of the children's expenses had gone down, such as daycare, other expenses such as afterschool care and summer lunches were added back into the equation. Additionally, as the children were growing older, they required more frequent bathing and laundry changes in addition to increased costs for sports and other activities. The evidence presented at the hearing also established that Father's income was incorrectly stated at the time of judgment as \$4,500 per month when in fact his salary with added benefits was \$5,765 per month. Both parties agreed that there had been no financial discovery in the original dissolution proceedings.

¶ 7 After the hearing on the petition to modify, the court granted Mother's motion and required Father to pay child support in the amount of \$1,614 per month, retroactive to

November 7, 2013. The court also relieved Father of any obligations to pay any of the expenses listed in the judgment of dissolution. The court specifically stated it was a very close case on whether there was a substantial change, other than the fact that Father's income should have been established as higher. The court determined that, based on the financial statements of each party, the needs of the children had increased substantially since the entry of judgment, and that the current expenses on behalf of the children far exceeded the offset figure of \$600 per month originally contemplated.

¶ 8 We, as a reviewing court, will not overturn a trial court's determination that there was a substantial change in circumstances warranting a modification of child support unless it is against the manifest weight of the evidence. *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 674, 840 N.E.2d 694, 699 (2005). A judgment is against the manifest weight of the evidence, or manifestly unjust, only if it appears that a contrary conclusion is clearly evident. *In re Marriage of Ward*, 267 Ill. App. 3d 35, 41, 641 N.E.2d 879, 884 (1994). We are not to reweigh the evidence. *In re Marriage of Smith*, 172 Ill. 2d 312, 325, 665 N.E.2d 1209, 1215 (1996). We also acknowledge that a substantial change in circumstances justifying a modification to increase child support may be based solely upon an increase in the supporting parent's ability to pay. See *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 29, 985 N.E.2d 602.

¶ 9 It is clear that the original judgment misstated Father's income and that there actually was no increase in his income from the date of the judgment to the filing of Mother's petition. Father's financial statement filed with the court at the time of the dissolution listed only his base salary with no allowances. Military allowances paid to a

parent by reason of his or her employment as an active member of the United States Armed Forces, however, are a species of remuneration to be considered in computing child support under the Illinois Marriage and Dissolution of Marriage Act. See *In re Marriage of McGowan*, 265 Ill. App. 3d 976, 638 N.E.2d 695 (1994). Mother was not aware of the misstatement because no financial information was exchanged at the time of the dissolution.

¶ 10 Father contends Mother could have filed a section 2-1401 petition for relief from judgment for a mistaken salary. See 735 ILCS 5/2-1401 (West 2012). While this may be true, Mother is asking for more than just a correction of Father's listed salary. She also testified that her expenses, particularly household costs, have increased and that the current arrangement of splitting extra costs associated with the children is not working as well as anticipated. We agree that Mother's use of a petition to modify child support was proper under the circumstances. We also agree that while the evidence presented as to a substantial change was indeed close, based on the financial statements of each party, the needs of the children had increased substantially since the entry of judgment, and that their current expenses far exceeded the original offset figure of \$600 per month. This fact, added to the misstatement of Father's income, justified the court's decision to grant Mother's petition to modify child support. We find no abuse of the court's discretion in this instance.

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Monroe County.

¶ 12 Affirmed.