NOTICE
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2015 IL App (5th) 140442-U

NO. 5-14-0442

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
LANCE A. BARBRE,	)	Gallatin County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 12-D-1
	)	
CHERIE K. BARBRE,	)	Honorable
	)	Thomas J. Foster,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Cates and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court abused its discretion when it awarded less than half of the statutory-guideline award for child support.

¶ 2 The respondent, Cherie K. Barbre, appeals orders entered in the circuit court of Gallatin County denying her motion to transfer venue and modifying child support to be paid by the petitioner, Lance A. Barbre. For the reasons set forth below, we reverse the judgment and remand the cause to the circuit court.

¶ 3 BACKGROUND

¶ 4 The parties were married on June 16, 2000. Together, they have two children: Ty J. Barbre, born on June 13, 2002, and Sloane L. Barbre, born on March 31, 2004. On January 4, 2012, the circuit court dissolved the marriage, incorporating the parties' marital settlement agreement and joint parenting agreement into the judgment for dissolution of marriage.

¶ 5 Pursuant to the joint parenting agreement, the parties shared joint legal custody of the children, with Cherie as the primary residential custodian. Lance's visitation schedule included alternating weekends, one evening a week, alternating holidays, and a 10-day period in the summer. In the joint parenting agreement, the parties agreed that either of them may petition the court at any time for a modification of the custody and monetary issues involving the children, specifically waiving any requirement to show a substantial change in circumstances.

¶ 6 The marital settlement agreement specified that Lance's net income from all sources was $13,125 per month; that child support payable at the statutory rate of 28% was $3,675 per month; and that the parties had agreed to deviate from the statutory amount and set child support at $1,800 per month. Pursuant to the marital settlement agreement, Lance agreed to pay 100% of the medical, dental, optical, and prescription drug expenses for the children, which were not paid by insurance and which were not considered copayments. The parties also agreed to venue in Gallatin County, Illinois, although they resided in White County, Illinois, when the dissolution of marriage proceedings were initiated.

¶ 7 Accordingly, the circuit court ordered Lance to pay Cherie $1,800 per month child support. The circuit court noted that the child support payable to Cherie was not in comformity with section 505 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505 (West 2012)). The circuit court nevertheless found the deviation appropriate because the needs of the children were being met, Lance was paying for 100% of the health insurance premiums and out-of-pocket healthcare expenses for the children, and Cherie contributed to the children through the income she earned as a teacher.

¶ 8 On December 9, 2013, asserting that both parties and their minor children resided in White County, Cherie filed a motion to transfer venue from Gallatin to White County. On the same date, Cherie filed a petition to modify child support, asserting that subsequent to the entry of the judgment of dissolution of marriage, the awarded amount of child support had been insufficient to allow the children to enjoy the lifestyle they would have enjoyed if the marriage had not been dissolved, Lance's income had increased, and the children's needs had increased.

¶ 9 On April 9, 2014, after hearing arguments, the circuit court denied Cherie's motion to transfer venue. Thereafter, on July 2, 2014, at the hearing on Cherie's petition to modify, Cherie testified that she was 45 years old and worked as a teacher at Carmi White County High School, earning $51,486 in wages in 2013. Cherie testified that her wages had been frozen for three years. Cherie testified that wages of approximately $3,350, in addition to monthly child support of $1,800, were deposited monthly into her

bank account. Cherie testified that she had received a 2013 federal income tax refund of $2,766 and a 2013 state income tax refund of $137.

¶ 10 Cherie testified that she paid $450 monthly for the house payment, $300 monthly for the car payment, and approximately $3,400 yearly for property taxes. Cherie testified that since the judgment, she had consistently withdrawn funds from her savings because her monthly expenses exceeded her monthly income. Cherie testified that the savings she was awarded in the divorce had been used to buy furniture for her home. Cherie testified that her parents had gifted her $11,000 and she had received $18,000 net proceeds from purchasing a smaller vehicle, all of which she had used for her and the children's expenses. Cherie testified that the balance in her savings account in January 2012 was $13,253.62, but by 2013 had dwindled to $1,687.20.

¶ 11 Cherie testified that the cost of Ty's activities had increased. Cherie testified that Ty golfed five days a week in the summer and participated in golf tournaments, which had entry fees of $20 to $35 and were located throughout southern Illinois. Cherie testified that Lance paid the annual membership fee at the country club, which allowed Ty to get on the course. Cherie testified, however, that she paid $250 extra for the unlimited country club membership, to avoid paying $7 a day, every day, and another $200 for membership at another course. Cherie testified that Ty also participated in wrestling and required the purchase of wrestling equipment. Cherie testified that she drove Ty to tournaments and required hotels occasionally. Cherie acknowledged that Lance drove Ty, and paid entry fees and travel expenses, to approximately half of the golf tournaments.

¶ 12 Cherie testified that the standard of living for the children was different than it had been at the time of dissolution in January 2012. Cherie testified that unlike Lance's, her home did not include a pool, a hot tub, an all-terrain vehicle, or a large yard. She also testified that she must complete the yard work, clean the house, and do the laundry herself. Cherie testified that when the parties were married, a housekeeper cleaned the home biweekly, allowing her more time with the children. Cherie testified that she lived in an older home that was expensive to heat and air condition.

¶ 13 Cherie acknowledged that she had traveled since the judgment. In 2012, she traveled to Nashville, Tennessee, Destin, Florida, and Chicago with friends and to Seattle, Washington, and Holiday World with the children. In 2013, she traveled to Nashville and Kentucky Lake with friends and to Nashville and French Lick, Indiana, with the children.

¶ 14 Lance testified that he was 39 years old and worked at First Financial Services as a financial advisor, which was the same position he held on the date of the judgment of dissolution of marriage. Lance testified that he had worked for First Financial Services for approximately 12 years and had three partners who shared or split monthly commissions based on the sale of client securities. Lance testified that he and his three partners, Randy Kleinschmidt, Gary Holland, and Brock Bolerjack, had an agreement to share total monthly revenues as follows: he and Randy received 41% each, Gary received 10%, and Brock received 8%.

¶ 15 Lance testified that in 2012, his tax return revealed a gross income of $291,451. Lance testified that in 2013, his tax return revealed a gross income of $414,355. Lance

acknowledged that his June 5, 2014, check stub revealed his gross wages through June 5, 2014, as $164,264. Lance testified that his net monthly income was generally $12,000 to $15,000.

¶ 16 Lance testified that although his total yearly income in 2013 was over $410,000, $150,000 to $175,000 of that income could be attributed to a one-time transaction event. Lance testified that in 2013 there was a transaction where approximately $9 million was sold or converted to cash that was reinvested during that period. When the conversion occurred, there was commission that he was due, resulting in a one-time spike in his income in July, August, and September. Lance acknowledged that his check stub for the pay period ending August 13, 2013, revealed a net pay for one month as $55,044.62, which Lance acknowledged, was about $3,500 more than Cherie grossed for the entire year.

¶ 17 Lance testified that he assisted in the purchase of Cherie's home, that the purchase price of the home was $150,000, and that Cherie had thereafter upgraded the home. Lance testified that although he lived in a home with an in-ground pool, hot tub, and 10 wooded acres, the fair market value of his home would be similar to Cherie's. Lance testified that since the judgment of dissolution of marriage, he had traveled on a Bahama cruise, purchased a diamond edition Avalanche vehicle, and repainted and refurnished his home.

¶ 18 Lance testified that he provided health insurance for the children pursuant to the parties' agreement and the judgment of dissolution of marriage. Lance testified that he had paid over $6,000 for other health-related expenses, such as ER visits, not covered by

insurance, since January 2012. Lance testified that he had been paying less than $250 per month for health insurance premiums, but the monthly premium had increased to over $300 for both children.

¶ 19 Lance testified that the costs associated with the children's needs and activities had not increased. Lance testified that he purchased Ty's golf equipment, country club membership fees, green fees, and tournament fees. Lance testified that he paid approximately 50% of Ty's golf tournament expenses.

¶ 20 Gary Holland, a financial advisor and consultant with First Financial Services, testified that he began his partnership with Lance more than 12 years ago. Gary testified that in 2010, 2011, and 2012, he, Lance, Randy, and Brock invested approximately $9 million of client assets into the Coal Credit Property Trust #3, which closed in February 2012. Gary testified that as a result, they had to reposition approximately $11 million to $12 million in new investments in July and August of 2013. Gary testified that as a financial advisor, he had never before or after encountered a two-month period involving the moving of $12 million in client assets and the resulting fees and commissions generated. Gary testified that it was the most lucrative two months he had ever had in the business.

¶ 21 On August 13, 2014, the circuit court entered its order. At the time of its order, Ty was 12 years old, and Sloane was 10 years old. The circuit court concluded that, pursuant to the previous judgment of dissolution of marriage, which incorporated the marital settlement agreement and joint parenting agreement, the parties waived the

requirement that Cherie prove a substantial change of circumstances in order to obtain a modification of child support.

¶ 22 The circuit court calculated the child support Lance owed pursuant to section 505(a)(1) of the Act. 750 ILCS 5/505(a)(1) (West 2012). Subtracting statutory deductions, including health insurance premiums (750 ILCS 5/505(a)(3) (West 2012)), from Lance's gross yearly wages, the court calculated Lance's previous three years of net income as $172,323 in 2011, $192,494 in 2012, and $265,387 in 2013. The court averaged the three years of net income to reach a yearly net income of $210,068, 28% of which calculated to $58,819 yearly child support and $4,901 monthly child support. Thus, the court found that the amount of child support Lance would be required to pay Cherie under the guidelines of section 505(a)(1) of the Act was $4,901 per month.

¶ 23 Pursuant to section 505(a)(2) of the Act (750 ILCS 5/505(a)(2) (West 2012)), however, the court concluded that Lance had proven that a deviation from the guidelines was appropriate. The court found that Cheri received $3,360 net monthly wage income and $1,800 monthly child support income for a total of $5,160 net monthly income, or $61,920 per year. The court found that Lance's monthly net income ranged from $12,000 to $16,000, as it generally had since the judgment. The court discounted the 2013 income earned in August, September, and November, considering it "non-recurring income." The court nevertheless noted that Lance's net income in a typical year would be approximately four to five times that of Cherie's.

¶ 24 The circuit court concluded that Lance had proven a deviation from the guidelines should occur because Cherie could meet her financial needs and those of the children in

the same standard of living enjoyed during the marriage with her income and the child support ordered. The circuit court found that the children had no extravagant needs and that the children's "needs will clearly be met by deviating from the guidelines." The circuit court considered that Lance voluntarily had purchased Ty's clothes and some of his golf expenses. The circuit court found that awarding Cherie the statutory amount of child support would be a windfall to her. Accordingly, the circuit court deviated downward from the statutory guidelines but amended Lance's child support obligation from $1,800 per month to $2,000 per month, which amounted to a $200 increase effective August 2014. On September 8, 2014, Cherie filed her notice of appeal.

¶ 25 ANALYSIS

¶ 26 Cherie argues that section 511(a) of the Act (750 ILCS 5/511(a) (West 2012)) required the circuit court to transfer her cause from Gallatin County to White County where she, Lance, and the children reside.

¶ 27 "[T]he determination of proper statutory venue raises separate questions of fact and law." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 153-54 (2005). "We will not disturb a trial court's findings of fact unless those findings are against the manifest weight of the evidence." *Id.* at 154. " 'A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Id.* at 155 (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)). "After reviewing the trial court's factual findings, we review the legal effect of the trial court's conclusions *de novo*." *Id.*

¶ 28 It is the respondent's burden to prove the petitioner's venue selection was improper. *Id.* To prove the petitioner's venue selection was improper, the respondent must set out specific facts and show a clear right to the relief asked for. *Id.* Any doubts arising from the inadequacy of the record will be resolved against the respondent. *Id.*

¶ 29 Section 512(b) of the Act provides:

> "After 30 days from the entry of a judgment of dissolution of marriage or the last modification thereof, any further proceedings to enforce or modify the judgment shall be as follows:
>
> ***
>
> (b) If one or both of the parties then resides in the judicial circuit wherein the judgment was entered or last modified, further proceedings shall be had in the judicial circuit that last exercised jurisdiction in the matter; provided, however, that the court may in its discretion, transfer matters involving a change in child custody to the judicial circuit where the minor or dependent child resides." 750 ILCS 5/512(b) (West 2012).

¶ 30 Cherie's petition to modify child support was filed more than 30 days after entry of the judgment of dissolution of marriage. At that time, both Lance and Cherie resided within the second judicial circuit, in which Gallatin County is located. Accordingly, pursuant to section 512(b) of the Act, venue is proper.

¶ 31 Cherie cites section 511(a) of the Act, which provides:

> "Any judgment entered within this State may be enforced or modified in the judicial circuit wherein such judgment was entered or last modified by the filing of

a petition with notice mailed to the respondent at his last known address, or by the issuance of summons to the respondent. If neither party continues to reside in the county wherein such judgment was entered or last modified, the court on the motion of either party or on its own motion may transfer a post-judgment proceeding, including a proceeding under the Income Withholding for Support Act, to another county or judicial circuit, as appropriate, where either party resides. If the post-judgment proceeding is with respect to maintenance or support, any such transfer shall be to the county or judicial circuit wherein the recipient or proposed recipient of such maintenance or support resides." 750 ILCS 5/511(a) (West 2012).

¶ 32 Venue may properly lie in more than one jurisdiction. *Patel v. Lacey*, 203 Ill. App. 3d 1048, 1049 (1990). Although venue may also have been proper in White County, transfer was permissive, not mandatory. See 750 ILCS 5/511(a) (West 2012) ("court *** *may* transfer *** to another county" (emphasis added)). Accordingly, Cherie has failed to satisfy her burden of showing that the selection of venue in Gallatin County was improper. "[I]f venue is proper in the original trial, and the [respondent] submits to that venue, bringing the post-judgment proceeding in the same forum allows for more efficient enforcement of judgments." *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24, 55 (1990).

¶ 33 Cherie next argues that the circuit court erred in setting Lance's child support obligation for two children at 11.4% of his net income, as opposed to following the statutory guideline percentage of 28%.

¶ 34 The standards governing court-awarded child support are set forth in section 505 of the Act. 750 ILCS 5/505 (West 2012). Pursuant to section 505(a)(1), the trial court, when ordering a supporting parent to pay child support, "shall determine the minimum amount of support by using the [statutory] guidelines," *i.e.*, a percentage of the supporting party's net income according to the number of children involved. 750 ILCS 5/505(a)(1) (West 2012). For two children, the statutory guideline is 28% of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2012). "Under this statutory scheme, a trial court's award of child support begins, in each case, with the statutory guidelines." *In re Marriage of Turk*, 2014 IL 116730, ¶ 44 (Theis, J., specially concurring). Section 505(a) of the Act creates "a rebuttable presumption that child support conforming to the guidelines is appropriate." *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 28. "The same guidelines and factors apply when the court considers an increase in child support." *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1022 (2003).

¶ 35 The party seeking a deviation from the statutory guidelines bears the burden of producing evidence that compelling reasons exist to justify the deviation. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 35. A trial court may deviate from the guidelines if it finds that doing so is appropriate after considering the children's best interests in light of the following factors: the financial resources and needs of the child and both parents; the standard of living the child would have enjoyed had the marriage not been dissolved; the physical, mental, and emotional needs of the child; and the educational needs of the child. 750 ILCS 5/505(a)(2) (West 2012). When determining whether to deviate from the guidelines, consideration of the factors set forth in section

505(a)(2) of the Act is mandatory, not directory. *Parks v. Romans*, 187 Ill. App. 3d 445, 448 (1989). If the court deviates from the guidelines, it must state the amount that would have been required under the guidelines and its reasons for deviating from that amount. 750 ILCS 5/505(a)(2) (West 2012); *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 53.

¶ 36 The relevant focus for determining income under section 505 of the Act "is the parent's economic situation at the time the child support calculations are made by the court." *In re Marriage of Rogers*, 213 Ill. 2d 129, 138 (2004). "[I]n determining income for child support purposes, the trial court has the authority to compel a party to pay at a level commensurate with his earning potential." *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 26. "Although child support is the obligation of both parents, if one parent earns a disproportionately greater income than the other he or she should bear a larger share of the support." *Id.* ¶ 35; see also *In re Garrett*, 336 Ill. App. 3d at 1023; *In re Keon C.*, 344 Ill. App. 3d 1137, 1143 (2003).

¶ 37 Determining the child support obligation of a high-income parent requires a trial court to balance competing concerns. *In re Keon C.*, 344 Ill. App. 3d at 1142. On one hand, the amount of child support should not be limited to the child's "shown needs," because the child is not expected to live at a minimal level of comfort while the noncustodial parent is living a life of luxury. *In re Marriage of Lee*, 246 Ill. App. 3d 628, 643 (1993). In *In re Marriage of Turk*, 2014 IL 116730, our supreme court recently acknowledged that it would not serve a child's best interests to have to " 'live a dual life in order to conform to the differing socio-economic classes of his or her parents.' " *In re*

Marriage of Turk, 2014 IL 116730, ¶ 25 (quoting Laura Raatjes, *High-Income Child Support Guidelines: Harmonizing the Need for Limits With the Best Interests of the Child*, 86 Chi.-Kent L. Rev. 317, 318-19 (2011)). On the other hand, a child support award is not intended to be a windfall. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 36 (1997). Because of these competing concerns, the statutory child support guidelines have less utility as parties' net income increases. *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App. 3d 747, 754 (1998); *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 392 (1990).

¶ 38 We review a child support award for an abuse of discretion. *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 53. A court abuses its discretion when no reasonable person would take the view adopted by the trial court. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32.

¶ 39 We agree with the circuit court's finding that the parties waived any requirement to show a substantial change in circumstances to modify child support. See 750 ILCS 5/510(a)(1) (West 2012) (providing that a substantial change in circumstances will justify a modification of child support). Notwithstanding the parties' waiver, however, a court may also increase the amount of child support solely on the basis of a parent's increased ability to pay, and it can be presumed that the cost of raising a child increases as the child grows older. See *In re Marriage of Garrett*, 336 Ill. App. 3d at 1021.

¶ 40 Accordingly, in the present case, the guidelines in section 505(a) of the Act created a rebuttable presumption that $4,901 monthly child support, 28% of Lance's monthly net income, represented an appropriate amount. However, the circuit court

found that Lance showed compelling reasons sufficient to overcome the presumption that the guideline support amount of $4,901 per month should be ordered. The circuit court found that a deviation was appropriate because the children did not have "lavish or extravagant needs or wants," or "any extraordinary educational needs," and that Cherie's travel expenses contributed to her perceived lack of financial resources to meet the children's needs. The circuit court held that the children's "needs will clearly be met by deviating from the guidelines." The circuit court further held that "[c]onsidering the things that Lance pays for in addition to his child support (Ty's golf clubs, golf course membership, greens fees, clothing, etc.), [Cherie's after-tax wages] together with the [$200] child support increase *** is sufficient for Cherie to provide for herself and the children in the same standard of living as they enjoyed during the marriage."

¶ 41 Although the circuit court's order was extensive and thorough, we find error in the circuit court's reasoning. In deviating from the statutory guidelines, the circuit court primarily relied on the children's "shown needs." Even where the amount paid in child support exceeds the monthly expenses for the entire household, a child's entitlement to a level of support is not limited to his or her "shown needs." See *In re Marriage of Garrett*, 336 Ill. App. 3d at 1023. Limiting child support to "shown needs" has been rejected by the Illinois Supreme Court (*In re Marriage of Bussey*, 108 Ill. 2d 286, 297 (1985)) for the reason that it, in effect, ignores the standard of living that the child would have enjoyed if the marriage had not been dissolved. See *In re Marriage of Garrett*, 336 Ill. App. 3d at 1023; *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 105-06 (1995). "[I]n modifying a child support award the court may increase the award based upon the ability

of the noncustodial parent to pay, regardless of the increase in the needs of the child." *In re Marriage of Freesen*, 275 Ill. App. 3d at 105-06. It is inferable that, if the marriage had not dissolved, the children would have been enjoying a higher standard of living. See *In re Marriage of Bussey*, 108 Ill. 2d at 297-298 (declining to accept petitioner's argument that a child is only entitled to receive support for his "shown needs").

¶ 42 "The expenses of the family are explicitly tied to the current level of child support." *In re Marriage of Garrett*, 336 Ill. App. 3d at 1024; see also *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 395-96 (2002) ("[I]t is inferrable that, if the marriage had not dissolved, petitioner's son would have been enjoying a higher standard of living. Had he been enjoying the same standard of living while residing with petitioner, it is apparent that the family's monthly expenses would have been higher."). "[W]here a noncustodial parent has the ability to pay support in excess of the stated needs of the child, a court may order child support in excess of the needs to enable the child to enjoy the standard of living he would have had if the marriage had not been dissolved." *In re Marriage of Rogliano*, 198 Ill. App. 3d 404, 412 (1990).

¶ 43 As the court in *In re Keon C.* noted, that child support exceeds the amount a custodial parent reports spending on a child is but one factor for a court to consider. *In re Keon C.*, 344 Ill. App. 3d at 1142-43. In *In re Keon C.*, the court awarded monthly child support of $8,500 for one child, even though the custodial parent reported spending only $1,000 on the child monthly. *Id.* In affirming the award, the court emphasized the noncustodial parent's considerable income, which was $1.4 million and was set to increase to $4.5 million. *Id.* at 1143-44. The court held that "the trial court was entitled

to infer that respondent's son would have enjoyed a high standard of living had the parties not separated." *Id.* at 1144. The court also noted the custodial parent's much smaller financial resources. *Id.*

¶ 44 Further, in deviating significantly below the statutory guidelines, the circuit court improperly considered Lance's gratuities, *i.e.*, "Ty's golf clubs, golf course membership, greens fees, clothing." By their very nature, gratuities may be given or withheld at any time at Lance's unfettered discretion. Any consideration of such gratuities in setting the child support award was improper. *In re Marriage of Freesen*, 275 Ill. App. 3d at 106.

¶ 45 In its order, the trial court calculated the statutory monthly child support as $4,901 but awarded Cherie $2,000 monthly, less than half of the statutory guideline award. Although the evidence revealed that Lance's income had increased significantly, the circuit court effectively lowered the percentage of the previously awarded child support from 13.7% to 11.4%, when accounting for the increase in Lance's income. Although the circuit court had a proper basis to deviate from the statutory guidelines, we find the extreme deviation of the circuit court's award to be an abuse of discretion.

¶ 46 The circuit court found Cherie's monthly net income was $3,360 and Lance's monthly net income was $12,000 to $16,000 per month. The trial court was entitled to infer that, had the parties' marriage not dissolved, their children would have enjoyed a high standard of living. 750 ILCS 5/505(a)(2)(c) (West 2012); *In re Marriage of Ackerley*, 333 Ill. App. 3d at 395. Lance's yearly gross income in 2013 was over $410,000. 750 ILCS 5/505(a)(2)(e). Cherie's resources were much smaller. 750 ILCS 5/505(a)(2)(b) (West 2012). It is clear from the record that Lance's financial resources

after paying Cherie's support are ample to meet his needs. See 750 ILCS 5/505(a)(2)(e) (West 2012); *In re Marriage of Garrett*, 336 Ill. App. 3d at 1024.

¶ 47 The circuit court properly included Lance's 2013 income when it calculated the statutory amount of child support. "If a parent has received payments that would otherwise qualify as 'income' under the statute, nothing in the law permits those payments to be excluded from consideration merely because like payments might not be forthcoming in the future." *In re Marriage of Rogers*, 213 Ill. 2d at 138. The Act does not allow a deduction of nonrecurring income to calculate net income for purposes of child support. *Id.* at 138-39.

¶ 48 However, "the nonrecurring nature of an income stream is not irrelevant." *Id.* at 139. "Recurring or not, the income must be included by the circuit court in the first instance when it computes a parent's 'net income' and applies the statutory guidelines for determining the minimum amount of support due under section 505(a)(1) of the Act." *Id.* "If, however, the evidence shows that a parent is unlikely to continue receiving certain payments in the future, the circuit court may consider that fact when determining, under section 505(a)(2) of the Act [citation], whether, and to what extent, deviation from the statutory support guidelines is warranted." *Id.*

¶ 49 Accordingly, the circuit court, in deviating from the statutory guidelines, properly considered that Lance received nonrecurring income in 2013 and that Lance paid all of the children's health-related expenses (see *In re Marriage of Turk*, 2014 IL 116730, ¶ 35 ("[a]llocation of the obligation to pay the medical and dental expenses of minor children is inextricably linked to the determination of how much monetary support each parent

should contribute toward the children's care")). However, the circuit court's deviation was excessive.

¶ 50 To calculate the statutory amount, the circuit court considered Lance's prior three years of net income: $172,323 in 2011, $192,494 in 2012, and $265,387 in 2013. To determine whether a deviation was appropriate and to calculate the extent of the deviation, the court properly considered the evidence that Lance is unlikely to continue receiving the payout he received in 2013. Accordingly, omitting Lance's income in 2013, and averaging the prior two years of net income, Lance's average yearly net income equals $182,408, and the monthly child support award pursuant to the statutory guidelines equals $4,256. Withdrawing from the average net pay the additional amount Lance testified that he paid for the children's health insurance premiums (post-2012 increase of $50 per month) and withdrawing from the support amount the children's medical, dental, and other healthcare expenses ($6,000 in two years or $250 per month), a more appropriate deviation from the statutory guideline would equate to $3,992 monthly child support.

¶ 51 After considering the evidence at the trial and the record regarding the factors in section 505 of the Act (750 ILCS 5/505 (West 2012)), we find that the circuit court awarded Cherie an inadequate amount of child support and that its excessive deviation from statutory guidelines was an abuse of discretion. The appropriate award should strike a balance between the resources and needs of the parties, Lance's ability to pay, and the standard of living the children would have enjoyed, considering all of the statutory factors.

¶ 52 CONCLUSION

¶ 53 For the reasons stated, we reverse the judgment of the circuit court of Gallatin County, and we remand the cause for further proceedings consistent with this order.

¶ 54 Reversed and remanded.