NOTICE
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NO. 4-14-1021

FILED
January 22, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SHERYE REICHERT and THE DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES, Petitioners-Appellees, v. TRAVIS MOHLENBRINK, Respondent-Appellant.	))))))))	Appeal from Circuit Court of McLean County No. 04F290 Honorable Elizabeth A. Robb, Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court did not err by including respondent father's payments related to the purchase of business assets when calculating his net income; and (2) respondent failed to supply a sufficient record with which to provide this court a sufficient basis to review the trial court's decision.

¶ 2 Following a hearing on the Department of Healthcare and Family Service's (Department) petition to modify child support, brought on behalf of Sherye Reichert, the trial court, pursuant to section 5/505(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 to 802 (West 2014), ordered respondent father, Travis Mohlenbrink, to pay $2,972 per month for child support of his son, Bryce Reichert. Respondent appeals, arguing (1) the trial court impermissibly included payments related to expenditures for the repayment of debt in calculating his net income; and (2) abused its discretion when it incorrectly relied on the

expert opinion of a certified public accountant (CPA) in determining the amount of his child support obligation. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Reichert are the parents of one child, Bryce Reichert, born May 13, 2004. On March 20, 2008, the trial court approved a stipulated agreement between the parties outlining the details of child support and determined respondent would pay $220.40 on a biweekly basis according to section 505(a) of the Act (750 ILCS 5/505(a) (West 2008)). Respondent worked as the manager of a Radisson Hotel, making $50,000 per year. The agreement also delineated instructions to respondent to provide his yearly W-2 and "[i]f there is a need to adjust the child support due to an increase in his salary, the parents will adjust in accordance with the Illinois guidelines."

¶ 5 In 2008, Reichert learned of respondent's catering business, Cracked Pepper, and asked respondent for his tax returns in 2009. Beginning May 29, 2013, respondent increased his child support payments to $276.48. Respondent owns two additional restaurants, Sugar and Salt, along with the catering business. These S-Corporations were incorporated in 2013, 2010, and 2008, respectively. In December 2012, respondent purchased a Porsche Boxster for $79,590, trading in a vehicle worth $38,000 and paying $40,000 in cash. The Porsche is owned and used by Cracked Pepper. In November 2013, respondent purchased a 2014 Land Rover Range Rover Sport for $82,469 for Cracked Pepper, using an older Land Rover Evoque as a trade-in ($44,000 value), paying $18,778 in cash, and financing $20,000. Respondent presented an affidavit of Wendi Olson Ramsay, a CPA, who stated respondent often paid for equipment in one-time payments. Respondent testified that he paid cash for the entire inventory for Sugar. The companies have no debt other than the 2014 Land Rover.

¶ 6 On June 13, 2012, the Department filed a petition to modify child support under section 510 of the Act (750 ILCS 5/510 (West 2012)) on behalf of Reichert. At the hearing, Reichert presented expert testimony by Dennis Knobloch, a CPA. Knobloch testified he reviewed respondent's 2012 and 2013 tax returns for the three Chapter S-Corporations respondent owned as well as his personal income tax returns to calculate child support in accordance with section 505(a) of the Act (750 ILCS 5/505(a) (West 2012)). According to the trial court's letter opinion, Knobloch testified to his calculations of respondent's statutory net income under section 505(a) and statutory guidelines for child support obligations. Knobloch testified he added depreciation back into respondent's income in accordance with the law in the Fourth District. Based upon these calculations, Knobloch determined respondent's net income, multiplied by 20% and divided by 12, resulted in a child support obligation of $2,972 per month. Respondent opposed this calculation.

¶ 7 Respondent believed his net income is only proper if business expenses, as allowed under section 505 (a)(3)(h) of the Act, are deducted. The letter opinion explained respondent did not present an expert witness but testified the expenditures for the restaurant equipment should be deducted from his income as allowable business expenses. The only equipment referenced in the letter opinion was the Porsche Boxster and the Land Rover. In his reply brief, respondent stated on several occasions these expenses included "ovens, stoves, dishwashers, etc[.]"; "ovens, hood systems, dishwashers, etc."; and "ovens, stoves, tables, chairs, dishwashers, etc." Ramsay, a CPA, the respondent's affiant, swore respondent presented unique circumstances by paying for assets in one-time payments. Respondent cited *In re Marriage of Davis*, 287 Ill. App. 3d 846, 679 N.E.2d 110 (1997), in support of his belief he should be allowed to deduct reasonable and necessary business expenditures used for repayment of debt for the

production of income in determining his net income according to section 505 (a)(3)(h) of the Act. He testified he made one-time payments for business assets, and the Land Rover was the only debt the three entities had. He presented no other schedule or evidence of the repayment of any debts. He nevertheless deducted these assets "as if they were 100% expensed." According to this calculation, respondent would only pay child support of $1,507 per month.

¶ 8 The trial court found Reichert's expert, Knobloch, correctly calculated respondent's net income according to Fourth District case law. The court also rejected respondent's contention the inventory and equipment purchased by him should be treated as a deduction from his net income as if the assets were 100% expensed. The trial court ordered respondent to pay $2,972 per month for child support, retroactive to the date of filing the petition to modify. The court noted although this order resulted in nearly a $30,000 per year increase in child support, the court "received little to no information concerning the income and needs of Ms. Reichart" and Bryce has "some unusual health needs and learning disabilities" for which he requires tutoring. The trial court found it did not have enough information to allow it to deviate from the statutory minimum child support calculations and ordered respondent to pay $2,972 per month.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Trial Court Did Not Abuse its Discretion Calculating Net Income Without Deductions for One-Time Payments

¶ 12 Respondent does not challenge the trial court's decision to modify the previous child support order. The issue on appeal, according to respondent, is whether the court erred in its calculation of his net income. Respondent argues the court did not properly deduct his one-

time payments as expenses incurred for the repayment of debts. Respondent argues, in particular, his one-time expenditures for the "repayment of debts" should be considered 100% expensed and deducted from his net income; as compared to debts initially financed to make the initial purchase.

¶ 13 Reichert and the Department argue despite respondent's hypothetical financing, the reality is he purchased this equipment with one-time payments, and no debt exists. Thus, he would not be allowed to deduct these expenditures for repayment of debts under 505(a)(3)(h) of the Act. We agree.

¶ 14 The determinations of a party's net income and to award child support lie within the sound discretion of the trial court. *Einstein v. Nijim*, 358 Ill. App. 3d 263, 268, 831 N.E.2d 50, 54 (2005). Respondent does not challenge the award or the need for a modification of child support, but the trial court's interpretation of section 505(a)(3)(h) of the Act. 750 ILCS 5/505(a)(3)(h) (West 2012). " 'How a statute is interpreted is not a matter left to the trial court's discretion. It presents a question of law ***.' " *Einstein*, 358 Ill. App. 3d at 267, 831 N.E.2d at 54 (citing *In re Marriage of Rogers*, 213 Ill. 2d 129, 135-36, 820 N.E.2d 386, 389-90 (2004)). Accordingly, our review is *de novo*. *Id*.

¶ 15 While the decision to award child support is within the discretion of the trial court, the minimum amount is dictated by statute (750 ILCS 5/505(a) (West 2012)). The trial court is charged with calculating a party's net income and dividing the result by a particular number, dependent on the number of children, to determine the minimum statutory child support amount (750 ILCS 5/505(a)(1) (West 2012)). Section 505(a)(3) defines a party's net income as the total of all income from all sources (750 ILCS 5/505(a)(3) (West 2012)). "The determination of 'net income' *** is a straightforward, mechanical process, explicitly delineated by the

legislature in section 505(a)(3) of the Act." *In re Marriage of Boland*, 308 Ill. App. 3d 1063, 1067, 721 N.E.2d 815, 818 (1999). The legislature provides deductions to be subtracted from net income, including the following:

> "(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income ***. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period[.]" 750 ILCS 5/505(a)(3)(h) (West 2012).

¶ 16 When engaged in statutory interpretation, the fundamental rule is to give effect to the true meaning and intent of the legislature. *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 81, 630 N.E.2d 820, 822 (1994). The statute must be considered as a whole and not read as singular phrases. *International Bureau of Fraud Control, Ltd. v. Clayton*, 188 Ill. App. 3d 703, 710, 544 N.E.2d 416, 421 (1989). The language of the statute is the clearest indication of the legislature's intent. *Solich*, 158 Ill. 2d at 81, 630 N.E.2d at 822. Words and phrases are given their ordinary and popularly understood meaning. *International Bureau of Fraud Control Ltd.*, 188 Ill. App. 3d at 710, 544 N.E.2d at 421. If the language of the statute is clear, the court must give it effect and not turn to extrinsic aids of construction. *Id.*

¶ 17 "Debt" is defined as a "[l]iability on a claim; a specific sum of money due by agreement or otherwise." Black's Law Dictionary 432 (8th ed. 2004). "Repay" is defined as "to pay back (~a loan)." Merriam-Webster's Collegiate Dictionary 989 (10th ed. 2000). This

definition is the plain meaning of repayment as understood in the statute—*i.e.*, the repayment of debt over a term longer than a single payment. Each of the cases presented by the parties contemplates the repayment of debts over a specified amount of time. In *In re Marriage of Davis*, 287 Ill. App. 3d 846, 853, 679 N.E.2d 110, 115 (1997), the Fifth District dealt with the repayment of a loan used to buy a partnership interest in a dental practice. In this district, the court previously dealt with monthly payments for the repayment of a loan used to purchase real estate. *In re Marriage of Cornale*, 199 Ill. App. 3d 134, 137, 556 N.E.2d 806, 808 (4th Dist. 1990). In *Gay v. Dunlap*, 279 Ill. App. 3d 140, 142, 664 N.E.2d 88, 90 (4th Dist. 1996), this court dealt with the long-term lease of a vehicle. Student loan repayments have also been considered. *Roper v. Johns*, 345 Ill. App. 3d 1127, 1130-33, 804 N.E.2d 620, 624-26 (5th Dist. 2004); see also *Davis*, 287 Ill. App. 3d at 854, 679 N.E.2d at 116. Expenses incurred for the repayment of a loan used for the purchase of an airplane have also been considered. *In re Marriage of Hart*, 194 Ill. App. 3d 839, 850, 551 N.E.2d 737, 743 (1990). Even the statute contemplates payments over an extended period of time, as evidenced by a payment schedule (750 ILCS 5/505(a)(3)(h) (West 2012) ("The court shall reduce net income *** only for the *period that such payments are due* ***") (Emphasis added.); see *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 656, 698 N.E.2d 1084, 1088 (3rd Dist. 1998) (requiring debt repayment be evidenced by a specific repayment schedule); see *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1079, 679 N.E.2d 856, 861 (4th Dist. 1997), *aff'd*, 181 Ill. 2d 552, 693 N.E.2d 379 (1998) (the party failed to present evidence of "any specific repayment schedule as required by the act"); see also *In re Marriage of Partney*, 212 Ill. App. 3d 586, 592, 571 N.E.2d 266, 270 (5th Dist. 1991) (finding the trial court erred by deducting investment losses where the losses could not be presented in a specified repayment schedule).

¶ 18 Respondent cited no cases to support the contention expenses paid in one payment are considered "expenditures for repayment of debts." The case law illustrates scenarios where debts are incurred and financed over an extended period, then deducted from net income for the period payments were due. The only debt respondent's businesses has is the Land Rover vehicle. There is no other evidence of payment schedules. The letter opinion stated respondent purchased the entire inventory of Sugar with a one-time payment. Ramsay, respondent's CPA, also attested respondent purchased business assets with one-time payments. The Land Rover is the only debt. Respondent paid for other assets with one-time payments. Although counsel argues this contention is absurd, ludicrous, and against public policy, the purpose of subsection (a)(3), including (h), is to calculate the noncustodial parent's net income. *Gay*, 279 Ill. App. 3d at 147-48, 664 N.E.2d at 94. The legislature has directed the method to calculate a noncustodial parent's net income; it is rigid and objective. See *Boland*, 308 Ill. App. 3d at 1067, 721 N.E.2d at 818 ("[t]he determination of 'net income' *** is a straightforward, mechanical process, explicitly delineated by the legislature in section 505(a)(3) of the Act[]"). Respondent's expenses could be appropriately considered when determining whether to depart from the statutory guidelines. *Gay*, 279 Ill. App. 3d at 148, 664 N.E.2d at 94. The trial court, in its opinion letter, found it "did not have sufficient information which would allow it to [depart] from the statutory minimum."

¶ 19 We hold respondent's single payments for assets were not "expenditures for repayments of debt" under section 505(a)(3)(h) and were properly included in his net income.

¶ 20 B. The Trial Cout Did Not Abuse its Discretion by Relying on CPA Calculation of Net Income.

¶ 21 Respondent next contends Reichert's expert, CPA Knobloch, failed to properly calculate his net income. Respondent argues during the hearing, Knobloch admitted making a

mistake when he included some forms of depreciation while not adding others in his calculation of respondent's net income. We have no record of this testimony, only the trial court's letter opinion. In the letter opinion, the trial court stated Knobloch testified extensively on section 179, bonus, and regular depreciation, which were added back to determine respondent's net income. Respondent testified these deductions were reasonable expenditures and should be deducted from his net income calculation. The record on appeal contains no transcript of this hearing.

¶ 22 "[I]n order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001). Absent any record, any issues related to the conduct of a hearing are not subject to review. *Id.* "[I]t will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984).

¶ 23 Respondent argues Knobloch admitted making a mistake in his calculations during testimony. Respondent is the party charged with presenting a sufficient record to support his claims. The record before us contains no transcript of the hearing or any substitute as permitted by the Illinois Supreme Court rules. The record does not provide the court with a sufficient basis to demonstrate the error of which respondent complains. This court must presume the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Id.*

¶ 24 We hold the trial court did not err when it relied upon Knobloch's testimony determining respondent's child support obligation.

¶ 25 III. CIVILITY

¶ 26 Respondent's counsel, in his brief, claims the trial court "either did not or does not

understand depreciation and/or accounting and its application to net income for child support or the Court was too lazy to do the math necessary to determine the correct net income."

¶ 27 The preamble to the American Bar Association Model Rules of Professional Conduct explains that "a lawyer zealously asserts the client's position." The rules continue, stating "[a] lawyer should demonstrate respect for the legal system and for those who serve it, including judges *** [and] it is *** a lawyer's duty to uphold the legal process."

¶ 28 Although respondent counsel is charged with advocating on behalf of his client, in this instance he displayed disrespect for the trial court. The Model Rules admonish against this type of behavior and so do we. We caution counsel to bear in mind his duty to uphold and respect the legal system.

¶ 29 IV. CONCLUSION

¶ 30 We affirm the trial court's judgment.

¶ 31 Affirmed