2016 IL App (4th) 160055-U

NO. 4-16-0055

FILED
November 3, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF CAROL S. WELLS,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	McLean County
JEFF B. WELLS,	)	No. 06D141
Respondent-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) On remand, the circuit court exceeded the scope of the appellate court's mandate by hearing additional evidence in support of the first petition to modify child support, and therefore a new decision must be made on that petition, this time limiting the evidence only to that originally adduced in the trial on that petition.

(2) The circuit court did not make a finding that was against the manifest weight of the evidence when it found, in response to the second petition to modify child support, a substantial change in circumstances.

(3) Because the amount of child support the circuit court determines in response to the second petition to modify child support might depend, in part, on the amount of child support it determines in response to the first petition to modify child support, the amount of child support under the second petition likewise must be redetermined.

¶ 2 The parties are petitioner, Carol S. Wells, and respondent, Jeffrey B. Wells. Three children, who are still minors, were born to them during their marriage. Their marriage was dissolved on September 13, 2007.

¶ 3 The parties now are litigating over whether respondent's child-support obligation should be increased and if so, by how much. Petitioner has filed two petitions to modify the amount of child support. She filed her first such petition on March 22, 2011, and her second such petition on September 2, 2015. We will call these the "first petition" and the "second petition."

¶ 4 The previous appeal in this case addressed the first petition. *In re Marriage of Wells*, 2015 IL App (4th) 140702-U. We noted the great disparity between the parties' respective incomes and the lack of evidence that the children had any unmet needs or extraordinary expenses. *Id*. ¶ 53. For those reasons, we reversed the circuit court's denial of a downward deviation from the statutory guideline of 32% of respondent's net income (see 750 ILCS 5/505(a)(1) (West 2014)), and we remanded the case for a redetermination of child support in some amount lower than the statutory guideline. *Wells*, 2015 IL App (4th) 140702-U, ¶¶ 53, 68.

¶ 5 On remand, the circuit court set the amount of child support at 25% of respondent's net income for the period of September 7, 2012, to September 2, 2015. Then the court granted the second petition, further modifying child support by setting it at 28% for the period of September 2, 2015, onward.

¶ 6 Respondent again appeals. He makes three arguments. First, he argues that, on remand, the trial court exceeded the scope of our mandate by hearing additional evidence in support of the first petition: evidence over and above that which the court originally heard on June 8, 2012. Second, in the event we disagree with respondent that the court exceeded the scope of our mandate by hearing additional evidence on the first petition, he argues the court abused its discretion by setting child support at 25% of his net income. Third, he argues the court made a finding that was against the manifest weight of the evidence when finding, in response to the

second petition, a substantial change of circumstances justifying an increase to 28% of his net income.

¶ 7 We agree with the first argument and hence do not reach the second argument, which is alternative to the first. As for the third argument, we uphold the finding of a substantial change in circumstances, but we reverse the amount of modified child support (28%) awarded in response to the second petition, because this amount should depend in part on whatever modification the circuit court hereafter makes (upon the second remand) in response to the first petition.

¶ 8 Therefore, we reverse the circuit court's judgment, and we remand this case with directions to do the following. Initially, in response to the first petition, the court should redetermine the amount of child support, this time limiting the evidence to that adduced in the hearing of June 8, 2012. As we held before, there should be an appropriate downward deviation. Next, the court should redetermine the amount of child support in response to the second petition, limiting the evidence to that adduced in the hearing of November 10, 2015, and taking into account the child support the court determines in response to the first petition.

¶ 9 I. BACKGROUND

¶ 10 The parties married on April 30, 1994. Three children were born to them during the marriage: A.W., born July 16, 1999; M.W., born March 5, 2001; and J.W., born August 21, 2003.

¶ 11 The marriage was dissolved on September 13, 2007. The judgment of dissolution, entered on that date, bears the signatures of petitioner's attorney and respondent's attorney under the words "APPROVED AS TO FORM & SUBSTANCE." It was agreed by the parties, and so

ordered, that petitioner would be the primary custodian of the children and that, beginning on September 1, 2007, respondent would pay $400 per month in child support. The judgment provided as follows:

> "C. The Respondent's child support shall be set in the amount of $400.00 per month commencing with the first payment due September 1, 2007 ***. *** Said child support represents a downward deviation on the Respondent's statutory child support by the amount of $900.00 per month in exchange for any claims for maintenance by Respondent from Petitioner or in lieu of claims of offset raised herein. Said offset of $900.00 per month shall continue for a period of five years, shall be considered in future instances of modification of child support (ie. If Respondent's statutory child support would be $1600.00 per month, his child support will be set at $700.00 per month after said offset) and shall terminate in the event the Respondent remarries, dies or cohabits with another individual on a continuing conjugal basis as contemplated within [section 510 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510 (West 2006))]. Further, the Petitioner agrees to assume 100% of any and all day care or nanny related expenses incurred for the benefit of the minor children."

¶ 12 In addition, the judgment divided certain marital assets. Respondent received half of petitioner's IBM Corporation (IBM) (stock shares and $152,072 from her IBM 401(k) plan.

¶ 13 On March 22, 2011, petitioner filed her first petition to modify child support (again, we are calling it the "first petition"). In count I of her first petition, she requested the circuit court to clarify that the downward deviation of $900 from the statutory guideline for child support actually "represented Petitioner's maintenance payment to Respondent." She explained

that she needed this clarification so that the Internal Revenue Service would allow her to deduct the $900 a month from her income taxes.

¶ 14 In count II of her first petition, petitioner alleged that a substantial change in circumstances had occurred in that (1) respondent's ability to support the children had increased and (2) the children's expenses had increased. Therefore, petitioner requested that "[respondent's] child support obligation be increased to a minimum of [32%] of his net income."

¶ 15 On June 8, 2012, the circuit court held a hearing on the first petition. The evidence tended to show the following regarding the parties' incomes. In September 2007, when the judgment of dissolution was entered, the parties stipulated that respondent's annual salary was $60,000. In the hearing of June 8, 2012, he testified his salary was now $70,000.

¶ 16 In 2010—which, petitioner testified, was "an extremely low year" for her—she earned $136,772, almost twice respondent's present earnings of $70,000 a year. More typically, petitioner's earnings were three to four times his earnings. According to documentation from the Social Security Administration, her Medicare wages were $245,886 in 2006, $233,614 in 2007, $225,662 in 2008, and $280,707 in 2009. According to a pay statement in petitioner's exhibit No. 24, her total gross earnings for the year were $322,706 as of May 15, 2011. According to another pay statement in the same exhibit, her total gross earnings for the year thus far were $279,425 as of May 31, 2012. In addition, a domestic partner paid half her household expenses. No one testified that the children had any unmet needs or any unusual, extraordinary expenses, such as uncovered medical bills or private-school tuition.

¶ 17 On August 12, 2012, the circuit court issued a decision on the first petition. First, with respect to count I, the court decided that the $900 a month was actually a downward deviation in child support rather than an offset for maintenance. The court said:

> "Candidly, the Court had preliminarily concluded that the offset was maintenance and that the agreement merely provided a convenience to avoid the unnecessary exchange of checks for maintenance and child support. Yet the plain language of the agreement has persuaded the Court otherwise: 'Said child support represents a downward deviation on the Respondent's statutory child support for the amount of $900.00 per month *in exchange for any claims for maintenance* by Respondent from Petitioner or in lieu of claims of offset herein.' (Emphasis added.) The plain meaning of this language is that no claim of maintenance was presented to the Court in consideration of which the Respondent's child support obligation was lowered. No maintenance was ordered; a downward deviation in child support was ordered."

Therefore, the court denied count I of the first petition, in which petitioner sought a clarification that the $900 a month was maintenance.

¶ 18 As for count II of the first petition, the trial court found that "Respondent's income ha[d] increased to a sufficiently substantial extent to support a modification of child support" to "the statutory guideline of 32% [of] his current income." The court made the modification retroactive to March 22, 2011, the date when petitioner filed the first petition. Subsequently, in an order of July 3, 2014, the court calculated the exact dollar amounts of the retroactive and prospective child support.

¶ 19 Respondent appealed. We held that, in its decision on the first petition, the circuit court abused its discretion by refusing a downward deviation from the statutory guideline of 32% (750 ILCS 5/505(a)(1) (West 2014)). We reasoned as follows in our rule 23 order:

> "[P]etitioner earns substantially more than respondent. Even in 'an extremely low year' for her, petitioner's earnings were almost twice respondent's present earnings. More typically, her earnings were three to four times his earnings. In addition, she got to claim two of the children as deductions, and her domestic partner paid for half of her household expenses. No one testified, in the hearing of June 8, 2012, that the children had any unmet needs or any unusual, extraordinary expenses. We conclude, therefore, that the trial court abused its discretion by setting child support at 32% of respondent's net income, with no downward deviation, from September 7, 2012, onward. *** The vast disparity between the parties' financial resources calls for a downward deviation in some amount. See 750 ILCS 5/505(a)(2)(b), (a)(2)(e) (West 2012). Therefore, we reverse the trial court's decision on count II of the March 22, 2011, petition to modify the judgment of dissolution, and we remand this case for a redetermination of child support." *Wells*, 2015 IL App (4th) 140702-U, ¶ 53.

¶ 20 On September 2, 2015, after we issued our Rule 23 order, petitioner filed her second petition to modify child support (again, we are calling it the "second petition"). She alleged "there ha[d] been a substantial change in circumstances since the prior court orders and that [r]espondent's ability to pay child support had increased and [her] ability to pay ha[d] decreased."

¶ 21 On November 10, 2015, on remand, the circuit court held a hearing on both the first petition and the second petition. The court initially addressed our mandate, which required a redetermination of child support in response to the first petition. Specifically, the court took up the question of what the amount of child support should be for the period of September 7, 2012

(which was approximately when the $900 a month expired), to September 2, 2015 (the date petitioner filed her second petition). Over respondent's objection, the court allowed petitioner to present additional evidence on that question, over and above the evidence already adduced in the hearing of June 8, 2012.

¶ 22 Petitioner testified that the cost of the three children's extracurricular activities (athletics and band) had increased from $30,083 in June 2012 to $36,000 a year and that meeting this cost had lessened her ability to save for retirement and otherwise spend money on herself.

¶ 23 After hearing this additional evidence in support of the first petition, the circuit court heard evidence in support of the second petition. Petitioner testified that in July 2014 she still was working for IBM but that because of a management change in the office, her earnings had declined significantly. In 2013 her earnings were $297,491, but in 2014 they decreased to $171,207. Therefore, in January 2015, she decided to resign from IBM and accept a position at Wells Fargo. She was unable, however, to pass a test as a condition of her continued employment at Wells Fargo. After three months of unemployment (May 8 to August 24, 2015), during which she interviewed with six corporations, she obtained a position at Ernst and Young, where her salary was $250,000. This was a flat salary. The job at Ernst and Young afforded no opportunity to earn bonuses or commissions, which, in 2012 (an especially good year), had pushed her earnings up to $438,040 at IBM.

¶ 24 Petitioner presented evidence that he earned $73,160 a year from his employment at State Farm Insurance Company. The parties disputed whether some capital gains he had realized, consisting primarily of his sale of the IBM stock distributed to him pursuant to the judgment of dissolution, should be regarded as his income for purposes of calculating child support. Petitioner argued the circuit court should find that respondent now was earning $98,500

a year and that the court should increase his child-support obligation accordingly. Respondent, on the other hand, argued that the downward deviation of $900 a month should be reinstated.

¶ 25 On December 29, 2015, the circuit court issued its decision on remand. The court found respondent's annual income to be $77,080—an amount that included capital gains—and the court set his child-support obligation from September 7, 2012, to September 2, 2015, at 25% of his net income. As for the second petition, the court found a substantial change in circumstances by reason of petitioner's decreased earnings, respondent's increased earnings, and the increased extracurricular expenses of the children. Therefore, the court set respondent's current child-support obligation at 28% of his net income, making this modification retroactive to September 2, 2015.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 A. Allowing, on Remand, the Presentation of Additional Evidence in Support of the First Petition

¶ 29 1. *The Standard of Review Applicable to This Claimed Error*

¶ 30 Respondent argues that by considering, on remand, "new evidence concerning the costs of the minor children's care and activities during the period of time encompassed by the mandate, as well as the impact of those costs on [petitioner's] lifestyle," the trial court exceeded the scope of our mandate in *Wells*, and thereby abused its discretion.

¶ 31 Actually, when the question is whether the trial court, on remand, acted within the scope of our mandate, we apply an independent, non-deferential standard of review instead of deferentially looking for an abuse of discretion. See *Gulino v. Zurawski*, 2015 IL App (1st)

131587, ¶ 64 ("The abuse of discretion standard is the most deferential standard of review ***."). "After a remand, the trial court is required to exercise its discretion within the bounds of the remand. Whether it has done so is a question of law. [Citations.] A reviewing court determines a legal question independently of the trial court's judgment." [Citations.] *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351-52 (2002); see also *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1205, 1208 (2006) ("[W]hether the [agency] complied with our mandate is subject to *de novo* review.").

¶ 32

¶ 33 2. *Was the Allowance of Additional Evidence in Support of the First Petition Consistent With Our Mandate?*

¶ 34 A "mandate," "as opposed to the appellate court opinion" (*PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 308 (1981)), is "[a]n order from an appellate court directing a lower court to take a specified action." Black's Law Dictionary 973 (7th 1999). In other words, the "mandate" is the "transmit[ed]" judgment: the order the clerk of the appellate court actually sends to the circuit court sometime after the issuance of the appellate court's opinion (or Rule 23 order). *PSL Realty*, 86 Ill. 2d. at 304; see also Ill. S. Ct. R. 368(a) (eff. July 1, 2006). (The circuit court cannot automatically implement the appellate court's opinion as soon as it is issued, because unbeknownst to the circuit court, a party to the appeal could have petitioned for rehearing (see *id.*); the mandate lets the circuit court know it is all right to begin implementing the opinion.)

¶ 35 Upon remand, the circuit court must proceed in accordance with the reviewing court's mandate. *In re Marriage of Jones*, 187 Ill. App. 3d 206, 215 (1989). The circuit court

"has no authority to act beyond the dictates of the mandate." (Internal quotation marks omitted.) *Quincy School District*, 366 Ill. App. 3d at 1209.

¶ 36 A mandate can be specific or general in its directions as to the action to be taken on remand. *Jones*, 187 Ill. App. 3d at 215-16. "A specific mandate must be followed precisely." *Id.* at 215. If the mandate says, for example, to enter a permanent injunction, the circuit court must enter a permanent injunction. *Id.* If the mandate says to enter a dismissal order, the circuit court must enter a dismissal order. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 49.

¶ 37 Often, however, mandates use general language, telling the circuit court, on remand, to "proceed in conformity with the opinion," or words to that effect. (Internal quotation marks omitted.) *Quincy School District*, 366 Ill. App. 3d at 1209. Obviously, if the mandate says to proceed in conformity with the opinion, "the content of the opinion is significant." (Internal quotation marks omitted.) *Id.* "[T]he trial court must examine the opinion and determine what further proceedings would be consistent with the opinion [citation], and, in this regard, it may allow the introduction of new evidence if consistent with the announced legal principles." [Citation.] (Internal quotation marks omitted.) *Jones*, 187 Ill. App. 3d at 215-16.

¶ 38 We issued our mandate in this case on June 1, 2015, and the mandate used general language when saying what the circuit court was to do on remand. Our mandate said: "It is the decision of this court that the order on appeal from the circuit court be AFFIRMED IN PART, REVERSED IN PART and the cause be REMANDED to the Circuit Court for the Eleventh Judicial Circuit, McLean County, for such other proceedings as required by the order of this court." Because our mandate required the circuit court to conduct other proceedings in conformity with the Rule 23 order (*Wells*, 2015 IL App (4th) 140702-U), the circuit court had to decide whether the Rule 23 order contemplated the presentation of additional evidence in support

of the first petition. Construction of a prior court order is a question of law. *In re Marriage of Avery*, 251 Ill. App. 3d 648, 652 (1993).

¶ 39 Granted, a phrase we used in our mandate, "other proceedings," if considered in isolation, would seem to encompass further evidentiary hearings, since "proceeding" is a broad, all-inclusive word, meaning "action taken in a court to settle a dispute." The New Oxford American Dictionary 1358 (2001). But our mandate did not say merely to "conduct other proceedings." It said to conduct "other proceedings *as required by the order of this court*," that is, the Rule 23 order. (Emphasis added.) Thus, we return to the Rule 23 order. By allowing petitioner, on remand, to present additional evidence in support of the first petition, did the circuit court contradict the "legal principles" "announced" in the Rule 23 order? (Internal quotation marks omitted.) *Jones*, 187 Ill. App. 3d at 215-16.

¶ 40 We conclude the answer is yes. Allowing the presentation of additional evidence in support of the first petition was logically inconsistent with our holding in the Rule 23 order that denying a downward deviation was an abuse of discretion—a holding that was conclusive: the law of the case (see *American Service Insurance Co. v. China Ocean Shipping Co. (Americas), Inc.*, 2014 IL App (1st) 121895, ¶ 17). Presenting evidence of more expenses, over and above the expenses already proved in the hearing of June 8, 2012, would retroactively revise the evidentiary basis of our holding, which ought to be controlling on remand (see *id.*). Also, theoretically, additional evidence could have put the circuit court in the untenable position of having to allow a downward deviation, as the Rule 23 order required, even if the evidence, *retroactively supplemented*, pointed the other way.

¶ 41 To express the problem in somewhat different terms, it would make no sense to say, on the one hand, that our decision in the Rule 23 order is "binding" while saying, on the other hand, that the evidentiary basis of our decision is shifting and subject to revision. *Id.*

¶ 42 The evidentiary hearing on the first petition was on June 8, 2012; that was the trial. The time to present any evidence relevant to the first petition was then, not later. Cases should not be tried piecemeal.

¶ 43 Petitioner argues, however, that denying her the opportunity, on remand, to present additional evidence in support of the first petition would have been unfair to her because she never received notice, before the hearing of June 8, 2012, that respondent would request a downward deviation and thus she received no forewarning of the need to present evidence in opposition to a downward deviation. This argument is unconvincing because the additional evidence that petitioner presented on November 10, 2015, on remand—evidence of additional expenses she incurred for the children's extracurricular activities—was evidence she should have presented in the first place, on June 8, 2012. The burden was on her, all along, to prove a substantial change in circumstances (see *In re Marriage of Lyons*, 155 Ill. App. 3d 300, 304-05 (1987)), and "a change in the children's needs" (*In re Marriage of Sweet*, 316 Ill. App. 3d 101, 105 (2000)), with a consequent reduction of funds for her to spend on herself, was just the sort of evidence one would present to prove a substantial change in circumstances. Insomuch as the children incurred extracurricular expenses before the date of the hearing, June 8, 2012, petitioner should have presented evidence of those expenses in that hearing instead of awaiting the outcome of an appeal and then frantically gathering the evidence she should have presented in the first place. Insomuch she incurred extracurricular expenses after June 8, 2012, those expenses could have been the subject of a subsequent petition to modify child support. See *In re Marriage*

of Zukausky, 244 Ill. App. 3d 614, 618 (1993) ("Support may be modified only as to installments accruing after the nonmoving party has been notified that a motion to modify has been filed and only upon a showing of a substantial change in circumstances.").

¶ 44 We conclude, therefore, that the circuit court exceeded the scope of our mandate by allowing petitioner, on remand, to present additional evidence in support of the first petition. (But the court was correct, on remand, to allow the presentation of evidence in support of the second petition, on which there had not yet been a trial.)

¶ 45 B. The Circuit Court's Decision on the Second Petition

¶ 46 1. *The Finding of a Substantial Change in Circumstances*

¶ 47 Section 510(a)(1) of the Dissolution Act (750 ILCS 5/510(a)(1) (West 2014)) provides that a child-support judgment may be modified only "upon a showing of a substantial change in circumstances." The party seeking the modification has the burden of proving a substantial change in circumstances. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 34 (1997). A "substantial change in circumstances" is "some change in circumstances of any nature that would justify equitable action by the court in the best interests of the child." (Emphasis omitted.) *Id.* at 34-35. To justify equitable action, the change in circumstances has to be "substantial" (750 ILCS 5/510(a)(1) (West 2014)), that is, "of considerable importance, size, or worth" (The New Oxford American Dictionary 1696 (2001)). If the circuit court finds there has been no substantial change in circumstances, it should deny the petition for modification of child support. See 750 ILCS 5/510(a)(1) (West 2014). If, alternatively, the court finds there has been a substantial change in circumstances, the court should follow the procedure in section 505(a) (750 ILCS 5/505(a) (West 2014)) to determine the amount of modified child support.

¶ 48 Respondent argues the circuit court made a finding that was against the manifest weight of the evidence when, in response to the second petition, the court found a substantial change in circumstances justifying an increase of his child-support obligation to 28% of his net income, to take effect on September 2, 2015.

¶ 49 To address this argument by respondent, we first must be clear what "against the manifest weight of the evidence" means. A finding is against the manifest weight of the evidence if the finding is "palpably erroneous and wholly unwarranted or [if] it appears to be arbitrary, unreasonable[,] and not based upon the evidence." *Johnson v. Abbott Laboratories, Inc.*, 238 Ill. App. 3d 898, 905 (1992).

¶ 50 On the basis of the evidence adduced in the hearing of November 10, 2015, could a trier of fact reasonably conclude that a substantial change in circumstances had occurred since the hearing on the first petition (June 8, 2012)? Surely, respondent would not contend that circumstances remained absolutely static during that period. Some changes had occurred. We are unconvinced it would be arbitrary or whimsical to characterize these changes, in combination, as "substantial." 750 ILCS 5/510(a)(1) (West 2014). Petitioner was unemployed from May 8 to August 24, 2015. Although she now earns a good salary at Ernst and Young ($250,000 a year), she has no potential to earn bonuses or commissions there, whereas while she worked at IBM, bonuses and commissions pushed her earnings as high as $438,040 (in 2012). The total cost of the three children's extracurricular activities increased by some $6,000 from June 2012 to November 2015—a pretty hefty sum. Respondent's earnings increased by about $7,000 from 2010 to 2015, although part of that increase consisted of capital gains from cashing in the marital IBM stock he had received pursuant to the judgment of dissolution. Not every reasonable mind would necessarily regard these changes, taken together, as inconsiderable or small.

¶ 51 Respondent argues that by upholding the finding of a substantial change in circumstances, we would go against *In re Marriage of Mulry*, 314 Ill. App. 3d 756 (2000), and *In re Marriage of Plotz*, 229 Ill. App. 3d 389 (1992). Both of those cases, however, are distinguishable, and *Plotz* really does not say what respondent interprets it as saying.

¶ 52 Let us begin with *Mulry*. In that case, the father sought to terminate his child-support obligation, arguing a substantial change in circumstances had occurred in that he had begun paying his daughter's college expenses. *Mulry*, 314 Ill. App. 3d at 758. One of the reasons we were unpersuaded by his argument was that he and the mother had freely and voluntarily agreed, in their separation agreement, that he would pay 80% of the children's college expenses (another reason was that his income had increased since the last modification of the judgment of dissolution). *Id.* at 757, 760-61. The implied reasoning was that if the father's assumption of 80% of the children's college expenses already was taken into account when determining the original amount of child support, his beginning to pay the college expenses represented nothing new—no real change of circumstances—for purposes of child support.

¶ 53 Respondent argues that just as the parties in *Mulry* freely and voluntarily provided, ahead of time, for the father's assumption of college expenses, the parties in the present case freely and voluntarily provided, ahead of time, for respondent's sale of the IBM stock and petitioner's payment of the children's extracurricular expenses and thus those circumstances represent no substantial change. Actually, the judgment of dissolution (which the parties approved in substance) does not appear to say anything about the *sale* of IBM stock by respondent. All it says is that "[t]he parties are to divide the Petitioner's marital IBM stock shares." Nor do we see where the judgment of dissolution says anything about the extracurricular expenses of the children. Petitioner "agree[d] to assume 100% of any and all day care or nanny

related expenses incurred for the benefit of the minor children," but the expenses of athletic and musical activities are not "day care or nanny related expenses." Granted, petitioner testified that she understood the judgment of dissolution as obligating her to pay the expenses of the children's extracurricular activities, but the alleged change in circumstances was not her payment or assumption of these expenses but the *increase* of these expenses. In *Mulry*, by contrast, the father contended that the substantial change in circumstances was his beginning to pay college expenses, not an increase in the amount of the college expenses. *Id.* at 758. Surely, if college expenses doubled after he began paying them, he would not be precluded from arguing a substantial change in circumstances. *Mulry* is inapposite.

¶ 54 As for the other case, *Plotz*, it is distinguishable because in that case the trial court explicitly found no substantial change in circumstances (" 'I don't think there was a substantial change in circumstances evidenced by the record' ") but modified the amount of child support anyway, increasing it by $10 a month. *Plotz*, 229 Ill. App. 3d at 391. As we already have discussed, a finding of a substantial change in circumstances is the prerequisite to any modification of child support. See *id.* at 392. In the present case, the circuit court found a substantial change in circumstances. That alone makes *Plotz* distinguishable.

¶ 55 Respondent argues the "supposed increase in [his] net income is a far cry from the [32%] increase that the Third District Appellate Court [in *Plotz*] suggested would constitute a substantial change in circumstances." But the appellate court in *Plotz* never presented the 32% figure as a threshold. Rather, merely for illustration, the appellate court contrasted the husband's moderate increase in income with the 32% increase in *In re Marriage of Stone*, 191 Ill. App. 3d 172 (1989), a case in which the appellate court affirmed the modification of child support. *Plotz*,

229 Ill. App. 3d at 392. That was not quite the same as defining "a substantial change in circumstances" as a 32% increase in earnings and not a percentage less.

¶ 56 As in the present case, a substantial change in circumstances could be a combination of several changes, not just a change in the noncustodial parent's income. The equitable inquiry is broad. "When determining whether there is sufficient cause to modify, courts consider both the circumstances of the parents and the circumstances of the children." (Internal quotation marks omitted.) *Mulry*, 314 Ill. App. 3d at 760. The circuit court did so in this case. We are unable to agree with respondent that the court made a finding that was against the manifest weight of the evidence when, in its adjudication of the second petition, it found a substantial change in circumstances. See *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 674 (2005).

¶ 57 2. *The Modification of Child Support to 28% in Response to the Second Petition*

¶ 58 "After the threshold question of whether a substantial change in circumstances has occurred is answered, then and only then may the [circuit] court determine the amount of the increase in child support." *Singleteary*, 293 Ill. App. 3d at 35. In determining the amount of the increase, the court should consider the same nonexclusive statutory factors it considered when determining the original amount of child support. *Id.* Those factors are:

> "(a) the financial resources and needs of the child;
>
> (b) the financial resources and needs of the custodial parent;
>
> (c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical, mental, and emotional needs of the child; [and]

(d-5) the educational needs of the child[.]" 750 ILCS 5/505(a)(2) (West 2014).

¶ 59 Because the financial resources and needs of the children (750 ILCS 5/505(a)(2)(a) (West 2014)) and the financial needs and resources of the parents (750 ILCS 5/505(a)(2)(b) (West 2014)) would be effected to some extent by the modification of child support the circuit court orders in response to the first petition, we reverse the 28% in child support and remand this case with directions to redetermine the amount of child support in response to the second petition after redetermining the amount of child support in response to the first petition.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we reverse the circuit court's judgment, and we remand this case with directions to do the following. Initially, in response to the first petition, the court should redetermine the amount of child support, this time limiting the evidence to that adduced in the hearing of June 8, 2012. As we held before, there should be an appropriate downward deviation. Next, the court should redetermine the amount of child support in response to the second petition, limiting the evidence to that adduced in the hearing of November 10, 2015, and taking into account the modified child support the court determines in response to the first petition. Otherwise, the court should proceed in conformity with this order.

¶ 62 Reversed and remanded with directions.