

NOTICE
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2016 IL App (5th) 150513-U

NO. 5-15-0513

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
REBECCA K. WRIGHT,)	Randolph County.
)	
Petitioner-Appellee,)	
)	
and)	No. 10-D-106
)	
ERIC J. HARTMANN,)	Honorable
)	Eugene E. Gross,
Respondent-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court did not abuse its discretion by excluding evidence of the income of the custodial parent's current spouse in determining her financial resources for the purposes of deviating from the child support guidelines, where the court did not abuse its discretion by failing to deviate from the child support guidelines based on the evidence before it, and where the court's inclusion of temporary total disability benefits awarded to the payor in its determination of child support was not a prohibited retroactive modification of child support, the circuit court's decision is affirmed.

¶ 2 The respondent-appellant, Eric J. Hartmann (Hartmann), appeals an order from the circuit court of Randolph County granting the petitioner-appellee, Rebecca K. Wright

(Wright), child support in the amount of \$31,339.28, allocated from Hartmann's worker's compensation award. For the following reasons, we affirm the decision of the circuit court.

¶ 3 Hartmann and Wright were married in 2003, and two children, L.J. and B.A., were born to the marriage. At the times relevant to this appeal, the parties' daughter, B.A., remained a minor. During the marriage, the parties built a home on Wright's father's property. Hartmann and Wright were divorced on August 25, 2010, at which time Wright was granted custody of the two minor children. Hartmann was ordered to pay \$800 per month in child support and maintain health insurance for the children. He also agreed to pay one-half of the children's future college expenses. Wright was awarded the parties' former marital residence and agreed to pay all outstanding mortgaged debt.

¶ 4 On January 9, 2012, Hartmann sought to modify child support pursuant to the Illinois Marriage and Dissolution of Marriage Act (the Act), stating that he had taken "a substantial reduction in pay and is unable to meet his own living needs" with the present child support payment obligation. Shortly thereafter, on January 13, 2012, Hartmann was injured in the course of his employment as a car salesman while earning a weekly wage of \$827.76. A "temporary modification" order was entered on February 24, 2012, reducing support to \$76 per week based upon the fact that Hartmann was receiving unemployment of \$272 per week.

¶ 5 Another order was entered on July 27, 2012, ordering Hartmann to notify the Attorney General's office and Wright of any new employment. The order stated that the

cause may be reset by the request of either party for review of the temporary child support.

¶ 6 Hartmann filed another petition to modify his child support payments on February 20, 2014, alleging that he had been injured at his place of employment, was "permanently disabled," was "engaged in pending worker's compensation litigation in the State of Missouri, and has applied for Social Security disability benefits," and had no present income. On March 7, 2014, Wright filed a response to Hartmann's petition and a petition for rule to show cause, alleging that Hartmann was over \$12,000 in arrears in child support.

¶ 7 On March 19, 2014, a temporary order was entered temporarily abating Hartmann's child support to \$150 per month but reserved the right to adjust child support retroactively. In an agreed order entered on July 3, 2014, child support was set at \$50 per week (\$216.66 per month) effective July 1, 2014. The order required Hartmann to disclose information concerning his worker's compensation claim and required him to escrow 20% of any worker's compensation settlement with his attorney. The agreed order continued the issues of "arrearage, current support based on settlement amount and attorney fees" so as to take into account the resolution of Hartmann's worker's compensation case.

¶ 8 A hearing was held on September 24, 2015, concerning the allocation of the worker's compensation settlement. Hartmann submitted exhibits with the details of his award. Hartmann had been working at Suntrup Kia in St. Louis, Missouri, with an average weekly wage of \$627.76 in 2011. He was fired on January 13, 2012, but slipped

and fell in the parking lot which was found to be a work-related injury. As Hartmann had received 26 weeks of unemployment compensation, he was disqualified from receiving temporary total disability for that time period; however, he was awarded 43 2/7 weeks of temporary total disability; he was also awarded 240 weeks of permanent partial disability after he was found to be 60% permanently partially disabled. The original total award was \$398,947.97 before deductions. His former employer sought review of the judgment, and the posthearing interest increased the award to \$443,979.89.

¶ 9 According to Hartmann's settlement statement, after attorney fees and costs, his net award was \$313,392.80; after medical liens were deducted, the award amounted to \$156,696.40. Child support arrearage of \$13,836.01 was paid to Wright by the insurance company, and \$13,172.10 was paid for "Bob Sutton Loan," which was Hartmann's repayment of a personal loan. The total is listed as \$129,688.29, with "less 20% To Allan Farris" (\$25,937.66) to be placed into escrow into the client trust account; the "Net Disbursement to Client" was listed in the amount of \$103,750.63.

¶ 10 At the hearing, Hartmann testified that as a result of his injury, he had undergone spinal fusion surgery and was on five different medications for his back. However, he was able to work parttime at Total Eclipse Auto Sales in Red Bud, Illinois. He stated, however, that he was unable to work when taking morphine, and as of the date of the trial, he had earned only \$2,000 in 2015. He testified that he had made no large purchases with the award and recognized that he needed the money to meet future regular living expenses. He testified that despite his obligation in the judgment of dissolution of marriage, he had not had the means to provide his children with health insurance.

¶ 11 Hartmann testified that his 16-year-old daughter, B.A., was a well-adjusted young lady and doing well in school. She had no physical or mental disabilities, had no need to see a psychologist or psychiatrist, and had successfully coped with her parents' divorce. She had been provided a car by her mother.

¶ 12 Wright testified that she worked two jobs and earned approximately \$4,000 per month. She had an \$1,800 monthly house payment, and her house was valued at close to \$300,000. When Hartmann's attorney inquired as to other household income, *i.e.*, her current spouse's employment, Wright's attorney objected to the relevance. The court sustained this objection.

¶ 13 Wright testified that Hartmann had never been current on child support. Wright had taken out a loan for her daughter's car and was paying solely for both the vehicle and its insurance. Despite it being Hartmann's obligation, Wright stated that B.A.'s health insurance was provided through her current spouse's employment and that she covered all of B.A.'s uncovered medical expenses.

¶ 14 After hearing the evidence and reviewing written memoranda submitted by the attorneys, the trial court's October 23, 2015, written order found that no basis for deviation from the child support guidelines existed. The court also found that it would be "manifestly unjust" not to include the temporary total disability payments as present income, as it was clear that Hartmann's child support obligation was never based upon the expectation of the award since the court file did not mention the award until July 3, 2014 (while the hearing dates were December 12 and 28, 2013, and the award was dated March 10, 2014). The court ordered that Hartmann pay Wright \$31,339.28 of the

\$156,696.40 award as child support and that each party pay their respective attorney fees. Hartmann appeals.

¶ 15 Hartmann argues that the circuit court's decision was erroneous in the following respects: by excluding evidence of the income of the custodial parent's new spouse in considering deviation from the child support guidelines; by not deviating from the child support guidelines based on the proffered evidence and that the award created a windfall; and, even assuming *arguendo* that the trial court acted within its discretion to order him to pay 20% of his net award as child support, the trial court erred where the portion of the allocated award which directly related to Hartmann's temporary total disability benefits resulted in a retroactive modification of child support. We address each of these arguments in turn.

¶ 16 The exclusion or admission of evidence rests within the discretion of the circuit court and will not be reversed absent an abuse of discretion. *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993). An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41. Here, the trial court sustained the objection to Hartmann's counsel's inquiry into Wright's current spouse's income, finding it irrelevant to his determination of whether or not to deviate from the child support guidelines. Hartmann agrees that, traditionally, the financial status of the custodial parent's current spouse is not considered in postjudgment child support proceedings (see *Robin v. Robin*, 45 Ill. App. 3d 365 (1977)), but argues that "the law on

this subject has evolved" and "equitable principles require the consideration of a new spouse's income."

¶ 17 Both parties agree that the financial status of a current spouse may not be considered to ascertain the ability of a party to fulfill a child support obligation, but it may be equitably considered to determine whether the payment of child support would endanger the ability of the support-paying party and that party's current spouse to meet their needs. *In re Marriage of Keown*, 225 Ill. App. 3d 808, 813 (1992). However, the inquiry here is not into the support-paying party, but rather into Wright's spouse's income, the non-support-paying spouse.

¶ 18 Hartmann cites *Street v. Street*, 325 Ill. App. 3d 108 (2001), and *In re Marriage of Drysch*, 314 Ill. App. 3d 640 (2000), in support of his contention; in these cases, the courts found inquiry into the custodial parent's spouse's income a relevant consideration. *Street*, 325 Ill. App. 3d at 114-15; *Drysch*, 314 Ill. App. 3d at 644-45. However, we find that *Street* and *Drysch* are inapposite due to the fact that both cases are concerned with the noncustodial parent's contribution to educational expenses under section 513 of the Act (750 ILCS 5/513 (West 2014)), not child support obligations pursuant to section 505(a), as is the case here. Hartmann provides no other support for his assertion that the trial court should have departed from the general rule that the financial status of the custodial parent's current spouse is not a proper consideration in postjudgment child support proceedings, or that Wright's current spouse's income was relevant to the trial court's determination regarding deviation from the guidelines. We find that the trial court did not abuse its discretion in excluding this evidence.

¶ 19 The parties agree that the settlement proceeds are income for child support purposes. *In re Marriage of Mayfield*, 2013 IL 114655, ¶ 25. However, Hartmann next asserts that the trial court abused its discretion by ordering Hartmann to pay child support pursuant to the statutory guidelines, arguing that the evidence warranted a deviation from the guidelines.

¶ 20 Section 505 of the Act provides for the imposition of child-support obligations and sets forth a statutory basis for determining the amount of child support; in the case of one child, the minimum amount is 20% of the supporting parent's net income. 750 ILCS 5/505(a)(1) (West 2014). Section 505(a)(2) provides that the guidelines in section 505(a)(1) shall be applied in each case unless the court finds that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence, which includes: the financial resources and needs of the child; the financial resources and needs of the parties; 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 2014).

¶ 21 Hartmann points out that Wright earns \$60,000 annually and lives in the former marital residence valued at approximately \$300,000, and her only outstanding indebtedness is her mortgage payment and the car payments for herself and B.A.; meanwhile, Hartmann is severely medicated and works only when his health allows. He asserted that there was little or no evidence presented as to the standard of living B.A. would have enjoyed had the couple's marriage not dissolved, and that she was mature and well-adjusted after their divorce, with no extraordinary physical, mental, emotional, or

educational needs. Finally, Hartmann notes that at the time the court made this award, B.A. was less than 18 months from the age of majority and thus the award "can be seen as nothing less than a true windfall [to the custodial spouse]." Wright responds that Hartmann has never been current on his child support payments since the parties' divorce, and he has failed to provide health insurance as was ordered by the court.

¶ 22 Child support is a matter within the sound discretion of the trial court, and this court will not disturb the determination absent an abuse of discretion. *In re Marriage of Deem*, 328 Ill. App. 3d 453, 457 (2002). A determination of child support begins with the presumption that the guidelines will be applied, and compelling reasons must exist in order to overcome the presumption and permit the court to deviate from the guidelines. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1022 (2003). The party seeking a deviation from the specific percentages bears the burden of presenting evidence justifying a deviation. *In re Marriage of Blaisdell*, 142 Ill. App. 3d 1034, 1041 (1986).

¶ 23 The focus of Hartmann's argument appears to be the impairment to his earning potential, and we agree that this may impact his future support obligations. However, the matter before us is the distribution of the lump sum that Hartmann received as a result of his worker's compensation award, and none of the reasons advanced by Hartmann support a finding that a deviation from the guidelines is appropriate after considering the best interests of the child. As for the "windfall" that Wright would receive, we note that Wright has provided B.A.'s housing, transportation, insurance, and everyday living expenses since the parties' divorce, while Hartmann was consistently in arrears on his child support payments. After consideration of the relevant factors, we cannot say that

the trial court abused its discretion in determining that a deviation from the guidelines was not appropriate in this instance.

¶ 24 Finally, Hartmann argues that the trial court erred in calculating child support on the portion of his worker's compensation award attributed to total temporary disability benefits, as this amounted to a retroactive modification of child support. Hartmann cites section 510(a) of the Act, which provides that the provisions of a judgment regarding child support may be modified only as to installments accruing subsequent to the filing of the motion for modification. 750 ILCS 5/510(a) (West 2014). He states that on February 24, 2012, his payment was reduced to \$76 per week, and this amount continued until entry of an agreed order on July 3, 2014, reducing the obligation to \$50 per week; no petition for modification of that child support obligation was filed by Wright until September 2015, approximately 10 days before trial. He notes that for the time period under which he was awarded temporary total disability (January 13, 2012, through May 13, 2013), he was under the \$76 per week child support obligation, which he satisfied upon the receipt of his worker's compensation award. Hartmann submits that the trial court retroactively considered income that he was entitled to prior to Wright's petition, and Hartmann had fully paid his support obligation for the time period covered by that portion of the award.

¶ 25 As we have previously discussed, Hartmann filed a petition to modify on January 9, 2012, requesting a reduction in his payment obligation. Thereafter, on February 24, 2012, the court granted Hartmann a temporary modification, and he was ordered to pay \$76 per week based on his unemployment of \$272 per week. On March 19, 2014, a

temporary order further lowered Hartmann's obligation to \$150 per month. On July 3, 2014, Hartmann's worker's compensation award is first mentioned by the trial court, ordering Hartmann to pay \$216 per month and continuing the matter generally until he received his award, specifically so that the parties could then resolve "the issues of arrearage [and] current support based on the settlement amount."

¶ 26 As the trial court noted, nothing in the record indicates that the temporary total disability amount was taken into account in the multiple modifications of Hartmann's child support obligations, as Hartmann was granted steadily decreasing obligations until the July 3, 2014, order. Thus, while Hartmann did pay his child support arrearages for the relevant time period, it is clear that the temporary amount was based on Hartmann's ability to pay without any consideration of the future award. Therefore, the trial court did not retroactively modify Hartmann's child support obligations; rather, the trial court determined that the temporary total disability was a part of the settlement as a whole, as the parties clearly anticipated that the child support amount would be resolved if and when Hartmann received his worker's compensation award. As Hartmann did not realize his temporary total disability until his worker's compensation appeal was complete and his award was in fact received, the trial court properly considered the temporary total disability benefits to be a part of the settlement amount.

¶ 27 For the foregoing reasons, we affirm the decision of the circuit court.

¶ 28 Affirmed.