2017 IL App (2d) 160665-U
No. 2-16-0665
Order filed February 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF COREN PORIS WARREN, Petitioner-Appellee, and PAUL WARREN, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of De Kalb County. No. 11-D-180 Honorable Ronald G. Matekaitis, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in ordering a modification of child support retroactive to a date prior to the filing of the petition for modification.

¶ 2 The marriage of the petitioner, Coren Poris Warren, and the respondent, Paul Warren, was dissolved on March 15, 2012. On April 16, 2015, Coren filed a petition for rule to show cause, based on Paul's alleged failure to provide annual documentation of his income as required by the parties' marital settlement agreement, and a motion to modify child support. On August 3, 2016, the trial court granted the motion to modify child support and ordered that the new child support award be retroactive to the date on which Paul was to have provided the requisite income documentation. Paul appeals from this order. We affirm in part and vacate in part.

¶ 3 BACKGROUND

¶ 4 The parties were married on December 3, 1993. Three children were born to the marriage: Alexander (born October 7, 1996); Caleb (born December 17, 1999); and Eliana (born July 3, 2002). The parties adopted a fourth child, Annalise (born February 19, 2004). On March 15, 2012, a judgment for dissolution of marriage was entered between the parties that incorporated a marital settlement agreement (MSA). Pursuant to the terms of the MSA, the parties were obligated to provide each other with documentation relating to their incomes each year. Specifically, the MSA stated:

> "Each year both parties shall provide each other a copy of their W-2's, K-1's, 1099's and any other evidence of income for the previous year from employers, companies such as WTS Services and any other sources of income to [*sic*] by February 15 of each year."

At the time of the divorce, Paul was working with the Kane County Sheriff's Department and was the owner of Warren Teaching Service Solutions (WTS), and Coren was running her own insurance business.

¶ 5 On February 19, 2015, Coren filed a motion for adjudication of indirect civil contempt, for failure to comply with the MSA, alleging that Paul failed to reimburse her for medical expenses for their children, failed to provide her with all his income documentation as required by the MSA, and failed to refinance a mortgage associated with the former marital residence as required by the MSA. On March 5, 2015, the parties entered an agreed order that Paul owed Coren $138 for the children's uncovered medical expenses. Hearing on the other matters was continued.

¶ 6 On April 16, 2015, Coren filed another motion for adjudication of indirect civil contempt, alleging that Paul had not provided all of his income documentation as required by the MSA. Also on April 16, 2015, Coren filed a motion to modify child support pursuant to section 510 of

the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510 (West 2014)), alleging a substantial change in circumstances in that the children's needs had increased and Paul's income had increased. Coren further alleged that Paul failed to provide income documentation as required by the MSA and that, if he had provided such in a timely manner, she would have had a basis to file a motion to modify child support as early as February 2014. Coren requested a finding that Paul willfully failed to provide his 2013 income documentation as required in February 2014 and asked that the increase in child support be made retroactive to February 15, 2014, the date she could have filed a motion to modify had she been provided with the requisite income documentation. A hearing on the petition and motion was set for June 29, 2016.

¶ 7 Prior to the hearing on June 29, Paul filed a motion *in limine* seeking to limit Coren's request for an increase in child support to the date she filed her motion to modify child support. The trial court proceeded to hear short arguments on the matter. Paul argued that under section 510(a) of the Dissolution Act, the trial court was precluded from awarding modified child support retroactive to a date prior to Coren's April 16, 2015, motion to modify child support. Coren argued that, had Paul complied with the requirements of the MSA and provided documentation of his 2013 income in February 2014, she would have filed a motion to modify child support at that time. The trial court took the matter under advisement and stated that it would "consider the motion in the context of all the information that's brought in" and rule on the motion thereafter.

¶ 8 Coren testified that the MSA obligated both parties to provide the other with W-2's, K-1's, 1099's, and any other evidence of the previous year's income by the February of the following year. She testified that Paul did not provide her with any documentation of his 2013 income in February 2014 as required by the MSA. In June 2014, based on her request, he finally

provided a W-2 from Kane County and a 1099 from WTS. She did not receive his W-2 from Waubonsee Community College, a 1099 from the Fraternal Order of Police Lodge 14, or any K-1. The 1099 from WTS showed income of $3,170. Paul told her that WTS had a tough year. As a result of discovery in this matter, she finally received his 2013 K-1 from WTS, which showed gross receipts of $169,588. Coren also testified that she did not receive anything in February 2015 as to Paul's 2014 income. She ultimately received that documentation as part of discovery in this case.

¶ 9 Coren further testified that she corresponded with Paul via text message in June 2014. At that time, Paul stated that his accountant indicated he would owe her $4,618 in additional child support. She told Paul she did not agree with that amount because she knew he had received a promotion and a pay raise. Paul then offered her $5,000. As she was in the middle of battling cancer, had multiple surgeries, and was trying to provide for four children, she accepted the $5,000. She would not have accepted this amount had she known that WTS had provided Paul with much more income than he divulged. In 2014, she had agreed not to file a motion to modify child support based on the information Paul gave her. Finally, Coren testified that she filed her motion to modify child support because Paul was not reimbursing her for the children's medical expenses as required by the MSA and, based on his lifestyle, she knew he was doing well. Paul was taking trips and doing things that she believed went beyond what could have been provided by his alleged income.

¶ 10 Paul testified that he was aware that the MSA required the previous years' income documentation to be provided to Coren by February of the following year. Paul testified that he did not provide Coren with all his income documentation in February 2014 because Coren did not provide her income documentation to him. She did not give him a K-1, so he did not give her a K-1. He acknowledged that he did not know whether Coren had a K-1 and he did not know

whether he received one from her in discovery. He did not provide her with his income from WTS because she did not provide him with a copy of her taxes. He only gave her what she gave to him.

¶ 11 Paul was presented with his 2013 WTS corporate tax return with a K-1 attached. WTS's gross receipts in 2013 were $169,588 and Paul's ordinary business income from WTS was $51,815. Paul had asked his accountant in 2014 to calculate how much additional child support he owed for 2013 based on all his income. The accountant informed him that he owed $4,618. Paul testified that he agreed to give Coren an extra $5,000 in June 2014 in exchange for her not filing any petitions in court.

¶ 12 The trial court found that under the MSA the parties had a mutual obligation to provide evidence of their income by February of each year but noted that they are not dependent obligations. Failure of one to provide such information did not excuse the other from providing the information. Accordingly, the trial court found Paul in civil contempt for his failure to provide his financial information to Coren on a timely basis.

¶ 13 Further, the trial court noted that a child support obligation would normally only relate back to the date of the petition to modify child support. However, the trial court found that there were circumstances that allowed it to consider a time period earlier than that. The trial court stated that, had Paul provided his income documentation earlier, Coren would have been more motivated at that time to file a petition to modify. As a result, the trial court found it appropriate to modify child support "back to that February 2014 date" that the parties were obligated to turn over their income documentation under the MSA.

¶ 14 On August 3, 2016, the trial court entered a written order finding Paul in indirect civil contempt of court for willfully failing to provide documentation of his income to Coren by February 15, 2014. The trial court ordered Paul to pay the attorney fees of $2,890.78, incurred

by Coren in enforcing the MSA. The trial court granted Coren's motion to modify child support and ordered that the modification would be retroactive to February 15, 2014, due to Paul's failure to provide documentation of his income to Coren by that date. Paul filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 On appeal, Paul argues that the trial court erred in granting the motion to modify child support to the extent that it was retroactive to February 15, 2014. Paul argues that the trial court only had authority to modify the child support from the date the motion to modify was filed, April 16, 2015.

¶ 17 Petitioner has not filed a brief on appeal. While we may not reverse summarily on that basis alone, we need not serve as petitioner's advocate or search the record for a basis upon which to affirm. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *Orava v. Plunkett Furniture Co.*, 297 Ill. App. 3d 635, 636 (1998). "[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." *Talandis*, 63 Ill. 2d at 133. In addition, the trial court's judgment may be reversed where the appellant's brief, as supported by the record, demonstrates *prima facie* reversible error in that judgment. *Id.* The claimed error in this case is easily decided, and we conclude that the trial court's decision must be vacated in part.

¶ 18 Under section 510(a) of the Dissolution Act, "the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2014). "A plain reading of section 510(a) dictates that a retroactive modification is limited to only those installments that date back to the filing date of the petition for modification

and, thus, insures that the respondent is put on notice prior to the court ordering him to pay increased support." *In re Marriage of Pettifer*, 304 Ill. App. 3d 326, 328 (1999) (citing *In re Marriage of Henry*, 156 Ill. 2d 541, 544 (1993) (because child support is entirely statutory in origin and nature, a trial court has no authority to retroactively modify a child support order)).

¶ 19 In the present case, the petitioner's petition to modify child support was filed on April 16, 2015. Accordingly, the trial court only had the discretion to modify child support as to installments accruing after that date. The trial court thus erred in ordering child support retroactive to February 2014. Therefore, we vacate that portion of the judgment ordering the increased child support from February 2014 to April 16, 2015, and remand for a recalculation of the child support arrearage.

¶ 20 In so ruling, we note that the trial court stated that, under certain circumstances, it could order child support retroactive to a date prior to the filing of the motion to modify. We could not find any case law indicating that any exceptions would apply under the circumstances in this case. We note that the trial court found Paul in indirect civil contempt of court for his failure to timely provide his income documentation to Coren pursuant to the terms of the MSA. To the extent that the trial court intended to punish Paul for this failure, we note that compensatory damages may not be awarded in a civil contempt proceeding. *In re Marriage of Morreale*, 351 Ill. App. 3d 238, 244 (2004).

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we vacate that portion of the judgment ordering the increased amount of child support from February 15, 2014, to April 16, 2015. We remand for a recalculation of the child support arrearage. We affirm the remainder of the trial court's judgment.

¶ 23 Affirmed in part and vacated in part; cause remanded.