2017 IL App (2d) 161109-U
No. 2-16-1109
Order filed November 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF WILLIAM WOLF, Petitioner-Appellant, and REBECCA WOLF, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 99-D-1541 Honorable John W. Demling, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in its support award for a non-minor child with a disability, or in considering relevant factors in making that award. Due to the lack of a complete transcript of the relevant hearing, we could not say that the circuit court abused its discretion in awarding maintenance to respondent. Finally, petitioner forfeited consideration of whether the circuit court erred in appointing respondent as trustee of a special needs payback trust. Therefore, we affirmed.

¶ 2 Petitioner, William Wolf, appeals from the circuit court's post-dissolution judgment on maintenance and support of his non-minor child with a disability, as well from the denial of his motion to reconsider. On appeal, William contends that the circuit court erred in (1) calculating his child support obligation; (2) determining that celiac disease and ulcerative colitis complicate

the diagnosis of autism; (3) determining that respondent, Rebecca Wolf, is impaired in her ability to work; and (4) appointing respondent as trustee of the special needs payback trust established for their daughter. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 William and Rebecca were married on January 22, 1995. They had two children, namely: Jessica, born June 7, 1995; and Rachael, born September 25, 1996. Rachel was diagnosed with autism in August 1999, and later with celiac disease and ulcerative colitis.

¶ 5 William filed a petition for dissolution of marriage on June 24, 1999, and a judgment for dissolution was entered on September 27, 2002, which included a marital settlement agreement. Under the agreement, Rebecca was given sole custody of the children, and a visitation schedule was established. William agreed to pay Rebecca $1,750 per month in unallocated family support for a period of 12 months, reviewable upon the filing of a petition by Rebecca at the expiration of the 12-month period. William also agreed to pay the mortgage on the marital home for 12 months. The agreement reserved the issues of child support and maintenance, and stated that the parties were not precluded from seeking child support under the Illinois Marriage and Dissolution of Marriage Act (Act) after Rachel attained majority.

¶ 6 Rebecca filed a petition for review on August 27, 2003, and the parties entered into an agreed order on October 28, 2003, under which William agreed to pay $3,000 per month in unallocated family support for an additional 24 months. Like the prior support order, the award was made reviewable upon the filing of a petition by Rebecca.

¶ 7 In the years that followed, William's support obligation was extended from time to time following additional motions for review by Rebecca, including on November 2, 2006, when the circuit court ordered William to continue paying $3,000 in reviewable unallocated support for an

additional 12 months. That order of support stated that William's support obligation would terminate on September 25, 2014—Rachel's 18th birthday. Between 2006 and 2014, no party sought review of the support order, and William continued to pay $3,000 per month in unallocated family support.

¶ 8 On Aug 26, 2014, Rebecca filed a petition for review and continuation of unallocated support, which the circuit court granted on October 6, 2014. William's unallocated support obligation was extended to March 25, 2016, and the order provided that Rebecca could thereafter file petitions seeking maintenance and support for a non-minor child with a disability.

¶ 9 On March 22, 2016, after Rachel had reached the age of majority, Rebecca filed a petition for maintenance and a petition for support of a non-minor child with a disability. She alleged, in pertinent part, as follows. The parties' dissolution judgment reserved the issues of maintenance and child support under sections 505 and 513 of the Act. She was the primary caregiver for Rachel. Rachel had both physical and mental impairments, in that she suffered from autism, ulcerative colitis, celiac disease, type 2 diabetes, and others. She alleged that "Rachel is a fully-grown, 250 pound woman with the functioning age of at most three (3)," who could be physically combative at times. She had to assist Rachel in nearly every aspect of her life, including showering, preparing meals, and dressing. She took Rachel to several doctor appointments per month. Rachel was hospitalized four times in 2015 due to her ulcerative colitis, and she missed over 100 days of school as a result. Rachel required the strongest medications and a special diet. Rebecca was unable to find part-time work in developmental therapy due to Rachel's disability, a lack of job openings, and her limited availability due to difficulty finding a reliable third party to care for Rachel. She had insufficient income to pay for either part or full-time care for Rachel.

¶ 10 The circuit court heard testimony and received evidence over the course of three days in July and August 2016, and thereafter took the matter under advisement. On August 26, 2016, the circuit court granted Rebecca's petitions, and directed her counsel to prepare a written judgment for presentment at the next status date that was consistent with its oral findings and rulings.

¶ 11 On September 19, 2016, the circuit court entered a written judgment. William was ordered to pay $1,700 per month in modifiable maintenance for a period of five years. The circuit court also ordered that an irrevocable special needs payback trust be created for Rachel, with Rebecca as trustee. William was ordered to pay $1,800 per month directly into the trust for Rachel's support. The judgment contained the following pertinent findings: Rachel was a disabled non-minor child as defined by section 513.5 of the Act, in that she suffered from autism, celiac disease, and ulcerative colitis—all of which made her care more complicated. She required care twenty-four hours per day, seven days a week. Rebecca provided the vast majority of Rachel's care, and personal support care workers helped care for Rachel a small number of hours per week. Rebecca testified that Rachel's financial needs were approximately $2,500 per month. Rebecca had little to no income, and her ability to work was impaired due to her duties in caring for Rachel. Rebecca had taken steps to obtain education and training to become employed. Neither party had significant assets. William earned $135,000 per year, and received gifts from his mother of $500 per month. The marriage was of a short duration, but maintenance was needed for a longer period due to the circumstances.

¶ 12 William filed a motion to reconsider on November 1, 2016, and the circuit court denied it on November 29, 2016. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 William first argues that the circuit court erred in setting his child support obligation at $1,800 per month. Specifically, he contends that the trial court awarded guideline child support under section 505(a) of the Act (750 ILCS 5/505(a) (West 2016)) based on his monthly gross income of $11,250, rather than on his monthly net income, which he argues is $6,140.[1] Applying guideline child support for one child to that amount, William argues that the circuit court should have set his child support obligation at $1,228 per month.

¶ 15 Rebecca counters, arguing that the child support guidelines in section 505(a) are inapplicable to this case, and that the circuit court properly awarded support under section 513.5 of the Act (750 ILCS 5/513.5 (West 2016)), which governs support for non-minor children with a disability. She maintains that the support order is reasonable, especially in light of her testimony that Rebecca's care costs $2,500 per month. In the alternative, she argues that if section 505 applies to this case, the circuit court was not required to accept William's testimony as to his net income, and she notes that William failed to produce his most recent income tax return at hearing.

¶ 16 We agree with Rebecca's first argument. Section 505 of the Act defines "child" as "any child under age 18 and any child under age 19 who is still attending high school." 750 ILCS 5/505(a) (West 2016). Rachel was born in 1996 and had attained majority when Rebecca filed the petition for support of a non-minor child with a disability. The child support guidelines in section 505 of the Act are therefore inapplicable to this case. Though the written judgment does reference section 505 in setting the amount of support, the circuit court clarified in ruling on

[1] William arrives at this figure by purportedly subtracting $5,485.60 in monthly deductions from $11,250 in monthly gross income. We note that William has miscalculated the difference between $11,250 and $5,485.60, which is $5,764.40 rather than $6,140.

William's motion to reconsider that the support order was entered not under section 505, but under section 513.5.

¶ 17 Section 513.5 of the Act governs support for non-minor children with disabilities. This section does not contain a support guideline. Instead, it instructs circuit courts to "consider all relevant factors that appear reasonable and necessary," including:

> "(1) the present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement;
>
> (2) the standard of living the child would have enjoyed had the marriage not been dissolved. The court may consider factors that are just and equitable;
>
> (3) the financial resources of the child; and
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> (4) any financial or other resource provided to or for the child ***." 750 ILCS 5/513.5(b) (West 2016).

¶ 18 Under section 513.5, trial courts are directed to use these factors both in deciding whether support is appropriate, and in setting the amount of support. *In re Guardianship of Sanders*, 2017 IL App (4th) 160502, ¶ 24. The trial court stated explicitly that it took into consideration the factors it felt were relevant under section 513.5 in setting the support determination, and William makes no argument that the circuit court misapplied section 513.5 or failed to weigh the factors therein. Indeed, his brief is devoid of any reference to section 513.5. Rather, his quarrel is with the circuit court's purported use of his gross income in calculating guideline child support under section 505(a) of the Act, which the circuit court plainly did not do.[2] For these reasons,

[2] We would be remiss if we did not point out that the support order is not 20% of William's gross income, as he argues. The circuit court found that William's gross annual income was $135,000, and that he also received monthly monetary gifts of $500 from his

we reject William's argument that the circuit court erred in determining the amount of support for his non-minor child with a disability.

¶ 19 We turn next to William's contention that "the circuit court erred in determining that celiac disease and ulcerative colitis complicate the diagnosis of autism." In his brief, William posits that, "[w]hen managed properly, celiac disease and ulcerative colitis have very little impact on an individual's day-to-day life." He argues that they do not give rise to a finding of disability, nor should the circuit court have considered them as "factors to be considered in assessing [Rachel's] disability."

¶ 20 We reject this argument. At the outset, we note that the circuit court made no such finding that celiac disease and ulcerative colitis complicate the diagnosis of autism, nor did it determine that Rachel is disabled because of these diseases. Rather, the written judgment states that "[c]eliac disease and ulcerative colitis make [Rachel's] care more complicated." Though William requests that we reverse this finding, he also seems to agree with it—he acknowledges in his appellate brief that Rachel's diet must be closely monitored and that celiac disease and ulcerative colitis are "painful and inconvenient" diseases that must be managed properly. Also, William does not contest the court's finding that Rachel is disabled because she suffers from autism. Circuit courts are to "consider all relevant factors that appear reasonable and necessary" in setting support under section 513.5, and the court therefore made no error in considering these diseases as factors or in finding that they complicate Rachel's care.

¶ 21 William's third argument on appeal is that the circuit court erred in finding that Rebecca has an impairment in her ability to work because she is Rachel's caregiver. According

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mother. If the circuit court had ordered support for Rachel based on 20% of these figures, it would have ordered William to pay $2,350 per month.

to William, Rebecca has "ample time to work at a job," noting that Rachel attends year-round school from 8:00 a.m. until 2:00 p.m., and that home-based personal support workers help care for her for up to sixty-five hours per month for free through a state program. He stresses that Rebecca has a master's degree in early childhood education, that she has maintained her educator's license since 2005, and that she is credentialed as a developmental therapist. He contends that the trial court's order on maintenance is "essentially abetting Rebecca in gaming the system." William makes no argument that the court erred as to the amount or duration of maintenance—he argues only that the circuit court erred in determining that maintenance is appropriate in the first place.

¶ 22 We are unable to reach the merits of this issue because the record on appeal is incomplete. In reviewing the record on appeal, it is clear that the circuit court held hearings on Rebecca's petitions over the course of three days: July 19, 2016, August 23, 2016, and August 25, 2016. On August 26, 2016, the circuit court made oral findings and announced its ruling. Of these four days, only the August 23, 2016, transcript appears in the record on appeal.[3] This transcript includes only a portion of Rebecca's cross-examination, and a portion of William's direct examination by his counsel. William also has not provided a certified bystander's report

[3] We note that no transcripts were originally filed with the record on appeal. Subsequent to the filing of the record on appeal, William moved to supplement it with reports of proceedings from June 28, 2016, August 23, 2016, September 6, 2016, October 24, 2016, November 15, 2016, and November 29, 2016. We granted the motion, and William filed supplemental transcripts for these dates. William did not seek to supplement the record with transcripts from the hearing and ruling on the petitions from which he now appeals, save for the August 23, 2016, transcript.

of proceedings or an agreed statement of facts with respect to the other days. The bulk of the testimony relative to this issue is therefore absent from the record on appeal. "An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it 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, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Here, we must presume that the evidence at the hearing supports the circuit court's order on maintenance.

¶ 23 William's final argument on appeal is that the circuit court erred in appointing Rebecca trustee of the special needs payback trust that the circuit court ordered be created in the September 19, 2016, order. He argues that Rebecca is unable to manage even her own funds, and highlights the fact that Rebecca is unemployed and filed bankruptcy in 2009.

¶ 24 William has forfeited this issue on review due to several failings in this portion of his appellate brief. First, his brief violates Supreme Court Rule 341(h)(3) as it relates to this issue, as it does not contain a concise statement of the standard of review. Second, we observe that the only authority relied on by William consists of a recitation of the prudent investor rule (760 ILCS 5/5 (West 2016)), the breach of which William predicts is a "probable event." This conclusion is unsupported by any citation to the record, nor pertinent legal authority. Illinois Supreme Court Rule 341(h)(7) requires that the appellant's brief contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016). This portion of William's brief falls far short of this rule, which our supreme court has stated is not a mere suggestion, but has the force of law. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*,

218 Ill. 2d 342, 353 (2006). "A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented." *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). The appellate court is not a depository into which the appellant may dump the burden of argument and research. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. Failure to follow Rule 341 may result in forfeiture of consideration of an issue on appeal. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Such is the case here.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 27 Affirmed.