2019 IL App (2d) 180271-U
No. 2-18-0271
Order filed March 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ADRIANA VALLIN, n/k/a Adriana Mejia,	)	Appeal from the Circuit Court of Winnebago County.
Petitioner-Appellee,	)	
and	)	No. 13-D-1113
LUIS VALLIN,	)	Honorable Gwyn Gulley,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying respondent's motion to reconsider, as he submitted evidence that he could have submitted at the original hearing.

¶ 2 After the marriage of petitioner, Adriana Vallin, n/k/a Adriana Mejia, and respondent, Luis Vallin, was dissolved, petitioner petitioned the court to hold respondent in contempt for failing to pay child support. The court ordered respondent to pay back child support, and respondent moved the court to reconsider, attaching to his motion copies of the fronts of checks purportedly given to petitioner to pay for child support. The court denied the motion, and

respondent timely appealed, claiming that the court should have granted his motion to reconsider. We disagree. Thus, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 18, 2014, the marriage of petitioner and respondent was dissolved, and respondent agreed to pay petitioner child support of $120 per week. Respondent failed to pay consistently, so the Department of Healthcare and Family Services (DHFS) petitioned to determine respondent's child support arrearage. Attached to the petition was a worksheet revealing that respondent owed petitioner $16,522.55 in child support and interest as of May 31, 2016; he had directly paid petitioner $500 in child support in 2015 and 2016; and he had given $480 to the State Disbursement Unit (SDU) in 2016 that was then remitted to petitioner.

¶ 5 On September 6, 2016, respondent appeared and denied that he owed any arrearage. The court continued the case and ordered respondent to "provide proof of direct payments by next court date." Similarly, on November 23, 2016, the court continued the case and again ordered "direct pay proof to be provided [by respondent] as well [as other evidence] if available."

¶ 6 Before a hearing on DHFS's petition was held, petitioner petitioned for a rule to show cause why respondent should not be held in contempt of court for failing to pay child support and retained private counsel. DHFS withdrew its petition, and respondent responded to petitioner's petition, again claiming that he "never missed a child support payment and has often paid above the $120 per week." At the June 23, 2017 hearing, petitioner testified that as of the date of the hearing, respondent owed $20,080 from the date of the judgment of dissolution. She also acknowledged a series of checks representing payments which coincidently were in the total amount of $4200. The court found respondent in contempt of court and ordered him to pay petitioner $16,060 in child support and interest.

¶ 7 Respondent moved the court to reconsider, claiming that he had paid $4220 in child support. Attached to his motion were copies of 23 checks purportedly written between August 12, 2014, and September 29, 2016, to either petitioner or SDU in amounts ranging from $120 to $500. At a subsequent hearing, respondent indicated that he had not produced the checks earlier because he had not believed that petitioner would lie under oath about the amount of child support she had received. The court denied the motion to reconsider and noted that respondent failed to meet his burden of proving why he should not be held in contempt. The judgment amount stood. Respondent appeals the denial of his motion to reconsider.

¶ 8 II. ANALYSIS

¶ 9 Before considering the merits of this appeal, we note that petitioner has not filed a brief in this court. As the record and issues are simple enough that we can address the claimed error raised, we proceed to do so under the guidelines of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 10 At issue in this appeal is whether the trial court abused its discretion when it denied respondent's motion to reconsider. *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 28. As the trial court had imposed an appealable contempt sanction, we have jurisdiction to consider this issue. See Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016); see also *In re Marriage of Levison*, 2013 IL App (1st) 121696, ¶ 51.

¶ 11 A motion to reconsider brings to the court's attention (1) newly discovered evidence, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Id.* ¶ 29. Respondent argues that his motion to reconsider brought to the court's attention newly discovered evidence. We disagree.

¶ 12 Evidence is considered "newly discovered" when it was not available prior to the previous hearing. *Id.* ¶ 30. "In the absence of a reasonable explanation regarding why the evidence was not available at the time of the original hearing, the circuit court is under no obligation to consider it." *Id.* The rationale behind this rule is simple.

> "Trial courts should not permit litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling. Civil proceedings already suffer from far too many delays, and the interests of finality and efficiency *require* that the trial courts not consider such late-tendered evidentiary material, no matter what the contents thereof may be." (Emphasis in original.) *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248-49 (1991).

¶ 13 Here, we cannot conclude that respondent has provided a reasonable explanation for why he did not submit the checks at the hearing on the petition for a rule to show cause. At the hearing on his motion to reconsider, he claimed that he did not submit such evidence because he did not believe that petitioner would lie about the payments she received. Yet respondent was ordered to submit evidence of his payments at least twice before petitioner filed her petition for a rule to show cause, and he never produced any such evidence. Respondent knew that he had the burden of establishing at the hearing on the petition why he should not be held in contempt of court. Yet he still did not produce the evidence.

¶ 14 Respondent asserts that "[w]hile [it is] true that the checks [respondent] presented at the hearing on his motion to reconsider could have been discovered prior to the hearing, [respondent] was under the mistaken impression that the trial court's arrearage finding did not include the funds from the 23 checks paid to [petitioner]." This is preposterous to say the least. It is clear from petitioner's testimony that she acknowledged payments through a series of checks

totally $4220, which was coincidently the same aggregate amount of the 23 checks respondent submitted with his motion to reconsider. Again, in September 2016 and November 2016, the court asked for evidence of *all* the payments respondent made. The November request was made well after the date of the last check respondent presented with his motion to reconsider. Further, at the hearing on the petition for a rule to show cause, respondent admitted that he had other checks but that he had not submitted them. Because these checks and any others referenced by respondent were clearly requested and available at the time of the hearing on the petition for a rule to show cause, we conclude that the court did not abuse its discretion when it denied respondent's motion to reconsider. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 325 (2010).

¶ 15 Respondent's reliance on *In re Marriage of Tollison*, 208 Ill. App. 3d 17 (1991), and *Cooney v. Balmer*, 2012 IL App (2d) 100950-U, do not persuade us otherwise. Not only is *Cooney* of no precedential value and not to be cited (see *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 17), but both cases stand for the proposition that, when the evidence clearly establishes an overpayment of child support, equity mandates that the party paying child support receive a credit. *Tollison*, 208 Ill. App. 3d at 20; *Cooney*, 2012 IL App (2d) 100950-U, ¶ 47. Here, the evidence supports the conclusion that the checks petitioner acknowledged, totaling $4220 are the same checks that respondent sought to have the court accept in his motion to reconsider. Thus, respondent did not establish that he overpaid his child support.

¶ 16 As respondent raised only the issue of whether his motion to reconsider was properly denied, we do not consider whether the amount awarded to petitioner was accurate.

¶ 17 III. CONCLUSION

¶ 18 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.