SECOND DIVISION
June 4, 2013

Nos. 1-12-1119 & 1-12-1612
(Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from
BARRI REDMAN,	)	the Circuit Court
	)	of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 04 D 9605
	)	
GREGORY GREIFF,	)	Honorable
	)	Kathleen G. Kennedy,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: Noncustodial parent seeking review of the circuit court's denial of his request to reduce his child support payments to the level he unilaterally felt he could afford failed to demonstrate that the circuit court abused its discretion when making its decision. Additionally, there was no abuse of discretion in denying respondent appointment of counsel on civil contempt proceedings brought by petitioner. Therefore, we affirm the judgment of the circuit court.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Gregory Greiff, a noncustodial parent, appeals the circuit court's ruling on his petition to reduce child support payments to petitioner, Barri Redman, respondent's former wife and custodial parent, to support his one child, Aiden Greiff, conceived during their marriage. Respondent also appeals the circuit court's grant of petitioner's request to impute income to respondent. For the reasons that follow, we affirm.

¶ 4 II BACKGROUND

¶ 5 During the marriage between Redman and Greiff, one son, Aiden, was born on October 4, 2002 to them. On December 12, 2006, their marriage ended in divorce. In 2007, agreed child support orders were entered requiring Greiff, the noncustodial parent, to pay $1706 per month in child support payments to Redman, the custodial parent, for Aiden. In July 2008, Greiff was terminated from the job he held at United Health Group in Minnesota where he made in excess of $80,000 per year. One week later, Greiff filed a motion to modify the order requiring him to pay $1706 per month for Aiden's support because he was unemployed and now unable to pay the ordered child support payments. He testified that he received unemployment benefits from November 2008 until August 2009, as well as severance pay from United Health Group. Since filing his motion to modify the child support payments, Greiff maintains that from the date of his termination to the present, he has been unable to find full-time employment.

¶ 6 Greiff has an undergraduate degree from the University of Chicago and a master's degree from Northwestern University. He testified that his field is risk management. Following his termination from his job, Grieff remarried to his current wife who is employed as a physician. He

receives his health insurance through her policy. He also testified that he has no housing expenses and keeps all of his expenses down to $50 per month. He submitted that he is involuntarily out of work and actively engaged in looking for a job. He testified that he spends eight hours a day every day looking for work. At the time he testified before the circuit court, he had just accepted freelance employment at $45 per hour with no guaranteed fixed hours with a company called Outerlinks located in Lowell, Massachusetts. He testified that he expects to gross $2,250 per month. He also testified to self-employment involving tutoring jobs. Greiff was unable to substantiate his income and expenses to the trial court in the traditional manner as he does not maintain a checking account, a savings account or any financial holdings usually used to evaluate a person's financial status. At the hearing, it was disclosed that he has not filed a tax return since his termination from United Heath Care in July 2008.

¶ 7 Greiff testified that he is not willing to pay more than the minimum 20% to support his son. He is also not willing to pay any of his ex-wife's legal fees incurred in attempting to collect child support payments from him. He also testified that he is not willing to pay interest on the back child support payments he owes for his son's support. He does not know how much his ex-wife pays to care for his son.

¶ 8 At the hearing, in 2011, the custodial parent claimed the father was in arrears in child support of approximately $75,000. Greiff was requesting a modification of the monthly amount to $277.60 for the period July 21, 2008 through August 31, 2009, which represents 20% of his net unemployment benefits. He also claims he should be credited with the $100 per month the paternal grandparents give to their grandchild, Aiden.

¶ 9 After a full hearing on the merits, the trial court found both Greiff's testimony about his efforts to find employment and his supporting documentation to be not wholly credible and did not credit the legitimacy of his failure to find employment commensurate with his earning potential. The trial court also found, based on its assessment of the credibility of Greiff's testimony and his demeanor, that his "poverty" is contrived in order to minimize his child support obligations. Although Greiff characterized funds he receives from his parents as loans, the court concluded that they are gifts. The trial court did reduce the amount of child support payments Greiff, the noncustodial parent, must pay from $1,706 per month down to $700 per month, effective September 2009. The court ordered Greiff to pay 20% of his net severance package received from United Health Care and 20% of his net unemployment benefits as child support. The court disallowed the monies Aiden received from his paternal grandparents to be credited to Greiff in the calculation of child support payments owed. The trial court also lowered the amount Greiff is in arrears in child support payments to $21,000. The court further ordered Greiff to "aggressively pursue employment commensurate with his earning potential by applying to a minimum of five positions per day and fully and contemporaneously documenting those applications." Greiff timely filed an appeal pursuant to Supreme Court Rule 303(a)(1). Greiff also appealed the trial court's subsequent order of May 11, 2012, wherein it denied his request for a court-appointed attorney to represent him in relation to his ex-wife's Petition for a Rule To Show Cause as to why he should not be held in contempt. Greiff's two appeals were consolidated herein.

¶ 10 III. ANALYSIS

¶ 11 Respondent raises two separate appellate issues involving child support. The crux of his

claim is that the trial court erred in its calculation of child support payments by not following the guidelines of section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505(a)(3) (West 2010)) and deviated upward from the guidelines in setting his revised child support obligations. He also argues that the trial court improperly imputed income to him.

¶ 12 Section 510(a)(1) of the Act permits an order for child support to be modified upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2010). "Once a modification is authorized under section 510, a trial court is to set the amount by considering the same factors used to determine an initial child support order." *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App. 3d 747, 751 (1998). Section 505(a) of the Act establishes guidelines for the calculation of child support. 750 ILCS 5/505(a) (West 2010). When a parent is obligated to pay child support for one child, as in this case, the guideline amount is 20% of that parent's net income. "Section 505(a) of the Act creates a rebuttable presumption that a specified percentage of a noncustodial parent's income represents an appropriate child support award." *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App. 3d 747, 751-52 (1998); *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). "The court is to apply the guideline amount unless it finds that the application of the guidelines is inappropriate after considering various factors, including the children's needs and resources, the needs and resources of both parents, and the standard of living the children would have enjoyed had the marriage not been dissolved." *Id.*; 750 ILCS 5/505(a)(2) (West 2010). "The court must make express findings if it deviates from the guidelines." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). "The findings of the trial court as to net income and the award of child support are within its sound discretion and will not be disturbed on appeal absent an abuse of

discretion." *In re Marriage Breitenfeldt*, 362 Ill. App. 3d 668, 675 (2005).

¶ 13 A substantial change in the income of the child support payor is grounds for modification of child support. *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 974 (1997). Specifically, economic reversals of fortune as a result of a change in employment, if made in good faith, may constitute a material change in circumstances sufficient to warrant a modification of a child support award order. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1076 (2009). In determining whether such a change in circumstances of the noncustodial parent is made in good faith, the crucial consideration is whether the change was prompted by a desire to evade financial responsibility for supporting the child or otherwise jeopardize his interests. *Id*. The trial court's ruling on the issue of good faith will not be disturbed absent an abuse of discretion. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 28. The party seeking the modification must present evidence of motive, other than the evasion of financial responsibilities for support of his child, in support of a petition for modification. *In re Marriage of Ross*, 355 Il. App. 3d 1162, 1166 (2005). In other words, the party seeking the modification in child support payments has the burden of demonstrating a substantial change in circumstances. *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 388 (2010).

¶ 14 According to respondent, the trial court failed to properly determine his net income under the guidelines set forth in section 505(a)(3) of the Act. We note that respondent has not provided this court with an actual transcript from the hearing on his petition to modify his child support payments. Instead, a bystander's report was filed as a supplement to the record on appeal. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). Any doubts that arise from the incompleteness of the record on appeal are resolved against the party appealing the judgment. *Foutch v. O'Bryant*, 99 Il. 2d 389, 391-92 (1984).

¶ 15 In the instant case, the issues that respondent advances require this court to defer to the trial court's judgment. *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 675 (2005). "The findings of the trial court as to net income and the award of child support are within its sound discretion and will not be disturbed on appeal absent an abuse of discretion." *Id.* Therefore, concerning respondent's claim that the trial court improperly imputed income to him when redetermining child support payments, it appears the trial court properly addressed that issue and properly determined that issue based on both the facts presented and the court's credibility findings. The trial court referenced the current guideline percentage, the amount and duration of unemployment benefits respondent received, as well as the amount he could earn as a tutor and his earning potential given his educational level and experience. Furthermore, the court has the authority to order a party to pay child support at the level commensurate with his or her earning potential. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 631 (2008). It is also acceptable for a court to "impute additional income to a noncustodial parent who is voluntarily underemployed." *Id.*; quoting *In re Marriage of Adams*, 348. Ill App. 3d 340, 344 (2004). Therefore, we hold that the trial court followed the law and there was a sufficient factual basis for its express findings. There was no abuse of discretion by the trial court.

¶ 16 Additionally, petitioner filed a petition for rule to show cause against the respondent on April 20, 2012. Greiff requested that the trial court appoint counsel to represent him in the civil contempt proceedings. In support of his position, respondent cites *People v. Abernathy*, 399 Ill. App. 3d 420 (2009). *Abernathy* involved a criminal defendant who was charged with aggravated battery with a firearm. If convicted, Abernathy faced a sentence of imprisonment. Consequently, Abernathy

qualified for appointment of counsel under the sixth amendment and 725 ILCS 5/113-3 (West 2008). *People v. Abernathy*, 399 Ill. App. 3d 420, 426 (2009). In *Turner v. Rogers*, 131 S. Ct 2507, 180 L.Ed. 2d 452 (2011), the Supreme Court reviewed a lower court's order that a father show cause why he should not be held in contempt for failing to comply with a child support order. The Supreme Court explained that the sixth amendment right to assistance of counsel does not apply to civil cases. Civil contempt differs from criminal contempt in that it seeks only to coerce the defendant to do what a court has previously ordered him or her to do. In the case of *In re Marriage of Betts*, 200 Ill. App. 3d 26 (1990), the appellate court held that a person facing jail sentences for indirect civil contempt are not entitled to court-appointed counsel even if they are indigent. "Imprisonment for civil contempt is unique in that the contemnor may secure his immediate release from incarceration by either complying with the court order which he has refused to obey or demonstrating that he is unable to comply with that order. Neither compliance nor establishing the impossibility of compliance is such a difficult task that the assistance of counsel is necessary." *Id*. at 56.

¶ 17 Respondent also relies on Cook County Local Rule 13.8 which requires trial courts to appoint attorneys for litigants facing contempt charges "when the Court determines that the Respondent lacks sufficient funds to obtain counsel." Although Greiff maintained that he is unable to afford counsel, the court referred to its credibility findings surrounding Greiff's recent testimony on his petition to modify child support payments. After being fully informed, the trial court found no basis to justify that an attorney should be provided to Greiff on the petition for rule to show cause. It noted that "nothing has changed with regard to Respondent's credibility and his earning potential." It further found that "[r]espondent has sufficient funds to insure his needs are met." The court also noted

Greiff's ability to obtain counsel in the past and noted that he has counsel on the pending appeal who, based on Greiff's representations, is representing him *pro bono*. Given all of these circumstances and prior findings by the trial court that Greiff is willfully underemployed, the trial court did not abuse its discretion in denying Greiff appointment of counsel on the petition.

¶ 18 VI. CONCLUSION

¶ 19 Based on the foregoing, we affirm the judgment of the trial court.

¶ 20 Affirmed.