

FIRST DIVISION  
December 3, 2012

No. 1-12-1278

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MURRAY JACOBS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 10 D 79177
	)	
HEATHER WAINWRIGHT,	)	Honorable
	)	Martha Mills,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirmed the circuit court's order denying respondent's motion seeking payment from petitioner for retroactive daycare costs and health insurance premiums for their minor child, and we affirmed the denial of the motion to reconsider, where respondent failed to provide a sufficient record on appeal for review.

¶ 2 Respondent, Heather Wainwright (Heather), and petitioner, Murray Jacobs (Murray), have one child, Quinn, from their non-marital relationship. On January 11, 2011, Heather filed a petition seeking payment from Murray for retroactive daycare costs and health insurance premiums for Quinn for 2010 and 2011. The circuit court denied Heather's petition and denied her subsequent motion to reconsider. Heather appeals. We affirm because Heather has failed to provide a sufficient

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record for review.

¶ 3 Quinn was born on May 20, 2009. Heather and Quinn reside in Connecticut; Murray resides in Illinois.

¶ 4 Murray filed an action in the circuit court of Cook County to establish his parent-child relationship, visitation, and statutory guideline child support on February 2, 2010.

¶ 5 Heather filed a petition for child support in Connecticut on September 22, 2010. On December 9, 2010, Heather voluntarily withdrew her petition for child support. The Connecticut court issued an agreed order whereby Connecticut would maintain jurisdiction over custody and Illinois would maintain jurisdiction over all of the child support issues.

¶ 6 On January 11, 2011, Heather filed a petition for child support and for other relief in Illinois. In her petition, Heather requested that Murray pay 20% of his net income for child support and a minimum of 50% of Quinn's daycare expenses and medical expenses, including monthly insurance premiums, co-pays, and any additional out-of-pocket costs not covered by insurance. Heather also requested that Murray pay retroactive child support, medical costs, and daycare for Quinn for 2010 and 2011.

¶ 7 On June 22, 2011, the circuit court conducted an evidentiary hearing. No transcript of the June 22, 2011, hearing is included in the record on appeal. The record does contain the circuit court's written order following the hearing, in which it set Murray's child support obligation at \$490.00 per month, 20% of his net monthly income. The court also found that since May 2009, Murray voluntarily paid approximately \$13,195.00 in child support, and there was "no arrearage, delinquency or retroactive support due." The court further ordered the parties to compare available health care plans, and ordered Murray to contribute 50% of Quinn's healthcare premiums in the

event Heather's plan is chosen. In the event Murray's plan is chosen, the court reserved the issue of payment from Heather toward the premiums. The court ordered each party to be responsible for 50% of Quinn's non-covered medical expenses.

¶ 8 The circuit court held an evidentiary hearing on the issue of current childcare costs and medical expenses on September 8, 2011. No transcript of the September 8, 2011, hearing is included in the record on appeal. The record does contain the circuit court's written order on October 4, 2011, following the hearing, in which the court noted that Heather has Quinn enrolled through Connecticut's subsidized health insurance program and ordered Murray to reimburse Heather for 50% of her out-of-pocket, unreimbursed expenses. The court also ordered Murray to pay \$100 per week for daycare and one-half of all costs not covered by Quinn's health insurance.

¶ 9 On December 13, 2011, the circuit court conducted a hearing on the issue of Murray's obligation to Heather for retroactive daycare expenses and medical insurance premiums. No transcript of the December 13, 2011, hearing is include in the record on appeal. The record does contain the court's written order following the hearing. Noting in its written order that "having on earlier date heard evidence, hearing argument of counsel and further, the dollar amounts at issue and being fully advised," the court ordered Murray to reimburse Heather \$140.06 for her out-of-pocket payments for Quinn's co-pays and prescriptions from January 2011 through September 2011. The circuit court denied Heather's request for reimbursement for retroactive daycare costs and health insurance premiums.

¶ 10 On January 12, 2012, Heather filed her motion to reconsider the circuit court's December 13, 2011, order denying her reimbursement for alleged past daycare costs and health insurance premiums. Heather alleged that "based upon the disparity of incomes between the parties and the

minimum contribution of MURRAY to child support and daycare expenses, it is fit, reasonable and just for MURRAY to reimburse HEATHER for one-half of the retroactive insurance premiums and daycare expenses for [Quinn]; especially in light of the fact that said expenses consumed one-half of Heather's annual income in only 9 months." No financial records were attached as exhibits to her motion to support her assertions. On February 7, 2012, Murray filed a verified response and a section 2-615 (735 ILCS 5/2-615 (West 2012)) motion to strike and dismiss Heather's motion to reconsider, arguing that Heather had failed to set forth newly discovered evidence, changes in the law, or errors in the court's previous application of existing law warranting reconsideration of the December 13, 2011, order.

¶ 11 On March 28, 2012, the circuit court heard arguments on Heather's motion to reconsider and Murray's motion to strike and dismiss. The circuit court entered an order denying Heather's motion to reconsider and denying Murray's motion to strike and dismiss. The order stated:

"Respondent's Motion to Reconsider is denied and the basis for the Court's denial of one-half of retroactive daycare and health insurance premiums from January 2011 through September 2011 is that the Court found that there was not enough of a disparity in the parties' incomes (Mr. Jacobs \$36,450 and Ms. Wainwright \$26,300) so that the effect of a large retroactive order for daycare and insurance would have a disproportionate effect on Jacobs. The Court also found that Ms. Wainwright lived with her parents, had fewer expenses than totally independent living, quit a better paying job at another university to live where she is living, and took a stay-at-home teaching job at a lesser salary, and has full-time daycare during the week."

¶ 12 The court found no just reasons for delaying enforcement or appeal under Illinois Supreme

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Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)).

¶ 13 Heather filed a timely notice of appeal from the circuit court's March 28, 2012, order denying her motion to reconsider the court's order of December 13, 2011, which denied Heather payment from Murray for one-half of retroactive daycare costs and health insurance premiums for Quinn for the period from January 2011 through September 2011. Heather does not appeal the June 22, 2011, and October 4, 2011, orders.

¶ 14 On appeal, Heather argues as follows:

"The Circuit Court erred by incorrectly minimizing HEATHERS's living expenses and employment, while inaccurately emphasizing the role of HEATHER's parents in providing for QUINN's care. HEATHER pays approximately \$800.00 per month in rent to her parents, in the form of cash payments, payments for household utilities, repairs, supplies, other miscellaneous household costs and expenses for her parents.

\*\*\* HEATHER's major expenses include rent, food, health insurance premiums, co-pays and out-of-pocket medical expenses for herself and QUINN, and child care costs. Additionally, although HEATHER works from home, daycare is required for QUINN because HEATHER is employed full-time as a teacher and works an average of forty hours per week. HEATHER's job requires her full time and attention during the day; QUINN is a toddler and requires constant care and supervision. Moreover, HEATHER's parents, elderly and retired, reside out of the country for approximately one-half of the year. \*\*\* As such, HEATHER's parents do not provide for QUINN's daily care and supervision.

In 2011, MURRAY earned approximately \$36,450.00 while HEATHER earned

approximately \$26,300.00. \*\*\* From January [2011] through September 2011, HEATHER expended \$11,454.00 for daycare and health insurance for QUINN, with no contribution from MURRAY. \*\*\* Said \$11,454.00 represents nearly one-half of HEATHER's 2011 annual income, expended during a nine month period. \*\*\* In finding that MURRAY's 2011 income of \$36,450.00 was not very substantial income; that retroactive payments would have a huge effect on MURRAY's income; and that it was not fair to order the retroactive payments for daycare and health insurance because they would have effects on MURRAY's income out of proportion to the amounts being asked for, the Court incorrectly minimized the fact that MURRAY earned approximately \$10,000.00 more in 2011 than HEATHER, while completely disregarding the impact these expenses had on HEATHER's income."

¶ 15 Heather further argues Murray made only "minimum contributions" to Quinn's support between January 2011 and September 2011.

¶ 16 As Murray aptly notes, though, "[t]here is no record to support Heather's argument that the Court 'minimized her living expenses and employment, while inaccurately emphasizing the role of Heather's parents in providing for Quinn's care.' In fact, there is no financial record before this Court of Heather's income, her finances, financial resources, or her living expenses much less, that she pays her parents \$800.00 per month cash for living expenses." Also, we note the record on appeal does not contain the evidence the circuit court heard and considered when determining whether to award Heather reimbursement from Murray for one-half of retroactive daycare costs and health insurance premiums. Murray asserts, and Heather does not dispute, that the circuit court conducted three hearings involving the parties' finances that were relevant to its determination. Two of those hearings occurred on June 22, 2011, and September 8, 2011, at which the circuit court heard

evidence, and a third hearing occurred on December 13, 2011, at which the circuit court heard only oral arguments of counsel (but stated in its written order that it also considered the evidence presented at the earlier hearings). With regard to the September 8, 2011, hearing, Heather specifically states in her appellant's brief that she "testified extensively about her income, employment, and expenses she incurs for QUINN's daycare, health insurance premiums and out-of-pocket medical costs." However, the record on appeal does not include any transcripts of the June 22, September 8, and December 13 hearings or any financial records or other evidence introduced therein. The only transcript Heather provided is the transcript from the hearing on her motion to reconsider, in which she argued that the evidence of the parties' incomes, employment, and expenses justified her petition for reimbursement of one-half of the retroactive daycare costs and health insurance premiums. However, there are no financial records or other evidence in the record to support Heather's assertions.

¶ 17 As the appellant, Heather had the burden of presenting a sufficiently complete record of the proceedings to support a claim of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). In the absence of a complete record, a reviewing court presumes an order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.'" *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)).

¶ 18 As discussed, Heather failed to include, in the record on appeal, transcripts and/or evidence

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from the June 22, 2011, September 8, 2011, and December 13, 2011, hearings that provided the basis for the circuit court's rulings on December 13, 2011, and March 28, 2012, which she now appeals. Heather also failed to submit a bystander's report or an agreed statement of facts as to these hearings. Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Thus, we do not have a record of the evidence that was presented and considered by the circuit court in denying Heather's petition seeking payment from Murray for one-half of retroactive daycare costs and health insurance premiums and in denying her motion to reconsider. In the absence of a complete record, we will presume the orders of the circuit court were proper.

¶ 19 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 20 Affirmed.