No. 2—10—0637
Order filed June 20, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DOREEN LEMKE-CRAFFEY, Petitioner-Appellee, and JOHN CRAFFEY, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 06—D—2516 Honorable George D. Strickland, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: (1) Without an official record of the relevant hearings, we declined to find that the trial court abused its discretion in modifying child support and in denying respondent's motion for reconsideration; (2) the trial court made the required finding in support of its deviation from the statutory guidelines. We affirmed the judgment of the trial court.

Pro se respondent, John Craffey, appeals from the trial court's ruling on his petition to reduce child support payments to petitioner, Doreen Lemke-Craffey, and from the trial court's subsequent order denying his motion for reconsideration. For the reasons that follow, we affirm.

I. BACKGROUND

On June 30, 2009, the trial court dissolved the marriage of the parties. The judgment incorporated the parties' marital settlement agreement, which provided, *inter alia*, that respondent would pay $1,000 per month in child support for the parties' child, Casey, who was born on April 29, 2003. The agreement further provided that respondent would keep Casey on his medical insurance, as he could do so without incurring additional cost.

On March 19, 2010, respondent filed a *pro se* petition to reduce child support based on a change of circumstances, *i.e.*, he lost his job. There were no exhibits attached to his petition. Petitioner filed a response. Following a hearing, the trial court modified respondent's child support obligation, ordering him to pay to petitioner $147 per week, which represented the "dependency allowance" he received through unemployment, and an additional $163.53 per month to cover half of Casey's health insurance coverage obtained through petitioner's employer. The record does not contain a transcript from the hearing.

On April 30, 2010, respondent filed a motion for reconsideration, with 10 exhibits attached. In the motion, respondent asked that his weekly support obligation be reduced to $14.39 and that his monthly "pre-tax" health insurance contribution of $163.53 be reduced to $117.74 to account for taxes. Respondent also asked the court to require petitioner to provide a "current Financial Affidavit."

On May 27, 2010, following a hearing, the trial court denied respondent's motion. The court found "that [respondent] earns $556 per week net income on unemployment of which $147 is the dependency allowance for the parties' minor child." The court "award[ed] the dependency allowance amount which is for the specific purpose of child support to [petitioner]." The court "ratifie[d] its' [*sic*] previous order to state that to the extent that the dependency allowance is greater

than 20%, being approximately 25% of net, the Court makes the express finding that it will deviate from guidelines in that amount for the needs of the child." The trial court further noted that "25% net is the same as his gross income per the unemployment compensation by statute." The record does not contain a transcript from the hearing.

Following the denial of his motion for reconsideration, respondent timely appealed. We note that petitioner did not file a brief. Nevertheless, we may reach the merits even without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

II. ANALYSIS

Respondent purports to raise a number of separate issues on appeal. However, the crux of the majority of his claims is that the trial court erred in its calculation of net income 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 2008)). He further argues that the court erred in denying his motion to reconsider, specifically his "request to review [petitioner's] net income and financial affidavit" and his objection to the tax benefits that petitioner received by paying for Casey's health insurance with pretax income. Finally, he argues that the court erred in failing to state its reasons for deviating from the 20% guideline in awarding child support.

Section 510(a)(1) of the Act permits an order for child support to be modified upon a showing of a substantial change of circumstances. 750 ILCS 5/510(a)(1) (West 2008). "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 (750 ILCS 5/505(a) (West 2008)) establishes guidelines for the calculation of child support. Where a parent is obligated to pay

child support for one child, 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." *Nale*, 294 Ill. App. 3d at 751; see also *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). The child support guidelines apply in proceedings for the modification of child support. *Nale*, 294 Ill. App. 3d at 751-52; see *Sweet*, 316 Ill. App. 3d at 108. "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." *Sweet*, 316 Ill. App. 3d at 108; see 750 ILCS 5/505(a)(2) (West 2008). "The court must make express findings if it deviates from the guidelines." *Sweet*, 316 Ill. App. 3d at 108. "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 of Breitenfeldt*, 362 Ill. App. 3d 668, 675 (2005).

According to respondent, the trial court failed to properly determine net income under the guidelines set forth in section 505(a)(3) of the Act. We note, however, that respondent has failed to provide us with a transcript from the hearing on his petition. An appeal is not an opportunity for a party to have a new trial. The appellate court is limited to reviewing the material before the trial court and deciding whether it is sufficient to support the judgment. The appellant is not entitled to have the judgment reversed without presenting a record that supports his or her claim that the trial court erred. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, he or she has the responsibility to make sure that the record contains a report of proceedings that includes "all the evidence pertinent to the issues on appeal." Ill. S. Ct. R. 323(a) (eff. Dec. 13, 2005). If a court

reporter's transcript of the relevant proceedings is unavailable, the appellant may prepare a bystander's report based on the best available sources, which can include the appellant's recollection, if necessary. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). Alternatively, the parties can present an agreed statement of facts. Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005). Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005), like the other supreme court rules governing appeals, is not a mere suggestion. See *Hall v. Turney*, 56 Ill. App. 3d 644, 645 (1977). Rather, the rule has the force and effect of law and is binding on litigants as well as the courts. *Id.* at 645. As a consequence, when a report of proceedings or substitute is essential to resolving an appeal and the appellant has failed to provide this court with such a record, we must presume that the trial court followed the law and had a sufficient factual basis for its ruling. *Foutch*, 99 Ill. 2d at 391-92. Any doubts that arise from the incompleteness of the record will be resolved against the appellant. *Id.* at 392.

Here, the issues that respondent advances require this court to defer to the trial court's judgment. See *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d at 675 ("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."). Respondent's failure to supply this court with neither a report of the proceedings, nor a substitute for that record, makes it impossible to review his claim. We are unable to review what, if any, evidence the parties presented. Without a record of the proceedings, we have no reason to conclude that the trial court did not properly base its judgment on the law and the evidence. See *Foutch*, 99 Ill. 2d at 391-92 (presuming that the trial court followed the law and had a sufficient factual basis for its ruling).

We also determine that the trial court properly denied respondent's motion for reconsideration. Respondent's motion had 10 exhibits attached in support of his argument that the

court failed to consider certain expenses in calculating net income when modifying his child support payment. To the extent the information contained in respondent's motion was not presented at the original hearing, the trial court was not required to consider it:

> " '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.) *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141 (2004) (quoting *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248-49 (1991)).

Further, concerning respondent's claims raised in the motion to reconsider as to petitioner's financial affidavit and tax benefits, without a record of the hearing we are unable to review how the trial court addressed the issues. We thus presume that they were addressed correctly. See *Foutch*, 99 Ill. 2d at 391-92 (presuming that the trial court followed the law and had a sufficient factual basis for its ruling).

Lastly, we reject respondent's argument that the court erred in failing to state its reasons for deviating from the 20% guideline in modifying child support. In response to respondent's motion for reconsideration, the trial court entered an order clarifying that it did so "for the needs of the child." This court has previously found that, while a court is required to make an express finding when it deviates from the guidelines, there is no requirement that this finding be written in the order. *Sweet*, 316 Ill. App. 3d at 108. The trial court may satisfy this requirement orally. *Sweet*, 316 Ill. App. 3d at 108. Here, as noted, the trial court made a written finding. In any event, without a record

of the hearing, we would have presumed that the court followed the law and orally made the required finding.

III. CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court of Lake County.

Affirmed.