2012 IL App (2d) 111160-U
No. 2-11-1160
Order filed August 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LISA WIGHTMAN,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellee,	)	
	)	
and	)	No. 03-D-520
	)	
RICHARD PREJNA,	)	Honorable
	)	Robert P. Pilmer,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: (1) The trial court properly held respondent in contempt for violating an order: although the court vacated the order, it was voidable, not void; (2) without an official record of the relevant hearing, we could not hold that the trial court abused its discretion in setting child support.

¶ 1 Two issues are raised in this post-decree marriage-dissolution case. Specifically, we are asked to consider whether the trial court erred in (1) finding respondent, Richard Prejna, in contempt of court for violating an order that the trial court vacated; and (2) denying respondent's motion to

reduce child support and, instead, increasing his child support obligation to the amount set in the judgment for dissolution of marriage. For the reasons that follow, we affirm.

¶ 2 On October 24, 2005, the marriage of respondent and petitioner, Lisa Wightman, was dissolved. In the judgment dissolving the marriage, the court set respondent's monthly child support obligation at $1,800. In setting child support at this amount, the court observed that it was unable to make an accurate determination of respondent's income. Thus, the court set child support at a reasonable amount, as contemplated by section 505(a)(5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(5) (West 2004)). The court also noted that a monthly child support award of $1,800 would not be inconsistent with an annual income of $90,000 and that it was not unreasonable to impute this amount of income to respondent.

¶ 3 Thereafter, on April 29, 2008, respondent moved to reduce his child support obligation, claiming that his business was no longer as profitable as it had been. The court granted the motion on November 24, 2008, reducing respondent's monthly child support obligation to $942. In that order, the court required respondent to pay 32% of any additional income he received.

¶ 4 On May 12, 2010, after petitioner learned that respondent had more funds than he claimed, she petitioned to vacate the order of November 24, 2008 (see 735 ILCS 5/2-1401 (West 2010)), reinstate respondent's monthly child support obligation of $1,800, and hold respondent in contempt of court. On November 12, 2010, while petitioner's petition was pending, respondent moved to reduce his monthly child support obligation, claiming that he was receiving unemployment benefits and that any income he received from his business was extinguished or very minimal.

¶ 5 On May 9, 2011, the trial court vacated the November 24, 2008, order reducing respondent's child support obligation; held respondent in contempt for "fail[ing] to pay 32% of any additional

income he received between November 24, 2008 and the date of this hearing"; denied respondent's November 12, 2010, motion to reduce his child support obligation; and set respondent's monthly child support obligation at $1,800. In so doing, the court found "the conduct of [r]espondent preceding the hearing of November 24, 2008 to be, at a minimum, unconscionable and most likely fraudulent[.]" Respondent timely appeals.

¶ 6 On appeal, respondent claims that the trial court erred in (1) finding him in contempt for violating the vacated November 24, 2008, order reducing his child support obligation; and (2) denying his November 12, 2010, motion to reduce his child support obligation, opting instead to reinstate the original monthly child support obligation of $1,800. We consider each issue in turn.

¶ 7 The first issue we consider is whether the trial court erred in finding respondent in contempt for violating the vacated November 24, 2008, order. According to respondent, he could not be held in contempt for violating that order, because it became void once it was vacated. Petitioner claims that respondent forfeited review of this issue, because he never raised it in the trial court. We disagree. If the trial court's order is void, it may be attacked at any time, and respondent may not be held in contempt for violating the order. *In re Adoption of Shumacher*, 120 Ill. App. 3d 50, 55 (1983). However, we conclude that respondent's argument lacks merit.

¶ 8 A party may not be held in contempt for violating a void order. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 758 (2008). "A void order or judgment is one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved." *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994). Although a party may not be held in contempt for violating a void order, a party may be held in contempt for violating a voidable order. *Barile*, 385 Ill. App. 3d at 758. A voidable order arises when, among other things,

the court has jurisdiction over the parties and the subject matter, but the court enters an order based on a party's fraudulent conduct or concealment of evidence. *In re Marriage of Noble*, 192 Ill. App. 3d 501, 509 (1989).

¶ 9 Here, the November 24, 2008, order was voidable, not void, and, thus, respondent could be held in contempt for failing to comply with it. That is, the November 24, 2008, order was entered based on respondent's misrepresentations to the court that his business was declining. The court recognized that respondent was not forthcoming with evidence of his income when the court found that respondent's conduct leading up to the entry of the November 24, 2008, order was "unconscionable and most likely fraudulent." As petitioner notes, if we were to conclude that the November 24, 2008, order was void merely because the court subsequently vacated it, we would be "shield[ing respondent] from liability for violating the order that never should have been entered and would not have been entered[] absent [respondent's] own fraud."

¶ 10 In reaching this conclusion, we observe that it is immaterial that the court found respondent in contempt after it vacated the November 24, 2008 order. "[I]f a court has jurisdiction of the subject matter and of the parties, then the court's order must be obeyed until such time as it is set aside by either the issuing court or the reviewing court." *Southern Illinois Medical Business v. Camillo*, 208 Ill. App. 3d 354, 366 (1991) (citing *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966). In *Cummings-Landau Laundry Machinery Co. v. Kaplin*, 386 Ill. 368 , 378 (1944), the supreme court stated that the issue presented by the facts of that case was whether the vacation of an order abates pending contempt proceedings for a violation thereof. The court upheld the contempt order, ruling that it is clear "that the order or judgment of a court having jurisdiction is to be obeyed, no matter how clearly it may be erroneous." *Id* at 385. Thus, because defendant never fully complied with the voidable November

24, 2008, order, he could be found in contempt for violating that order even though the court eventually vacated it on May 9, 2011. Given the fact that the order was entered based on respondent's misrepresentations to the court and the fact that he could be held in contempt for violating an order that the court subsequently vacated, we would conclude that respondent was properly held in contempt for violating the November 24, 2008 order.

¶ 11 The second issue we address is whether the trial court erred when it denied respondent's November 12, 2010, motion to reduce child support. Petitioner claims that we must affirm the trial court's order reinstating respondent's monthly child support obligation of $1,800, because the record does not provide sufficient information concerning respondent's income. We agree.

¶ 12 Section 510(a)(1) of the Act (750 ILCS 5/510(a)(1) (West 2010)) permits an order for child support to be modified upon a showing of a substantial change of circumstances. "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).

¶ 13 Section 505(a) of the Act (750 ILCS 5/505(a) (West 2010)) establishes guidelines for the calculation of child support. Where a parent is obligated to pay child support for three children, the guideline amount is 32% of that parent's net income. 750 ILCS 5/505(a)(1) (West 2010).

¶ 14 These guidelines also apply in proceedings for the modification of child support. *Nale*, 294 Ill. App. 3d at 751-52; see *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." *Sweet*, 316 Ill. App. 3d at 108; see 750 ILCS 5/505(a)(2) (West 2010). If the court deviates from the guidelines, it must make an express finding of such. *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).

¶ 15 According to respondent, the trial court failed to properly determine his net income when it reinstated the original child support obligation. Because respondent has failed to provide us with a transcript from the hearing held on May 9, 2011, we are unable to review respondent's claim.

¶ 16 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, the appellant 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).

¶ 17 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.* 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.

¶ 18 Here, the issue that respondent advances requires this court to defer to the trial court's judgment. See *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."). The fact that respondent has supplied this court with neither a report of the proceedings, nor a substitute for that record, makes it impossible to review his claim, as we have no idea what evidence was presented to the trial court. In his brief, respondent, citing to an affidavit he prepared, indicates that his annual income decreased to $37,807.80. Although that affidavit reflects as much, there was doubtless other evidence presented that suggested otherwise or cast doubt on the accuracy of the affidavit. Indeed, the trial court noted in its written order that respondent was not always forthcoming with information concerning how much he made. Because of that, without a record of the proceedings or a substitute, 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. Accordingly, we affirm the trial court's order reinstating the child support obligation of $1,800.

¶ 19 For these reasons, we affirm the judgment of the circuit court of Kane County.

¶ 20 Affirmed.