2017 IL App (2d) 160833-U
No. 2-16-0833
Order filed July 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KIM HEMPHILL, Petitioner-Appellee, and ROBERT HEMPHILL, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 05-D-760 Honorable Joseph V. Salvi, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that the parties' 20-year-old daughter was disabled was not against the manifest weight of the evidence. The court did not abuse its discretion when it ordered the father to pay non-minor child support and all uncovered medical expenses. Affirmed.

¶ 2 Appellee, Kim Hemphill, and appellant, Robert Hemphill, have one adult child, A.H. (born in 1996). A.H. has been diagnosed with schizoaffective disorder (bipolar type), anxiety, and seizures. On May 25, 2016, the trial court granted Kim's petition under section 513.5 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/513.5 (West 2016)) for non-minor child support based on a disability. The court ordered Robert, who earned

approximately $87,000 per year as a Lake County corrections officer, to pay $1030 in monthly support, continue to maintain health insurance, and pay all uncovered medical expenses. It also ordered Robert to contribute $3880 toward Kim's attorney fees. Robert appeals, challenging: (1) the court's determination that A.H. is "disabled" for the purposes of receiving non-minor child support; (2) the $1030 support amount; and (3) the order to pay all uncovered medical expenses. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Kim and Robert married in 1995. They had one child, A.H., born in 1996. Robert worked for Lake County as a corrections officer, where he earned a salary and pension, and Kim did not work. In 2005, the parties divorced. Kim was awarded custody of A.H. Robert was ordered to pay $560 per month in child support, representing 20% of his net income at that time. Robert was to pay child support until the *later* of A.H.: turning 18, graduating high school, *or* being self-sufficient as defined as living outside a parent's residence and sustaining more than part-time work. Further, Robert was to provide medical, hospital, and psychiatric insurance for A.H., until his obligation to pay child support terminated, or until A.H. graduated college, but not past age 23. (Robert was also to pay $250 per month in maintenance, for a term of 30 months, which was non-modifiable and non-reviewable.)

¶ 5 On May 28, 2014, Robert filed an untitled *pro se* motion. It stated in total: "Request to stop child support. Child is 18 years old and out of high school."

¶ 6 On July 10, 2014, Kim petitioned for non-minor support based on a disability. 750 ILCS 5/513.5 (West 2016) (then 750 ILCS 5/513 (West 2014)). Kim did not specifically allege that the 2005 judgment of dissolution already provided that child support may extend beyond age 18 if the child is not self-sufficient. She did state, however: "[Robert] has refused to agree to

continue to support his disabled child after the age of 18 and her graduation from high school." Kim requested to be reimbursed for attorney fees connected with her petition.

¶ 7 On February 5, 2015, Robert, through counsel, answered the support petition, stating that he had insufficient knowledge to admit or deny whether A.H. suffered from mental illness. He also petitioned to "modify" child support, requesting that the support amount "be set to zero."

¶ 8 On May 25, 2016, the court heard the petitions. The record does not contain a transcript of the hearing, but it does contain a bystander's report. According to the report, Kim testified that she has always been A.H.'s primary caretaker. A.H.'s mental-health problems began in 2006, and she was diagnosed with bipolar disorder. She was later diagnosed with schizophrenia. The most recent diagnosis was schizoaffective disorder (bipolar type), anxiety, and seizures. A.H. was able to complete high school with the help of an individualized education plan (IEP) and home schooling. Now age 20, A.H. continued to work toward her goals relating to school, work, and greater independence. She signed up for three classes at the community college, but she was not able to complete them. She applied for three jobs, but she was not hired. Her medication caused fatigue that made it difficult for her to reach her goals. She did not have many friends and rarely left the house. Robert participated in some activities with A.H., such as teaching her to drive, but he did not see her "really all that often." Kim continued to care for A.H., providing shelter, transportation, and supervision of medical treatment. Kim was able to name four to six of A.H.'s medications and their respective dosages. Kim did not have the financial resources to be A.H.'s sole provider. A.H. applied for, but did not receive, social security disability benefits. Thus, Kim urged, A.H. still required the financial support of her father.

¶ 9 Robert testified that he saw his daughter on a regular basis; he called Kim or A.H. to set up a time to visit. Robert knew that A.H. had been diagnosed with bipolar disorder, "but he did not know a lot more, Kim took care of [A.H.'s] medical issues ***, including medications and appointments." Robert knew that A.H. took medication for her mental illness, but he did not know the names or dosages of the medication. Robert disagreed that A.H. struggled. When they spent time together, she was "upbeat." She was able to complete high school. She learned to drive and was looking forward to obtaining her driver's license. She was taking some college classes. (Robert was "not sure" how many.) She was looking for jobs. She was "just like everybody else."

¶ 10 The parties submitted financial affidavits, and, as to Robert, W-2 forms and paystubs. According to Kim's financial affidavit, her monthly expenses totaled $2800. This included $1300 to maintain the household in which she and A.H. lived, $250 to maintain a vehicle, $522 for uncovered medical expenses, and $333 for attorney fees. Kim testified that she is unemployed, though she cared for A.H. and ran the household. She received food stamps, had been unable to save for retirement, and had $65,000 of debt relating to unpaid medical expenses.

¶ 11 According to Robert's financial affidavit, he earned a *gross* income of approximately $77,000 working for Lake County. However, according to his most recent W-2 form, he earned a gross income of approximately $87,000. When asked about the discrepancy, Robert explained that the $77,000 figure came from a document that he prepared "a while ago" and that he might not have distinguished between base pay and overtime. According to the W-2 form, Robert's *net* income was $61,790 per year, and $5150 per month. Robert did not fill out the retirement information on the financial affidavit, and the bystander's report is silent on that point. He stated in the financial affidavit that he had $182 in total savings. He paid approximately $1135 to

maintain his household, including rent and utilities. He paid $1611 per month to maintain his vehicles, including $1288 for two separate vehicle payments on a truck and a Harley Davidson motorcycle. He paid approximately $300 per month for attorney fees and another $300 for personal items, like clothing or lunch at work.

¶ 12 The court granted Kim's petition. It found that, pursuant to section 513.5 of the Marriage Act, A.H. was disabled. It awarded $1030 per month in non-minor child support, retroactive to the date of the petition. In reaching this figure, it noted that Robert's gross income was $87,693 per year, and his net income was $61,790. The support amount was consistent with 20% of Robert's net income. The court further ordered that Robert maintain health insurance for A.H. and that he cover all medical expenses that were not otherwise covered by health insurance. Finally, Robert was to contribute $3880 to Kim's attorney fees.

¶ 13 Robert moved to reconsider. In denying the motion, the court stated that Robert was "completely not credible" when he tried to refute Kim's evidence. It elaborated: "he was incredibly incredible. I mean the way he tried to lie was just so bad that it was almost sad." In rejecting Robert's claim that *Kim* did not adequately support A.H., the court noted: "I think that we all know that no matter what the age, [the] expenses are well beyond what you even think they are if you try to add them up. She is contributing substantially to the support of this child." This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Robert argues that the trial court's disability determination was against the manifest weight of the evidence. He further argues that, even if A.H. is disabled, the court abused its discretion when it ordered him to pay $1030 in monthly support and all medical expenses not covered by health insurance. For the reasons that follow, we reject these arguments.

¶ 16 As we conduct the analysis, we are mindful that the record is scant. There is no transcript, only a bystander's report. And, some of the exhibits referenced in the bystander's report, such as Robert's W-2 forms, are not part of the appellate record. We remind Robert that an appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of an adequate record, it will be presumed on appeal that the trial court's order was in conformity with the law and had a sufficient factual basis. *Id.* at 392. Thus, we resolve any doubts arising from the incompleteness of the record against Robert. See *id.*

¶ 17 A. Disability Determination

¶ 18 We will not reverse a trial court's determination that an individual is disabled, unless that determination is against the manifest weight of the evidence. *In re Marriage of Kennedy*, 170 Ill. App. 3d 726, 731 (1988). A determination is against the manifest weight of the evidence when it is arbitrary and unsupported by the evidence, or when the opposite result is clearly apparent. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. Additionally, it is well established that we defer to the trial court on issues of credibility, because it was in the position to observe the witnesses and their demeanor. *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986).

¶ 19 Section 513.5 of the Marriage Act provides:

> "(a)The court may award sums of money out of the property and income of either or both parties *** for the support of a child of the parties who has attained majority when the child is mentally or physically disabled ***.
>
> * * *
>
> (c) As used in this Section:

> A 'disabled' individual means an individual who has a *physical or mental impairment* that *substantially limits a major life activity*, has a record of such an impairment, or is regarded as having such an impairment.
>
> 'Disability' means a mental or physical impairment that substantially limits a major life activity." (Emphases added.) 750 ILCS 5/513.5 (West 2016).

¶ 20 Robert does not dispute the mental-impairment component of the definition. Although he repeatedly downplays the severity of the impairment, referring to it as a "condition addressed by medication," he does not go so far as to challenge the diagnoses of schizoaffective disorder (bipolar type), anxiety, and seizures.

¶ 21 Similarly, Robert does not raise any *real* argument against the substantial-limitation component. He states in total:

> "Looking at Kim's testimony as noted above, regarding a condition addressed by medication that causes fatigue, lack of motivation, an IEP, [etc.], this is not evidence of an individual who has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment. 750 ILCS 5/513.5(c) (West 2016). Indeed, in addition to there being no evidence of any particular major life activity that is impacted, there is absolutely no evidence of a 'record of such an impairment' or that the child 'is regarded as having such an impairment.' "

Robert does not attempt to define the substantial-limitation component, and he does not adequately discuss the evidence in relation to that component.

¶ 22 In fairness to Robert, there is a dearth of case law specifically addressing the substantial-limitation component. The legislature only recently expressly defined disability as it pertains to

non-minor child support. 750 ILCS 5/513.5 (West 2016) (P.A. 99-90 § 5-15 (eff. Jan. 1, 2016)). Still, Robert had available to him case law generally addressing the term disability as it pertains to non-minor child support. See, *e.g.*, *Kennedy*, 170 Ill. App. 3d 726. Robert also had available to him persuasive case law addressing the term disability under the Americans with Disabilities Act (ADA), which uses *nearly identical* language to define a disability: "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment ***." 42 U.S.C. § 12102(2) (2016); *Jackson v. Sweet Ideas, Ltd.*, 321 Ill. App. 3d 1029, 1034 (2001) (stating that a person is "substantially limited" when he or she is significantly restricted in duration or manner as compared to the average person and that a "major life activity" includes caring for oneself and working). Robert had available authority, and we cannot excuse the conclusory nature of his substantial-limitation argument. See, *e.g.*, *Hall v. Naper Gold Hospitality, Ltd.*, 2012 IL App (2d) 111151, ¶ 12 (citing Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008)).

¶ 23 In any event, here, the evidence supports the trial court's finding of disability. Kim, whom the trial court found to be credible, testified that A.H. could not complete high school without the help of an IEP and home schooling. Her medications caused fatigue. She was not yet able to complete her college course work, obtain a job, or obtain a driver's license. She had few friends and rarely left the house. That A.H., at age 20, continued to work toward independence and might someday achieve it should not be held against her. See, *e.g.*, *Kennedy*, 170 Ill. App. 3d at 733 (non-minority child support awarded where it was anticipated that, within three years time, the 18-year-old son would be able to hold a job at the level of a clerk at a self-

service filling station). This is particularly true where the 2005 judgment of dissolution provided for the possibility that A.H. might need nurturance and support beyond the age of 18.

¶ 24 As we have stated, Robert raises no real challenge to the court's determination that A.H. was disabled under the section 513.5 of the Marriage Act. He does argue, however, that the definition of disabled set forth in section 513.5 does not apply. This argument stretches the bounds of good faith.

¶ 25 Robert notes that, in 2014, when Kim petitioned for non-minor child support based on a disability, the Marriage Act did not expressly define disability. One case in effect at that time, however, referred to a disabled individual as one "incapacitated" by illness. *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 832-33 (1999). Robert urges that the trial court should have considered whether A.H. was "incapacitated," rather than "substantially limited."

¶ 26 We disagree. The section 513.5 definition of disability was effective in May 2016, when the trial court issued its decision. The Marriage Act's provisions apply to "all pending proceedings commenced prior to its effective date with respect to issues on which *a judgment has not been entered*." (Emphasis added.) 750 ILCS 5/801 (West 2016). Thus, the statutory definition set forth in section 513.5 applies, because Kim's petition for non-minor child support based on a disability was *pending but not decided* prior to section 513.5's January 2016, effective date.

¶ 27 We further note that the legislature is presumed to be aware of prior interpretations of the statute. *S.D. by D.D. v. Kishwaukee Community Hospital*, 288 Ill. App. 3d 472, 477 (1997). That the legislature chose to define disabled as "substantially limited" after *Thurmond* referred to it as "incapacitated" shows that it did not agree with *Thurmond*'s language. We reject Robert's

argument that the trial court should have considered whether A.H. was "incapacitated," rather than "substantially limited."

¶ 28 B. Support Amount

¶ 29 Robert challenges the $1030 support amount, arguing that it is more than 20% of his net income. Robert cites to section 505 of the Marriage Act, which sets forth the 20% guideline for children under 18, or children under 19 still attending high school. 750 ILCS 5/505 (West 2016). Robert points to his financial affidavit, which sets forth a monthly net income of $4050, 20% of which is $810. Robert's argument is flawed in at least two ways: (1) section 505's 20% guideline does not apply to this case; and (2) Robert's $4050 figure is incorrect.

¶ 30 First, Section 505, which sets forth a guideline of 20% of the supporting party's net income, does not apply. 750 ILCS 5/505 (West 2016). Under section 505, "child" is defined as "any child under age 18 and any child under age 19 who is still attending high school." *Id*. A.H. is 20 years old, and section 505 does not apply.

¶ 31 Section 513.5, the applicable section, does not have a 20% guideline. Rather, the court determines the amount of section 513.5 support based on "all relevant factors" that appear "reasonable and necessary" or "just and equitable," including: (1) the present and future financial resources of both parties to meet their needs, including but not limited to, savings for retirement; (2) the standard of living the child would have enjoyed had the marriage not been dissolved; (3) the financial resources of the child; and (4) any financial or other resources provided to or for the child including, but not limited to, any supplemental security income, any home-based support provided pursuant to the home-based support services law for mentally disabled adults, and any other state, federal, or local benefit available to the non-minor disabled child. 750 ILCS

5/513.5(b) (West 2016). In weighing the appropriate factors, the court happened to use a 20% guideline. This does not mean that it was required to use a 20% guideline.

¶ 32 Also, Robert's $4050 monthly net-income figure is incorrect. Robert, citing to his financial affidavit only, states that his net income is $4050. However, in addition to Robert's financial affidavit, the court also considered Robert's W-2 form. The court stated that, in reviewing *that* documentation, Robert's net monthly income was $5150, 20% of which was $1030.

¶ 33 C. Medical Expenses

¶ 34 Finally, Robert challenges the trial court's order that he maintain medical insurance for A.H. and pay for all medical expenses not otherwise covered by insurance. The parties agree that the uncovered medical expenses average $522 per month. We review the court's assignment of uncovered medical expenses for an abuse of discretion. *In re Keon C.*, 344 Ill. App. 3d 1137, 1146 (2003).

¶ 35 Robert argues that the court abused its discretion, because it did not adequately consider his financial resources and his need to save for retirement. He notes that, in effect, when the $1032 support payment and the $522 medical payment are combined, Robert will be required to contribute approximately 30% of his net income to support A.H. We do not disagree with Robert's assertion that he will be required to contribute approximately 30% of his net income to support A.H. However, we disagree that the order constituted an abuse of discretion.

¶ 36 According to Kim's financial affidavit, her monthly expenses totaled $2800. This included $1300 to maintain the household in which she and A.H. live, $250 to maintain a vehicle, $522 for uncovered medical expenses, and $333 for attorney fees. Kim was unemployed, though she cared for A.H. and ran the household. She received food stamps, had

been unable to save for retirement, and had $65,000 of debt relating to unpaid medical expenses. The court found Kim to be credible, and, so, we accept her financial affidavit as an accurate representation of her financial circumstances.

¶ 37 Additionally, Kim testified that A.H. does not receive support from other sources. A.H. does not receive government aid. She had applied for several jobs, but she was not hired.

¶ 38 According to Robert's W-2 form, he grossed approximately $87,000 per year. He net $5150 per month. He had a general debt of $1253. He had a $60,758 debt for two vehicles, a truck and a motorcycle. He paid $1288 monthly in vehicle payments, each payment being roughly equal at over $600. The amount in his retirement account is unclear from the record—he left his financial affidavit blank on that point, and the bystander's report is also silent on the issue. However, the 2005 judgment of dissolution stated that Robert had a pension and deferred-compensation plan with Lake County. As of the 2016 hearing, Robert was still employed by Lake County.

¶ 39 In sum, it is clear that the trial court considered the parties' respective needs and resources before setting a support amount and ordering payment of medical expenses. It also considered A.H.'s needs and resources. Kim had no discretionary income, no savings, and had gone into significant debt to provide for A.H. Robert, in contrast, had room in his budget for luxury items, such as a $600 monthly motorcycle payment. He had no significant debt. A $1552 total payment, including $522 for medical, is not insignificant to Robert, but he has the means to make the payment. The court did not abuse its discretion.

¶ 40 III. CONCLUSION

¶ 41 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 42 Affirmed.