2017 IL App (2d) 160998-U
No. 2-16-0998
Order filed August 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARIA POMERANTZ, Petitioner/Counter-Respondent-Appellee, and MICHAEL POMERANTZ, Respondent/Counter-Petitioner-Appellant.	)))))))))))	Appeal from the Circuit Court of Lake County. No. 10-D-696 Honorable Michael B. Betar, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: Based on the record provided, which did not include a transcript of the relevant hearing, we concluded that the trial court did not err in: denying Michael's petition to modify child support; calculating the amount of child support owed; and finding Michael to be in indirect civil contempt for failing to pay the support. Therefore, we affirmed.

¶ 2 Petitioner, Maria Pomerantz, and respondent, Michael Pomerantz, were married on February 14, 1998, and had three children. Their marriage was dissolved on August 20, 2012. The dissolution judgment incorporated the parties' marital settlement agreement (MSA) and joint

parenting agreement. About two years later, Michael filed a petition to modify child support, alleging a substantial change in circumstances. Michael alleged that his net income had been reduced by 15% due to a wage garnishment from multi-million dollar judgments entered against him. Maria then filed a petition seeking to hold Michael in contempt for decreasing his child support payments and for failing to disclose and pay child support on his 2012 bonus. The trial court denied Michael's petition and granted Maria's petition, and it subsequently denied Michael's petition to reconsider. Michael challenges these rulings on appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In the MSA, the parties agreed that Michael would pay $4,400 per month in base child support and $1,540 per month in maintenance.[1] Michael is a named partner at a law firm, and the child support amount was:

> "predicated upon MICHAEL's gross annual salary from Brown, Udell, Pomerantz & Delrahim in the amount of $250,000.00, and MICHAEL's gross monthly salary from employment in the amount of $20,833.00. MICHAEL's 'net monthly salary' for purposes of child support in accordance with Section 505 of the Illinois Marriage and Dissolution of Marriage Act *** (750 ILCS 5/505) is $13,772.50."

The MSA also provided for additional child support as follows:

> "Additionally, MICHAEL shall pay to MARIA an amount equal to thirty-two percent (32%) of the net, after-tax income derived from the first Fifty Thousand Dollars ($50,000.00) of actual cash bonuses and distributions (beyond MICHAEL's $250,000.00 gross base salary), if any, (excluding such distributions made purely for the purposes of paying income tax or of phantom income for bookkeeping purposes) received from

[1] The maintenance was to terminate in July 2015.

> Brown, Udell, Pomerantz & Delrahim, Ltd. MICHAEL's total payments to MARIA from his bonuses and distributions shall not exceed $11,307.00 in a given calendar year. MICHAEL shall pay the amounts due to MARIA under this paragraph within fourteen (14) business days of his receipt thereof, together with an unredacted copy of the paystub(s) reflecting the gross amount of the bonus or distribution made and the withholdings made from said amount by his employer."

The MSA stated that Michael would have no obligation to pay any additional child support from his gross earnings from employment "in excess of $30,000.00 or from any other source."

¶ 5 On August 6, 2014, Michael filed a petition to modify child support. He alleged that two monetary judgments had been entered against him in favor of MB Financial Bank, N.A., totaling over $8.5 million. Michael alleged that his bank accounts had been frozen and that, due to wage garnishment, his net income would be reduced on a continual basis by 15%. He argued that his child support obligations should proportionately be reduced pursuant to section 510 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510) (West 2014)). He also alleged that since the entry of the dissolution judgment, Maria had secured full-time employment, was earning substantial wages, and received a company car.

¶ 6 On September 10, 2014, Maria filed a petition seeking to have Michael found in indirect civil contempt. Count I alleged that instead of paying $4,400 per month in child support, Michael had paid only $3,800 for the months of August and September 2014. Count II alleged that he had failed to provide her with the documents showing his bonus, and she believed that he had not paid her an amount equal to 32% of the first $50,000 of the bonus.

¶ 7 Michael filed an amended petition to modify child support on November 10, 2014. He added allegations that his costs for caring for the children had dramatically increased due to their

activities, religious education, and orthodontic treatment. Michael further alleged that the children were spending additional time with him.

¶ 8 On November 12, 2014, the trial court issued a rule to show cause for indirect civil contempt against Michael. It found that there was probable cause to believe that he failed to pay the full $4,400 per month in child support and failed to tender to Maria an unredacted copy of his pay stub showing the gross amount of his 2012 bonus.

¶ 9 The trial court subsequently held a hearing on the motions, which took place over multiple days. Both parties called certified public accountants as expert witnesses. However, the record does not contain a transcript of the hearing. The parties submitted written closing arguments.

¶ 10 The trial court issued its ruling on July 15, 2016. It found as follows on the subject of monthly child support. The MSA set child support based on Michael's net income derived from his gross salary of $250,000 per year from his law firm. His net income had changed due to two money judgments entered against him from bad real estate investments that culminated in a 15% wage garnishment. However, the MSA "did not base child support upon any income derived from Michael's real estate investments," but rather solely based on his law firm salary, which had not changed. The trial court continued:

> "Michael wishes to reduce his child support obligation based upon a speculative real estate investment that did not produce the return on investment that he anticipated. It is somewhat analogous to investing in the stock market separate and apart from any employment income one is receiving, losing money in the market, and then asking the Court to reduce one's child support obligations due to one's monetary losses in the market. This could conceivably lead to a slippery slope. Using this logic, one could ask

> that his child support obligations be reduced due to his losses at the horse track or video poker. This Court declines to do so. The fact that there is a wage garnishment as the result of Michael's losses is unpersuasive. Courts in Illinois allow legitimate casinos to obtain judgments against players that receive house credit and then fail to repay the casino. Such judgments could then result in a wage garnishment."

The trial court also noted that, although Michael wished to reduce his child support obligation by $660 per month due to "a speculative real estate investment that went sour," he contributed at least $1,346 per month directly from his paycheck to his 401(k). The court ruled that Michael had not undergone a substantial change in circumstances from the time the judgment of dissolution and the MSA were entered to the time he filed his petition to modify child support. It further found that he had unilaterally reduced the amount of base child support he paid beginning in August 2014, without leave of the court.

¶ 11 On the subject of additional child support owed from bonuses/distributions, the trial court stated the following. In 2012, Michael received $100,000 in distributions from his law firm above and beyond his $250,000 salary. In 2013, he received $225,000 in such distributions. Michael claimed that these distributions were " 'phantom' " income distributions provided to him to pay taxes on his "K-1" income because he was a shareholder in the S-corporation law firm. His accountant testified to the same theory. "However, *** the accountant's testimony appeared convoluted, lacking in clarity, and not credible." It "appeared intended to prevent the listener from understanding how it was truly implemented." Michael's theory was that the distributions were to be used to pay taxes on his W-2 and K-1 income, as opposed to being income to him. "However, what *** Michael and his accountant were unable to explain was why Michael would owe taxes a second time (to be paid by distributions) on his W-2 payroll

income, when taxes were already taken out of that income in his paychecks." In contrast, the trial court found the testimony of Maria's accountant, who testified as to the amount Michael owed in additional child support, to be credible.

¶ 12 After performing a series of calculations, the trial court determined that Michael's net bonus in 2012 was $57,969, and that he owed Maria $10,509 in additional child support for 2012. It further found that he had a net bonus of $149,761 in 2013 and that he owed Maria $10,941 in additional child support for that year.

¶ 13 The trial court ruled that Michael was in indirect civil contempt of court because he willfully and contumaciously, and without compelling cause or justification, violated the dissolution judgment and MSA by failing to pay the full amount of base child support and by failing to pay the additional child support due on his bonuses. It found that Michael owed Maria a total of $31,788.87 in child support. It sentenced him to 6 months' periodic imprisonment but stayed the sentence to allow Michael to pay the purge amount of $6,500 (which he later did).

¶ 14 On August 12, 2016, Michael filed a motion to reconsider. The trial court denied the motion on October 28, 2016, and Michael timely appealed.

¶ 15 II. ANALYSIS

¶ 16 A. Petition to Modify Child Support

¶ 17 Michael first argues that the trial court erred in denying his petition to modify child support. We summarize his argument as follows. When the MSA was first entered into in 2012, his relevant net monthly income was $13,772.50. However, he experienced a substantial change in circumstances as a result of the wage deductions levied against him. After the garnishment, his net income dropped to $10,647.50, a reduction of "$3,740.00,"[2] more than 22%.

[2] We note that $13,772.50 - $10,647.50 = $3,125

Nonetheless, in his petition to modify, he requested a reduction of just $700. He minimally reduced his base child support payments only after filing his petition to modify and at the specific direction of his divorce counsel.

¶ 18 Michael points out that the statutory definition of net income under section 505(a)(3)(h) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/505(a)(3)(h) (West 2016)) [3] allowed for a deduction for:

> "*Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income including,* but not limited to, student loans, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period." (Emphasis added.)

Michael cites *In re Marriage of Davis*, 287 Ill. App. 3d 846, 853 (1997), where the court stated that "necessary" expenses were " 'those expenses outlaid by a parent with a good-faith belief his or her income would increase as a result, and which actually act to increase income, or would have done so absent some extenuating circumstances.' " *Id.* (quoting *Gay v. Dunlap*, 279 Ill. App. 3d 140, 149 (1996)). The *Davis* court held that the father's purchase of a dental practice and building partnership interest was a reasonable and necessary expense for the production of income. *Id.* at 854.

[3] Section 505 was amended effective July 1, 2017, and no longer contains this language. See 750 ILCS 5/505, as amended by P.A. 99-764, effective July 1, 2017. However, we cite the version of the statute in place at the time of Michael's petition and the trial court's ruling.

¶ 19 Michael argues that rather than recognizing that the debts he incurred were from business investments, from which both parties enjoyed substantial benefits when the real estate market was strong, the trial court wrongfully likened the debts to gambling losses. Michael maintains that by the trial court's logic, a stock investor could never claim a change in circumstance due to a downturn in the market, nor could a full-time real estate investor claim such a change despite the worst real estate downturn in over 25 years. According to Michael, the trial court's narrow view ignores the reality of how most entrepreneurs generate income. Michael argues that the trial court also ignored the fact that, since the MSA's entry, Maria has been continuously gainfully employed, and Michael's parenting responsibilities have increased.

¶ 20 Maria counters that Michael has failed to provide a brief or record upon which we can base a meaningful review of the trial court's order, requiring the dismissal of his appeal. Maria notes that Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016)[4] requires that the statement of facts cite pages of the record on appeal. She cites *U.S. Bank Trust National Ass'n v. Junior*, 2016 IL App (1st) 152109, ¶ 18, where the court stated that the failure to substantiate factual assertions with citations to the record warrants dismissal of the appeal, because it is otherwise almost impossible for the reviewing court to determine whether the facts presented are an accurate and fair portrayal of events in the case. Maria points out that Michael's statement of facts largely references only his own pleadings, even though pleadings "do not constitute evidence except by way of admission." 735 ILCS 5/2-605(a) (West 2016). Maria argues that, as a result, there is no evidentiary basis for any of Michael's factual claims which underlie his

[4] Rule 341 was amended effective July 1, 2017. See IL Court Order 0011 (eff. July 1, 2017) (amending Ill. S. Ct. R. 341). The changes are not relevant here because they largely relate to electronic filing, and they became effective after Michael filed his brief.

arguments.

¶ 21 Maria further observes that Michael has not provided a transcript or bystander's report of the hearing on the petitions at issue. She cites *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984), where our supreme court stated that the appellant has the burden of providing a sufficiently complete record of trial proceedings to support his or her claims of error, and the reviewing court will resolve any doubts that arise from the incompleteness of the record against the appellant. Maria asserts that without any report of what occurred at the evidentiary proceeding, Michael simply cannot establish that the trial court abused its considerable discretion.

¶ 22 Although Michael largely cites to his own pleadings in his statement of facts, we decline to dismiss the appeal, as the trial court's findings support the basic factual assertions underlying Michael's argument. However, as we subsequently discuss, his failure to provide a transcript of the hearing does require us to resolve any doubts arising out of the incompleteness of the record against him.

¶ 23 Maria further argues that Michael's claims "defy logic." Maria highlights that the MSA disallowed any child support from Michael's gross earnings from employment "in excess of $30,000.00 or from any other source." She notes that the trial court stated that the MSA "did not base child support upon any income derived from Michael's real estate investments" but rather on his law firm salary, which had not changed. It also found that the judgments against Michael resulted from "a speculative real estate investment that went sour." Maria argues that the trial court ruled that Michael did not sustain his burden of proving a change in circumstances because he demonstrated no change in the only income considered for child support purposes pursuant to the parties' agreement. Maria argues that this conclusion was not against the manifest weight of the evidence and was well-within the trial court's discretion, particularly when any doubts

arising from the lack of a transcript of the hearing must be resolved against Michael.

¶ 24 Section 510(a)(1) of the Dissolution Act (750 ILCS 5/510(a)(1) (West 2016)) provides that an award of child support can be modified "upon a showing of a substantial change in circumstances." The party seeking the modification has the burden to prove that a substantial change in circumstances has occurred. *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 13. The trial court's factual findings in an action seeking to modify child support will not be disturbed unless they are against the manifest weight of the evidence. *Id.* ¶ 16. Its decision whether to modify child support is within its sound discretion. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 28. An abuse of discretion occurs only where no reasonable person would take the trial court's view. *Id.*

¶ 25 Here, the trial court found that Michael's law firm salary had not changed, which is undisputed. Michael argues that under section 505(a)(3)(h) of the Dissolution Act, the wage garnishment should be deducted from the calculation of his net income because it falls within the category of "[e]xpenditures for repayment of debts that represent reasonable and necessary expenses for the production of income." 750 ILCS 505(a)(3)(h) (West 2016). Arguably, the wage garnishment relates to the repayment of debt incurred with the intent of producing income. "However, simply because an expense falls into the category of a debt repayment does not mean it is deductable," as the party must show that the debts being repaid are for the reasonable and necessary expenses to produce income. *Gay v. Dunlap*, 279 Ill. App. 3d 140, 148 (1996); see also *In re Marriage of Davis*, 287 Ill. App. 3d at 853 ("Merely qualifying as a repayment of a debt is a necessary but not sufficient condition for deductibility under section 505(a)(3)(h).")

¶ 26 Thus, the question is whether the real estate investments were "reasonable and necessary expenses" to produce income. As Michael notes, *Davis* defined "necessary expenses" as money

a parent outlaid with a good-faith belief that it would increase his or her income, and which did or would have done so without extenuating circumstances. *Davis*, 287 Ill. App. 3d at 854. Similarly, in order to determine what is a "reasonable" expense under section 505(a)(3)(h), the court must consider the relationship between the amount of the expense and the amount by which, in good faith, the income is expected to increase as a result. *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 19. However, without a transcript of the hearing, there is nothing to substantiate that the investment previously generated money for the parties or was otherwise "reasonable and necessary." To the contrary, the trial court labeled it as a "a speculative real estate investment that went sour," and we have no basis to disturb this finding. See *Foutch*, 99 Ill. 2d at 392 (in the absence of a sufficiently complete record on appeal, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis"); *cf. In re Marriage of Cornale*, 199 Ill. App. 3d 134, 137 (1990) (trial court did not err in declining to deduct monthly payments for a real estate investment when determining parent's net income for child support purposes).

¶ 27 The trial court further pointed out that the MSA based child support on Michael's law firm salary, which had not changed, and that even after the wage garnishment, Michael was still contributing $1,346 per month to his retirement account. Moreover, as Maria notes, although Michael seeks to have losses from his investments decrease his child support payments, any gains he received from those investments would not have correspondingly increased his child support payments. Michael points to Maria's employment and his increased time with the children as additional reasons to find a substantial change in circumstances, but we have no evidence from the hearing to consider on these issues, nor did the trial court comment on them in its ruling. For all of these reasons, we must conclude that the trial court acted within its

discretion in ruling that Michael failed to prove that there was a substantial change in circumstances warranting a reduction in child support.

¶ 28 B. Amount of Additional Child Support Owed

¶ 29 Michael next argues that the trial court erred in failing to properly apply the MSA's express contractual terms, as opposed to section 505 of the Dissolution Act, in determining the additional child support that he owed on bonuses/distributions. Michael argues that the MSA was binding on the parties and should have been applied as written. He cites the MSA language regarding additional child support, which excluded "distributions made purely for the purposes of paying income tax or of phantom income for bookkeeping purposes." Michael argues that the trial court heard the testimony of his accountant, Irwin Steinberg, CPA, who had helped prepare the MSA formula. Michael maintains that Steinberg also advised him, in writing, as to the amount of additional child support he owed every year since the MSA was executed. Exhibits, prepared by Steinberg and included in the record, indicate that Michael owed $813 for 2012 and $4,841.13 for 2013. According to Michael, these calculations excluded distributions of $100,000 in 2012 and $300,241.48 in 2013 that were for the purposes of paying income tax or were phantom income. Michael argues that the trial court failed to start with net, after-tax income and should have excluded these distributions. Michael contends that the trial court instead improperly accepted the testimony of Maria's accountant, who calculated the additional child support under section 505 rather than pursuant to the parties' agreement.

¶ 30 Maria notes that Michael bases his argument on Steinberg's testimony, but the trial court did not find Steinberg's testimony to be credible. Maria argues that the trial court instead found her accountant to be credible, and it applied the same calculations that she did, as demonstrated by her exhibits. Maria argues that neither her accountant nor the trial court applied section 505,

but rather applied the MSA as written. Maria maintains that there is no support for Michael's assertions that the additional distributions he received were for taxes or phantom income, beyond the bald assertions of Steinberg, whom the trial court found incredible.

¶ 31 We agree with Maria's argument. Nothing in the trial court's ruling indicates that it was applying section 505, as opposed to the MSA, to compute the child support owed on Michael's bonuses. Rather, the trial court quoted the relevant formula from the MSA, and it subtracted from the distributions state and federal income tax liability that was not covered in withholdings. Michael takes the position that the trial court should have accepted Steinberg's testimony as to the amounts from the distributions excluded as representing payment of income taxes and phantom income. However the trial court expressly found Steinberg's testimony to be "convoluted, lacking in clarity, and not credible." The trial court specified that Steinberg was unable to explain why Michael would owe taxes a second time on his W-2 payroll income; Michael does not even attempt to provide an answer in his brief. In contrast, the trial court found Maria's accountant's testimony to be credible. "Where a conflict in the witnesses' testimony exists, a reviewing court will not substitute its judgment for that of the trier of fact, whose function it is to determine the credibility of the witnesses' testimony and the inferences to be drawn therefrom." *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 17. In his reply brief, Michael argues that the trial court did not actually struggle with the credibility of witnesses but instead had "an admitted lack of acumen and understanding of the formula set forth in the parties' MSA and of Mr. Steinberg's testimony." We have the parties' MSA in the record on appeal, but Michael has deprived us of the benefit of Steinberg's enlightening testimony by failing to provide us with a transcript of the hearing. Based on the record before us, we cannot say that the trial court erred in calculating the amount of money Michael owed for additional child support.

See *Foutch*, 99 Ill. 2d at 392.

¶ 32 C. Contempt

¶ 33 Last, Michael argues that the trial court erred in finding him in contempt of court, as his conduct was not without compelling cause or justification. Michael argues that he only minimally reduced child support payments after a significant reduction in his net income and pursuant to the express direction "of his seasoned divorce attorney and highly respected accountant." Michael maintains that, therefore, even if the trial court's calculations are otherwise upheld, his conduct was reasonably justified. Michael contends that, at all times, he thought he was properly following the law and the MSA. Michael cites *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 67, in whuch the appellate court held that the father did not willfully disregard the trial court's support order where he sought the advice of his attorney before terminating a prepaid tuition plan.

¶ 34 Maria argues that Michael characterizes his unilateral reductions to child support as minimal, but the trial court found that he had failed to pay nearly $32,000 of support. Maria argues that we are in no position to determine whether Michael established a sufficient excuse for non-payment because Michael has not provided transcripts of trial testimony or a bystander's report, and that an affirmance is required on that basis alone. Maria maintains that, even otherwise, the record supports the trial court's ruling, as the amount of his unilateral reduction of support was less than half of what he continued to voluntarily contribute to his retirement plan despite pleas of hardship. Maria argues that although Michael contends that he believed that the deduction was warranted due to the wage garnishment, the child support order was for a set amount of $4,400 per month, and Michael was bound to follow that order until he obtained a modification from the trial court. See *In re Marriage of Scheaffer*, 2013 IL App (2d) 121049, ¶

12 (to modify a child support obligation, a parent must petition the trial court and receive judicial approval of any changes). Maria argues that the rule applies with particular force when a trial court ultimately denies the request to modify to support.

¶ 35 Regarding Michael's argument that he relied on the advice of his attorney and accountant, Maria argues that the record is devoid of any testimony that the attorney advised him to violate a court order. Maria argues that Michael's only citation to the record in relation to this claim is to his written closing argument, which was not evidence and which did not include any representation of the advice Michael claims to have received. Maria argues that the record similarly lacks evidence that Steinberg gave Michael any advice at the time Michael underpaid the additional child support he owed for 2013. Maria maintains that even if there were substantiating evidence, Michael's claims lack merit because a person subject to court orders cannot abdicate responsibility for complying with them.

¶ 36 To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving, by a preponderance of the evidence, that the other party has violated a court order. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 50. The burden next shifts to the alleged contemnor to prove that the violation was not willful and contumacious, and that he has a valid excuse for failing to follow the order. *Id.* "Willful" means that the noncompliance was without compelling cause or justification. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 39. Contumacious conduct is conduct that is calculated to embarrass, hinder, or obstruct a court in its administration of justice, or lessen the court's dignity and authority. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 50. Thus, a party's noncompliance with an order does not automatically necessitate a finding of contempt. See *In re Marriage of Baggett*, 281 Ill. App. 3d 34, 39 (1996). Whether a party is guilty of contempt is a factual question for the trial

court, and we will not disturb its determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 50.

¶ 37 We find no basis for reversal. Without a transcript of the relevant hearing, we are unable to determine what *specific* advice Michael allegedly received and when he received this advice. The lack of a transcript distinguishes this situation from *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, which is further distinguishable because the father there closed a college savings account only after the trial court terminated his educational support obligation for his son. *Id.* ¶ 63. A transcript is especially important in this case because the trial court found Steinberg not to be credible, and because Michael is a seasoned attorney with presumably his own independent knowledge of the necessity of complying with court orders as written. Only after reviewing Michael's testimony on direct and cross-examination, along with the testimony of other relevant witnesses, could we assess whether the trial court erred in finding that Michael's failure to pay the child support amounts due was willful and contumacious. Instead, in accordance with *Foutch*, 99 Ill. 2d at 392, we must conclude that the trial court's contempt finding was not against the manifest weight of the evidence or an abuse of discretion.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 40 Affirmed.