

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).

2014 IL App (4th) 130553-U

NO. 4-13-0553

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 6, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
SHEILA A. STEWART, n/k/a SHEILA A.)	Circuit Court of
PORTER,)	McLean County
Petitioner-Appellant,)	No. 97D528
and)	
BRENT E. STEWART,)	Honorable
Respondent-Appellee.)	John C. Costigan,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* (1) In a proceeding regarding educational expenses for a college-age son, the trial court improperly afforded the respondent father credit for payments for which he previously had been given credit.

(2) This court lacks jurisdiction over the *pro se* appellee's claims, as appellee failed to file the requisite notice of appeal or cross-appeal.

¶ 2 In September 2012, petitioner, Sheila A. Stewart, n/k/a Sheila A. Porter, moved to find respondent, Brent E. Stewart, owed her \$15,280.54 for their son's college expenses and to modify a child-support order to allow her to claim her son as a tax exemption for tax year 2012. The trial court granted her motions in part. The court found Brent owed Sheila \$7,046 in educational expenses. The court modified the child-support order to allow Sheila to claim her son as a tax exemption, starting the tax year 2013, if Brent was not current in paying his share of

the educational expenses. Sheila appeals, arguing (1) the trial court, in determining Brent's share of the educational expenses, improperly credited Brent for payments already considered and factored into earlier educational-expense orders and improperly awarded Brent amounts deemed "refunds"; and (2) the court erroneously failed to give her the tax exemption for 2012. We affirm as modified.

¶ 3

I. BACKGROUND

¶ 4

Sheila and Brent share an adult son, Austin Stewart. In December 2009, the trial court entered an order regarding Austin's educational expenses. Sheila and Brent were ordered to share equally the financial responsibility for certain expenses related to Austin's college education, including tuition, room and board, and fees. Austin was responsible for costs associated with transportation, clothing, laundry, recreation, and other miscellaneous expenses. The terms of the order were contingent on both parties having access to Austin's grades and billing statements. During the summer session of 2009, Austin resided with Sheila and attended Heartland Community College (Heartland). The following fall and spring semesters, Austin was a full-time student at Western Illinois University (WIU). The order set forth payments made by Brent and amounts he owed Sheila. Brent owed \$315.41 for Heartland fees, \$387.51 for books for the fall 2009 semester, and \$468.55 for WIU. The court ordered both parties to forward Austin \$390 each semester for books. The court also awarded attorney fees to Sheila for Brent's delay in providing tax documents.

¶ 5

In February 2011, the trial court found Brent in contempt for failing to pay college expenses. The trial court considered a credit, a payment of \$200 by Brent, and concluded Brent owed Sheila \$5,013.22 for unreimbursed expenses for Austin's fall 2010

semester at Illinois State University (ISU). The court reserved a ruling on \$155.10 owed from Austin's attendance at WIU, but neither party addressed the issue further.

¶ 6 In July 2012, the trial court entered an order regarding Austin and his minor sibling, Ashton Stewart, who resided with Sheila. The order addressed a number of topics, including Sheila's request for the 2011 tax exemption for Austin. An order from December 2000 stated "[Brent] shall receive Austin as an exemption on his Federal and State tax returns each year so long as [Brent] is current in child support and day[-]care reimbursement." The court found Brent was current on those issues and denied Sheila's request.

¶ 7 In September 2012, Sheila filed petitions for modification of the December 2000 order on the tax-dependency issue and for an order regarding amounts owed to her by Brent. Sheila asked the trial court to modify the December 2000 order to allow Brent to claim Austin as a dependent on his taxes only if he was current in his payments for Austin's educational expenses. In the latter petition, Sheila requested the \$5,013.22 awarded by the trial court in February 2011 and the educational expenses related to Austin's attendance at Heartland during the summers of 2010, 2011, and 2012, and in the spring of 2012. Sheila further requested the educational expenses related to Austin's attendance at ISU in the spring and fall of 2011 and 2012. She sought certain spring 2013 expenses, noting she had not received a bill for tuition and fees. Sheila argued Brent owed her, after deducting payments made by Brent and a 2009 tax credit, \$15,280.54.

¶ 8 In January 2013, the trial court entered an order on Sheila's September 2012 petitions. The court agreed to amend the December 2000 order regarding the tax dependency. The court found, beginning with the 2013 tax year, Brent may claim Austin as an exemption as

long as he is "current with his support obligations as of December 31st of that year." The court noted Brent argued he did not owe Sheila any money, but it found Sheila incurred \$15,280.54 in Austin's educational expenses, for which she was entitled to reimbursement from Brent. The court stated it had reviewed Brent's exhibits and concluded Sheila failed to give Brent credit for a number of payments Brent made and for credit for refunds Austin received from Heartland, WIU, and ISU. For the refunds, the court found Brent was entitled to credit of \$3,226.17. The court, in addition, listed 13 checks, totaling \$7,502.97, for which Brent deserved credit:

1/10/10	\$100
7/25/10	200
12/31/09	390
1/14/10	290
12/26/09	4,000
1/15/10	1.50
7/31/09	150
10/20/09	400
9/21/09	400
8/19/09	400
12/23/09	315.41
12/31/09	139.55
12/31/09	<u>716.51</u>
	\$7,502.97

The court found Brent owed Sheila \$4,551.40 and denied Sheila's request for attorney fees.

¶ 9 In February 2013, Sheila filed a motion to reconsider. In May 2013, the trial court amended its order. The court observed it "again reviewed all of the bills and reconsidered the bills allegedly owed and the payments made." The court found Sheila had already given Brent "credit for the \$4,000 payment which the Court had initially not credited to" Sheila. The court also found Brent "did not receive credit for check number 7190 in the amount of \$575.25; 7192 in the amount of \$156.78; 7053 in the amount of \$100; 7026 in the amount of \$200; 7211 in the amount of \$473.37." The court found Brent owed Sheila an additional \$2,494.60 and revised the January 2013 order to find Brent owed Sheila \$7,046.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, Sheila first argues the trial court erred by giving Brent credit for payments she argues were already applied and considered in earlier rulings of the court. According to Sheila's argument, the court's failures result in Brent receiving double and triple credit for payments he made. Sheila, however, concedes she failed to give Brent credit for \$122.08 and contends she is owed \$15,158.46.

¶ 13 Sheila's argument is based on the trial court's factual findings. The appropriate "standard of review is whether the trial court's findings of fact are against the manifest weight of the evidence." *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342, 672 N.E.2d 57, 60 (1996). Under this standard, a reversal is warranted when "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 14 We start with the checks written by Brent and credited by the trial court. The

credit to Brent for the first check listed by the court, referred to in the order as "1/10/10[,] 100," is conceded as proper by Sheila. Thus, Brent should receive credit for this amount.

¶ 15 We turn to the check referenced as "7/25/10" for \$200. The record shows Brent received credit for this amount when the trial court entered the February 18, 2011, order. The February 2011 order concerns payments for the fall 2010 semester. The check is dated July 25, 2010. In the order, the trial court concluded, in regard to college expenses at ISU, Brent paid \$200: "with [Brent] being given credit for the \$200.00 payment made July 30, 2010." This check was considered and applied as a credit. It was error to give Brent credit for this payment a second time.

¶ 16 Regarding the "12/31/09[,] 390" payment, Sheila contends the payment is pursuant to the December 30, 2009, order for books. The record supports her contention. In the December 30, 2009, order, the court ordered both Sheila and Brent to forward Austin \$390 each semester for books. The check for \$390 was paid the following day, just before the start of the spring 2010 semester. When Sheila sought compensation from Brent for the fall 2010 educational expenses and later for the 2011 and 2012 expenses, expenses for spring 2010 were not involved or sought. Sheila, thus, had given credit to Brent for paying this amount.

¶ 17 The next check, referred to by the trial court as "1/14/10[,] 290," is a check written by Brent to "Western IL." In the memo line appears, "Payment in Full." Brent included this check in his appendix on appeal as a payment toward Austin's spring 2010 semester. Austin attended WIU in the fall 2009 and spring 2010 semesters. The reimbursement sought by Sheila in this action involves the judgment from the fall 2009 semester (the December 2009 order) and expenses and fees related to Austin's attendance at Heartland and ISU, starting with the summer

2010 semester. This \$290 was already credited by Sheila, as she does not seek additional payment for the spring 2010 semester at WIU. Brent should not have been given additional credit for this check.

¶ 18 The trial court also gave credit for a check for \$1.50 to Brent. This check, dated January 15, 2010, appears to be linked to a "Landlord/Lease charge" from fall 2010. The only argument Sheila makes regarding this check is she "did not receive it." Sheila does not cite the record. The record is insufficient to find this credit is against the manifest weight of the evidence.

¶ 19 The next four checks mentioned in the trial court's January 2013 order are as follows: "7/31/09[,] 150," "10/20/09[,] 400," "9/21/09[,] 400," and "8/19/09[,] 400." These checks reference amounts for which the court gave Brent credit in December 2009. In the December 2009 order, the court stated Brent "paid \$150 toward the Heartland and [laptop] expenses." The court further observed the following regarding the \$400 checks: "[Brent] has sent two \$400.00 checks to school which have been cashed and acknowledged by the school. He has sent a third \$400 check which [has] been received by the school but which will be sent back and reimbursed by the school." In addition, the court, when determining the "equalization payment" in December 2009, stated it was "dependent upon all of the above assumptions and representations." These checks were considered and credited in Brent's favor. It was error to give Brent additional credit for these payments.

¶ 20 The last three payments listed in the January 2013 order are "12/23/09[,] 315.41," "12/31/09[,] 139.55," and "12/31/09[,] 716.51." Sheila contends these payments satisfied the debt the trial court determined Brent owed her in December 2009 and should not have been twice

credited to Brent. We agree. In the December 2009 order, the court concluded Brent owed "\$315.41" to Sheila for "health payments," which is the exact amount paid by Brent with the December 23, 2009, check. The court further concluded Brent owed Sheila \$387.51 for Austin's fall 2009 semester books and an additional \$468.55 for WIU expenses for fall 2009. The total of these two amounts is \$856.06. The two "12/31/09" checks total \$856.06. The record establishes these two checks satisfied the payments Brent owed as of the December 30, 2009, order. Her current litigation against Brent does not involve fall 2009 expenses. Sheila considered those paid by Brent. The court improperly gave Brent additional credit for these payments.

¶ 21 Sheila further argues the trial court erroneously awarded Brent credit for "refunds" from WIU, Heartland, and ISU for \$3,226.17. In the January 2013 order, the court ruled Austin received refunds from WIU, Heartland, and ISU totaling \$6,452.34, for which Brent was entitled to a credit for his share of that amount—\$3,226.17. Sheila contends the court arrived at these figures based on Brent's "Exhibit #5," which lists "the student's refunds." On this exhibit, Brent listed the following on the first page: "DRCT SUB 12-09-11 \$2,669.00," "DRCT SUB 12-12-11 \$2,669.46," "08-09-11 \$225.75," "08-09-11 \$346.46," "09-19-11, \$297.51," and "03-23-10 \$44.16." Brent also listed on a separate page of the same exhibit a refund of \$100 on November 15, 2010. Sheila maintains the "refunds" for the largest two amounts were not actually refunds, but federal loans taken by Austin for expenses, such as buying a car. Sheila emphasizes the order requires Brent to pay for half the tuition and does not require Austin to acquire loans or use federal loans for expenses Brent and Sheila must pay under the December 2009 order. Regarding the other funds, Sheila concedes she failed to account for the \$44.16 refund, but she maintains the other amounts were already accounted for in her request for

reimbursement.

¶ 22 The first two amounts on Brent's exhibit, \$2,669.46 and \$2,669, are "federal direct subsidized loans" in the amounts of \$2,669.46 and \$2,669. These "refunds" resulted after the tuition and fees were paid in full but before the federal loans were applied. A letter from "Pat Walsh", written on letterhead from the Student Accounts Department of ISU, indicates the loans were issued to Austin, "applied to his student account, and refunded to him as the money is borrowed in the student's name." The letter further states the loans belong to Austin, who is responsible for repaying them.

¶ 23 We agree these funds were not "refunds" for which Brent should receive credit. These loans did not lessen the amounts owed to ISU for Austin's education. They did not decrease the amount owed by Brent and Sheila under the December 2009 order, which requires Sheila and Brent share "on a 50/50 basis" certain mandatory college expenses, including tuition and room and board. The "refunds" resulted from Austin's taking federal loans to assist in the amounts for which he is responsible, such as transportation, clothing, and laundry. By awarding Brent a credit for these loan amounts, the court improperly increased Sheila's burden above the "50/50 basis" set forth in the December 2009 order. Brent was improperly afforded a credit for his share of these amounts.

¶ 24 Sheila argues the next three amounts, \$225.75, \$346.46, and \$297.51, were accounted for when she calculated the amount requested from Brent. In making this argument, Sheila points to an exhibit she drafted and includes a couple of sentences asserting she accounted for these refunds. This argument is insufficient for this court to find the trial court's award is against the manifest weight of the evidence. The order giving Brent credit for his share of these

amounts stands.

¶ 25 Sheila does not challenge the remaining \$200 of the \$6,452.34. It appears \$100 of that amount was referenced by Brent, but the remaining amount was not. Because Sheila did not challenge the remaining \$200, she has forfeited any argument it was improperly awarded. Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived.").

¶ 26 We turn to the amounts Brent was credited in the May 2013 order. The first listed is "check number 7190 in the amount of \$575.25." The record contains a check No. 7190, dated November 22, 2012, from Brent to Sheila. At the top is written "Austin Stewart College" and in the memo line is written "ISU Fall Payment." Sheila makes no argument in her brief regarding this check. She has thus forfeited any argument this check was improperly credited. Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived.").

¶ 27 The second check listed by the trial court in the May 2013 order is "[No.] 7192 in the amount of \$156.78." It refers to a check written by Brent to Sheila, dated November 26, 2012. Across the top of the check appears, in handwriting, "Austin Stewart College." Sheila's brief contains no argument regarding this check. She has forfeited any argument the court improperly credited Brent with this check. Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived.").

¶ 28 The third check in the order, "[No.] 7053 in the amount of \$100," is a check written from Brent to ISU for \$100. The date of the check is November 10, 2010. Sheila does not mention the check in her argument. She has forfeited a challenge to it. *Id.*

¶ 29 The fourth check, "[No.] 7026 in the amount of \$200," refers to a check written by Brent to ISU on July 25, 2010. Brent was given credit for this payment both in the February

2011 order and in the court's January 2013 order. The decision to credit Brent with this check is against the manifest weight of the evidence.

¶ 30 Regarding the last check in the order, "[No.] 7211 in the amount of \$473.37," Sheila argues only that "[t]here is no evidence of this payment." The record contains a check numbered 7211 in the amount of \$462.50. The check is written by Brent to Sheila on January 24, 2013. In the memo line of the check is handwritten, "Room + Board Spring 2013." The record is insufficient to find the crediting of this check is against the manifest weight of the evidence. The record shows, however, Brent should have been credited for only \$462.50.

¶ 31 Sheila last argues the trial court erroneously denied her request to allow her the tax deduction effective for tax year 2012. Sheila maintains because Brent owed several thousand dollars, he should not be permitted to claim a child for whom he is grossly in arrears.

¶ 32 "Modification of child-support orders lies within the sound discretion of the trial court, and its decision will not be disturbed on appeal unless an abuse of discretion is found." *In re Marriage of Deike*, 381 Ill. App. 3d 620, 630, 887 N.E.2d 628, 637 (2008).

¶ 33 We find no abuse of discretion in the trial court's order. In the order dated December 2000, the issue of the tax exemption was set, giving Brent the authority to "receive Austin as an exemption on his Federal and State tax returns each year so long as [Brent] is current in child support and day[-]care reimbursement." In July 2012, upon Sheila's request for the 2011 tax exemption based on the above language and her contention Brent was behind on Austin's educational expenses, the trial court denied it. The court stated it strictly construed the language, consistent with the parties' approach throughout their time with the case, and found Brent was current in "child support and day[-]care reimbursement" and was thus entitled to the

exemption. In her September 2012 filings, Sheila sought modification of the December 2000 order to require Brent to be current regarding the educational expenses in order to claim the exemption. The court agreed to the modification, but it ordered it not to take effect until the 2013 tax year.

¶ 34 This finding is proper. Brent, throughout the 2012 tax year, due to previous court orders, believed he had the exemption due to his compliance with "child support and day[-]care reimbursement." To take that from him at the end of that year would have been improper. Instead, the trial court gave Brent notice, at the beginning of 2013, that if he was not current on his educational obligations, he would not be permitted to use Austin as an exemption for 2013.

¶ 35 We turn to the arguments in Brent's brief. Brent makes a number of challenges to the figures reached by the trial court, ultimately concluding he is owed by Sheila \$80.53 for educational expenses. Brent, however, failed to file a cross-appeal, leaving this court with no authority to resolve Brent's claims. See Ill. S. Ct. Rule 303(a)(3) (eff. June 4, 2008); *Rodgers-Orduno v. Cecil-Genter*, 312 Ill. App. 3d 1150, 1154, 728 N.E.2d 62, 66 (2000) (holding the filing of "a timely notice of cross-appeal is a prerequisite to appellate jurisdiction"); see also *Lagen v. Balcov Co.*, 274 Ill. App. 3d 11, 14, 653 N.E.2d 968, 970 (1995) ("Appellees may not argue alleged errors unless they timely file a notice of cross-appeal or a separate appeal."). Without the filing of a cross-appeal, this court is "confined to those issues raised by the appellant and will not consider those urged by the appellee." *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 41, 990 N.E.2d 802.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we find Brent owes Sheila \$13,327.57 for Austin's

educational expenses. We affirm the trial court's judgment as modified.

¶ 38 Affirmed as modified.