

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).

2018 IL App (4th) 160614-U

NO. 4-16-0614

FILED

March 30, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> THE MARRIAGE OF HENDERSON)	Appeal from
)	Circuit Court of
(Chad Henderson,)	Cumberland County
Petitioner-Appellant,)	No. 12D3
and)	
Sarina Henderson,)	Honorable
Respondent-Appellee).)	Millard S. Everhart,
)	Judge Presiding.
)	

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court's decision not to deviate from the statutory guideline for child support is not an abuse of discretion.
- (2) The trial court did not abuse its discretion in ordering petitioner to pay college expenses for his daughter.
- ¶ 2 Petitioner, Chad Henderson, and respondent, Sarina Henderson, are the parents of two daughters, H.H. (born June 23, 1997) and B.H. (born November 7, 1999). The parties' marriage was dissolved in March 2012. At that time, a joint parenting agreement was entered. Because the parents shared physical custody and equal visitation time, the agreement provided for no child support. The parties made no provision for college expenses.
- ¶ 3 In May 2015, Sarina filed a petition to modify the joint parenting agreement for

child support for B.H. and a petition for postsecondary education expenses for H.H. After a hearing, the trial court ordered Chad pay Sarina \$1098.18 per month in child support and additional sums toward an arrearage. The court further ordered Chad pay H.H.'s Sallie Mae loan of \$14,616 for each year she is in college.

¶ 4 Chad appeals the order, arguing the trial court abused its discretion in (1) not deviating from the statutory guideline to reduce the amount of support to reflect the fact his income and expenses prevent him from affording the statutory amount; and (2) ordering him to pay for college expenses when he cannot afford them, particularly in light of the support order. We affirm.

¶ 5 I. BACKGROUND

¶ 6 Chad and Sarina were married in 1997. The marriage was dissolved in March 2012. The parties entered into a joint parenting agreement for their two daughters. The parties shared parenting time and custodial decisions.

¶ 7 Sarina, in May 2015, petitioned the trial court to modify the joint parenting agreement and for child support. Sarina alleged significant changes warranted the modification and the support award. Sarina alleged Chad's residence was injurious to their daughters' welfare in that Chad committed domestic battery against B.H. B.H. refused to return to Chad's home. Sarina further alleged H.H. had resided with her full-time for over 1 1/2 years. Sarina also filed a petition for "Post Secondary Education Expenses" on behalf of H.H. Sarina alleged H.H. would be attending the University of Louisville, pursuing a premedical track, beginning fall 2015. Sarina asserted the parties were unable to agree how to allocate college expenses and asked the court to apportion the expenses in an equitable manner.

¶ 8 In March 2016, the parties entered a parenting plan order. According to the order, B.H. would reside with Sarina. The parties agreed the decision-making parental responsibilities would be allocated to Sarina. The parties further agreed Sarina would have the majority of parenting time. Chad would see B.H. “twice a month for joint counseling with Richard McDade until the counselor recommends expanding [Chad’s] period of contact.”

¶ 9 The issues of child support and college expenses remained. Hearings were held on these issues in March and April 2016. At the hearing, Chad testified he resided in Greenup with Tristan, his girlfriend’s son. Chad was employed as a highway maintainer, mechanic, and equipment operator with the Illinois Department of Transportation. Chad was paid bimonthly. His base pay for each check was \$3093.50. His net was \$1983.51. The net figure reflected, among other deductions, \$262.95 toward Chad’s retirement. This was a mandatory figure. The net amount also included \$147.25 in health insurance and \$18.93 toward dental and vision. Both H.H. and B.H. were covered by Chad’s insurance. His net monthly income from his state employment was \$3967.02.

¶ 10 Chad testified he owned 30 acres of farm ground and grain bins. He rented the farm ground and grain bins, earning \$6172.08 in rent, from Jerry Sidwell. Chad also worked as a mechanic for Jerry and Jerry’s brother, Larry Sidwell, fixing farm equipment. Chad planted for them, as well, earning \$15 an hour. In 2015, Chad’s net income from Jerry Sidwell was \$3564.32. His net income from Larry that year was \$4143.92. Chad testified his income from the farming activities and rent “could change depending on snow storms, overtime, cash rent, [and] whether my grain bins get full.” Chad agreed, however, his earnings were “fairly consistent.”

¶ 11 Chad testified his house and property included 79.5 acres. On this property, Chad

owed \$94,192.50. Chad agreed he had at least \$200,000 equity in the house. Regarding his other property, Chad testified he had \$30,000 in equity on his truck, \$8000 in a tractor, \$6000 in a bush hog, and \$7000 in a “Yamaha Rhino.” Chad also owned six beef calves, which he valued at \$5000 in total. Chad had \$6120 in his checking account.

¶ 12 According to Chad, in October 2014, H.H. went to live with Sarina full time. From that date to when H.H. graduated high school, Chad provided no money for H.H.’s groceries, clothing, or living expenses. When asked if he could afford the \$1537.45 Sarina requested in child support, Chad stated such an award would prevent him from paying his bills. Chad asserted the maximum he could pay from his state pay would be \$300 per month. When asked if he could pay anything beyond that for H.H.’s college education, Chad stated, “I would like to help with something,” but the funds would have to be from a cash-rent check or a planting check. Chad’s financial affidavits indicate Chad had \$5456.71 in monthly expenses and obligations. This included a house payment of \$791.92, and a truck payment of nearly \$900.

¶ 13 H.H. testified she attended the University of Louisville. She graduated high school in 2015. H.H. intended to get an undergraduate degree in biology and go into medical school for anesthesiology. H.H.’s fallback plan was to pursue nuclear medicine. H.H. selected the University of Louisville because it offered her program. She loved the campus and liked the people. In her first year of classes, H.H. earned As and Bs.

¶ 14 According to H.H., her college expenses for fall semester 2015 were \$16,743 and for spring semester 2016 were \$16,643. H.H. earned \$500 per year for books from First Neighbor Bank and a one-time \$7500 scholarship from the National Scholars Program. H.H. took out a \$14,000 Sallie Mae loan for her freshman year. She took out a direct subsidized loan

for \$1732 per semester and an unsubsidized loan for \$990 per semester. Chad had not contributed toward these expenses. H.H. worked 30 hours per week as a hostess.

¶ 15 On cross-examination, H.H. testified another reason she went to the University of Louisville was because her boyfriend at the time went there. When H.H. completed the ACT, she sent her results to three in-state universities: University of Illinois Champaign-Urbana, Southern Illinois University at Edwardsville, and Eastern Illinois University. H.H. acknowledged Chad offered her \$500 for her high-school graduation. Chad also tried to give H.H. some things for her dorm, such as a refrigerator and microwave. H.H. refused the offers.

¶ 16 Sarina testified she resided with her boyfriend, Joseph Sowell, and B.H. Sarina and Sowell had been in a relationship for over six years. He was employed and contributed approximately \$300 per week to household expenses. B.H. began residing full-time with Sarina in April 2015.

¶ 17 Sarina lived in a house she owned. She was self-employed. Sarina owned a few apartment buildings and worked as an exotic dancer. As an exotic dancer, Sarina earned, on average, \$250 per night, working three nights each week. On the nights she worked, Sowell was home with B.H. Sarina had not yet completed her tax return for 2015. On her 2014 tax return, Sarina's reported wages were less than the \$750 per week she was earning at that time. In 2014, Sowell earned more wages, meaning Sarina did not have to work as many hours.

¶ 18 According to Sarina, Stock Property Management Company (Stock Property Management) managed her rental properties. In 2014, Sarina earned no income from her rental properties. For 2015, the property manager for Sarina's apartments, Susan Fitt, told Sarina she received \$400. That \$400 was a reimbursement for a fine Sarina had to pay for an ordinance

violation. Sarina submitted an exhibit showing the apartment's profit and losses for 2014 and 2015. This included a list of receipts for payments and for expenditures related to the management of Sarina's apartments.

¶ 19 Sarina testified H.H. borrowed significant sums to attend the University of Louisville. To help H.H., Sarina puts money in her account when H.H. requests funds: "\$50 here, \$50 there." Sarina estimated giving H.H. "probably" \$200 to \$250 per month. When H.H. visited, which occurred at least one a month, Sarina purchased her \$100 in groceries. Sarina paid H.H.'s car insurance and cell phone. Before H.H. went to college, Sarina purchased "business clothes" for H.H. and gave her \$700 in moving expenses. Sarina bought her a printer and "other stuff."

¶ 20 In her exhibits, Sarina listed her current weekly gross wage as \$750. For her average net weekly and monthly wages, Sarina listed "T.B.D." Sarina stated her total monthly expenses were \$3871. Sarina's financial affidavit indicates Sarina had \$61,000 in equity in real estate. Sarina placed the net value of \$15,000 on her household items. Sarina had \$200 in her checking account and \$50 in savings.

¶ 21 On cross-examination, Sarina testified, when she first purchased the apartment buildings, she made money from them. That changed when she became a part owner of a bar and restaurant, causing her to focus too much time on the restaurant and too little time on ensuring her renters were paying and the apartments were maintained. Sarina relinquished her interest in the restaurant to her partner in 2013. Sarina did not make money from the restaurant.

¶ 22 Regarding her income from dancing, Sarina testified her income was in cash. She recorded her nightly income in notes. Sarina had not provided those notes to Chad. She testified

“Every time I’m going to – to add it all up and everything – something happens. Like, yesterday [B.H.] was home sick.” When asked about her failure to report net income on her financial affidavit, Sarina responded because she had not filed her taxes for 2015, so she did not yet know what the net amount of her income.

¶ 23 When asked about her gain of nearly \$4700 for her apartment at 4 Southeast Second Street in 2014, Sarina testified she sold that apartment. The earnings were due to the sale. For the rentals at 100 East Ohio Street in Greenup and 1017 Champaign Avenue in Mattoon, the 2014 tax return shows they made money, but Sarina testified “seeing how the taxes weren’t paid, I would have to say that, I would not say that’s a true statement.” Stock Property Management received 10% of the rents collected.

¶ 24 Sarina testified her rental properties were owned under her name. Chad’s counsel asked, “[W]hat is Destiny Properties?” Sarina explained she “put in for a business name for Destiny Properties,” but she did not put her rentals under that name. Sarina’s financial documents show a loan to Destiny Properties in 2014 and 2015. Sarina did not know how to explain it, denying she received \$2000. Sarina testified she would have to ask Stock Property Management. On another page, someone had written “Unpaid taxes approximately \$20,000.” Sarina did not know whose handwriting that was. She testified the debt “definitely [was] incurred in 2014 and 2015. 2014, 2013, 2014. Oh, no, it’s only been the last couple of years is what I’m trying to say.” Sarina testified Fitt would know the answer. Counsel testified he continued to see “Destiny Properties” throughout the financial records. Sarina believed Stock Property Management referred to her properties in that manner, even though she did not use the name. Sarina did not file a separate tax return for Destiny Properties. In 2015, there were entries

on March 23 for \$125 in cash and on May 29 for \$150 cash. Those were amounts Sarina received. She also received \$300 for another ordinance violation. Sarina did not know what was listed as “an unspecified rental expense” of \$2875.50. She testified she did not receive that amount.

¶ 25 Sarina testified the account for her rental properties was not listed on her financial affidavit because she did not own that account. She agreed, however, the account was held on her behalf. Sarina believed there was “[p]robably somewhere between 2 and \$4,000” in the account. She based this conclusion on a conversation she had with Fitt “a couple of days ago.”

¶ 26 On redirect examination, Sarina testified she received notices for unpaid real-estate taxes on her rental properties for approximately \$20,000.

¶ 27 In June 2016, the trial court entered an order regarding child support. The court found a substantial change in circumstances had occurred and Chad conceded that fact. The court noted Sarina argued Chad’s net monthly income was \$5490.89, and Chad established his net income as \$5246.81. The court found, for child-support purposes, it would rely on the figure purported by Sarina. The court noted it considered many relevant and material factors and concluded a downward deviation from the statutory guidelines was not warranted. The court set child support at the 20% statutory guideline: \$1098.18 per month. The court further found an arrearage of over \$14,000, and ordered Chad pay an additional \$250 per month toward the arrearage through December 2016 and \$500 per month starting January 2017.

¶ 28 In July 2016, the trial court entered judgment on Sarina’s petition for college tuition. The court ordered Chad pay H.H.’s Sallie Mae loan of \$14,616 for the 2015-16 school year and each year thereafter so long as H.H. was in college. Alternatively, the court allowed

Chad to elect to pay H.H. \$1218 per month for each academic year instead of assuming the Sallie Mae loan. The court ordered Sarina pay \$600 per month for H.H.'s car insurance, phone, food, and spending money during her college enrollment. The court found H.H. should be responsible for her direct subsidized and unsubsidized student loans.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 We note no appellee brief was timely filed in this case. Beginning in February 2017, Sarina filed 17 motions to extend the deadline for her brief. These 17 motions were granted. In the last order granting an extension, this court stated the following: "This is the FINAL extension of time to file appellee's brief. No further extensions will be granted." Despite our admonition, Sarina, in October 2017, requested an additional extension of the deadline. This court denied the motion.

¶ 32 We are neither obligated to act as an advocate for Sarina nor required to examine the record for a means to sustain the judgment of the trial court. See *In re Marriage of Purcell*, 355 Ill. App. 3d 851, 855, 825 N.E.2d 724, 727 (2005). If, however, the record is simple and we can readily decide the asserted errors without the assistance of an appellee brief, we will consider the merits of the appeal. See *In re Marriage of Case*, 351 Ill. App. 3d 907, 910-11, 815 N.E.2d 67, 70 (2004). The record is simple. The assistance of an appellee brief is unnecessary. We, therefore, will consider the merits of the appeal.

¶ 33 A. Child Support

¶ 34 Chad first argues the trial court erred in not deviating from the statutory guidelines that set child support at 20% of the party's net income. Chad maintains compelling

evidence supported the deviation, such as the fact his monthly living expenses exceeded his monthly income from the Illinois Department of Transportation. Chad further contends the farm payments he received only once or twice per year should not have been factored into the allocation of child support as they are not received on a “monthly basis.” Chad argues the trial court’s ruling also failed to consider the medical bills he paid, as well as the provision of health insurance from his employment. Chad further maintains Sarina failed to provide details regarding the expenses necessary to provide for B.H. and the alleged failure of B.H.’s needs being met. In support of this last contention, Chad relies on *In re Marriage of Deike*, 381 Ill. App. 3d 620, 887 N.E.2d 628 (2008).

¶ 35 In proceedings for the modification of child support, section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) authorizes trial courts to order parents “to pay an amount reasonable and necessary for the support of the child.” 750 ILCS 5/505(a) (West, 2014). The Act then sets a minimum amount of support per number of children, creating “a rebuttable presumption that a specified percentage of a noncustodial parent’s income represents an appropriate child-support award.” *In re Keon C.*, 344 Ill. App. 3d 1137, 1141, 800 N.E.2d 1257, 1261 (2003). For one child, the minimum amount of support is 20% of the supporting party’s net income. 750 ILCS 5/505(a)(1) (West 2014). Courts must apply the guideline absent compelling reasons to overcome the presumption and to allow the court to deviate from the guidelines. *Keon C.*, 344 Ill. App. 3d at 1141-42. Section 505(2) sets forth the factors to be considered when determining whether a deviation is appropriate:

“(2) The above guidelines shall be applied in each case
unless the court finds that a deviation from the guidelines is

appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, one or more of the following relevant factors:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical, mental, and emotional needs of the child;
- (d-5) the educational needs of the child; and
- (e) the financial resources and needs of the non-custodial parent.” 750 ILCS 5/505(a)(2) (West 2014).

This court will reverse a determination on the appropriate amount of child support only if the trial court abused its discretion. *Keon C.*, 344 Ill. App. 3d at 1142.

¶ 36 Chad has not shown a compelling reason to justify a deviation from the statutory guideline. While the record shows Chad’s net income and expenses were essentially the same, it also establishes Chad had the financial resources to meet his statutory child-support obligation. According to the record, Chad had “at least” \$260,000 in assets. We find no abuse of discretion in the decision not to deviate from the statutory amount when the record shows Chad had the financial resources necessary to provide support for his child.

¶ 37 Chad’s arguments are unconvincing. We see no evidence the trial court improperly considered the annual or biannual farm payments when deciding on the child-support

order. In addition, we do not accept the argument “the financial burden of breaking such payments down as if Chad is receiving them on a monthly basis is simply too great.” Chad testified his farm-related earnings were “fairly consistent” year-to-year, and nothing in the record indicates Chad is physically or mentally incapable of saving or “breaking such payments down” to allow him to make the mandated monthly payments. Also, Chad’s reliance on *Marriage of Deike* is misplaced as it is irrelevant to the issue of whether a deviation was justified. In *Marriage of Deike*, the question was whether the petitioner established a substantial change of circumstances to justify relief from child support. See *Deike*, 381 Ill. App. 3d at 627.

¶ 38

B. College Tuition

¶ 39

Chad next maintains the trial court improperly ordered him to pay H.H.’s Sallie Mae loan “of \$14,616 per year, or \$1218 per month.” Chad contends the uncontradicted testimony establishes he does not have the ability to pay the amount ordered by the trial court, particularly in light of the child-support order. Chad maintains he will have insufficient income to meet his monthly obligations. Chad further points to the trial court’s failure to place a reciprocal obligation on Sarina. Chad emphasizes “Sarina submitted absolutely no evidence that the parties would have been willing or able to pay for the college education” had the parties remained married.

¶ 40

“A child does not have an absolute right to a college education.” *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 878, 892 N.E.2d 11, 16 (2008) (quoting *In re Marriage of Spear*, 244 Ill. App. 3d 626, 663, 613 N.E.2d 358, 360 (1993)). The Act, however, authorizes a trial court to order parents to pay for college expenses. Section 513 of the Act states, in part, “[t]he court may award sums of money out of the property and income of either or both parties

***, as equity may require, for the support of the child.” 750 ILCS 5/513(a) (West 2014). In making this award, the trial court shall consider relevant factors, including the following:

“(1) The financial resources of both parents.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

(3) The financial resources of the child.

(4) The child’s academic performance.” *Id.* § 513(b).

The petitioner bears the burden of establishing the respondent should contribute toward their child’s college expenses and the burden of proving how much the respondent should contribute. *Keller*, 382 Ill. App. 3d at 879. If petitioner satisfies his or her burden, respondent bears the burden of presenting evidence that would “equally balance” the petitioner’s evidence. *Id.* We review a decision whether to award educational expenses for an abuse of discretion. *Id.* at 877.

¶ 41 The trial court did not abuse its discretion in its order regarding H.H.’s college expenses. Sarina presented evidence showing Chad had property from which he could contribute to H.H.’s college education. Chad did not present evidence to show otherwise. While his income was insufficient to make the monthly payments, the record shows his assets were not. A trial court’s order for college expenses may be awarded “out of the *property* and income” of either parent. (Emphasis added.) 750 ILCS 5/513(a) (West 2014). Given Sarina’s assets and income, it was not an abuse of discretion for the trial court to direct Chad to pay \$14,616 and Sarina to pay \$7200 per year. We note H.H. is responsible for the federal subsidized and unsubsidized loans, which totaled \$5444.

¶ 42

III. CONCLUSION

¶ 43 We affirm the trial court's judgment.

¶ 44 Affirmed.