2018 IL App (4th) 170851-U

NO. 4-17-0851

FILED
April 5, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF E. KATE DANIELS,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	Sangamon County
ROCK E. DANIELS II,	)	No. 16D566
Respondent-Appellant.	)	
	)	Honorable
	)	Jack D. Davis II,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in its (1) allocation of parenting time and (2) application of the pre-amendment version of the child support guidelines under the Illinois Marriage and Dissolution of Marriage Act.

¶ 2 On August 30, 2017, the trial court entered a judgment for dissolution of marriage between petitioner, E. Kate Daniels, and respondent, Rock E. Daniels II. The judgment incorporated an order allocating parenting time and significant decision-making authority, also entered by the court on August 30, 2017. The court allocated the majority of parenting time to Kate and ordered Rock to pay $896 per month as child support, applying the pre-amendment version of the child support guidelines under the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act).

¶ 3 On appeal, Rock argues the trial court erred in its allocation of parenting time and in its application of the pre-amendment version of the child support guidelines. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Rock and Kate were married in July 2008. A son, R.W.D., was born in October 2009.

¶ 6 In August 2016, Kate filed a petition for dissolution of marriage and a petition for temporary relief. In January 2017, the trial court entered temporary orders concerning child support, financial matters, and the allocation of parental responsibilities and parenting time. The court ordered Rock to pay temporary child support in the amount of $886 per month pursuant to section 505(a)(1) of the Dissolution Act (750 ILCS 5/505(a)(1) (West 2016)). Rock was to receive parenting time every other weekend, from Thursday at 4:30 p.m. to Sunday at 6 p.m. During weeks Rock did not have weekend parenting time with R.W.D., he was to receive parenting time on Tuesdays from 4:30 p.m. to 7 p.m., and on Thursdays from 4:30 p.m. until he dropped R.W.D. at school on Fridays.

¶ 7 On June 27, 2017, and June 28, 2017, the trial court conducted a trial on the petition for dissolution of marriage. The evidence presented at trial relevant to the issues on appeal follows.

¶ 8 Kate testified she was 39 years old. R.W.D. was seven years old and had completed first grade. Kate had lived in her home on Inverness Road in Springfield, Illinois, for almost 11 years. She began full-time employment in October 2016, working as the health systems administrator for the nursing unit of the Sangamon County Jail.

¶ 9 Kate testified Rock suffered a traumatic brain injury following a motorcycle accident in 2012. He was hospitalized for nine weeks and two days. After Rock's release from the hospital, Kate "did everything for him," including showering him and following behind him with a "gait belt." Rock underwent physical therapy. R.W.D. had just turned three years old.

Kate testified it became increasingly difficult to communicate with Rock after the accident, stating "over the last few years *** he's very hard to communicate with." Kate testified that Rock "feels as though I'm attacking him or putting him down, even when I'm just having a simple conversation about trying to facilitate things for [R.W.D.]." Rock was involved in another accident in 2013.

¶ 10 In March 2017, Kate and Rock attended a parent-teacher conference for R.W.D. The teacher advised Rock and Kate that R.W.D. was having difficulty staying on task and was easily distracted. Rock acknowledged he told R.W.D.'s teacher he did not know about R.W.D.'s homework because he saw him only two nights a week. Following the conference, Kate engaged a tutor for R.W.D. and continued to communicate with his teacher weekly concerning R.W.D.'s progress. Kate provided rewards for R.W.D.'s goal chart at school.

¶ 11 In previous years, Rock attended parent-teacher conferences (preschool and kindergarten) with Kate but did not say anything. His contact with R.W.D.'s school had been limited to parent-teacher conferences and annual Christmas programs. Kate volunteered in the school cafeteria before she began working full-time and was R.W.D.'s room mother in kindergarten.

¶ 12 Kate testified she facilitates R.W.D.'s participation in basketball and baseball leagues with friends from his school. Both she and Rock attend the games. Rock had recently taken the initiative to have R.W.D. play on a hockey team, which Kate thought was great. Kate attended hockey practices and games, and purchased needed gear.

¶ 13 Kate testified she arranges play dates with friends and purchases gifts for birthday parties R.W.D. attends. Kate purchases R.W.D.'s school uniforms and makes all of R.W.D.'s

medical appointments. When Kate is not working, she and R.W.D. swim, ride bikes, and play with their dog in the backyard.

¶ 14 Because Rock had overnight parenting time on Thursdays, Kate packed a bag for R.W.D. with all that he would need for the following school day. She went through R.W.D.'s school communication folder to be certain everything was in order. Kate placed classroom snacks in the bag when it was R.W.D.'s turn to provide them, money for R.W.D.'s lunch account, and donations for various school fundraisers. Kate expressed concern that R.W.D. comes back from Rock's with "a rash on his bottom and on the inside of his legs." Kate puts R.W.D. in the bathtub to soak and then applies powder to the affected areas of skin.

¶ 15 Kate stated she and Rock communicated "horribly." Although Kate did not raise her voice, Rock often believed she was "yelling at him and screaming at him." While talking on the phone, Rock would hang up on Kate once a week.

¶ 16 According to Kate, Rock had become active in R.W.D.'s life during the course of the litigation. Rock had not previously been actively involved in R.W.D.'s life.

¶ 17 Kate provided to the trial court a proposed parenting plan in which the allocation of parenting time was the same as in the January 2017 temporary order. Kate expressed concern about the schedule but knew "at the same time" she needed to facilitate a relationship between Rock and R.W.D. She had often provided Rock with additional parenting time on Sunday and Tuesday evenings.

¶ 18 Rock testified he was 36 years old and worked as a lineman for City, Water, Light, and Power. He lived next door to his parents in a home his parents owned and rented to Rock. Before he and Kate separated, he helped R.W.D. with his homework every night and read chapter books with R.W.D. before bedtime. He had signed R.W.D.'s school communication

folder "multiple times" and had also provided R.W.D. with cash to put on his lunch account "multiple times."

¶ 19 Rock testified he became aware of R.W.D.'s need for a tutor at the parent-teacher conference in March. He did not recall R.W.D.'s teacher's name but texted with the tutor (R.W.D.'s former preschool teacher) regarding R.W.D.'s needs. He purchased books the tutor recommended. Rock testified he and R.W.D. "buckled down and started reading more." Rock talked with R.W.D. "about paying attention in class." Rock did not pay for the tutor.

¶ 20 Rock participates in a trap shooting league on Tuesday evenings with various family members. He takes R.W.D. with him on the Tuesday evenings he has parenting time. Rock frequently spends weekends camping with extended family members and takes R.W.D. when he has him for the weekend. R.W.D. loves camping. Rock testified he signed R.W.D. up for hockey, a sport Rock played as a child. Kate "was all for it."

¶ 21 Rock acknowledged texting Kate every Sunday he had weekend parenting time to ask if R.W.D. could stay overnight. Rock's extended family has dinner on Sundays, "about 1:00." Rock testified "it's a rush going from Sunday dinner, trying to clean up, get everything together to go back to [Kate's] house" by 6 p.m. Rock would like a fifty-fifty parenting time schedule.

¶ 22 Rock testified he leaves for work too early to drop R.W.D. at school. When R.W.D. has a Thursday overnight with Rock, Rock's dad drops R.W.D. at school in the morning. On all other school mornings, Kate drops R.W.D. at school. Kate's mom picks R.W.D. up at the end of each school day.

¶ 23 Rock acknowledged that because of the traumatic brain injury he suffered in the motorcycle accident, there is "a gap that I can't remember anything." When asked if his

communications with Kate were "easy communications or difficult communications," Rock responded he was "pretty fluent in [his] communication." He admitted calling R.W.D. every day, stating "I like to talk to my son. I always sing to him every day." Rock did not know anything about the various birthday parties R.W.D. attended and did not purchase gifts for the parties, although he had in the past.

¶ 24 Enrico Johnson testified he supervised Rock when Rock came back to work after the motorcycle accident. Rock was initially assigned to the storeroom. Johnson did not know how long Rock worked in the storeroom. Johnson agreed Rock "was able to complete all of his assignments and perform his duties without any type of problem."

¶ 25 Larry Growth, Rock's uncle, testified Rock involves R.W.D. in many activities and is protective of R.W.D. According to Growth, Rock is mentally and physically prepared to parent his son.

¶ 26 Rock Eugene Daniels (Rock Sr.) testified Rock was in the hospital for approximately three months following his motorcycle accident in October 2012. Rock was not wearing a helmet at the time of the accident and had been drinking alcohol. Approximately 10 months later, Rock had another alcohol-related accident.

¶ 27 Rock Sr. testified Rock's memory "was not very good" after his motorcycle accident. Rock continues to have "a window he lost several years before [the accident] to maybe a year after [the accident], he has a block of things he can't remember." Rock Sr. has observed Rock engage R.W.D. in many outdoor activities, which R.W.D. loves. Rock teaches R.W.D. about nature and gun safety. Rock Sr. stated Rock "has completely swore [*sic*] off alcohol. He does not touch it."

¶ 28 Sharon Ann Price testified she is Rock's great aunt. She has observed Rock with R.W.D. on many occasions. She believed Rock was an excellent father, "very caring, loving, protective."

¶ 29 Sherrie Daniels, Rock's mother, testified she has observed her son parent R.W.D. She believed her son was a very good parent. She testified Rock does things with R.W.D. all of the time. She has observed Rock and R.W.D. working to clear brush together and collecting eggs from the chickens. "They do things that you do as a family." Sherrie testified Rock functions independently and does not require assistance parenting R.W.D.

¶ 30 Jennifer Johnson, Rock's sister, testified Rock's home is clean and Rock prepares "nutritious and proper" meals for R.W.D.

¶ 31 At the close of evidence, the court directed the parties to submit written closing arguments "14 days from today, and I will issue an opinion thereafter."

¶ 32 On August 1, 2017, the trial court entered a memorandum of opinion. The court noted both Kate and Rock clearly loved R.W.D. and had the ability to cooperate on decisions regarding his education, health, religion, and extracurricular activities. Accordingly, the court allocated joint decision-making responsibilities to both Kate and Rock. The trial court then went through each of the statutory factors set forth in section 602.7(b) of the Dissolution Act (750 ILCS 5/602.7(b) (West 2016)) to determine the allocation of parenting time according to R.W.D.'s best interests.

¶ 33 The trial court noted Kate proposed the January 2017 temporary order allocating parenting time be made permanent. However, Rock believed a fifty-fifty parenting time schedule would allow him to more "effectively parent" R.W.D. The court found an equal parenting time schedule would not be in R.W.D.'s best interests. The court noted "the evidence

is overwhelming that Kate has undertaken the lion's share of tasks associated with preparing R.W.D. for his day; whether it be school or play." The court did not believe equal parenting time would provide R.W.D. "the stability he needs to succeed in school." The court stated it did not consider R.W.D.'s wishes "due to his young age."

¶ 34 The next statutory factor related to the amount of time each parent performed caretaking functions for the child in the prior 24 months. The trial court found Kate had been primarily responsible for R.W.D. The court noted Kate "registered [R.W.D] for school, selected his doctor, coordinated his doctor and dentist appointments, took the lead at parent teacher conferences, scheduled play dates, bought his clothing and provided for the majority of his meals." The court observed Rock's ability to provide care for R.W.D. had been limited due to his traumatic brain injury. The court found this statutory factor weighed heavily in Kate's favor as did any prior agreement or course of conduct relating to primary caretaking of the child.

¶ 35 The trial court also considered R.W.D.'s interactions with his parents and extended family noting "R.W.D. is blessed with two families (Rock and Kate's) who love him dearly." The court found Kate's proposed parenting time schedule would "preserve and develop" R.W.D's relationships with Kate's family and Rock's family. With regard to the mental and physical health of all individuals involved, the court acknowledged Rock is capable of assisting R.W.D. with his "homework, studies, etc." However, Kate showed she had been primarily responsible for those types of tasks for R.W.D. and had been successful. Rock continued to experience difficulty with his memory and occasionally required prompting in that regard.

¶ 36 Finally, in considering the willingness and ability of Kate and Rock to place the needs of R.W.D. ahead of their own needs, the court found this factor weighed only slightly in Kate's favor. The court characterized Kate as "a devoted mother who has tailored her personal

and work schedule around R.W.D.'s needs." Although the court noted Kate's criticism of Rock, referencing his "motorcycle accident and excessive drinking," the court found Rock "in the *present* *** places his needs second to RWD's." (Emphasis in original.) The court commended Rock for making "the right choice" to be actively involved in R.W.D.'s life during the course of the litigation, noting "Rock could have chosen to be an absent father."

¶ 37 After addressing each of the statutory factors, the trial court adopted Kate's proposed parenting plan, as detailed in the January 2017 temporary order. The plan awarded Rock parenting time every other weekend from Thursday at 4:30 p.m. to Sunday at 6 p.m. During weeks Rock did not have weekend parenting time with R.W.D., he was to receive parenting time on Tuesdays from 4:30 p.m. to 7 p.m., and on Thursdays from 4:30 p.m. until he dropped R.W.D. at school on Fridays. In addition, the court ordered Rock to pay $896 per month as child support, applying the pre-amendment version of the child support guidelines under the Dissolution Act. The court found the amendment to section 505 (750 ILCS 5/505 (West Supp. 2017)), effective July 1, 2017, to be substantive rather than procedural and noted "the case was tried before July 1[, 2017]." Thus, the court "[did] not apply the amended statute retroactively."

¶ 38 On August 30, 2017, the trial court entered the judgment of dissolution of marriage incorporating the memorandum of opinion entered on August 1, 2017, and an order allocating parenting time and significant decision-making authority entered on August 30, 2017.

¶ 39 On September 29, 2017, Rock filed a motion for reconsideration and modification of judgment of dissolution of marriage. Rock argued the trial court erred in its allocation of parenting time when it "relied heavily upon the fact that Rock suffered a traumatic brain injury in 2013." Rock sought overnight parenting time on Tuesdays and Thursdays when

he did not have weekend parenting time. In addition, Rock argued the court erred in its application of the pre-amendment version of the child support guidelines.

¶ 40 On October 23, 2017, the trial court entered an order denying Rock's motion. The court stated it had considered each of the statutory factors as set forth in section 602.7(b) of the Dissolution Act (750 ILCS 5/602.7(b) (West 2016)), including the parties' health (750 ILCS 5/602.7(b)(7) (West 2016)). The court noted "the evidence was that [Rock] suffered permanent injuries due to the crash that have impacted his ability to recall and remember things (including driving directions and appointments) and to communicate with the child's teachers." Rock had acknowledged "the challenges he faces with his memory." The court had considered the motorcycle accident solely as it related to "the permanent cognitive injuries [Rock] sustained and their bearing on allocation of parenting time." The court noted the parties did not have a good relationship, and further, R.W.D. had experienced difficulty with school, "which in this Court's opinion strongly suggest that he needs to be grounded with stability in his residence."

¶ 41 With regard to its calculation of child support, the trial court stated that "the presentation of testimony and evidence in this case was complete on June 28, 2017[,]" and section 505 of the Dissolution Act was amended effective July 1, 2017. The court found the holding in *In re Marriage of Cole*, 2016 IL App (5th) 150224, 58 N.E.3d 1286, "applies" and that it had "properly applied [the] pre-July 1, 2017 statute."

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. Allocation of Parenting Time

¶ 45 Rock argues the trial court's award of the majority of parenting time to Kate was against the manifest weight of the evidence.

¶ 46 Section 602.7(a) of the Dissolution Act (750 ILCS 5/602.7(a) (West 2016)) states the trial "court shall allocate parenting time according to the child's best interests." Section 602.7(b) (750 ILCS 5/602.7(b) (West 2016)) sets forth the factors the court is to consider when determining the child's best interests for purposes of allocating parenting time, including, *inter alia*, the wishes of the parents and the child; the amount of time each parent spent performing caretaking functions in the 24 months preceding the filing of the petition for allocation of parental responsibilities; the interrelationship between the child, his or her parents, and others who may significantly affect the child's best interest; the child's adjustment to his or her home, school, and community; the mental and physical health of all individuals involved; the distance between the parents' residences; the child's needs; the willingness and ability of each parent to place the needs of the child above his or her own needs; whether a restriction on parenting time is appropriate; and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602.7(b) (West 2016).

¶ 47 On appeal, we give great deference to the trial court's best-interest findings because that court is in a better position "to 'observe the temperaments and personalities of the parties and assess the credibility of witnesses.' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40, 799 N.E.2d 1037, 1041 (2003) (quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002)). Thus, a reviewing court will not reverse a trial court's custody determination unless it (1) is against the manifest weight of the evidence, (2) is manifestly unjust, or (3) results from a clear abuse of discretion. *Marsh*, 343 Ill. App. 3d at 1240. Moreover, this court will not substitute its judgment for the trial court's and will find an abuse of discretion only when "the trial court 'acted arbitrarily without conscientious judgment

or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.' " *Marsh*, 343 Ill. App. 3d at 1240 (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001)). "A judgment is against the manifest weight of the evidence if an opposite conclusion is apparent or if the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *In re A.S.*, 394 Ill. App. 3d 204, 214, 916 N.E.2d 123, 132 (2009).

¶ 48 Here, the trial court addressed each of the relevant statutory factors in its memorandum of opinion. The court found the evidence "overwhelming" that Kate had performed the majority of caretaking functions for R.W.D. See *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 77, 667 N.E.2d 1094, 1097 (1996) ("An important consideration in determining custody under the best-interest-of-the-child standard is stability of environment, *i.e.*, consideration of which parent has been caring for the child.") The record shows Rock suffered a traumatic brain injury when R.W.D. was three years old and continues to suffer "limitations." As a result of the injuries Rock suffered in the motorcycle accident, Kate assumed "the lion's share of tasks" associated with caring for R.W.D. These findings are consistent with Kate's testimony. We decline to substitute our judgment for that of the trial court, which had the opportunity to listen to the witnesses, observe their demeanor, and assess their credibility.

¶ 49 Citing *Stopher*, Rock argues the trial court abused its discretion in considering "any residual effects" of his traumatic brain injury "as a basis to deny Rock effective parenting time with his child." In *Stopher*, this court upheld a grant of permanent custody to a child's developmentally disabled mother, whose IQ was 67. *Stopher*, 328 Ill. App. 3d at 1038. However, as in the instant case, the trial court's decision favored the parent who had been the

primary caregiver for the child. *Stopher*, 328 Ill. App. 3d at 1038. Thus, we do not find the *Stopher* decision supportive of Rock's argument.

¶ 50 The basis on which the trial court awarded Kate the majority of the parenting time was its finding that an equal division of parenting time would not provide seven-year-old R.W.D. the stability he needs to succeed in school and would not serve his best interests. Contrary to Rock's assertions, the court did find Rock had been "able to help RWD with his schoolwork." The court acknowledged Rock had "been there" for R.W.D. and commended Rock for his involvement with R.W.D. over the course of the proceedings. Further, the court observed Rock "has and will continue to effectively parent RWD under Kate's proposed parenting time schedule." Although the court noted its concerns regarding Rock's traumatic brain injury "and the resultant challenges he faces," it found Rock capable of assisting R.W.D. "with homework, studies, etc."

¶ 51 We agree with the trial court that the record reveals both Kate and Rock are loving parents who want the best for R.W.D. However, the court believed Kate had shown she has been primarily responsible for R.W.D and able to do so successfully. We find the trial court's decision to award Kate the majority of parenting time was not against the manifest weight of the evidence; the trial court acted within its discretion in denying Rock's proposed equal parenting time schedule or, alternatively, overnights on Tuesdays and Sundays.

¶ 52 B. Child Support Guidelines

¶ 53 Rock next argues the trial court erred in failing to apply the new child support guidelines, effective July 1, 2017, to its calculation of child support. See Public Act 100-15 (eff. July 1, 2017) (amending with technical corrections section 505 of the Dissolution Act (750 ILCS 5/505 West Supp. 2017)). Beginning July 1, 2017, the amended statute provides for an award of

child support based on an income-shares model. See 750 ILCS 5/505 (West Supp. 2017). The former guidelines were based on a percentage-of-obligor income model. See 750 ILCS 5/505 (West 2016).

¶ 54 The trial court heard evidence in this matter on June 27, 2017, and June 28, 2017, prior to the new guidelines taking effect on July 1, 2017. After the close of evidence, the court directed the parties to submit written closing arguments "14 days from today, and I will issue an opinion thereafter." On August 30, 2017, the trial court entered the judgment of dissolution of marriage incorporating the memorandum of opinion entered on August 1, 2017, and an order allocating parenting time and significant decision-making authority entered on August 30, 2017. Each of the three orders was entered after the new child support guidelines took effect on July 1, 2017.

¶ 55 The construction of a statute is a question of law which this court reviews *de novo*. *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16, 25 N.E.3d 570. Our supreme court has stated that when determining whether a statute is to be applied retroactively, as opposed to prospectively only, the proper analysis is that set forth in *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994), and followed by *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38, 749 N.E.2d 964, 971 (2001). *Hayashi*, 2014 IL 116023, ¶ 23.

> "Under *Landgraf*, if the legislature has clearly prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition. Where there is no express provision regarding the temporal reach, the court must determine whether applying the statute would have a 'retroactive' or 'retrospective' impact; that is, 'whether it would impair rights a party possessed

> when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.' [Citation.] Where there would be no retroactive impact, as defined in *Landgraf*, the court may apply the statute to the parties. [Citation.] However, if applying the statute would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied." *Hayashi*, 2014 IL 116023, ¶ 23.

¶ 56 Our supreme court has also "determined, however, that, as long as section 4 of the Statute on Statutes [citation] is in effect, an Illinois court will never need to go beyond step one of the *Landgraf* test." *People v. Atkins*, 217 Ill. 2d 66, 71, 838 N.E.2d 943, 947 (2005); see also *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 332, 860 N.E.2d 246, 253 (2006) (stating "the legislature will always have clearly indicated the temporal reach of an amended statute, either expressly in the new legislative enactment or by default in section 4 of the Statute on Statutes"). Section 4 of the Statute on Statutes provides, in part, as follows:

> "No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding." 5 ILCS 70/4 (West 2012).

¶ 57 The supreme court has "held that section 4 is a clear legislative directive as to the temporal reach of statutory amendments and repeals when none is otherwise specified: those that are procedural may be applied retroactively, while those that are substantive may not." *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 406, 917 N.E.2d 475, 483 (2009).

¶ 58 In considering the retroactivity analysis and the facts of this case, section 99 of Public Act 100-15 simply states "[t]his Act takes effect July 1, 2017." Pub. Act 100-15, § 99 (eff. July 1, 2017) (amending 750 ILCS 5/505 (West 2016)). This language does not indicate the amendment's intended temporal reach. Thus, the General Assembly did not clearly prescribe the temporal reach of amended section 505.

¶ 59 Because there is no express provision regarding the amendment's temporal reach, we must determine whether the amendment is a procedural or a substantive change. As noted, a substantive amendment will not be given retroactive effect. *White v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 2014 IL App (1st) 132315, ¶ 32, 18 N.E.3d 92. "A substantive amendment 'establishes, creates or defines rights,' whereas '[p]rocedure is the machinery for carrying on the suit.' " *White*, 2014 IL App (1st) 132315, ¶ 32 (quoting *Deicke Center-Marklund Children's Home v. Illinois Health Facilities Planning Board*, 389 Ill. App. 3d 300, 303-04, 906 N.E.2d 64, 68 (2009)); see also *Atkins*, 217 Ill. 2d at 71-72 (noting the differences between substantive and procedural amendments).

¶ 60 Here, amended section 505 is substantive in nature and may not be applied retroactively. This is so because the child support statute in Illinois was dramatically changed on July 1, 2017, with the implementation of the income shares statute. Thus, amended section 505 cannot be applied retroactively.

¶ 61 We acknowledge the parties in this case had not submitted written closing arguments until after the new child support guidelines took effect, and the trial court's orders were not entered until after the new guidelines took effect. However, the hearing in this matter was held, and the evidence closed, prior to the new guidelines taking effect. For this reason, the trial court properly considered the former child support guidelines in rendering its judgment, as the evidentiary hearing was concluded prior to the effective date of the new child support guidelines. Accordingly, the trial court did not err in failing to apply the new child support guidelines in rendering its judgment.

¶ 62 In its October 2017 ruling, the trial court relied on *Cole*, 2016 IL App (5th) 150224, in support of its ruling. Rock attempts to distinguish *Cole* on the facts, stating, in *Cole*, "all arguments had been submitted and the matter was under advisement by the Court for two months [(before the effective date of the new maintenance statute)]."

¶ 63 In *Cole*, the husband argued an award of maintenance was against the manifest weight of the evidence where the trial court did not apply the new maintenance guidelines contained within Public Act 98-961, which amended section 504 of the Dissolution Act, effective January 1, 2015. *Cole*, 2016 IL App (5th) 150224, ¶ 6. The dissolution proceeding was held and the evidence closed on October 24, 2014, but the trial court did not enter its judgment until February 24, 2015. *Cole*, 2016 IL App (5th) 150224, ¶ 4. The husband argued "all cases pending prior to the amendatory act, but decided after the amendatory act took effect, should also apply the terms of the amended statute." *Cole*, 2016 IL App (5th) 150224, ¶ 6. The appellate court disagreed, first finding the new law silent about any retroactive application and then finding the new maintenance guidelines substantive in nature. Thus, the amended statute did not apply retroactively. *Cole*, 2016 IL App (5th) 150224, ¶ 8. The appellate court found no

error in the trial court's application of the pre-amendment statute in its calculation of maintenance, reasoning that "the case *was essentially closed* before the effective date of the new maintenance statute[,]" and thus, "[t]he rights of the parties should be determined by the facts of the case, not by the timing of the final order." (Emphasis added.) *Cole*, 2016 IL App (5th) 150224, ¶ 9.

¶ 64 We note the factual recitation in *Cole* makes no reference to closing arguments, oral or written. Nor do we find determinative the number of days or months between the close of evidence, here or in *Cole,* and the effective dates of the amended sections 504 and 505 of the Dissolution Act. As in *Cole*, proofs were closed, and the matter submitted to the trial court for the rendering of its decision, before the effective date of the new statute. The reasoning by the appellate court in *Cole* is equally applicable here, "[t]he mere fact that the matter was taken under advisement but not ruled on until *** after the effective date of the new statute, does not warrant retroactive application of the law." Like *Cole*, the instant case was "essentially closed" before the effective date of the new child support statute. See *Cole*, 2016 IL App (5th) 150224, ¶ 9. As stated by the *Cole* court, "[t]he rights of the parties should be determined by facts of the case, not by the timing of the final order."

¶ 65 Finally, we reject Rock's contention that the trial court's calculation of child support violated the mandates of federal law. Rock essentially argues that by not applying the newly adopted child support guidelines, the trial court implicitly recognized the existence of two sets of child support guidelines in Illinois whereas federal law only allows for one set of guidelines.

¶ 66 Section 302.56 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 302.56(a) (2016)) provides, in relevant part:

> "Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section."

¶ 67 Consistent with the mandates of federal regulation 45 C.F.R. § 302.56 (2016), this State has established a single set of child support guidelines, effective July 1, 2017. The regulation does not mandate the newly adopted child support guidelines be applied retroactively. Simply because the trial court applied the pre-amendment version of the child support guidelines does not require the conclusion that the State had more than one set of child support guidelines in effect in violation of the federal mandate.

¶ 68 III. CONCLUSION

¶ 69 We commend the trial court for its thorough and comprehensive order which we found especially helpful.

¶ 70 For the reasons stated, we affirm the trial court's judgment.

¶ 71 Affirmed.