

NOTICE
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2018 IL App (5th) 160261-U

NO. 5-16-0261

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
CARRI HAERTLING,)	St. Clair County.
)	
Petitioner-Appellant,)	
)	
and)	No. 11-D-964
)	
JASON HAERTLING,)	Honorable
)	Julia R. Gomric,
Respondent-Appellee.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court. Justices Chapman and Cates concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's finding that there had not been a substantial change in circumstances that would warrant modification of child support was against the manifest weight of the evidence.
- ¶ 2 The petitioner, Carri Haertling (Carri), filed a postjudgment motion, requesting that her ex-husband, the respondent, Jason Haertling (Jason), start paying child support for the parties' two minor children. After an *in camera* evidentiary hearing, the circuit court found that there had not been a substantial change in circumstances that would warrant a modification of child support and denied the motion. Carri subsequently filed a

motion for reconsideration, which was also denied by the court. Carri appeals, arguing that the court abused its discretion in denying her motion. We reverse and remand.

¶ 3

BACKGROUND

¶ 4 The parties married in 2001 and had two children: the first born in 2004 and the second born in 2007. Throughout their marriage, Carri was employed as a part-time physical therapist, while Jason was employed as a salesman for a biotechnology company. In December 2011, Carri filed a petition for dissolution of marriage and Jason filed a counterpetition. Each party requested custody of the children and temporary relief regarding child support, spousal maintenance, and allocation of the parties' debts. According to the financial statements filed by the parties, Carri was earning a net monthly income of \$2062.96, while Jason was earning a net monthly income of \$4594.50.

¶ 5 In June 2012, the circuit court granted the parties temporary joint custody of the children but designated Carri as primary residential custodian. Jason was awarded temporary and exclusive possession of the marital residence and ordered to pay the associated mortgage and utilities. In addition, Jason was ordered to pay the children's daycare and private school tuition expenses, \$300 per month in child support, and an equal share of the children's outstanding medical expenses.

¶ 6 In August 2012, Jason filed a petition to revisit temporary issues alleging that his income had decreased rendering him unable to pay the debts and child support previously ordered by the circuit court. The court ordered Jason to provide information regarding his new employment prior to the next scheduled hearing. Jason subsequently filed an

amended petition to revisit temporary issues alleging that he had been forced to obtain new employment due to payment restructuring at his previous employer, which resulted in a commission-only income. As a result, Jason accepted employment with a different company that guaranteed \$3000 per month plus earned commission. Jason alleged, however, that his earned commission would not be forthcoming for two to three weeks. Jason's new employer did not require regular out-of-town travel, allowing him to be home at night and on weekends. Jason also alleged that Carri only worked part-time, despite her ability to work full-time. Thus, Jason requested that the court reduce or abate his child support obligation, modify the visitation schedule, and reallocate the parties' debts.

¶ 7 In February 2013, the parties filed updated financial statements with the circuit court, in which Carri reported a net monthly income of \$2476.59, while Jason reported a substantially reduced net monthly income of \$1476.10. At the subsequent hearing held on Jason's amended petition, the Honorable Randall W. Kelley (Judge Kelley) emphasized that Jason would have to earn "a lot more than \$3,000 a month" due to the parties' debts and expenses. Judge Kelley also stated that Carri was "pursuing full-time employment" and that she had "to get there." Based upon the parties' debts, the children's private school tuition expenses, and additional financial obligations, Judge Kelley ordered "temporary relief" to Jason by abating his child support obligation until the next court proceeding.

¶ 8 In May 2013, Judge Kelley entered a judgment for dissolution dissolving the parties' marriage, a supplemental judgment of dissolution, and a joint parenting order (all three documents are collectively referred to herein as the judgment). Judge Kelley found

that Carri was "working for Trenton Chiropractic full time" as a physical therapist and also working PRN for Rehab Care, while Jason was employed full-time with BioVision Technologies. The judgment provided that the parties would have joint custody of their two children. The judgment further provided that no child support would be paid by either party because the parties were "gainfully employed" earning "similar incomes at the time." Both parties filed motions for reconsideration, or clarification, of the judgment.

¶ 9 On July 29, 2013, Judge Kelley held a hearing on the parties' respective motions. In response to Carri's argument that the circuit court had failed to provide a basis for deviating from the child support guidelines in writing, Judge Kelley stated that the court had found that the parties had each spent a substantial amount of time with the children. In response to Carri's request for child support from Jason's prospective bonuses and commissions, Judge Kelley indicated that Jason's bonuses could not be accurately projected, and that Carri would have to address the issue of child support every year. Judge Kelley encouraged, however, that Jason voluntarily pay his "share of child support" if he obtained a large bonus so that Carri would not have to file a claim with the court.

¶ 10 In January 2016, Carri filed a motion for assessment of child support alleging that the children's needs had grown and Jason's income had increased, which constituted a substantial change in circumstances since the previous order. Specifically, Carri alleged that Judge Kelley had presumed Jason would pay child support when his income increased because he had been underemployed when the supplemental judgment was entered in February 2013. Carri further alleged that Jason had since increased his gross

income to approximately \$97,000, which was comparable to the income he had earned during the parties' marriage. In light of the increase in Jason's income, Carri requested an award of child support and an equitable division of the children's medical, orthodontic, and extracurricular expenses.

¶ 11 Although Jason failed to file a timely answer to Carri's motion, Jason filed an updated financial statement reporting that his net monthly income had increased to \$5862.93. According to the position statement filed by Carri, the parties were no longer earning similar incomes where Jason earned an annual gross income of approximately \$97,500, while she was earning an annual gross income of approximately \$55,000, or a net monthly income of approximately \$3250. Carri also argued that Judge Kelley had previously stated that Jason should begin "paying child support when he got a job commiserate [*sic*] with his training" and requested child support in the amount of \$1415 per month, beginning January 1, 2016.

¶ 12 On March 15, 2016, an *in camera* hearing was held on Carri's motion for assessment of child support before the Honorable Julia Gomric (Judge Gomric). While the record on appeal does not contain a report of these proceedings, Judge Gomric entered a written order denying Carri's motion for assessment of child support "in part" following the hearing. In the order, Judge Gomric awarded neither party child support but divided the children's daycare and summer camp costs between the parties.

¶ 13 In April 2016, Carri filed a motion for reconsideration of the March 15, 2016, order alleging that Judge Gomric had misconstrued Judge Kelley's previous rulings regarding child support. Carri argued that Judge Kelley had temporarily abated Jason's

child support obligation in 2013 due to his depressed income. Carri acknowledged that the parenting time had not changed since the supplemental judgment of dissolution and that Judge Kelley had previously encouraged her to obtain full-time employment. Although Carri was not technically working full-time, she was working more hours and her income had gradually increased since 2013. Carri emphasized, however, that Jason's income had nearly doubled in the same time frame resulting in a substantial increase since the previous orders. Carri attached transcripts of the proceedings held before Judge Kelley on February 20, 2013, and July 29, 2013, in support of her motion for reconsideration.

¶ 14 On May 24, 2016, Judge Gomric held a hearing on Carri's motion to reconsider where the parties discussed the prior *in camera* hearing, as well as the February 20, 2013, and July 29, 2013, hearings. At the hearing, Carri claimed that Jason's substantial increase in income constituted a substantial change in circumstances since the entry of the supplemental judgment of dissolution. Carri also argued that Judge Kelley had intended for Jason to begin paying child support once Jason's income increased, as evidenced by the July 29, 2013, transcript. Carri also urged that she had increased her annual income by working more hours and had continued to work for the same employer because her schedule remained flexible to care for the children.

¶ 15 In response, Jason argued that Judge Kelley had advised Carri to obtain full-time employment at the February 20, 2013, hearing. Additionally, Jason argued that Judge Gomric had stated at the *in camera* hearing that "unless [Carri] works full-time, even if everything you're saying in the transcript is true, there will be no child support because

there's not been a change in circumstances." Relying on Judge Gomric's statement, Jason argued that Carri had failed to establish a substantial change in circumstances because the children spent a relatively equal amount of time with each parent and that the parties' incomes would remain comparable if Carri worked full-time. Jason also expressed that he could relieve Carri's financial burden by spending more time with the children.

¶ 16 After hearing arguments, Judge Gomric denied Carri's motion for reconsideration of child support. Judge Gomric disagreed with Carri's interpretation of Judge Kelley's statements at the July 29, 2013, hearing finding that Judge Kelley only intended Jason to pay child support if he earned substantial bonuses. Judge Gomric also observed that, although Judge Kelley had instructed Carri to obtain full-time employment, Carri continued to work part-time throughout the three years that had elapsed since the entry of the supplemental judgment. Judge Gomric found that the parties would earn similar incomes if Carri worked full-time. Thus, Judge Gomric concluded that Carri could not establish a substantial change in circumstances. In response to Carri's argument that her current employment provided a flexible schedule to care for the children, Judge Gomric stated, "I have three children and I work full-time" and that Carri would "have to figure it out." Following Judge Gomric's denial of Carri's motion to reconsider, Carri filed a timely notice of appeal.

¶ 17

ANALYSIS

¶ 18 On appeal, Carri asserts that the circuit court abused its discretion in denying both her motions for assessment of child support and reconsideration where the court improperly focused on her employment status in finding that she failed to prove a

substantial change in circumstances. Jason responds by asserting that the record is insufficient for this court to review Carri's claim and, alternatively, that Carri failed to establish a substantial change in circumstances.

¶ 19 Before addressing the merits of Carri's claim, we consider Jason's assertion regarding the record on appeal. As the party claiming error, Carri had the burden to provide a sufficient record, including all evidence pertinent to the appeal. *Murphy v. Chestnut Mountain Lodge, Inc.*, 124 Ill. App. 3d 508, 510 (1984). Accordingly, any doubts arising from an incomplete record will be resolved against Carri because, absent record evidence to the contrary, we must assume that the circuit court acted in conformity with the law and had before it the necessary facts to support its decision. *Murphy*, 124 Ill. App. 3d at 510. Pursuant to Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994), "[t]he record on appeal shall also include any report of proceedings prepared in accordance with Rule 323." In cases where no verbatim transcript of the evidence of proceedings is available, Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) provides that "the appellant may prepare a proposed report of proceedings from the best available sources, including recollection."

¶ 20 As Jason correctly notes, the record on appeal includes neither a transcript nor a proposed report of the proceedings from the March 15, 2016, *in camera* hearing held on Carri's motion for assessment of child support. We note, however, that the record includes the following: Carri's motion for assessment of child support; the written order denying Carri's motion for assessment of child support; Carri's motion for reconsideration; Jason's response to Carri's motion for reconsideration; Carri's position

statement; Jason's financial statements; and the transcript of the May 24, 2016, hearing held on Carri's motion for reconsideration. These documents, taken together, set forth the court's reasoning and legal bases for denying Carri's motion for assessment of child support and, thus, provide a sufficient record for our review of Carri's claim on appeal.

¶ 21 Pursuant to section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a)(1) (West 2016)), an order for child support may be modified "upon a showing of a substantial change in circumstances." The petitioner bears the burden of showing that a substantial change in circumstances has occurred since the entry of the judgment. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1021 (2003). "When determining whether sufficient cause to modify has been shown, courts consider both the circumstances of the parents and the children." *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 673 (2005). An increase in the needs of the children must be balanced against the parent's ability to provide for them, "and where a change has occurred that creates a substantial imbalance between the child's needs and the parent's support capabilities, modification is required." *Breitenfeldt*, 362 Ill. App. 3d at 673-74. "The trial court's determination whether a substantial change in circumstances occurred is one of fact and will not be disturbed unless it is found to be against the manifest weight of the evidence." *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 821 (2004). A court's ruling on a request for modification of a child support order will not be reversed unless the ruling amounts to an abuse of discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004) (citing *In re Marriage of Bussey*, 108 Ill. 2d 286, 296 (1985)); *In re Marriage of Davis*, 287 Ill. App. 3d 846, 852 (1997). A court abuses its discretion when

no reasonable person would take the view adopted by the court. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008).

¶ 22 In the present case, the circuit court determined that there had been no substantial change in circumstances in the three years that had elapsed since Judge Kelley entered the judgment awarding neither party child support. At the hearing on Carri's motion for reconsideration, it was undisputed that, since the previous judgment, the visitation schedule had remained the same, Jason had obtained new employment resulting in a substantial increase in his income, Carri had increased her hours and income, Jason's increased income was higher than Carri's increased income, and the needs of the children had grown. Nevertheless, the court observed that Carri had not obtained full-time employment and determined that Carri could not establish a change in circumstances because the visitation schedule had remained the same and the parties' incomes would remain similar, within \$10,000, if Carri were working full-time.

¶ 23 While the circuit court's factual findings and rulings on a request for modification of child support are entitled to deference on review, we conclude, on this record, that the circuit court abused its discretion in denying Carri child support, where the court focused on Carri's perceived underemployment in determining whether there had been a substantial change in circumstances. In our view, this finding was against the manifest weight of the evidence. In support of this conclusion, we note, initially, that the court disregarded the notable disparity between the parties' actual, net monthly incomes in finding that the parties' incomes remained similar. By doing so, the court abused its discretion in calculating and considering Carri's potential income for purposes of

determining whether there had been a change in circumstances. The court seemingly ignored the fact that Carri had, over time, actually increased her hours, and her monthly income had increased. Further, the court's comments were improper and noticeably penalized Carri for failing to obtain full-time employment.

¶ 24 Moreover, by focusing on Carri's perceived underemployment, the circuit court disregarded several undisputed changes in the parties' circumstances since the previous judgment. First, although the visitation schedule had remained the same, the needs of the children had increased. Second, Jason had obtained new employment, which substantially increased his net monthly income from approximately \$1500 to approximately \$5860. We note that "a substantial change in circumstances justifying a modification increasing child support may be based solely upon an increase in the supporting parent's ability to pay." *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 29 (citing *In re Marriage of Lambdin*, 245 Ill. App. 3d 797, 806-07 (1993)). Third, Jason's increased net monthly income was notably higher than Carri's actual, net monthly income, which had also increased from approximately \$2500 to approximately \$3250. After considering these undisputed changes, we conclude that the court abused its discretion in focusing on Carri's perceived underemployment, and the finding that there had been no substantial change in circumstances was against the manifest weight of the evidence. In fact, based upon the record before us, we conclude that there was sufficient evidence that Carri met her burden of proof and that the circuit court should have determined that a substantial change of circumstances had occurred since the last court hearing.

¶ 25 Therefore, we reverse the circuit court's order denying Carri's motion for assessment of child support and remand this matter for the court to modify Jason's child support obligation pursuant to section 505(a) of the Act (750 ILCS 5/505(a) (West 2016)).

¶ 26 **CONCLUSION**

¶ 27 For the aforementioned reasons, the order of the circuit court of St. Clair County is reversed and the cause remanded for further proceedings not inconsistent with this disposition.

¶ 28 Reversed and remanded.