

THIRD DIVISION
February 27, 2013

No. 1-12-0330

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILIANA TAKOVA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 D2 30023
)	
STOYCHO MIHOV MIHOV,)	Honorable
)	Jeanne M. Reynolds,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where father seeking review of denial of his request to modify child support payments failed to provide record of hearing, appellate court cannot evaluate reasoning of trial court; the judgment of the trial court was affirmed.
- ¶ 2 Respondent Stoycho Mihov appeals the trial court's denial of his petition to vacate, modify or reconsider the amount of child support he was ordered to pay Iliana Takova as part of a 2010 judgment for dissolution of marriage. On appeal, Mihov contends the court abused its discretion in finding that no substantial change had occurred in his circumstances that would

warrant a child support modification. Although Takova has not filed a brief in this proceeding, we may consider the merits of this appeal on Mihov's brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (such review allowable if record is simple and errors can be considered without additional briefing). We affirm.

¶ 3 The record on appeal establishes the parties were married in 1999 and two children were born during the marriage. On January 15, 2010, Takova filed a petition for dissolution of marriage in which she stated Mihov was self-employed in the construction business and earned an annual income of "at least \$43,000 per year after taxes." On April 28, 2010, the court entered a judgment for dissolution of marriage and a marital settlement agreement which specified, *inter alia*, that Mihov pay Takova \$1,000 per month in child support, or 28 % of his net income, whichever amount was greater. On the same date, Mihov executed a marital settlement agreement wherein he acknowledged making full and complete disclosure of his income and agreed to pay \$1,000 per month in child support.

¶ 4 In November 2010, Takova filed a petition for a rule to show cause alleging Mihov was \$1,000 in arrears in paying child support. She also asserted Mihov failed to reimburse her for half of the children's summer camp expenses and had not maintained life insurance as required by the marital settlement agreement. On January 18, 2011, Mihov filed a written response admitting his failure to pay all required child support but stating "he is an unemployed handyman/construction worker" and had been unable to work.

¶ 5 On January 21, Mihov filed a petition to revise visitation and amend the amount of child support he was required to pay, among other matters. Mihov asserted that contrary to Takova's representation of his salary in the dissolution petition, he did not earn a net annual salary of \$43,000 and that he had been unemployed and unable to pay child support and other expenses. On February 4, an agreed order was entered finding that Mihov owed \$3,500 in past due child

support for the period of October 29, 2010, through February 2, 2011, and setting out a timetable for Mihov to pay that arrearage.

¶ 6 On March 21, Mihov filed a petition to suspend child support payments, asserting that on February 24, he broke his leg after falling on ice. Mihov stated he would be unable to work for three to six months and unable to pay child support because he lacked a source of income. On March 24, an agreed order was entered stating that Mihov's petition would be considered a petition to modify child support payments.

¶ 7 On May 13, the court entered an order suspending child support payments effective March 21 due to his injury. On May 31, Mihov sought amendment of the May 13 order to suspend child support retroactively to January 21 or, in the alternative, asking the court to "dramatically reduce" the amount of child support owed from January 11 to March 21 to reflect his unemployment. On August 15, Takova filed a *pro se* petition for rule to show cause, asserting she was owed past due child support pursuant to the February 4 agreed order.

¶ 8 Following a hearing on October 17, 2011, the trial court denied Mihov's request to modify child support. A written order from that date indicates that the court ordered Mihov to pay past due child support of \$10,311 in installments and to continue to pay \$1,000 in monthly current child support. A transcript of the October 17 hearing is not included in the record on appeal. However, it appears from the record that in arguing his income had decreased since his initial support obligation was set, Mihov submitted to the court his 2010 federal tax return along with a 1099 form that listed his 2010 earnings as \$22,500. Mihov also submitted bank statements from August to September 2011 that showed earnings of \$400 per week, or \$20,800 per year, along with a letter from an employer dated November 2011 confirming that rate of pay.

¶ 9 On November 16, Mihov filed a petition to vacate, modify or reconsider the court's October 17 order. Mihov argued that the court erred in finding that no substantial change in

circumstances had occurred since the initial determination of child support. Mihov asserted that although the court considered his 2010 pay of \$22,500 to not be a substantial change from his \$20,800 salary in 2011, the court instead needed to compare that pay to the \$43,000 salary on which his \$1,000 monthly child support obligation was based. Before Mihov's petition was ruled upon, Takova filed a petition for rule to show cause on December 6, asserting that Mihov had not complied with the payment schedule ordered by the court on October 17. Takova also filed a *pro se* response to Mihov's motion to vacate asserting that Mihov had not presented evidence of a substantial change to his income and had not complied with the court's requirement that he apply for jobs and complete a job search journal between January and July 2011.

¶ 10 Following a hearing on December 30, 2011, the court denied Mihov's petition to vacate or modify his child support obligation. The court repeatedly stated that Mihov agreed to the \$1,000 monthly amount and had not met his burden of proving a change in circumstances. The court ordered a rule to show cause would issue against Mihov for failing to pay a total of \$3,432 pursuant to the original child support schedule.

¶ 11 Mihov now appeals the court's October 17 and December 30, 2011 rulings, contending the court abused its discretion when it found no substantial change in circumstances existed to modify the \$1,000 monthly child support amount. He argues the reduction in his annual income from \$43,000 to \$20,800 constituted a substantial change in circumstances, and he contends the court failed to analyze whether his change in employment leading to his lower income occurred in good faith.

¶ 12 Section 505 of the Illinois Marriage and Dissolution of Marriage Act (the Act) sets out guidelines for a minimum amount of child support to be awarded, including an award for two children of 28 % of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2010). That percentage was awarded in the instant case. Mihov's \$43,000 annual gross income equals a net

monthly income of \$3,583, and 28 % of that amount is \$1,003. Therefore, Mihov's initial child support obligation of \$1,000 per month for two children was within the statutory guidelines.

¶ 13 The Act further provides that a child support order may be modified upon a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2010). The party seeking a modification in child support payments has the burden of demonstrating a substantial change in circumstances. *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 388 (2010).

¶ 14 A substantial change in the income of the payor is grounds for modification of child support. *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 974 (1997). Specifically, economic reversals as a result of a change in employment, if made in good faith, may constitute a material change in circumstances sufficient to warrant modification of a child support order. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1076 (2009). In determining whether such a change in circumstances of the non-custodial parent is made in good faith, the crucial consideration is whether the change was prompted by a desire to evade financial responsibility for supporting the children or otherwise jeopardize their interests. *Id.* The party seeking the modification must present evidence of a motive, other than the evasion of financial responsibilities for support of the children, in support of a petition for modification. *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1166 (2005). The trial court's ruling on a request to modify child support will not be disturbed absent an abuse of discretion. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 28.

¶ 15 In his notice of appeal, Mihov specifically appealed the court's ruling, made in the October 17, 2011 hearing, that his financial circumstances failed to support a modification in the amount of child support. Illinois Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that the appellant has the responsibility for providing "all evidence pertinent to the issues on appeal." Here, the judge who entered the October 17 order also presided at the December 30 post-

judgment hearing, and the judge stated at the outset of the latter proceeding that it had previously held "a full and complete hearing on these matters."

¶ 16 Although Mihov has provided a transcript of the December 30 hearing on his petition to vacate the court's ruling, the record does not contain a report of proceedings of the October 17 hearing, or a suitable substitute such as a bystander's report or an agreed statement of facts in accordance with Rule 323(c) or (d). The record does not reflect any evidence or discussion of what circumstance existed at the time Mihov agreed to pay \$1,000 on April 28, 2010 and how that circumstance changed at the time of the October 17 hearing. If the appellant fails to submit a record that fully and fairly presents all matters necessary for a decision on the issues he has raised, the reviewing court will presume the correctness of the trial court's order. See *Smolinski v. Vojta*, 363 Ill. App. 3d 742, 757-58 (2006), citing *People v. Edwards*, 74 Ill. 2d 1, 7 (1978) (reviewing court "evaluates the record, as it is, for error" and "refrain from supposition" as to the trial court's reasoning).

¶ 17 Therefore, absent a record of the October 17 hearing, the reviewing court must indulge in every reasonable presumption favorable to the judgment and will presume the trial court followed the law and had a sufficient basis for its ruling. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010). Given those standards, this court cannot find that the trial court abused its discretion in denying Mihov's petition to modify child support.

¶ 18 Accordingly, the judgment of the trial court is affirmed.

¶ 19 Affirmed.