

NOTICE
Decision filed 11/08/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120219-U

NO. 5-12-0219

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
JOHANNA STEFAN,)	Williamson County.
n/k/a Johanna Hendrix,)	
)	
Petitioner-Appellee,)	
)	
and)	No. 01-D-210
)	
KEITH STEFAN,)	Honorable
)	James R. Moore,
Respondent-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in increasing Father's child support obligation. Additionally, court did not abuse its discretion in denying Father's motion to reopen proofs.
- ¶ 2 The respondent, Keith Stefan (Father), appeals the postjudgment dispositions entered by the circuit court of Williamson County, based upon the stipulation of the parties and argument of counsel. We affirm.
- ¶ 3 Father and Mother, Johanna Stefan now known as Johanna Hendrix, were married in July of 1997. They were granted a judgment of dissolution of their marriage in June of 2001. Prior to the dissolution of the marriage, they had one child, a daughter. Incorporated into the dissolution of marriage was a marital settlement agreement and a joint parenting agreement. The joint parenting agreement designated

Mother as the primary residential custodian, while the marital settlement agreement established Father's child support obligation at \$120 a month. In 2003, the parties entered into an agreed modification of joint custody granting Father additional visitation time. In April of 2008, the parties entered into an agreed order for modification of the judgment of the dissolution of marriage increasing Father's child support obligation to \$350 a month. Father also agreed to provide insurance coverage for the child and to pay one-half of uncovered medical expenses, plus one-half of all schooling and extracurricular expenses. Father was granted the right to claim the child as a tax exemption every other year.

¶ 4 In June of 2011, Mother filed a petition to modify the judgment of dissolution of marriage to increase child support. In the petition, Mother alleged a substantial change in circumstances had occurred in that Father's income had increased and he was not paying the statutory percentage of child support as set forth in section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505 (West 2010)). Mother further alleged that an increase in child support was in the minor child's best interest. Father filed a response setting forth a list of affirmative defenses. He also filed a motion to dismiss and/or judgment on the pleadings. The parties agreed to submit stipulated exhibits along with written legal arguments in support of their positions. No evidentiary hearing was held. Based upon the submitted evidence and arguments, the circuit court of Williamson County granted Mother's petition and denied Father's motion to dismiss. The court specifically found that a substantial change of circumstances existed to warrant an increase in child support, based on the increase in base salary of Father from 2008 to 2011 and on the presumed increased cost of raising a child each year. The court further stated that there was not a sufficient basis to deviate from the statutory guidelines. Accordingly, Father's child

support obligation was set at \$690.34 per month.

¶ 5 Father filed a motion for reconsideration as well as a motion for leave to incorporate a recent pay stub into evidence. After hearing argument on the motions, the court denied both motions. Father now appeals contending the court erred in granting Mother's petition to modify the judgment of dissolution of marriage to increase child support. Father does not believe Mother met her legal burden to show that there has been a substantial change of circumstances as to Father's income nor are there any allegations or evidence to show that there has been an increased need as to the minor child.

¶ 6 Pursuant to section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act, a child support order may be modified "upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a)(1) (West 2010). To determine whether a sufficient change of circumstances exists to warrant an increase in child support, the party seeking the modification must show increased financial needs of the child or children and an increase in the income of the support obligator which allows him or her to pay the increase. *In re Marriage of Scott*, 72 Ill. App. 3d 117, 124, 389 N.E.2d 1271, 1276 (1979). The trial court has discretion in determining whether modification of child support is warranted, and its decision will not be overturned absent an abuse of that discretion. *In re Marriage of Davis*, 287 Ill. App. 3d 846, 852, 679 N.E.2d 110, 115 (1997).

¶ 7 Here, it is undisputed that Father's income had increased since 2008. Father contends, however, that his increased income represents cost of living increases only and does not substantiate the significant increase in child support Mother will now be receiving under the new order. Father also asserts that because he now has the child 47% of the time, his expenses have already been increased. He further points out that

his base salary in 2008 was \$45,510, while his base salary in 2011 is \$49,138, for an increase of only \$3,628 over 3 years. Father claims he does not have the financial resources to absorb the almost double monthly increase in child support.

¶ 8 We first note that an increase in the obligor's ability to pay support may on its own justify an increase in child support. *In re Marriage of Heil*, 233 Ill. App. 3d 888, 891, 599 N.E.2d 168, 170 (1992). Secondly, the court may also consider the fact that the child is older and his or her expenses are presumed to have increased as well. *In re Marriage of Heil*, 233 Ill. App. 3d at 894-95, 599 N.E.2d at 173. See also *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343, 809 N.E.2d 246, 248 (2004); *In re Marriage of Davis*, 287 Ill. App. 3d at 851, 679 N.E.2d at 114; *People ex rel. Stokely v. Goodenow*, 221 Ill. App. 3d 802, 805, 583 N.E.2d 102, 104 (1991). Admittedly, there is a large disparity between the prior child support order and the current amount calculated as 20% of Father's income in this instance, but the earlier amount was set by agreement of the parties. No mention was made in the parties' agreement as to why they chose to deviate from the statutory guidelines at that time. The guidelines set forth in section 505, however, create a rebuttable presumption that child support in the guideline amount is appropriate. *In re Marriage of Adams*, 348 Ill. App. 3d at 343, 809 N.E.2d at 249; *Roper v. Johns*, 345 Ill. App. 3d 1127, 1130, 804 N.E.2d 620, 624 (2004). The burden of proof rests with the person requesting a deviation from the guidelines to show compelling reasons exist to justify such deviation. *Roper*, 345 Ill. App. 3d at 1130, 804 N.E.2d at 624. In this instance, the court did not find a sufficient basis to deviate from the guidelines, whether or not there was a deviation in the prior order. Moreover, even if the prior order did deviate from the statutory guidelines, the trial court is not required to deviate from the guidelines the next time a request for modification of child support is made. *Stokely*, 221 Ill. App. 3d at 806,

583 N.E.2d at 105. Accordingly, a court's decision to apply the guidelines in modifying the award, even if deviated from before, will not be disturbed absent an abuse of discretion. *Stokely*, 221 Ill. App. 3d at 806, 583 N.E.2d at 105. We see no abuse of the court's discretion in this instance. We therefore conclude that the court did not err in increasing Father's child support obligation in line with the statutory guidelines.

¶ 9 Father also argues on appeal that the court erred in denying his motion to incorporate into evidence his final pay stub for the year 2011. Father believes the court abused its discretion in denying his motion given that the hearing was based on submitted documents and no testimony was needed to refute the pay stub. In considering a motion to reopen proofs, the court is to take into account such factors as whether the other side will be surprised or unfairly prejudiced by the new evidence, whether the evidence is of utmost importance to the movant's case, and whether there are more cogent reasons to deny the motion. *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 249, 470 N.E.2d 551, 562 (1984). The denial of a motion to reopen proofs is within the sound discretion of the trial court; consequently the court's decision will not be overturned absent a clear abuse of that discretion. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1120, 806 N.E.2d 701, 711 (2004). Under the circumstances presented here, we cannot say the court abused its discretion in denying Father's motion. The year-end pay stub was not of utmost importance given that evidence establishing Father's income prior to the hearing had already been submitted.

¶ 10 Father also argues on appeal that the trial court erred in not ruling on his affirmative defenses. We find it unnecessary to address this argument any further than to note that all of the supposed defenses were taken into consideration by the

court in reaching its judgment and have been noted here as well.

¶ 11 For the aforementioned reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 12 Affirmed.