

No. 1-13-2640

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

<i>In re</i> ANIYA M., a Minor)	Appeal from the
(Ebony Ward,)	Circuit Court of
)	Cook County.
Petitioner-Appellant,)	
)	
v.)	Nos. 11 D 79403
)	11 D 79413
)	
Adrian Mosley,)	Honorable
)	Sharon O. Johnson,
Respondent-Appellee).)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court abused its discretion in awarding a child support amount that represented a downward deviation from the statutory guideline of 20% of the noncustodial parent's net income, where the record indicates the court disregarded a relevant factor and failed to consider the parents' disparate incomes.

¶ 2 Petitioner Ebony Ward appeals the trial court's order setting a monthly child support amount of \$1,117.73 for Aniya M., to be paid by respondent Adrian Mosley. On appeal, Ward contends the trial court abused its discretion in deviating from the statutory child support

guideline of 20% for a single child by ordering Mosley to pay a support amount equal to 11% of his monthly income. Although Mosley has not filed a response brief, we may consider this appeal on Ward's brief alone pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976). We reverse and remand with directions.

¶ 3 On March 15, 2011, Ward filed a complaint to determine the existence of a parent-child relationship on behalf of her daughter, Aniya, born on June 6, 2008, alleging that Mosley was the minor's natural father. On the same day, Mosley filed a complaint alleging he was the child's father and seeking joint custody and the establishment of a parenting schedule. The parties were never married. Those two actions were consolidated.

¶ 4 In June 2011, Ward sought a temporary order as to child support. Mosley responded that his employment with Exelon (formerly Commonwealth Edison) involved "a fluctuating work schedule and income," and Mosley requested that the court order a support amount below the statutory guidelines. On July 25, 2011, the trial court ordered Mosley to pay child support of \$1,200 per month based on a monthly net income of \$6,000. Over the next several months, the court entered orders establishing a parenting schedule and custody of the child on special occasions.

¶ 5 In June 2011, Mosley filed a financial affidavit stating his 2010 gross income was \$90,000 and in 2011, his gross income to date was \$75,005.68. In April 2012, Ward filed a financial affidavit stating she was employed by the Chicago Transit Authority (CTA) but was on temporary disability leave. Ward listed her net monthly income as \$755.08 in unemployment benefits.

¶ 6 On March 7, 2013, the trial court held a hearing on custody and child support, and the record on appeal contains a bystander's report as to that proceeding. Ward testified that in addition to Aniya, she had two minor children from a previous relationship. She lived in Lansing with the three children and her husband, whom she married in 2012. Ward testified she earned \$21 per hour in her CTA job but worked a varying number of hours each week. In 2012, Ward earned \$27,348 in gross income. The court reviewed a February 2013 financial affidavit filed by Ward itemizing her monthly living, household and transportation costs, as well as expenses directly related to Aniya.

¶ 7 Mosley testified he had two minor children in addition to Aniya. He lived in South Holland and worked as an electrician for Exelon earning \$44.28 per hour and a higher hourly rate for overtime. Mosley earned \$150,165 in gross income in 2011. As of December 13, 2012, Mosley's gross income for 2012 was \$159,725.80. The court reviewed the following documentation as to Mosley: his June 2011 financial affidavit, his 2011 federal income tax return, and a December 2012 pay statement.

¶ 8 The trial court awarded Ward sole custody of Aniya, allowing Mosley visitation one night per week. As to child support, the court found Mosley's net monthly income was \$10,030, which would result in a monthly award of \$2,006 under the 20% guideline set out in section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505(a)(1) (West 2012)). The court found that amount would be excessive and that a downward deviation would be appropriate in this case.

¶ 9 Based on Ward's February 2013 financial statement, the trial court noted that Ward's monthly household expenses (including rent and utilities) totaled \$3,004 and monthly

transportation expenses (including gas, repairs, car payment) totaled \$1,093.33. The court divided those amounts by five to reflect the number of people in Ward's household (Aniya, Ward, Ward's husband and Ward's two other children) to arrive at respective per-person amounts of \$600.80 and \$218.67 for household expenses and transportation. The court then added those per-person amounts to the expenses listed in Ward's financial statement as being solely related to Aniya (including clothing, medical care, child care, babysitting and entertainment) of \$1,416 to arrive at a sum of \$2,235.47 for Aniya's monthly expenses. The trial court divided the child support obligation between the two parents by setting Mosley's monthly child support amount at \$1,117.73, or half of the total monthly expenses attributable to Aniya. The court also ordered Mosley to pay 75% of the child's expenses for day care, medical care, school fees and extracurricular activities.

¶ 10 On April 26, 2013, Ward filed a motion for reconsideration of the trial court's ruling, arguing that no compelling reason was presented for a downward deviation of approximately \$890 per month from the statutory guideline of 20% of Mosley's income. On July 9, 2013, the court heard arguments on Ward's motion for reconsideration. Mosley responded that the motion for reconsideration did not raise any facts that had not been presented at the trial and also pointed out that he had been ordered to pay 75% of the additional expenses incurred by Aniya. Mosley argued that a larger support award would constitute "unofficial maintenance" to Ward because Ward's husband contributed to the household expenses. Mosley asserted the \$1,200 temporary child support amount ordered by the court had apparently been adequate for Aniya's needs.

¶ 11 The trial court noted that the motion to reconsider was filed more than 30 days after the March 7 trial date, and Ward responded that the court had not yet entered a judgment on those proceedings. The court stated that the motion to reconsider was either untimely or "premature."

¶ 12 The court proceeded to address the amount of child support awarded:

"THE COURT: [My next question] is whether or not you agree, counsel, that this Court does not have the level of the playing field [*sic*] that the – you know, I don't have to enter an order that brings a mother's income or ability to provide for the child equal to that of father. That's what it sounds like you are arguing.

MR. PASULKA [attorney for Ward]: That – that the mother should be equally responsible?

THE COURT: Well, you are saying that the mother makes significantly less money than dad and therefore, I should enter a guidelines order so that the child can live in a similar – have a similar standard of living that father does.

MR. PASULKA: I understand.

THE COURT: This is a parentage case, not a petition for dissolution."

¶ 13 Counsel argued that the statutory 20% support amount should be applied in this case and that both parents have a duty to support the child. The court asked if a record was available of the hearing. After being told none was available, the court ruled as follows:

"Okay. I'm going to deny the motion to reconsider based on it being untimely. I do not have my findings at the time. This court has discretion to deviate from guidelines after considering the relevant factors. This court, you know, without having the benefit of

a transcript or a court order – a written order that specifically lays out my findings, I must presume that I did, in fact, consider the relevant factors.

As indicated in the motion to reconsider, this court did make certain findings that the child's monthly expenses were \$2,235 and I made findings as to the relevant income which, you know, support my finding today that I did consider those matters when determining the support at that time. Therefore, I'm going to deny the motion to reconsider."

¶ 14 When counsel asked if the motion was denied as untimely, the following exchange occurred:

"THE COURT: Yes, it's untimely. It's untimely and this court finds that I did consider the relevant factors pursuant to [section] 505.

MR. PASULKA: And what were they?

THE COURT: The income of the parties, needs of the minor child, income being the financial resources of the parties, and the needs of the child."

¶ 15 The court entered a written judgment reflecting its oral rulings in the March 7, 2013, trial. Ward has filed a timely notice of appeal from that order.

¶ 16 On appeal, Ward contends the trial court abused its discretion in deviating downward from the 20% statutory guideline in setting Mosley's child support obligation at \$1,117.73 per month. She contends the court did not consider Mosley's approximate annual salary of \$160,000 and her annual earnings of \$30,000, and Ward further argues that the court did not take into account the standard of living that Aniya would have enjoyed had the parties remained together.

¶ 17 Section 505(a) of the Act permits the trial court to order either or both parents to pay "an amount reasonable and necessary for the support" of a child. 750 ILCS 5/505(a)(1) (West 2012). In calculating that amount, the trial court first must determine the parties' income and apportion that income to provide an amount of child support to be paid by the noncustodial parent.

Mayfield v. Mayfield, 2013 IL 114655, ¶ 16. Once an income amount has been established, section 505(a) creates a rebuttable presumption that a specified percentage of the income of the noncustodial parent represents an appropriate child support award to be paid by that parent. 750 ILCS 5/505(a)(1) (West 2012). In the case of one child, the supporting parent's child support obligation is a minimum of 20% of that parent's net income. *Id.* Under that guideline, the child support amount to be paid by Mosley each month was \$2,006, as the trial court acknowledged in this case.

¶ 18 A court may deviate from the statutory amount upon considering the following 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)(a)-(e) (West 2012).

¶ 19 When determining whether to deviate from the statutory guidelines, a trial court's consideration of the factors set forth in section 505 of the Act is mandatory, not directory. *In re*

Marriage of Singleteary, 293 Ill. App. 3d 25, 36 (1997). The trial court must make express findings when it orders a child support amount below the statutory minimum. *Id.* A determination of the appropriate amount of child support will be reversed only if the trial court is shown to have abused its discretion. *Id.* at 1142. An abuse of discretion is found only where no reasonable person would adopt the view taken by the trial court. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 41.

¶ 20 Circumstances that support a deviation from the statutory guidelines include a non-custodial parent with limited resources, or where the application of the guidelines would create a windfall for the custodial parent. *In re Marriage of Stanley*, 279 Ill. App. 3d 1083, 1086 (1996). A court also is justified in awarding child support below the guideline amount when both parents have incomes that are more than sufficient to provide for the child's reasonable needs. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 707-08 (2006); *In re Marriage of Bush*, 191 Ill. App. 3d 249, 260 (1989). However, where the two parents have disparate incomes, a child should not suffer because a custodial parent has a limited income. *Id.*; see also *In re Marriage of Bussey*, 108 Ill. 2d 286, 297 (1985).

¶ 21 Here, Ward, the custodial parent, earned about \$27,000 in 2012, and Mosley earned about \$160,000. The trial court determined that based on Mosley's net monthly income, his child support obligation pursuant to the 20% guideline would equal \$2,006. The court found that a support award in that amount would be excessive, having calculated the child's monthly expenses at approximately \$2,235. The court then ordered that the parents should pay those expenses equally, with Mosley contributing \$1,117.73 per month in child support.

¶ 22 We find that the trial court abused its discretion in deviating from the statutory guidelines and setting a child support amount of only \$1,117.73 to be paid by Mosley. Although the court engaged in a calculation of Aniya's monthly expenses, the court did not clearly explain its reasoning for a downward deviation from the statutory amount. The court must make express findings when ordering an award below the statutory minimum. *Singleteary*, 293 Ill. App. 3d at 36. At the hearing on Ward's motion to reconsider, the court stated that its ruling was based on the parties' incomes and the child's needs; however, the court explicitly rejected the notion that it "should enter a guidelines order so that the child can *** have a similar standard of living that [her] father does." Therefore, the court expressly disregarded one factor in section 505(a)(2).

¶ 23 In determining the amount of support payments, the trial court is not limited to the child's base financial needs and may consider the child's standard of living had the parties remained together. *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 35. Although the support of a child is the joint obligation of both parents, when one parent earns a disproportionately greater income, that parent clearly should bear a larger share of the support. *Id*; see also *In re Keon C.*, 344 Ill. App. 3d 1137, 1143 (2003); *Singleteary*, 293 Ill. App. 3d at 38. Here, Aniya is entitled to the benefit of Mosley's larger income, which in 2012 was more than five times greater than the income of Ward.

¶ 24 Additionally, the record indicates that in determining the amount of support required for Aniya's needs, the trial court specifically considered in its calculations the presence of Ward's husband and other children in the household. The trial court found the amount of child support should be mitigated to some degree by the presence of five people in Ward's household, apparently in contrast to a hypothetical household that included only Ward and Aniya. The trial

court arrived at the support amount of \$2,235.47 by including Aniya's expenses and her pro-rated share of household and transportation expenses. The court then ordered Mosley to pay half of that amount.

¶ 25 This court has criticized the presumption that a child support payment will financially benefit others in the household, such as a new spouse or partner. *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App. 3d 747, 752-53 (1998). The court in *Nale* held the child's father did not overcome the presumption that the statutory support amount should be awarded even though the mother lived with another man, a fact on which the trial court focused upon in its ruling. *Id.* Reversing the trial court's order, this court stated that although a trial court can deviate downward from the guidelines "if it determines the supporting parent is using support to pay for an unwarranted benefit" to someone living in the household, "the trial court's reliance on the mere fact that such a person lived in the recipient household effectively punishes children for living arrangements over which they have no control." *Id.* at 753.

¶ 26 As further proof of the trial court's abuse of discretion, we note the court's remark that this was a "parentage case, not a petition for dissolution" after stating it need not order a support award that would bring Aniya to a standard of living commensurate with that of her parents' respective incomes. Not only did that comment exhibit disregard for a relevant statutory factor, the fact that Ward and Mosley were never married has no bearing on Mosley's child support obligation because unmarried persons are responsible to pay child support for children born out of wedlock on the same basis as those born within a marriage. 750 ILCS 45/3 (West 2012) ("[t]he parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents").

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¶ 27 Accordingly, for all of the reasons stated above, we reverse the trial court's order requiring Mosley to pay child support in the amount of \$1,117.73 monthly because that award constituted an abuse of discretion. We remand with directions for the trial court to enter a child support award in the amount of \$2,006 per month, which represents 20% of Mosley's net monthly income. 750 ILCS 5/505(a)(1) (West 2012).

¶ 28 Reversed and remanded with directions.