

No. 1-16-0965

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

CONSTANCE V. CURRY,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 05 D 1067
)	
JOHN G. CURRY,)	Honorable
)	Mark Lopez
Respondent-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion by increasing Appellant's child support obligation and sanctioning him with attorney's fees.

¶ 2 Following orders increasing his child support obligation and holding him in indirect civil contempt for failure to timely pay child support, *pro se* respondent-appellant, John G. Curry (John), now appeals those orders. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 **BACKGROUND**

¶ 4 On June 13, 2007, a judgment for dissolution of marriage was entered for John and

petitioner-appellee, Constance V. Curry (Constance). The judgment awarded sole custody¹ of their two children to Constance. The judgment also required John to pay child support in the amount of \$1,070 per month, which represented 28% of John's net monthly income at the time from his employment at the Chicago Fire Department.

¶ 5 On December 8, 2014, John filed a petition for modification of custody, alleging endangerment of the children while they are in Constance's custody.

¶ 6 On February 17, 2015, Constance filed a petition for rule to show cause and adjudication of indirect civil contempt against John. In that petition, Constance alleged that the child support amount had not been modified since the dissolution judgment in 2007 and that John had failed to notify her of his several income increases over the years.

¶ 7 On February 20, 2015, Constance filed a petition for modification of child support, requesting contribution towards uncovered medical expenses and other relief. In that petition, Constance again alleged the child support obligation had not been modified in seven years, despite an increase in both John's salary and the cost of caring for their two children.

¶ 8 On June 16, 2015, the circuit court held John to be in indirect civil contempt for failure to notify Constance of his income increases since the dissolution judgment in 2007. The circuit court also granted Constance's petition to modify child support.

¶ 9 On July 22, 2015, John and Constance presented arguments as to both past child support due and the new monthly child support amount. After hearing from both parties, the circuit court ruled that John owed child support arrearage of \$44,342, along with interest. The circuit court set John's new child support obligation at \$1,825 per month, based on his increased income.

¹ As of January 1, 2016, the term "custody" is now known as "allocation of parental responsibilities" and the Illinois Marriage and Dissolution of Marriage Act. This case was decided by the trial court prior to the change, and so for simplicity we will use the term "custody" in this order.

¶ 10 On August 16, 2015, John retired from the Chicago Fire Department. He then filed a new motion with the circuit court petitioning to decrease child support based on his new, reduced income which was from his pension.

¶ 11 On December 17, 2015, the circuit court held John in indirect civil contempt for failure to pay child support in August, September, or October 2015 without cause or justification. John was ordered to pay additional arrearages, and Constance's attorney was granted leave to file for attorney's fees pursuant to Section 503(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act). The circuit court further denied John's motion to modify child support finding that his termination of employment was voluntary. John filed a motion to reconsider the December 17, 2015 rulings.

¶ 12 On March 15, 2016, the circuit court denied John's motion to reconsider its December 17, 2015 order. The court found that John had terminated his employment voluntarily and not in good faith. The circuit court also awarded Constance attorney's fees from John in the amount of \$7,500 as a sanction for willful failure to comply with the court order of December 17, 2015.²

¶ 13 John's petition for modification of custody was amended and continued several times throughout the pendency of the case. As part of the March 15, 2016 order, the custody matter was continued to April 28, 2016. The issue of custody modification is not at issue in this appeal.

¶ 14 On April 12, 2016, John filed a notice of appeal. The notice states that he is appealing from the December 17, 2015 and March 15, 2016 orders.

² We note that this case had several other findings, including several other orders holding John in indirect civil contempt and sanctioning him with attorney's fees. However, neither John nor Constance filed a timely notice of appeal from any of those other orders.

¶ 15

ANALYSIS

¶ 16 Our jurisdiction in this case is limited to review of the orders of December 17, 2015 and March 15, 2016, the only two orders identified in John's notice of appeal.³

¶ 17 Through Supreme Court Rule 304(b)(5) (eff. Mar. 8, 2016), we have jurisdiction over the March 15, 2016 order, which sanctioned John with attorney's fees from the December 17, 2015 order holding him in indirect civil contempt. Contempt judgments that impose a penalty are final, appealable orders. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 7 (citing Ill. S. Ct. R. 304(b)(5)). Additionally, a "review of a contempt finding necessarily requires review of the order upon which it is based." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 277 (2006) (citing *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 968 (2004)). Thus, by reviewing the March 15, 2016 sanction order, we also have jurisdiction to review the July 22, 2015 order setting John's new child support obligation, for which he was held in indirect civil contempt on December 17, 2015 for failure to pay.

¶ 18 We lack jurisdiction, however, to the extent that John asks us to review the denial of his motion for modification of child support on December 17, 2015 and the denial of his motion for reconsideration on March 15, 2016, as neither are final orders nor contain express Rule 304(a) language to make the orders final and appealable. "Appellate jurisdictional issues in dissolution of marriage proceedings are inherently problematic because the proceedings involve many separate issues that are not always decided at the same time in the trial court." *In re Marriage of*

³ John also requests this court to remand on the issue of child custody with instructions for the circuit court to expedite the proceedings. However, there are no final and appealable orders related to the custody matter. At the time of his appeal on April 12, 2016, John's petition for modification of custody had been continued to April 28, 2016. Additionally, the contempt order John now appeals is not related to his petition for custody. Thus, we need not address any of the arguments raised in his brief on the issue of custody.

Sassano, 337 Ill. App. 3d 186, 192 (2003). Supreme Court Rule 304(a) provides that if multiple claims for relief are involved in an action, an appeal may be taken from a final judgment for some of the claims, but only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *Sassano*, 337 Ill. App. 3d at 192 (citing Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)). In the absence of such a finding, any judgment that adjudicates fewer than all the claims is not appealable. *Id.*

¶ 19 We first review the child support order issued on July 22, 2015. “The findings of the trial court as to net income and the award of child support are within its sound discretion and will not be disturbed on appeal absent an abuse of discretion.” *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 22 (quoting *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 675 (2005)). The trial court abuses its discretion when no reasonable person would take its view. *Id.*

¶ 20 This court is limited to reviewing the material that was brought before the trial court and determining whether it is sufficient to support the trial court's judgment. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). The appellant must present a complete record that supports his claim that the trial court erred in order for the judgment to be reversed. *Id.* (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984)). In alternative to a transcript, the appellant may prepare a bystander's report, or the parties may present an agreed statement of facts. *Id.* (citing Ill. S. Ct. R. 323(a) and 323(d) (eff. Dec. 13, 2005)). “Any doubts arising from an incomplete record must be resolved against the appellant.” *Id.*

¶ 21 The July 22, 2015 order increased John's support obligation to \$1,825 per month. The circuit court also ruled that John owed child support arrearage of \$44,342, along with interest. While it is clear from the record that a hearing was held, the transcripts from that hearing were not included in the record for our review. However, the court order states that the new amount is

"pursuant to statute," referring to Section 505(a)(1) of the Act, which provides guidelines for determining child support amount based on net income and number of children.

¶ 22 The lack of a transcript or bystander's report does not allow us to know what evidence was presented at the hearing before the trial court or the court's reasoning for its order. Based on the order stating that the child support amount was pursuant to the statutory guidelines, we must conclude that the circuit court reasonably followed the law and had a sufficient factual basis for its ruling. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d at 157 (2005). Thus, we cannot say the circuit court abused its discretion in the July 22, 2015 order when it determined the child support amount which John must pay.

¶ 23 We next review the contempt order from December 17, 2015 and the resulting March 15, 2016 order awarding sanctions of \$7,500 in attorney's fees. We will not disturb a trial court's decision to hold a party in contempt unless there has been an abuse of discretion. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006) (citing *In re Marriage of Allen*, 265 Ill. App. 3d 208, 213 (1994)). "The failure to make support payments as required by court order is *prima facie* evidence of contempt." *Id.* (citing *In re Marriage of Hilkovitch*, 124 Ill. App. 3d 401, 420 (1984)). It is the burden of the alleged contemnor to then show that his noncompliance was not willful and that he has a valid excuse for his failure to pay. *Id.* Additionally, a trial court's decision to award fees is generally a matter of discretion and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 10 (citing *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007)).

¶ 24 Due to the lack of a transcript or bystander's report, we rely on the circuit court's orders. The March 15, 2016 order stated John was being sanctioned with attorney's fees for his willful failure to comply with the court order from December 17, 2015. The December 17, 2015 order

stated that John was being held in indirect civil contempt for failing to pay his child support obligations in August, September, and October 2015. The court found that John's termination of his employment was voluntary.

¶ 25 On appeal, John does not dispute that he failed to pay the increased child support amount of \$1,825 per month from the July 22, 2015 order. He instead argues that he could not pay his child support obligations during those months because he retired in August 2015, which significantly decreased his income. John claims that the \$1,825 per month was over 28% of his new income, pursuant to the guidelines in Section 505(a)(1) of the Act. John argues that he retired due to his age and physical condition and that he did not retire to intentionally reduce his child support obligation. In her brief, Constance argues that John had voluntarily retired simply to reduce his child support obligation.

¶ 26 A good-faith, voluntary change in employment which diminishes a payor's financial ability may constitute a substantial change in circumstances justifying a reduction in child support payments. *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1166 (2005). The circuit court must determine if the decision was made in good faith or was prompted by a desire to evade financial responsibilities for supporting the children or to otherwise jeopardize their interests. *Id.* (citing *In re Marriage of Hardy*, 191 Ill. App. 3d 685, 690 (1989)). The payor must present evidence of a motive other than the evasion of financial responsibilities, and unless good faith is shown, a voluntary termination of employment is not considered a material change in circumstances sufficient to warrant a reduction in child support obligations. *Id.* (citing *In re Marriage of Dall*, 212 Ill. App. 3d 85, 95–96 (1991)).

¶ 27 The fact that John failed to pay is *prima facie* evidence of contempt. We presume the circuit court had the sufficient factual basis to determine that John retired from the Chicago Fire

Department in bad faith and therefore did not provide a valid reason for his failure pay. Additionally, we presume the circuit court reasonably concluded that John's continued failure to pay his child support obligations required both parties to appear for more court appearances, which validated the court's ruling which awarded attorney's fees to Constance. There is nothing in the record to suggest that \$7,500 amount awarded was not a reasonable attorney's fee award. We find no abuse of discretion in either the circuit court's contempt ruling or the imposition of attorney's fees.

¶ 28

CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.