

No. 1-15-1768

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE FORMER MARRIAGE OF)	
JACEK GLOD,)	
)	Appeal from the
Petitioner-Appellant,)	Circuit Court of
)	Cook County.
v.)	No. 12 D 3897
)	
MARTA GLOD,)	Honorable
)	Patricia Logue,
Respondent-Appellee.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: We affirm the judgment of the circuit court of Cook County where the court properly determined petitioner’s support obligations from his imputed net income.

¶ 1 Petitioner, Jacek Glod, appeals from an order of the circuit court dissolving the parties’ marriage and making certain determinations regarding custody, parenting time, child support, and other ancillary matters. Based on the parties’ testimony at trial, their income disclosure statements, their bank account records, and other considerations, the court imputed net income to

petitioner in the amount of \$8000 per month. The court determined that under the statutory guidelines, petitioner was required to pay \$2860 per month in child support payments to respondent, Marta Glod, who was awarded sole primary custody of the parties' three minor children. The court subsequently denied petitioner's motion to reconsider its determination that his net income was \$8000 per month. We conclude that the circuit court did not abuse its discretion in determining the amount of support based on petitioner's imputed income and we affirm the circuit court's judgment.

¶ 2

I. BACKGROUND

¶ 3

Petitioner and respondent were married on February 25, 1995, and had three minor children and one child who reached the age of majority during the course of the proceedings. Their marital home was located in Palos Hills, Illinois. On April 29, 2012, three days after respondent filed a petition for an order of protection, petitioner filed a petition for dissolution of marriage. In his petition, petitioner stated that he was self-employed as the owner and operator of a towing company called J.G. Services and that respondent was a currently unemployed ultrasound technician. Petitioner sought custody of the parties' children¹ and cited irreconcilable differences as the basis for the irretrievable breakdown of the marriage.

¶ 4

A. Petition for Temporary Maintenance and Initial Disclosures

¶ 5

On May 9, 2012, Respondent filed a petition for temporary maintenance, child support, and attorney's fees. In her petition, respondent, who was living in the marital home with the parties' children, contended that she was without funds to support herself and pay for the family's expenses. On July 24, 2012, petitioner filed a disclosure statement detailing his financial information. On that disclosure statement, petitioner averred that his gross business income for

¹ Petitioner later withdrew his claim for custody.

2012 from January through June was \$45,859.83, but that his income available per month, after subtracting his personal and business expenses, was negative \$5,023.82. Petitioner also identified three vehicles that he owned, a 2005 Mercedes Benz, a 2008 Honda Odyssey, and a 2007 Freightliner Tow Truck. Petitioner further disclosed that he had two bank accounts at Marquette Bank, one personal account in his name, and one account for J.G. Services.

¶ 6 On September 25, 2012, the court held a hearing on respondent's motion for temporary maintenance. At the hearing, respondent testified that while she was living with petitioner, their living expenses were more than \$9000 each month. Respondent testified that petitioner paid all of their expenses with the money he earned from his tow truck business. She further testified that in February 2011, the parties filed for bankruptcy relief. Respondent testified that about a year after the parties obtained bankruptcy relief, she became aware that petitioner kept a safe in the house in which she observed him storing a large amount of cash. She testified that she currently works as a sonographer, but works infrequent hours and currently makes approximately \$1000 per month. She testified that she would need \$9500 per month to become current with her expenses.

¶ 7 Petitioner testified that he owned a tow truck company and had a gross income of between \$6000 and \$9000 per month. He further testified, however, that his business expenses were approximately \$4400 each month and that he had to borrow money from his mother to keep current with business and personal expenses. He testified that when he lived with respondent in their marital home, their expenses were approximately \$9300 per month and were always kept current.

¶ 8 In ruling on respondent's motion, the court noted that it found neither party credible, but found that some things were "more credible than others." The court determined that petitioner

would pay respondent \$6000 per month in support and pay \$4000 toward her attorney's fees. The court stated that it based this amount on the fact that petitioner was consistently able to pay household expenses of nearly \$10,000 even though he alleged that his towing business was not doing well. The court noted that towing vehicles is a cash-based business and again noted that there was "little to no credibility in the room." On October 1, 2012, the court detailed the parties' obligations in a written order, noting that it was reserving judgment on the issue of retroactive relief until the court's final disposition of the action.

¶ 9 On October 22, 2012, petitioner filed a motion to reconsider the court's ruling contending that there was no evidence in the record to support the amount of support awarded. He further contended that the court relied on the past practices of the parties in determining the amount of the award when the "cash flow was substantially different." Petitioner asserted that the order requiring him to pay \$6000 a month was "clearly unconscionable" and that he was unable to "pay such an exorbitant amount." On January 22, 2013, the court denied petitioner's motion to reconsider.

¶ 10 B. Retroactive Support

¶ 11 On January 30, 2013, respondent filed a motion for retroactive support and arrears judgment. In her motion, respondent contended that petitioner owed her \$30,000 in retroactive support payments that accrued from May 9, 2012, through the date of the court's order on October 1, 2012. On March 11, 2013, the court found that petitioner was in arrears by \$27,727.16 on his support obligations and found him in indirect civil contempt for his failure to pay. The court further ordered that petitioner would pay \$3000 per month to respondent to purge the arrearage in addition to his current support obligations.

¶ 12 On May 1, 2013, the court found that petitioner had failed to satisfy his purge obligations and remanded him to the custody of the sheriff of the Cook County department of corrections. The court also noted in its order that petitioner tendered a \$5000 check to respondent in open court to be applied to the arrearage and attorney's fees owed. On June 6, 2013, the court found that petitioner was financially unable to meet the purge requirements and therefore set the purge mandate aside. The court further ordered that the Cook County sheriff release petitioner from custody. On August 7, 2013, respondent's attorney withdrew due to respondent's inability to pay and respondent proceeded *pro se*.

¶ 13 C. Trial for Dissolution of Marriage

¶ 14 At trial, petitioner testified that in 2012 he sold his tow truck for \$28,000 and had dissolved his tow truck business. Petitioner testified that he now worked as a truck driver for Bulldog Express making \$15 an hour.² Petitioner testified that he left his tow truck business because he could make a more consistent and predictable income as a truck driver, while earning the same net income as he did when he owned and operated J.G. Services. He testified that when he owned J.G. Services, he earned between \$6000 and \$9000 per month in gross income, but had considerable business expenses as detailed in his disclosure statements. On cross-examination, petitioner stated that he had only one bank account and that he closed the J.G. Services account in October 2012. Petitioner also acknowledged that he traded in the family minivan and purchased a new car, which he asserted was more fuel efficient. Respondent testified that while they were living together in the marital home, petitioner paid their monthly household expenses, which were in excess of \$9000.

² Petitioner testified that he originally earned \$20 an hour, but his pay was decreased because he missed work while in the Cook County department of corrections for failing to pay the purge amount. Petitioner further testified that he would eventually return to earning \$20 an hour.

¶ 15 The court rendered its judgment in a written order. In its order, the court awarded respondent sole custody of the parties' three minor children and noted that petitioner owed substantial arrears for child support of \$92,000 or more. The court also made extensive findings regarding petitioner's income, expenses, and bank accounts. In discussing petitioner's finances, the court noted that he kept the money from the sale of his tow truck rather than share it with respondent. The court also found that petitioner had other trucks and vehicles titled under his name, or the names of companies he was involved in. The court determined that petitioner was therefore still towing vehicles and made a living comparable to the living he made when he operated J.G. Services. The court determined that based on his disclosure statements and bank account deposits, petitioner's net income while he was operating J.G. Services was more than \$60,000 a year.

¶ 16 The court further found that despite petitioner's testimony to the contrary, he earned substantially less income driving trucks for Bulldog Express than he did when he owned J.G. Services. The court noted that the parties disputed whether petitioner truly stopped towing vehicles. The court observed that it had previously found that petitioner was not a credible witness and that "[h]is demeanor and testimony at trial in the latest hearing did not erase the court's doubt." The court found that his credibility was further "eroded by his false testimony that he has only one bank account." The court noted that based on records obtained by respondent, petitioner had at least five bank accounts in his name, some of which were joint accounts that he shared with other people.

¶ 17 The court further found that even assuming petitioner's testimony was entirely truthful, he still had an obligation to make the support of the parties' three minor children his priority after securing basic needs for himself. The court determined that petitioner's job change from

operating the tow truck business to becoming a truck driver represented voluntarily underemployment where there were no circumstances that required the change to a job that paid substantially less money. The court therefore determined that petitioner was required to pay support consistent with his prior level of income.

¶ 18 The court further observed that although petitioner was substantially behind on his support obligations, he was able to pay many other bills, withdraw cash from his bank accounts, and sell vehicles without giving respondent half of the proceeds or paying his child support obligations. The court determined that “[t]he money going into [petitioner’s] accounts and the cost of the many purchases going out of his accounts suggests income well beyond his income from Bulldog Express.” The court thus determined that petitioner had not prioritized his child support payments as required by the supreme court and section 505 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/510 (West 2013)). The court noted that on April 23, 2013, petitioner purchased a new car by trading in the family’s vehicle, which was marital property, and paid a \$500 down payment on the car. Petitioner then assumed a loan agreement requiring him to make 48 monthly payments on the vehicle of \$227.15.

¶ 19 The court further found that petitioner’s bank account records showed that he had paid many other expenses that indicated he had substantial cash on hand. The court noted that he paid living expenses, attorney’s fees, loaned money to family members, and cashed numerous checks written to himself on different bank accounts “totaling many, many thousands of dollars.” The court concluded that “[a]fter considering the facts presented, bank records, the income [petitioner] established he can make, his spending habits, the income he had in 2012 when he allegedly left his towing business behind him, as well as [petitioner’s] apparent easy access to cash and credit, the court imputes net income to [petitioner] of \$8000/month.” The court noted

that it had doubts as to whether petitioner had disclosed all of his income or whether he had voluntarily “slashed” his earnings by more than half. The court then determined that under the statutory guideline for three minor children, petitioner was required to pay 32% of his monthly net income, \$2560, in child support. The court also determined that petitioner would be required to pay \$300 in child support arrears, for a total of \$2860 per month.

¶ 20 On March 17, 2015, petitioner filed a motion to reconsider the circuit court’s judgment. In his motion, petitioner contended that the court incorrectly determined that he was still working as a tow truck driver and improperly imputed \$8000 of net income per month to him. Petitioner contended that the court focused solely on his gross business income, and did not consider the substantial expenses he incurred while operating J.G. Services, which left him with a considerably lower net income than that imputed to him by the court. Petitioner further contended that the court incorrectly found that he still owned a tow truck where his lack of funds and credit left him unable to purchase one. On April 28, 2015, the court denied petitioner’s motion to reconsider. This appeal follows.

¶ 21 II. ANALYSIS

¶ 22 On appeal, petitioner contends that the circuit court abused its discretion in imputing \$8000 of monthly income to him in determining his support obligations. He maintains that in determining this amount, the circuit court solely focused on the gross income he earned from his former tow truck business and did not consider his net income as required for determining the amount of support. He further asserts that many of the trial court’s factual findings regarding his finances and bank account information are erroneous and unsupported by the record. He maintains that the court erred in finding that he is voluntarily underemployed and that it would

be impossible for him to fulfill the decreed support obligations based on his current financial position.

¶ 23 As the parties recognize, “[t]he 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 absent an abuse of discretion.” *In re Marriage of Pasquesi*, 2015 IL App (1st) 133926, ¶ 29. The circuit court abuses its discretion where no reasonable person would agree with the position adopted by the court. *Id.*

¶ 24 Under the IMDMA, a trial court's calculation of child support is contingent on the noncustodial parent's net income. *Pasquesi*, 2015 IL App (1st) 133926, ¶ 29. The IMDMA defines net income as the total income from all sources minus certain deductions. 750 ILCS 5/505(a)(3) (West 2010). Where “ ‘net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case.’ ” *Pasquesi*, 2015 IL App (1st) 133926, ¶ 29 (quoting 750 ILCS 5/505(a)(5) (West 2012)). When determining the appropriate income level, a court may look to the party's past earnings and may also “compel a party to pay child support at an imputed income level commensurate with their earning potential.” *Pasquesi*, 2015 IL App (1st) 133926, ¶ 29. In this case, we find that the circuit court did not abuse its discretion in determining petitioner's imputed net income.

¶ 25 Here, the court determined that because it found that petitioner was not credible, it was not able to determine his current net income from his testimony and disclosure statements alone. Accordingly, the court looked to other factors, such as the past practices of the parties, petitioner's previous income as a tow truck driver, and petitioner's bank account statements and imputed an income level to him commensurate with his earning potential. Specifically, the court determined that petitioner had multiple bank accounts, was previously able to pay household

expenses of more than \$9000 per month, and had substantial cash on hand from his ongoing work as a tow truck driver. The court did not credit petitioner's testimony that he left the tow truck business because he could make the same money driving a truck for Bulldog Express where the court observed that he earned substantially less money. The court therefore imputed income to petitioner in the amount of \$8000 based on his previous earning potential as a tow truck driver and the parties' past practices of having household expenses of more than \$9000 per month, which petitioner had paid. See *Pasquesi*, 2015 IL App (1st) 133926, ¶ 29.

¶ 26 Petitioner contends that the circuit court erred in imputing \$8000 of monthly income to him because the circuit court unreasonably focused on his gross business income, rather than on his net income. Petitioner points out that the court discussed that he testified that his gross income when he operated J.G. Services was between \$6000 and \$9000 per month and also discussed amounts that he deposited into his J.G. Services bank account each month, but did not consider his expenses in determining his monthly net income. Petitioner refers to his July 24, 2012, disclosure statement in which he noted that his net income per month while operating J.G. Services was negative \$5023.82.

¶ 27 The record shows, however, that the court did consider petitioner's net income in determining the amount of imputed income. Specifically, the court focused on petitioner's ability to pay household expenses in excess of \$9000 per month while the parties were living together in the marital home. The court also noted that petitioner appeared to have undisclosed cash on hand from his tow truck business based on his bank account activity and current spending habits. The court believed that petitioner was still towing vehicles despite his testimony to the contrary and believed that he was voluntarily underemployed earning \$15 or \$20 per hour with Bulldog Express. "Courts may both look to past earnings to determine an appropriate income level (*In re*

Marriage of Hubbs, 363 Ill. App. 3d 696, 706 (2006)) and compel a party to pay child support at an imputed income level commensurate with their earning potential (*In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009)).” *Pasquesi*, 2015 IL App (1st) 133926, ¶ 29.

¶ 28 Moreover, as respondent points out, on petitioner’s July 24, 2012, disclosure statement, he listed business expenses of \$4080.73 on required monthly deductions. He then listed the same amount, \$4080.73, under miscellaneous expenses and labeled it “[b]usiness expenses.” He then subtracted both amounts from his gross income in arriving at the negative \$5023.82 figure, thus grossly exaggerating his expenses. Moreover, and perhaps more importantly, the court found that petitioner was not credible in his testimony and disclosures regarding his finances. “As the trier of fact, the trial court was in a superior position to observe the demeanor of the witnesses, determine and weigh their credibility, and resolve any conflicts in their testimony.” *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 95 (citing *In re Marriage of Rosen*, 126 Ill. App. 3d 766, 774 (1984)).

¶ 29 Instead of taking petitioner at his word, the court made extensive findings regarding petitioner’s bank account activity and determined that his transaction history indicated that he had more income available than his disclosures or testimony revealed. Particularly, the court noted that petitioner had recently purchased a new vehicle, was current with his living expenses, loaned money to family members, and cashed numerous checks written to himself on different bank accounts “totaling many, many thousands of dollars.” Where a party’s personal spending exceeds his net income, and the source of such money is unexplained, such money should be considered as an additional resource for child support. *In re Marriage of Tegeler*, 365 Ill. App. 3d 448, 461 (2006). The court further found that given his substantial support arrearage and the evidence of his spending habits, petitioner had failed to prioritize his child support payments as

required by section 505 of the IMDMA (750 ILCS 5/510 (West 2013)) and the supreme court's holding in *In re Marriage of Logston*. *In re Marriage of Logston*, 103 Ill. 2d 266, 286 (1984) (quoting *Shaffner v. Shaffner*, 212 Ill. 492, 496 (1904) ("It is proper that he first pay his bare living expenses; but whenever he has any money in his possession that belongs to him and which is not absolutely needed by him for the purpose of obtaining the mere necessities of life, it is his duty to make a payment on this decree.")). Accordingly, we find that the court properly considered petitioner's net income in determining the amount of support.

¶ 30 Petitioner next contends that there is nothing in the record to support the circuit court's findings because respondent never introduced any exhibits into evidence. Initially, we note that petitioner fails to cite any authority that dictates that the court's findings must be based on exhibits introduced by respondent and our research reveals no such mandate. In addition, contrary to petitioner's representations, in its order, the circuit court continually referred to petitioner's bank account information in determining his income. The court credited respondent with obtaining these documents by subpoena.

¶ 31 At base, petitioner's contentions focus on the circuit's court determination that he earned more income or had more earning potential and possessed more cash on hand than his testimony or disclosure statements indicated. Petitioner goes to great lengths to identify instances in the record where his testimony or the information he provided on his disclosure statements contradicts the court's findings. As discussed, however, the court did not find petitioner credible, and it is not our position on review to reweigh the evidence or reassess witness credibility. *In re April C.*, 345 Ill. App. 3d 872, 889 (2004). Moreover, as stated above, the court may, in its discretion, impute income to petitioner if it believes he is voluntarily underemployed and may look to past earnings to determine his earning potential. *Pasquesi*, 2015 IL App (1st) 133926, ¶

29. The court in this case found that petitioner was voluntarily underemployed, had undisclosed income, and earned substantially more income than his testimony or disclosure statements indicated. It was therefore proper for the court to impute income to him in an amount commensurate with his earning potential and past practices. *Id.* We find no abuse of discretion where the court made extensive findings regarding petitioner's finances and bank account activity which indicated that he earned more income than he revealed and the court imputed income to him at a level that was consistent with his apparent earnings and earning potential. Accordingly, we conclude the trial court did not abuse its discretion in imputing income to petitioner of \$8000 per month in determining his support obligations.

¶ 32

III. CONCLUSION

¶ 33

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 34

Affirmed.