2017 IL App (2d) 160189-U
No. 2-16-0189
Order filed January 18, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re the PARENTAGE of MATTHEW L., and EMELIA L.,	)	Appeal from the Circuit Court of Kane County.
minors.	)	No. 13-F-449
(John L., Petitioner-Appellant v. Natalie H. n/k/a Natalie F., Respondent-Appellee.)	)	Honorable John G. Dalton Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred.

ORDER

Held: The trial court did not abuse its discretion in increasing petitioner's child support; the court's order holding petitioner in contempt for failing to pay child support was not against the manifest weight of the evidence.

¶ 1 Petitioner John L. and respondent Natalie H. dated and lived together for several years in Kane County. Natalie gave birth to two children: Matthew L. in May 2006, followed by Emelia L. in September 2008. John was later adjudicated the father of Matthew and Emelia. John appeals from an order of the trial court, which (1) modified his monthly child support obligation based on the court's calculation of John's net income and (2) found John in contempt for willfully failing to pay child support. John contends that the trial court erred when it modified the

amount of his child support based on its calculation of his net income and, further, that he should not have been held in contempt. We affirm.

¶ 2 As an initial matter, at the time that John filed his notice of appeal, there were still unresolved claims between the parties pending in the trial court—specifically, two petitions for a rule to show cause filed by Natalie against John. The order holding John in contempt was appealable under Supreme Court Rule 306(b)(5), but without a finding under Supreme Court Rule 304(a), we would have no jurisdiction over the modification order. See *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008); *In re Marriage of Valkiunas & Olsen*, 389 Ill. App. 3d 965, 968 (2008); *Department of Pub. Aid on Behalf of K.W. v. Lekberg*, 295 Ill. App. 3d 1067, 1070 (1998); *Baldassone v. Gorzelanczyk*, 282 Ill. App. 3d 330, 333-34 (1996). We gave John the option to supplement the record with evidence showing that the parties' claims had been resolved or with a Rule 304(a) finding. John chose the former option; he supplemented the record with docket sheets showing that the petitions pending at the time of his notice of appeal (and subsequent show-cause petitions) have been resolved in the trial court. Thus, we have jurisdiction over the modification order as well. See Ill. S. Ct. R. 303(a)(2). Turning to our review of those orders, we note the following.

¶ 3 In 2013, John sought a declaration concerning his paternity of Matthew and Emelia. In July 2014, the trial court entered a comprehensive order declaring John the children's father. The order, among other things, set John's child support payments at $200 per month. Elsewhere in the record, we are told that John has been unemployed for some time due to "a brain injury from being hit by a car several years ago," and was unemployed at the time the initial child support order was entered. Accordingly, the court made no finding as to John's net income at that time.

¶ 4 In March 2015, however, Natalie filed a petition for a rule to show cause, which alleged that John had failed to make his court-ordered child support payments for the preceding nine months. Natalie also filed a petition seeking to increase the amount of John's monthly child support. At this point, we note that the record on appeal consists of only the common law record, some exhibits concerning John's personal finances (which are far from comprehensive), and a bystander's report from hearings held on February 4 and February 5, 2016, on *inter alia* Natalie's petitions to modify child support and to hold John in contempt. It is axiomatic that any doubts which may arise from the incompleteness of the record must be resolved against the appellant and in favor of the judgment. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 5 The bystanders report from the February 2016 hearings reveals the following. John testified that his monthly expenses were approximately $2,800 per month (we have rounded all figures). John also testified that he had "no income"; he lives with his girlfriend and is unemployed. John also had not yet been approved for disability payments. John does, however, have power of attorney over the finances of his mother, Raquel. In addition, John testified that his father had passed away in January 2014 and that "his father's life insurance was *** $150,000." The record is unclear as to whether John received some, all, or none of his father's life-insurance payout.

¶ 6 On cross-examination, John was asked about his bank account statements. He testified that some of the statements showed "monies being transferred" from his girlfriend's bank account into his personal bank account. When the trial court certified the bystander's report, it made a handwritten annotation that, when read together with the original text, indicates that John testified about "monies being *regularly* transferred" from his girlfriend's account into his bank account. Then, in the margin, the trial court wrote, "There were also occasions where money was

transferred from John's mother's bank account into his girlfriend's account." The report goes on to state that "John testified that he did that"—meaning, he routed money through both his mother's and his girlfriend's bank accounts—"to hide that he had money from [Natalie.]"

¶ 7 The trial court found that John's monthly expenses were $2,800 but also found that John was "very clear that [he] had no issues paying his monthly expenses *** due to regular consistent transfers from either his girlfriend and/or his mother." Accordingly, the trial court determined that John's net income was commensurate with his monthly expenses, applied the guideline support rate—28% for two children (see 750 ILCS 5/505(a)(1) (West 2014))—and increased John's monthly child support accordingly from $200 to $780. The court modified the amount of John's support retroactive to the date in March 2015 in which Natalie sought the increase. See 750 ILCS 5/510(a) (West 2014). As noted, the court also held John in indirect civil contempt for willfully failing to pay past due support for the children.

¶ 8 John first argues that the trial court erred because Natalie had not alleged a "substantial change in circumstances" had occurred since the support order was entered in July 2014. See 750 ILCS 5/510(a)(1) (West 2014). We note that evidence of a parent's increased ability to pay child support, alone, can justify an increase in the amount of child support ordered. See *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 29 (quoting *In re Marriage of Heil*, 233 Ill. App. 3d 888, 891 (1992)). In addition, we note that because the trial court found "an inconsistency of at least 20% *** between the amount of the existing order and the amount of child support that results from application of [statutory child support] guidelines," (750 ILCS 5/510(a)(2) (West 2014)), Natalie was not required to prove whether a substantial change had occurred.

¶ 9 John next argues that the trial court erred in calculating his net income for the purpose of determining the amount of child support. We review a court's modification of child support

payments for an abuse of discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135 (2004). "[A]n abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52.

¶ 10 We determine that the trial court did not abuse its discretion when determining John's net income or in calculating his monthly child support obligation. "Net income" is defined as "the total of all income from all sources" minus applicable deductions. 750 ILCS 5/505(a)(3) (West 2014). Deductions are not at issue here. What is at issue is that John was, per the annotation in the bystander's report, *regularly* receiving money from his girlfriend's and his mother's bank accounts. Our supreme court has stated that "income" is "something that comes in as an *increment*" or is a "*recurrent* benefit that is usually measured in money." (Emphasis added; internal quotation marks and brackets omitted.) *In re Marriage of Rogers*, 213 Ill. 2d at 136. Per the rule set forth in *Rogers*, the trial court was undoubtedly correct to consider the "regular consistent transfer" of money to John from his mother and his girlfriend in its calculation of his net income.

¶ 11 John points out that he testified his monthly *expenses* were $2,800, and not that his monthly *income* was $2,800. However, the trial court need not wait for John to paint a clearer picture of his finances before setting the amount of the children's support. Courts have the authority to compel parties to pay child support at a level commensurate with their earning potential (see *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344 (2004)), and John was, more or less receiving some of the $2,800 a month he used to support himself. Therefore, it was not unreasonable for the trial court to infer that John's income was commensurate with his expenses. See *id.*; *In re Marriage of Sweet*, 316 Ill. App. 3d 101 (2000); see also *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 233 (2008) (upholding modification where parent had evinced a

pattern of nondisclosure concerning his income and was "evasive and less than straightforward about his finances"). Moreover, to the extent the record is ambiguous concerning John's income, we construe those ambiguities against John and in the light most favorable to the trial court's judgment. See *Foutch*, 99 Ill. 2d at 392.

¶ 12 Next, in a scant, one-and-a-quarter page argument, John asserts that the trial court erred when it increased his support obligation retroactive to the date Natalie filed her petition to increase. Child support "may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a). John does not assert that he was given insufficient notice of Natalie's petition to increase. He argues that Natalie failed to show a "substantial change in circumstances," but as we explained earlier (see *supra* ¶ 8) the substantial-change requirement, if it was even applicable at all (see 750 ILCS 5/510(a)(2)), was met given evidence of John's increased ability to support his children since the entry of the initial support order. Accordingly, we determine that the trial court did not abuse its discretion when it made the increase in John's child support retroactive to the date Natalie filed the petition. See *In re Marriage of Petersen*, 2011 IL 110984, ¶ 18; *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 32.

¶ 13 Finally, in a mere one-page argument, John asserts that it was against the manifest weight of the evidence for the trial court to hold him in contempt for failing to pay child support as originally ordered. According to John, he knew that he was supposed to pay Natalie $200 per month that per the July 2014 order, but he argues that there was "an agreement" between he and Natalie that he would pay for the children's extracurricular activities "in lieu of monthly support amounts." Other than John's self-serving testimony, however, there was no evidence of any such agreement in the record. The court's July 2014 order specifically stated that John would pay

Natalie $200 per month in support and that the parties would split 50-50 the costs for the children's extracurricular activities. Nothing in the order suggests the latter was deductible from the former.

¶ 14 John also relies on the fact that he filed a petition for a rule to show cause against Natalie, which alleged that Natalie had not paid her fair share for the children's extracurricular activities, but the record shows that, after a hearing, the court denied John's petition and issued no rule against Natalie. As such, we fail to see how this supports John's overall argument concerning contempt. Last, John relies on pictures of text messages between himself and Natalie, but those messages do not indicate any agreement regarding an agreed modification of John's child-support obligation. Accordingly, on this record, the trial court's finding that John "had willfully failed to make child support payments," was not against the manifest weight of the evidence. See *In re Marriage of McCormick*, 2013 IL App (2d) 120100, ¶ 17 (citing *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)).

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 16 Affirmed.