2017 IL App (2d) 160632-U
No. 2-16-0632
Order filed June 29, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IN RE MARRIAGE OF CAROL CINCINELLO,	)	Appeal from the Circuit Court
	)	of Du Page County
Petitioner-Appellant,	)	
	)	
and	)	No. 13-D-0730
	)	
PAUL CINCINELLO,	)	Honorable
	)	Neal W. Cerne,
Respondent-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Concerning modifications of maintenance and child support, trial court did not err in finding: a substantial change of circumstances occurred such that modifications were appropriate; the change was not contemplated in judgment for dissolution of marriage such that it barred modification; respondent did not voluntarily and in bad faith cause change; and respondent's alleged ownership of shell corporation prior to judgment for dissolution of marriage was not relevant to judgment for dissolution of marriage—a reasonable person could find modification of maintenance to zero was equitable under the changed circumstances and petitioner did not establish error in trial court's setting amount of modified child support.

¶ 2 I. INTRODUCTION

¶ 3 Petitioner, Carol Cincinello, appeals an order of the circuit court of Du Page County modifying the maintenance and child-support obligations of respondent, Paul Cincinello. For the reasons that follow, we affirm.

¶ 4 Before proceeding to the substance of this appeal, we note that respondent contends that we lack jurisdiction over this appeal due to several purportedly unresolved motions. Petitioner initially agreed with respondent's contention; however, she subsequently moved to supplement the record with two orders (one of which was an agreed order) that show that all open motions had subsequently been resolved, primarily by agreement (it is difficult to understand how respondent could maintain that we lacked jurisdiction based on purportedly unresolved motions that were actually resolved by an order he agreed to). The orders submitted by petitioner show that all open motions were resolved no later than March 6, 2017. Though the notice of appeal in this case was filed before this date on August 5, 2016, pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. January 1, 2015), it became effective when these motions were resolved.

¶ 5 At this point, we also deny respondent's request that we strike petitioner's brief. Respondent takes issue with petitioner's characterizations of the record at various points in her brief. Respondent alleges, *inter alia*, that petitioner's brief violates Illinois Supreme Court Rule 341(d)(6) (eff. January 1, 2016), in that her statement of facts is argumentative. While we will leave the accuracy of such characterizations for the substantive portion of the brief, we perceive nothing so egregious as to warrant the extreme sanction of striking a brief. Indeed, we do not find it surprising that adverse parties view the evidence differently. Parenthetically, we note that respondent's brief fails to comply with Illinois Supreme Court Rule 341(d)(7) (eff. January 1, 2016) in a manner that hampers our review. That section requires citation in the argument section of the brief to the pages of the record a party is relying upon. Respondent makes

numerous factual allegations in the course of making his argument without substantiating them with citation to the record. Furthermore, simply citing to exhibits is generally insufficient as it does not specify where in the record the material relied on appears (Rule 341(d)(7) states citation must be made to "the pages of the record relied on").

¶ 6 II. BACKGROUND

¶ 7 The parties' marriage was terminated when a judgment for dissolution of marriage ("the judgment") was entered on June 21, 2013. It incorporated a marital settlement agreement (MSA) and provided that respondent would pay petitioner permanent, reviewable, periodic maintenance in the amount of $37,167 per month and child support in the amount of $5,239 per month. The MSA stated that the amount of maintenance was 45% of respondent's gross income. It set forth that income as $60,000 annual salary from employment by CBC Customhouse Brokers, Inc.; a distribution of $994,000 as a 37.083% owner of CBC and Bloomingdale Partners, Inc. ("Bloomingdale"; collectively "CBC"); and an $8,500 monthly distribution from Bloomingdale. Child support represented an agreed downward deviation from the statutory guidelines. The marital estate was divided roughly evenly between the parties (petitioner's share approached $4 million). The MSA also recognized that there was litigation ongoing between respondent and Ronald Bogdanski regarding respondent's involvement as a shareholder and employee of CBC.

¶ 8 On December 31, 2013, respondent filed a motion to modify maintenance. The motion to modify maintenance alleged a substantial change in circumstances. It alleged that Bogdanski, the majority shareholder of CBC and Bloomingdale, unilaterally reduced respondent's income by about $150,000. It further alleged that Bogdanski was motivated by respondent filing a lawsuit alleging breach of fiduciary duty, fraud, self dealing, and other similar acts with regard to CBC.

Bogdanski filed a counterclaim. The motion alleged that respondent had incurred substantial legal fees in the litigation with Bogdanski.

¶ 9 The motion further noted that section 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510 (West 2012)) allows for the modification of maintenance following a substantial change of circumstances and that a change in a party's ability to pay maintenance constitutes such a change. It then alleged that respondent received about $150,000 less in 2013 relative to his 2012 income. Additionally, given petitioner's substantial assets, a reduction in maintenance would not affect petitioner's ability to support herself. Accordingly, respondent asked the trial court to reduce his "maintenance obligation payable to [petitioner] to an amount [the] Court deems just and appropriate."

¶ 10 On April 22, 2014, respondent filed a motion to modify child support and reduce his life insurance obligation. This motion noted that a joint parenting agreement was incorporated into the judgment for dissolution of marriage. It contained similar allegations to the motion to modify maintenance. It further alleged that "tensions peaked between Bogdanski and [respondent]" in December 2013 and that respondent was forced to resign his position at CBC. Respondent therefore did not receive any income in January 2014, and he subsequently started a new business where he earns a salary of $70,000 per year. It then alleged that this constituted a substantial change in circumstances and that he was acting in good faith when he resigned at CBC. He requested that the trial court reduce child support to 28% of his current income and reduce his obligation to maintain life insurance.

¶ 11 An evidentiary hearing was held on the two motions. Respondent testified that he works for and owns 85% of a company called Worldwide International Logistics (Worldwide). He purchased Worldwide from Joseph Gallione on January 30, 2014. Respondent had known

Gallione for over 10 years. The purchase was memorialized by a stock purchase agreement. Respondent explained that he purchased "[b]asically the name" of the company, for which he paid Gallione one dollar. Prior to purchasing the company, Worldwide did not have a bank account. On the day after the purchase, respondent capitalized the company with $700,000 of his own money. He subsequently "put another $200,000 into it." Respondent never intended to go into business with Gallione. Worldwide is involved in logistics, transportation, and customs. In 2014, Gallione obtained a clearance from the Transportation Safety Authority (TSA) for Worldwide to operate. He was not paid for doing this, but rather did this out of friendship. Respondent testified that since he began running Worldwide, it had grown to 14 employees. He offered three individuals from CBC a 5% ownership interest to entice them to join Worldwide. Respondent's salary from Worldwide was $70,000, and he received no additional bonuses or salary.

¶ 12 Respondent testified that he filed suit against Bogdanski in May 2013. Respondent was a minority shareholder and Bogdanski was the majority shareholder of CBC, which was also in the business of importing goods through United States customs. The suit alleged various breaches of fiduciary duties. In August 2013, respondent amended his complaint. Some of the allegations request as a remedy that CBC buy out his interest in the company as an alternate form of relief. At the time of the judgment for dissolution of marriage, respondent was not contemplating selling his interest in CBC. However, he subsequently felt he was being "squeezed out." Bogdanski put two family members on the CBC board and removed respondent as a signator on the company's accounts. Respondent described the environment at CBC as "very toxic." Respondent testified that he started seeing a psychologist, as there was "a lot of stress and anxiety." Eventually, the suit was settled. Respondent received $1.5 million for his interest in

CBC and other related entities. From the settlement, respondent paid attorney fees in the amount of $550,000.

¶ 13 Joseph Gallione testified that prior to respondent's purchase of Worldwide, it was a "shell company." Gallione owns a company that manufactures construction equipment. Though Gallione had resigned from Worldwide when respondent purchased it, his name was still on certain papers, which made it easier for him to obtain the TSA clearance.

¶ 14 Petitioner also testified. She stated that she had a Morgan Stanley account with a balance of $2,680,649.60 as of December 31, 2015. She did not use any of these funds for personal expenses. She has another account with $25,000. She has no mortgage (her home was valued at $575,000 in the MSA). Her monthly expenses total $14,502.08, and she has been able to meet them without using funds from her investment accounts.

¶ 15 The trial court first reviewed pertinent terms of the MSA. It observed that the amount of maintenance was premised on respondent's 2012 income of $1,054,000. The court noted that while respondent was already engaged in the Bogdanski litigation, its outcome was unknown and uncertain. It then found, "Had it been known and expressly contemplated that [respondent] would lose his position and realize a greatly decreased salary so as to be a contemplated circumstance not sufficient to support a modification of his support obligations, then his agreement to pay $446,004 per year in maintenance and $62,828 per year in child support would most certainly have been unconscionable." It further found that, given the situation at CBC, it was reasonable to infer that respondent had been forced out of his position there, though his resignation appeared voluntary on its face. Moreover, respondent's resignation was in good faith and not done to avoid his child-support or maintenance obligations. The trial court placed no weight on Gallione's involvement in Worldwide prior to respondent's acquisition of that

company after he resigned from CBC. It stated, "Whether it was [respondent's] intention all along to create his own company[] or whether it was merely a prudent contingency plan in case the litigation went bad is irrelevant" because respondent "is not an indentured servant, where he was required to stay employed at [CBC] and earn $1,000,000 per year." The trial court found immaterial inconsistencies in the testimony of respondent and Gallione regarding the formation of Worldwide, as they concerned a matter collateral to the issue before the court. The court also noted that petitioner's financial situation is "very sound" and that respondent's income had "substantially decreased." Therefore, the trial court modified respondent's maintenance obligation to zero (it did not terminate maintenance), modified child-support to the statutory guideline, but declined to modify respondent's life-insurance obligation, recognizing respondent's potential to earn significant income in the future. This appeal followed.

¶ 16 III. ANALYSIS

¶ 17 On appeal, petitioner challenges the trial court's decisions to modify maintenance and child support. She raises a number of subarguments regarding each decision. We will address petitioner's arguments regarding maintenance first. Generally, a trial court's decision to modify either of these obligations is reviewed using the abuse of discretion standard of review. *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 29 (maintenance); *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 194 (2003) (child support). Under this standard of review, we will reverse only if no reasonable person could agree with the position taken by the trial court. *In re Marriage of Mitteer*, 241 Ill. App. 3d 217, 224 (1993). Factual decisions will be overturned only if they are contrary to the manifest weight of the evidence, which means an opposite conclusion to the trial court's is clearly apparent. *John Allan Co. v. Neuedorf*, 60 Ill. App. 3d 559, 561 (1978). With these standards in mind, we now turn to the substance of this appeal.

¶ 18 A. MAINTENANCE

¶ 19 Petitioner raises five subarguments concerning maintenance: (1) whether a substantial change in circumstances occurred that would allow for the modification of maintenance; (2) whether any substantial change in circumstances was contemplated by the judgment for dissolution of marriage; (3) whether any substantial change in circumstances that occurred was voluntarily caused by respondent; (4) whether respondent was the *de facto* owner of Worldwide such that it would estop him from alleging a substantial change in circumstances: and (5) whether it was equitable to modify maintenance to zero. We find none of petitioner's arguments well founded and will address them *seriatim*.

¶ 20 1. Whether a Substantial Change in Circumstances Occurred.

¶ 21 Section 510 of the Act (750 ILCS 5/510 (West 2012)) allows a court to modify maintenance following a substantial change in circumstances. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198 (2011). The party seeking a modification bears the burden of showing such a change has occurred. *Id*.

¶ 22 Petitioner quibbles with the trial court's calculation of respondent's 2013 income. In the end, what she complains of would amount to no more than an approximate 15% discrepancy, and she cites nothing to establish that such a discrepancy would allow us to conclude that the trial court's ultimate decision was an abuse of discretion. The crux of this issue concerns respondent's 2014 income. Petitioner contends that the $1.5 million buyout of respondent's interest in CBC should be included in his income for that year. The trial court held otherwise. Citing *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004), it explained that it would only consider recurring income. A sale of assets, the trial court explained, "is a one-time occurrence and may have been reinvested."

¶ 23 According to petitioner, *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 25, defines "net income" as the total income from all sources (respondent points out that *Pratt* concerned child-support and not maintenance; however, we nevertheless find it persuasive in this context). Petitioner also cites *Rogers*, 213 Ill. 2d at 137, which, she claims, stands for the proposition that recurring income should be included in determining net income. As we read *Rogers*, it provides trial courts with the discretion to do so, rather than stating that it must be included under all circumstances. *Rogers* plainly states, "If, however, the evidence shows that a parent is unlikely to continue receiving certain payments in the future, the circuit court may consider that fact." *Id*. at 139. Thus, it was clearly within the trial court's discretion to exclude this amount, and petitioner does not explain why no reasonable person could agree with the trial court's decision to do so.

¶ 24 Petitioner relies heavily on *In re Marriage of Bryant*, 206 Ill. App. 3d 167 (1990). In that case, the respondent moved to terminate maintenance after losing his job. The reviewing court held that the trial court did not err by considering the respondent's pension and stock income in determining whether a substantial change in circumstances occurred. *Id*. at 171-72. It explained, "This income bears directly on [the] respondent's ability to meet his needs while also meeting the needs of petitioner." *Id*. at 172. While the same may be true here, as explained above, *Rogers*, 213 Ill. 2d at 137, allowed the trial court to take into account that the nonrecurring nature of the litigation-driven buyout as well. In short, we do not see *Bryant* as a significant limitation on the trial court's ability to exercise its discretion in this case.

¶ 25 Petitioner identified several possible inferences favorable to her that the trial court apparently did not draw. For example, she points out that the fact that respondent is paying a number of employees despite testifying that he is doing "literally everything" for Worldwide

allows an inference that he expects profitability to increase. Similarly, petitioner notes that respondent executed a promissory note between Worldwide and himself authorizing a $1 million loan from respondent to Worldwide. However, respondent has actually loaned Worldwide only $900,000. This, according to petitioner, would allow an inference that Worldwide is more profitable than respondent anticipated. Perhaps so—however, we see nothing so compelling here that the trial court was required to draw such inferences. It is, after all, well established that we may not simply substitute our judgment for that of the trial court. *Best v. Best*, 358 Ill. App. 3d 1046, 1055 (2005) ("Therefore, we will not substitute our judgment for the trial court's regarding the credibility of the witnesses, the weight it should have given to the evidence, or the inferences it should have drawn.").

¶ 26 Petitioner lists a number of assets that she claims show that respondent's financial situation was actually stronger after the entry of the judgment for dissolution of marriage. However, it is uncontroverted that respondent's income no longer included a large, annual distribution by virtue of his former employment with CBC. It is difficult to conceive of a scenario where we would hold that it would be an abuse of discretion for a trial court to determine that the loss of approximately $1 million per year in income was a substantial change in circumstances. In other words, petitioner's attempts to argue that the trial court abused its discretion in finding such a change here are wholly unpersuasive.

¶ 27 2. Whether the Substantial Change was Contemplated in the Dissolution Judgment

¶ 28 Petitioner next argues that the substantial change in circumstances discussed above was contemplated at the time the judgment was entered which, she asserts, renders it an inappropriate basis for a modification of maintenance. She cites *In re Marriage of Hughes*, 322 Ill. App. 3d

815, 818-19 (2001), and *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1005 (2008) in support. We find neither case persuasive.

¶ 29 In *Reynard*, 378 Ill. App. 3d at 1005, the Fourth District made the following observation: "[W]e are reluctant to find a 'substantial change in circumstances' where the trial court contemplated and expected the financial change at issue." This provides some support for petitioner's position. However, on closer examination, *Reynard* is distinguishable. In that case, the purported change in circumstances was the termination of tuition payments by the respondent for his daughter's attendance at college. *Id*. Obviously, such payments would terminate when the daughter graduated (or otherwise left college). Here, the change at issue was dependent on the outcome of litigation, a much less certain event, as the trial court expressly found.

¶ 30 Similarly, in *Hughes*, 322 Ill. App. 3d 815, the respondent-father was ordered to make 12 monthly payments for a car awarded to the petitioner as well as 12 payments of rehabilitative maintenance to the petitioner. The petitioner sought increased child support, contending that the respondent's income increased after he made the final payment. The *Hughes* court declined to find that this was a substantial change in circumstances. *Id*. at 820. The court explained, "The increase in [the petitioner's] available income to pay child support following the termination of maintenance and car payments did not constitute a substantial change in circumstances because these events were contemplated and expected by the court when the judgment for dissolution of marriage was entered." Again, however, the change in *Hughes* was a certitude—the car payments would terminate in 12 months, which is much more certain than the outcome of a civil suit. As such, *Hughes* is distinguishable as well.

¶ 31 From these two cases, we learn that for something to be considered "contemplated" for the purposes at issue here, it has to be more than a mere possibility. There must be a fairly high

likelihood that the event will come to pass before it will be deemed contemplated such that it cannot constitute a substantial change in circumstances. The trial court expressly found that the outcome of the litigation in which respondent was involved was "unknown and uncertain." The trial court further explained that had it known respondent would lose his position at CBC, with the attendant loss of income, it would have considered the amount of maintenance and child support it originally set (over $500,000 a year combined) to be unconscionable. While petitioner takes issue with the trial court's findings, she points us to nothing that would allow us to conclude that no reasonable person could agree with the trial court. As such, she has not carried her burden on appeal here.

¶ 32 3. Whether Any Substantial Change in Circumstance was Voluntary

¶ 33 It is undoubtedly true that where a party obliged to pay maintenance voluntarily and in bad faith reduces his or her income, a modification to maintenance (or child support) is not warranted. See *In re Marriage of Smith*, 77 Ill. App. 3d 858, 862 (1979). Conversely, "[i]t is well established that a spouse's voluntary change in occupation or employment made in good faith may constitute a substantial change in circumstances sufficient to warrant modification of maintenance or child support." *In re Marriage of Kowski*, 123 Ill. App. 3d 811, 814 (1984). Moreover, "substantial reductions may be permissible and do not *per se* constitute lack of good faith." *Id.* Section 510 of the Act mandates that a court consider "any change in the employment status of either party and whether the change has been made in good faith" when deciding whether to modify maintenance or child support. 750 ILCS 5/510 (West 2012). The trial court expressly found that respondent "did not voluntarily resign [from CBC] to avoid his maintenance and child support obligations" and that "[h]is change in circumstances was not a result of bad faith."

¶ 34 Petitioner cites *In re Marriage of Stephenson*, 121 Ill. App. 3d 698 (1983), in support of her argument. In *Stephenson*, the respondent filed a motion to modify his maintenance obligation after he lost his job. The evidence showed that the "respondent resigned from his job in January, 1983, as a result of differences of opinion between [the] respondent and the board which supervised him." *Id*. at 700. The trial court denied the request, and the reviewing court affirmed. *Id*. at 701. The reviewing court explained, The "[r]espondent's resignation from his job in this case was entirely voluntary, occurred within two months of the judgment of dissolution, and came at a time when respondent still had over five months remaining in his term of employment." *Id*. It continued, "Under these circumstances, *we agree with the trial court* that the voluntary change in respondent's economic conditions did not mandate abatement of his maintenance obligations." (Emphasis added.) *Id*. Thus, in *Stephenson*, the *trial court* found the respondent was not acting in good faith. Here, the trial court found to the contrary. Moreover, in *Stephenson*, the respondent's resignation was prompted by a mere "difference of opinion" between the respondent and the board that supervised him. In this case, respondent's resignation resulted from a series of events that included litigation and led respondent to seek psychological assistance. The trial court's findings here rest on solid evidence (that is, they are not contrary to the manifest weight of the evidence).

¶ 35 Petitioner also relies on *Shen v. Shen*, 2015 IL App (1st) 130733. In that case, the petitioner resigned a job at Trader Joe's, allegedly due to back pain. He presented the testimony of his chiropractor in support. However, the trial court questioned the credibility of both the petitioner and the chiropractor as well as the *bona fides* of the petitioner's decision to resign. *Id.* ¶ 65-66. This is unlike the present case, where the trial court found respondent was acting in good faith. Put differently, the salient question is whether respondent was acting in good faith.

In *Shen*, unlike here, there was a finding that the petitioner was not, so *Shen* provides little guidance for the instant case.

¶ 36 Indeed, there is ample support in the record for the trial court's finding that respondent was acting in good faith. There was evidence that Bogdanski reduced respondent's compensation by $150,000, which, respondent believed, was retaliation for his filing a lawsuit. Bogdanski put two family members on the CBC board and removed respondent as a signator on the company's accounts. Respondent, in fact, filed a multi-count civil suit. He described the environment at CBC as "very toxic." Respondent felt he was being "squeezed out" of CBC and eventually sought psychiatric care due to "stress and anxiety." Parenthetically, we note that petitioner argues only that respondent actions were voluntary and does not address whether respondent was acting in good faith. This is not the proper standard, as it does not matter that respondent's decisions were voluntary if they were made in good faith. *Kowski*, 123 Ill. App. 3d at 814.

¶ 37 Given this evidence, we cannot say that no reasonable person could agree with the trial court that respondent was acting in good faith when he left CBC. On this point, *Kowski*, 123 Ill. App. 3d 811, provides sound guidance. In that case, the court found the respondent was acting in good faith under the following circumstances:

> "The record reveals that the husband's change in employment was prompted by his concern over his health, his displeasure with the circumstances of his previous employment, and his reasonable conclusion that an extended job search to find comparable employment at a similar salary level would be fruitless. It is also reasonable to infer that the husband became co-owner of [a business after resigning] in order to avoid a recurrence of the events in his previous employment that had prompted his

> departure, *i.e.*, a lack of job security because he could be discharged from his position by the owner of the company. There is no evidence in the record to indicate that the husband's change in employment was prompted by a desire to evade his maintenance obligations. In fact, the record discloses good faith on the part of the husband to find suitable employment which did not jeopardize his health and permitted him to receive an income which may well increase substantially in the future." *Id*. at 816.

Indeed, *Kowski* bears remarkable similarities to the instant case. Respondent left CBC due to ongoing animosity with the majority shareholder, he had concerns about his psychological health, and he purchased Worldwide after leaving CBC. We find *Kowski* extremely persuasive here.

¶ 38 In short, there is ample evidence in the record to support the trial court's conclusion that respondent was acting in good faith when he left CBC, and that is dispositive of this argument.

¶ 39 4. Estoppel and Fraud

¶ 40 Petitioner next contends that respondent's involvement with Worldwide prior to his actual acquisition of that company (she characterizes respondent as a *de facto* owner during this period) somehow estops him from alleging a substantial change in circumstances. Petitioner also suggests respondent's behavior relative to Worldwide amounted to fraud. The elements of equitable estoppel are:

> "(1) a misrepresentation or concealment of material facts through the words or conduct of the party to be estopped, (2) knowledge by the party against whom the estoppel is alleged that the representations were untrue, (3) no knowledge of the truth respecting the representations on the part of the party asserting equitable estoppel, (4) a reasonable expectation of the party estopped that his representations will be acted upon, (5) a good

> faith reliance to its detriment by the party asserting estoppel, and (6) prejudice to the party asserting estoppel if the other party is permitted to deny the truth of its representations." *Phelan v. Keiser*, 312 Ill. App. 3d 573, 574 (2000).

The manifest-weight standard of review applies to a trial court's decision regarding estoppel (unless it is based on a legal conclusion, which is not the case here). *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33. The elements of fraud are as follows:

> "(1) a statement by defendant; (2) of a material nature as opposed to opinion; (3) that was untrue; (4) that was known or believed by the speaker to be untrue or made in culpable ignorance of its truth or falsity; (5) that was relied on by the plaintiff to his detriment; (6) made for the purpose of inducing reliance; and (7) such reliance led to the plaintiff's injury." *Oldendorf v. General Motors Corp.*, 322 Ill. App. 3d 825, 831 (2001).

Again, the manifest-weight standard applies. *Benzarky v. Patel*, 2017 IL App (3d) 160162, ¶ 54. Note that the final elements of both theories require prejudice or injury to the party advancing the theory.

¶ 41 Petitioner details the relationship between respondent, Gallione, and Worldwide in her brief and asserts this establishes that petitioner was the *de facto* owner of Worldwide before he actually bought it. Assuming, *arguendo* that petitioner is accurate on this point, we fail to see how petitioner has established the elements of either estoppel or fraud.

¶ 42 Petitioner initially relies on *Sassano*, 337 Ill. App. 3d 186. In that case, the respondent (who was obligated to pay maintenance and child support) failed to disclose a second job he had obtained prior to the entry of a judgment for dissolution of marriage and understated his income accordingly. Subsequently, he lost this second job and moved to reduce maintenance in support,

claiming the loss was a substantial change in circumstances. The *Sassano* court found that the respondent was estopped from alleging a substantial change in circumstances. It explained,

> "[The r]espondent stated that he earned only $80,000 from one job, and his conscious nondisclosure of his additional income amounted to a false statement of material fact upon which petitioner reasonably relied to her detriment. The additional information would have certainly affected the settlement negotiations. We agree with the trial court that respondent may not secretly reap a disproportionate share of the economic benefit of his second job and later demand petitioner to shoulder a greater share of the cost when he loses that employment" *Id*. at 195.

The instant case is easily distinguishable. Even if respondent was the *de facto* owner of Worldwide, it was merely a shell corporation before he formally acquired it. He received no income from Worldwide, so his income was accurately disclosed at the time of the judgment for dissolution of marriage. It defies credulity to think that petitioner would have come to a different decision regarding whether to accept the terms of the MSA had she known of the existence of a worthless corporation. Hence, there was no concealment of a *material* fact. Moreover, it is difficult to see how nondisclosure damaged petitioner in any way, which, as noted above, is an element of both estoppel and fraud.

¶ 43 Petitioner's reliance on *In re Marriage of Gurin*, 212 Ill. App. 3d 806 (1991), is no more persuasive. *Gurin*, like *Sassano*, concerned an obligor failing to disclose a source of income. Worldwide was not a source of income to respondent at the time of the judgment. Petitioner quotes a passage from *Gurin* that is pertinent here:

> "Concealment of existing material fact is actionable where it is employed as a device to mislead [citation], such as where it relates to a matter upon which plaintiff could be

> expected to rely in determining whether to engage in conduct in question [citation] or such that had the defrauded party been aware of the concealed fact, he would have acted differently." *Id*. at 814.

Petitioner does not explain how or why she would have "acted differently" had she known of the existence of a shell corporation.

¶ 44 Moreover, unlike both cases, at issue here is respondent's loss of income from CBC—that is the substantial change in circumstances at issue. Petitioner was well aware of respondent's employment and income from CBC. Respondent's acquisition and capitalization of Worldwide is not the issue in this case. In other words, what petitioner is complaining of here simply is not *material*. As such, it cannot support a claim of fraud or work an estoppel against respondent. Petitioner's argument is not well taken

¶ 45 5. Equity

¶ 46 Petitioner contends that it was inequitable to set maintenance at $0. This argument is premised on the trial court failing to take into account the $1.5 million buyout respondent received of his share of CBC and other related entities. As explained above, the trial court was within its discretion in excluding nonrecurring income. *Rogers*, 213 Ill. 2d at 139. Thus, this argument is based on a faulty premise, and we will not consider it further.

¶ 47 B. CHILD SUPPORT

¶ 48 Petitioner contends that the $1.5 million respondent received as a buyout of his interest in CBC should have been included in his 2014 income for the purpose of calculating child support. Thus, respondent reasons, either no substantial change in circumstances occurred, or, if one did, it did not occur until after 2014. The trial court's modification of child support was made effective on May 1, 2014. It is well established that we review the result to which the trial court

arrived at, rather than its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002).

¶ 49 We find *Rogers*, 213 Ill. 2d 129, to be of considerable guidance here. Pertinent here, the supreme court, addressing the impact of nonrecurring income on child support, held as follows:

> "[T]he nonrecurring nature of an income stream is not irrelevant. Recurring or not, the income must be included by the circuit court in the first instance when it computes a parent's "net income" and applies the statutory guidelines for determining the minimum amount of support due under section 505(a)(1) of the Act. If, however, the evidence shows that a parent is unlikely to continue receiving certain payments in the future, the circuit court may consider that fact when determining, under section 505(a)(2) of the Act (750 ILCS 5/505(a)(2) (West 2002)), whether, and to what extent, deviation from the statutory support guidelines is warranted."

Thus, if a court can deviate from the statutory guidelines based on the fact that income is not likely to recur (that is, actually change the amount of support), it surely can consider that fact in determining a substantial change in circumstances occurred (which does not actually change the amount of support but is simply a condition precedent to making such a change). Quite simply, respondent's income for 2014 included an amount that was certain to not recur, the buyout, instead of annual distributions he received regularly for many years. Respondent's income for 2014 was meaningfully different in this respect, and the trial court was not required to ignore this fact. As such, we find that a reasonable person could conclude that a substantial change in circumstances had occurred by 2014.

¶ 50 Petitioner also suggests that respondent's capitalization of Worldwide with funds derived from the buyout constituted a voluntary expenditure and he could have instead kept those funds

and realized $1 million. Petitioner cites *In re Marriage of Deike*, 381 Ill. App. 3d 620 (2008), in support. In *Deike*, the respondent (who was obligated to pay child support) lost his job and purchased a tavern. According to the respondent, the tavern operated at a loss. The respondent testified that neither he nor his new wife received a salary from the tavern. The trial court declined to find a substantial change in circumstances due to the respondent's purported business losses. *Deike* was a heavily fact-based decision. The reviewing court noted that the trial court could have properly rejected the respondent's testimony based on his lack of credibility. *Id*. at 631. The court also noted that the respondent owned a cabin and was able to continue to operate the tavern (despite the purported losses). The reviewing court affirmed, noting the standard of review. *Id*. at 632. Here, conversely, the trial court largely credited respondent's testimony. Thus, unlike *Deike*, petitioner faces the heavy burden of showing that the trial court's factual findings were contrary to the manifest weight of the evidence and that its decision was an abuse of discretion. As explained above, that is not the case here. Indeed, the trial court expressly found that respondent's departure from CBC was not voluntary and that his change of circumstances was not in bad faith.

¶ 51 Petitioner also takes issue with the trial court's calculation of child support. In a cursory argument, petitioner provides virtually no supporting authority, only making a general citation to the controlling statute. The crux of this issue appears to be that the trial court included in its calculation of respondent's income taxes paid in 2014 where it did not have access to information concerning 2015. Petitioner fails to explain why that trial court could not fashion its order using the best and most recent information available to it. She cites no authority that addresses this question, much less authority that establishes that it is error. As such, not only do we find this argument unpersuasive, we find it forfeited as well. See *International Union of*

Operating Engineers Local 965 v. Illinois Labor Relations Board, 2015 IL App (4th) 140352, ¶ 20.

¶ 52 Finally, petitioner incorporates by reference the arguments she made earlier regarding respondent being the *de facto* owner of Worldwide and that any substantial change in circumstances was contemplated in the judgment. We have previously rejected these arguments and find them no more persuasive here.

¶ 53 IV. CONCLUSION

¶ 54 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 55 Affirmed.