

NOTICE
Decision filed 01/04/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150013-U

NO. 5-15-0013

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
TAMARA JEAN STORMS,)	Pope County.
)	
Petitioner-Appellee,)	
)	
and)	No. 12-D-20
)	
BRIAN A. STORMS,)	Honorable
)	Joseph M. Leberman,
Respondent-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Moore and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly denied father’s request for modification of child support when father could not show any substantial change in circumstances warranting such a modification.

¶ 2 Brian A. Storms, father, appeals the decision of the circuit court of Pope County denying his motion to reconsider and his motion to reopen evidence. He argues on appeal that the court’s decision ordering him to pay child support retroactively is against the manifest weight of the evidence, as is the determination of the appropriate amount of child support to be paid under the circumstances. We affirm.

¶ 3 Father and Tamara Jean Storms, mother, were married in September of 1995 in Harrisburg, Illinois. Their marriage resulted in the birth of two children, one in 2000, and the second in 2004. On May 20, 2013, the parties entered into a marital settlement agreement which was adopted as the judgment of the circuit court. The parties shared joint custody of the children, each having them approximately an equal amount of time. Father agreed to pay \$370 in monthly child support, representing 28% of his net self-employed income at that time.

¶ 4 On January 3, 2014, mother filed a petition to modify the marital settlement agreement and a petition for rule to show cause. In the petition, mother claimed that father's income had increased in that he had become employed full-time and was no longer self-employed. She further claimed that father was in arrears in paying child support, among other items not at issue here, and therefore argued that father was no longer entitled to a tax exemption with respect to the children. On February 4, 2014, the court issued an order indicating that support would be calculated pursuant to father's current wages and would be set at 28% of his current net income. In the order, the court specifically noted that father had acknowledged he had received new employment and had submitted the documents necessary to calculate the monthly amount of child support. The tax exemption issue was dismissed.

¶ 5 On April 14, 2014, mother filed a second petition for rule to show cause, again alleging that father was behind on child support payments. Father responded with a motion to modify child support in which he alleged that he had the children a significant amount of the time. He argued that his having the children nearly 50% of the time

justified a deviation from the percentage guidelines found in section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505 (West 2014)). Mother filed a motion to dismiss on the grounds that there had been no change of circumstances warranting modification of child support from the amount set on February 4, 2014. The court denied father's motion to modify, as well as his subsequent motion to reconsider/motion to reopen evidence, finding that there had been no substantial change in circumstances which warranted a modification of child support. Father now appeals the court's various orders.

¶ 6 Father first argues on appeal that the decision to deny his motion to reconsider/motion to reopen evidence was against the manifest weight of the evidence. According to father, the parties' marital settlement agreement states that the minimum child support father will pay is \$370 while self-employed. The agreement continues that if father's income tax returns reflect an amount which shows that 28% of his net income is more than \$370, then he will pay the difference so that child support is 28% of his net income while self-employed. He points out the agreement says nothing about his income if he is no longer self-employed, and the evidence presented to the court clearly shows that he is no longer self-employed. He believes the court's decision to retroactively add an arrearage of 28% of net income from the time when he was no longer self-employed is not set forth in the agreement and is not supported by the law. He further asserts that the court did not take into account the fact that he has joint custody of the children and that he shares equal time with them. He also argues that the court did not hear any evidence

with respect to mother's income, noting that it is the responsibility of both parents to support their children financially.

¶ 7 We initially note that modification of child support rests within the sound discretion of the trial court, and its decision will not be disturbed on appeal absent abuse of that discretion. *In re Marriage of Bussey*, 108 Ill. 2d 286, 296, 483 N.E.2d 1229, 1233 (1985); *In re Paternity of Perry*, 260 Ill. App. 3d 374, 377, 632 N.E.2d 286, 288 (1994). Secondly, modification of child support is permissible within two years of the initial order only after a showing of a substantial change of circumstances, and the burden of demonstrating such a change is on the party seeking modification. *Perry*, 260 Ill. App. 3d at 377, 632 N.E.2d at 289. Here, father did not meet the threshold burden of showing a change in circumstances sufficient to warrant modification of child support.

¶ 8 Turning first to the issue of father's net income, as the trial court stated in its order, "although paragraph 17(a) of the Marital Settlement Agreement addresses child support based on [father's] then current self-employment income, the clear intention in the agreement is for [father's] child support obligation to be 28% of his net income." The order further stated that support would be calculated pursuant to father's current wages and that a withholding order would be issued containing the child support amount, 28% of father's current net income. Father acknowledged that he had received new employment and turned over his pay stubs for calculation of his net income. At the time of the issuance of the court's order, father knew that his child support obligation was to be 28% of his total net income, not just 28% of his self-employment income. Father's argument is therefore without merit.

¶ 9 Father also contends that the support amount of 28% should be modified because he has the children approximately 50% of the time and deviation from the statutory guidelines is therefore justified. Unfortunately for father, there was no change in circumstances pertaining to the amount of time he spent with the children from the time he entered into the marital settlement agreement or the court's February order. Father acknowledged this fact when asked by the court. Father also agreed before the February order was issued that child support would be set at 28% of his current net income. He presented no reasons at that time for deviating from the statutory guidelines. Having presented no evidence of any substantial change in circumstances warranting a modification of child support since the marital settlement agreement or the February court order was entered, we have no choice but to affirm the court's subsequent judgments denying modification as requested by father. See 750 ILCS 5/510 (West 2014).

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Pope County.

¶ 11 Affirmed.