

No. 1-17-2306

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

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
INGRID SCHROETER,)	Cook County.
)	
Petitioner-Appellee,)	
)	
and)	No. 06 D 7286
)	
DOUGLAS LINDSAY,)	Honorable
)	Mary S. Trew,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

- ¶ 1. *Held:* The judgment of the circuit court of Cook County granting the petition to modify child support is affirmed in part, vacated in part, and the cause remanded with instructions; we reject respondent’s argument that the trial court’s finding it could not determine his net income was against the manifest weight of the evidence or a misapplication of the law where respondent failed to include a report of proceedings or bystander’s report for two of the four evidentiary hearings as part of the record on appeal; the trial court’s ruling that a minor child’s emancipation should not be a basis to modify child support is vacated because it contradicts the terms of the parties’ marital settlement agreement, the judgment for dissolution of marriage, and the provisions of the Illinois Marriage and Dissolution of Marriage Act.
- ¶ 2. Respondent, Douglas Lindsay, appeals from the trial court’s order modifying his child

support payments to petitioner. Respondent and petitioner, Ingrid Schroeter, were married and had four children. They divorced in 2008. In 2015 petitioner filed a petition for modification of child support. The court heard evidence of respondent's income and claimed medical expenses and found respondent was not a credible witness. The court found it could not determine respondent's income and under the provisions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(5) (West 2016)) awarded petitioner an increase in child support based on what the court determined to be reasonable. On appeal, respondent claims the trial court abused its discretion: by ordering court-determined reasonable child support payments based on the finding it could not determine his income; for setting child support without calculating his income and calculating his necessary medical expenses; and for the trial court's failure to consider a minor child's emancipation when setting the amount of child support. For the reasons that follow the judgment of the trial court is affirmed in part, vacated in part, and the cause remanded with instructions.

¶ 3.

BACKGROUND

¶ 4. Petitioner and respondent were married in September 1990. They had four children during their marriage: Bryant, born in November 1996; Andris, born in September 1998; Peter, born in June 2000; and Danielle, born in July 2003. A judgment for dissolution of the marriage was entered on July 28, 2008. The judgment for dissolution of marriage incorporated the parties' marital settlement agreement, and provided respondent pay petitioner child support of \$4,000 per month for four years in a lump sum payment of \$192,000. The judgment further provided that the amount of child support respondent would be obligated to pay would be revisited after four years should respondent not be earning \$200,000 annually. Section 3.4 of the marital settlement agreement provides that "upon all children attaining emancipation, all child support payments

shall terminate.” Section 3.6 of the agreement further provides that a child emancipates when the first of the following events occurs: “the child attaining majority, provided however, that in the event the minor child attains majority while attending high or secondary school, the sum of money then being paid by DOUG to INGRID shall continue and shall not be reduced until the graduation of said child from such school, but in no event over the age of 19.”

¶ 5. On August 20, 2012, respondent filed a petition for modification of child support. The petition alleged respondent was unemployed and requested a reduction of his child support obligations. Petitioner filed her petition to increase child support on October 10, 2012. On August 23, 2013, the parties entered into an agreed order. The court ordered respondent to “pay temporary child support to [petitioner] in the amount of \$1200.00 per month until [respondent] secures Social Security Disability or obtains gainful employment. Said issue of temporary child support will be reviewed in three months on December 2, 2013.”

¶ 6. In September 2013, respondent was hospitalized after a fall and was subsequently diagnosed with end-stage liver disease. Doctors determined respondent required a liver transplant. Respondent received a liver transplant in May 2016. The amount of child support respondent was ordered to pay was not revisited.

¶ 7. On July 30, 2015, petitioner filed the instant petition to increase respondent’s child support payments. Petitioner claimed a substantial change in circumstances occurred due to respondent’s greater income. Petitioner argued respondent received a significant amount of money from his mother and step-father, Joan Lindsay Strom and Robert Strom. Although respondent claimed the money he received from his parents was a loan, respondent stipulated that all the money he received from his mother and step-father was considered as income under the Act (750 ILCS 5/505 (West 2016)) to determine his support obligations.

¶ 8. At a hearing on September 12, 2016, respondent stipulated he received from his step-father \$248,838 in 2015 and \$160,000 in 2016. He further testified he received \$719,548 from the Stroms for the period September 2012 through July 2016, and that he spent the money on “living expenses and for medical expenses.” Respondent argued his support obligation should depart from the statutory guidelines because he spent \$159,072.99 on medically necessary expenses during this period due to his health condition. Therefore, respondent argued his obligation for child support should deviate downwards from the statutory guidelines due to his health expenses. 750 ILCS 5/505(a)(3.4) (West 2016).

¶ 9. At the November 15, 2016 hearing, respondent testified his March 20, 2013 disclosure stated his gross income that year was \$12,700. He had only received three checks from his mother for \$4,166 each at that point, though he received more money after March 2013. He testified that he actually received over \$70,000 from his mother and step-father in 2013. However, respondent also testified he received \$12,700 in total income for 2012.

¶ 10. The trial court held two further evidentiary hearings, on January 30 and 31, 2017. Respondent did not include in the record before this court a transcript of those hearings or a bystander’s report.

¶ 11. The trial court entered an order on July 7, 2017. The order found respondent did not provide a credible account of his income and that respondent’s income therefore could not be determined. The court ruled that, under the Act, it was authorized to set a reasonable amount of support. See 750 ILCS 5/505(a)(5) (West 2016) (“If the 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.”). The trial court found:

“7. It is clear that Doug, although unemployed, has been receiving

significant amounts of money from his mother and stepfather which should be imputed to him as income. Doug has characterized this money as ‘loans’ but this is dubious. Taxes were not paid by Doug on this money, but some of it was used for Doug’s medical costs.

8. What is less clear is how much was actually given to Doug and how much was used for his medical expenses, during a period of serious illness.

9. The evidence produced at the hearing, as presented, was very difficult to follow, making it extremely burdensome for this court to determine a net income from which it can compute a guideline order.

10. When a court cannot determine net income, because of default or any other reason, the court shall enter support in an amount considered reasonable in the particular case. 750 ILCS 5/505(a)(5)

11. This court finds that it cannot determine an accurate net income for Doug. Therefore, the court will enter support in a reasonable amount.”

The trial court did not make a finding on which of respondent’s listed medical expenses were medically necessary expenditures respondent could deduct from his child support obligations.

¶ 12. The trial court therefore granted petitioner’s motion to increase child support and set respondent’s child support obligation at what the court determined to be a reasonable amount.

The court ordered:

“A. Ingrid’s Motion to Increase Child Support is GRANTED.

B. In the court’s discretion, and for the reasons set forth above, current child support shall be ordered at the amount of \$5,000.00 per month. Child support shall continue at the rate of \$5000.00 per month until the youngest child

turns 18 or graduates from high school, whichever occurs later, but not later than age 19.

C. Retroactive child support to be paid by Doug is ordered from the date of Ingrid's filing (July 30, 2017) to July 2015. This retroactive amount through June 2017 totals \$120,000 (\$5000 multiplied by 24 months). Doug will receive a credit for any child support payment he made during that time. The balance will constitute a judgment to be paid within 90 days. There is no interest on retroactive child support.

D. The fact that a child emancipates shall not constitute a substantial change in circumstances in the event of a future Petition to Modify Child Support.”

Respondent claims the trial court's order constituted an abuse of discretion. On appeal respondent argues July 1, 2017 marked two legally significant events: 1) one of his minor children emancipated, and 2) the Illinois legislature enacted amendments to the Act. Pub. Act 99-0764 (eff. July 1, 2017) (amending 750 ILCS 5/505). The legislature altered the calculation for child support payments to an income shares model, calculated using an estimator provided by the Illinois Department of Healthcare and Family Services. *Id.* Respondent also alleges that the trial court's finding that his income was difficult to ascertain was against the manifest weight of the evidence. Respondent timely filed his notice of appeal from the trial court's July 7 order, and this appeal followed.

¶ 13.

ANALYSIS

¶ 14. Respondent appeals from the trial court's order modifying his child support obligation. Respondent claims the trial court abused its discretion by not exercising its discretion because

the court did not make a finding estimating respondent's income and did not make a finding on the amount of medical expenses respondent can deduct from net income in the calculation of his child support payments; the trial court's finding it could not determine his net income was against the manifest weight of the evidence and the court abused its discretion setting his child support payments at what the court determined to be a reasonable amount because respondent stipulated to his income and listed all of his claimed medical expenses. Respondent also claims that the court erred when the trial court entered its order on July 7, 2017 and the order did not state whether respondent's obligation to pay child support for the period prior to July 1, 2017 was based on the previous guidelines or whether child support payments from July 1, 2017 onward should differ based on the income shares calculation of child support which became effective July 1, 2017. Respondent also claims the court should have calculated the support obligation based on two minor children from July 1, 2017 onward because his second eldest child emancipated in June 2017 upon graduating high school and reaching the age of 18.

¶ 15. The trial court entered its order granting petitioner's motion to modify respondent's child support obligations on July 7, 2017, and respondent filed his notice of appeal on July 28, 2017. Therefore, this court has jurisdiction over this appeal under Illinois Supreme Court Rules 301 and 303. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 16. We review the trial court's award of child support for an abuse of discretion. *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391 (1990). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). "We will allow the trial court's factual conclusions to stand unless they are against the manifest weight of the evidence." *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 233 (2008). "A judgment is

against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.” *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 17. Rule 341 Violations

¶ 18. We note both parties argue on appeal that the other party’s brief does not conform to Illinois Supreme Court Rule 341, and request this court strike the opposing party’s brief. Ill. S. Ct. R. 341 (eff. May 25, 2018). “The rules of procedure concerning appellate briefs are rules and not mere suggestions. [Citation.] It is within this court’s discretion to strike the plaintiffs’ brief and dismiss the appeal for failure to comply with Rule 341.” *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Here, “the record is not long and the issues are simple,” (*id.*) such that we may review the issues without striking either party’s brief. The parties’ failure to comply with Rule 341 did not impede our review of the matter to such a degree that we will “penalize the parties so severely for the lapse of their counsel.” *Id.*

¶ 19. Determination of a Parent’s Child Support Obligations

¶ 20. In order to determine the child support obligations in dissolution of marriage proceedings, the Act requires the trial court to determine each parent’s income and set the amount of child support according to guidelines based on a calculation of income shares. Pub. Act 99-0764 (eff. July 1, 2017) (amending 750 ILCS 5/505); see also <https://www.illinois.gov/hfs/ChildSupport/parents/Pages/ChildSupportEstimator.aspx>.

“The court shall compute the basic child support obligation by taking the following steps:

- (A) determine each parent’s monthly net income;
- (B) add the parents’ monthly net incomes together to determine the

combined monthly net income of the parents;

(C) select the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children of the parties; and

(D) calculate each parent's percentage share of the basic child support obligation." 750 ILCS 5/505(a)(1.5) (West 2016).

In certain circumstances the trial court may not be able to determine a party's net income. "If the 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." 750 ILCS 5/505(a)(5) (West 2016).

¶ 21. Determination of Respondent's Income

¶ 22. In this case the trial court found it could not determine respondent's income, and the court set \$5,000 monthly child support as a reasonable payment based on the circumstances of the case. Respondent argues the trial court's finding that it could not determine his income was against the manifest weight of the evidence and the court abused its discretion by deviating from the statutory guideline amount of child support without determining respondent's income. Respondent argues he stipulated he received \$455,000 from the Stroms for the period September 2013 through July 2016, and that his income was therefore ascertainable. Respondent testified he received \$719,548 from 2012 through 2016, and that he received \$455,000 from the Stroms during the relevant period from December 2013 through July 2017. Petitioner also supplied the trial court with statements from respondent's bank accounts, including images of checks deposited into his accounts. The trial court found respondent was not a credible witness and the presentation of evidence of his income obfuscated the court's ability to determine an accurate net

income. As noted above, respondent failed to provide this court with an account of the final two evidentiary hearings held in this case.

¶ 23. When a court cannot determine a parent's income, or if the parent is unemployed or underemployed, the court may estimate the parent's income and set child support based on that estimated income instead of the parent's current income. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000). Although respondent asserts his income was readily ascertainable, the court found respondent did not provide credible testimony and the court therefore found it could not determine respondent's income.

¶ 24. Respondent claims that because he stipulated to his income, his income was readily ascertainable and the trial court erred by finding he was not a credible witness whose income could not be accurately determined. Petitioner argues respondent disclosed only \$12,700 of income for 2012 when respondent received over \$70,000 that year, and therefore respondent was not a credible witness concerning his income. When a party is not forthcoming about their assets and income, and the court finds the party lacks credibility as a witness, the court may find a party's net income cannot be determined. 750 ILCS 5/505(a)(5) (West 2016); see also *In re Marriage of Severino*, 298 Ill. App. 3d 224, 229 (1998). In *Marriage of Severino*, the trial court did not make a finding of the respondent's net income because it found the "respondent's testimony concerning his net income lacked credibility." *Marriage of Severino*, 298 Ill. App. 3d at 229. The petitioner uncovered certain facts pointing out discrepancies in the respondent's reporting of his income. The respondent was unable to explain the discrepancies the petitioner raised, and "[o]ther examples abound in the record to support the trial court's finding that respondent was 'less than candid' about his assets and income." *Id.* at 230. "Without credible evidence of respondent's net income, the trial court was compelled to make the award of child

support in an amount that was reasonable in the case.” *Id.*

¶ 25. Respondent argues his income was readily ascertainable, and thus should be distinguishable from a case where the respondent’s income could not be accurately determined, because here respondent’s income could be determined based on his disclosures, the check images entered into evidence, and his stipulations of income.

¶ 26. In this case respondent failed to provide this court with a complete record on review. Although respondent made stipulations about his income at the November 15, 2016 hearing, there were also two hearings held on January 30 and 31, 2017. No transcript or bystander’s report of those hearings is included in the record on review. Without an account of what evidence the court heard at the final two evidentiary hearings held January 30 and 31, we cannot say the trial court’s finding was against the manifest weight of the evidence because we do not know what evidence was presented to the court on January 30 and 31, 2017.

¶ 27. As the appellant, it was respondent’s burden to provide this reviewing court with “a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). Respondent failed to provide this court with a sufficiently complete record of the proceedings to support his claim of error by not including transcripts or bystander’s reports of the final two evidentiary hearings held in this matter. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2015) (“the appellant may prepare a proposed report of proceedings from the best available sources, including recollection”). “Unless there is a contrary indication in the order or in the record, it is presumed that the court heard adequate evidence to support the decision that

was rendered.” *Foutch*, 99 Ill. 2d at 394. The respondent failed to provide this court with a sufficiently complete record to support his claim of error. Therefore, we resolve the issue of whether respondent’s income was ascertainable against respondent. Due to the incompleteness of the record, we presume the trial court made its ruling with a sufficient factual basis and in conformity with the law, and therefore affirm the trial courts finding that his income was difficult to ascertain. *Id.* at 391-92.

¶ 28. In its order the trial court also found that in this case \$5,000.00 per month is reasonable child support for the three minor children. Because we do not have a complete record before us, we again presume the trial court’s finding was in conformity with the law. Therefore we do not find an abuse of discretion.

¶ 29. Respondent also argues the trial court abused its discretion when it set child support and did not state whether the child support order was made under the provisions of the Act that were in effect prior to its amendment, which became effective July 1, 2017. We find no error because the outcome of this case would not change whether the amount was set under the old or new provisions because under both the old and new provisions of the Act, a court is permitted to set reasonable support when it is unable to determine the obligor’s income. Pub. Act 99-0764 (eff. July 1, 2017) (amending 750 ILCS 5/505). Since the court was unable to determine respondent’s income and the provisions are identical, we find the outcome would be the same under either the old or new provisions of the Act.

¶ 30. Determination of Respondent’s Retroactive and Ongoing Child Support Obligations

¶ 31. Respondent argues the trial court abused its discretion by awarding child support based on the court’s finding respondent had three minor children when it issued the July 7, 2017 order, because respondent only had two minor children at that time. Petitioner argues this was not an

abuse of discretion because the court awarded retroactive child support representing periods when the parties had three and four minor children, and that the trial court ordered respondent to continue paying the same amount of child support without reduction until his youngest child emancipated. We note the parties' second oldest child had turned 18 years old and was set to graduate high school in June 2017, which would have left only two minor children as of July 2017. However, the record does not reveal whether that child in fact graduated high school.

“Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier, but not by the death of a parent obligated to support or educate the child.” 750 ILCS 5/510(d) (West 2016).

¶ 32. Although respondent did not present a complete record of the evidentiary hearings, it is clear that the Act requires a written settlement agreement or provisions in the judgment before the obligation to support a child extends beyond emancipation. We have examined the record in this case. Here, the parties' marital settlement agreement did not expressly extend the obligation to pay child support beyond emancipation. The marital settlement agreement provides that “upon all children attaining emancipation, all child support payments shall terminate.” Under the agreement, a child emancipates upon “the child attaining majority, provided however, that in the event the minor child attains majority while attending high or secondary school, the sum of money then being paid by DOUG to INGRID shall continue and shall not be reduced until the graduation of said child from such school, but in no event over the age of 19.” It is undisputed

the marital settlement agreement was incorporated into the judgment for dissolution of marriage. By stating that child support “shall continue and shall not be reduced until the graduation of said child from such school, but in no event over the age of 19” the agreement provided for the end of respondent’s obligation to support a child upon the emancipation of each child. Reading these two provisions together we conclude the parties agreed in the settlement agreement that was incorporated into the judgment that respondent’s obligation to support each individual child terminates when each child is emancipated and the child support payments are to be reduced accordingly.

¶ 33. The trial court’s order contradicts the terms of the marital settlement agreement where it held “the fact that a child emancipates shall not constitute a substantial change in circumstances in the event of a future petition to modify child support.” As noted above, the marital settlement agreement based respondent’s obligation to pay child support for each child on that child not attaining emancipation. We find this holding of the trial court inconsistent with the marital settlement agreement which was incorporated into the judgment for dissolution of marriage and therefore contrary to the provisions of the Act. “Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.” 750 ILCS 5/502(e) (West 2016). Therefore, we find the trial court abused its discretion when it ordered respondent to pay \$5000 per month until the youngest child is emancipated and ruled that emancipation of a child is not a substantial change in circumstances to apply for an adjustment of the amount of child support. On remand, we direct the trial court to vacate those specific provisions of its order.

¶ 34. Finally, we note petitioner, in her appellee brief, requested this court provide as an additional form of relief increased child support payments from respondent, and whatever further

relief this court deems just and proper on appeal. However, petitioner has not filed any cross-appeal from the trial court's July 7, 2017 order. Therefore, those issues are not properly before this Court. *Cincinnati Insurance Co. v. Chapman*, 2016 IL App (1st) 150919, ¶ 27 (“Where a general decision for the appellee contains findings unfavorable to the appellee and no cross-appeal is filed, the adverse findings are not properly before the reviewing court.”).

¶ 35. We affirm the trial court's finding that respondent's income could not be determined and that a \$5000 per month child support obligation is reasonable for the three minor children for the period ending July 1, 2017. However, we find the trial court's order awarding child support of \$5000 from July 1, 2017 until the youngest child emancipates and the portion of the order finding emancipation of a child is not a substantial change in circumstances is contrary to the law and facts of this case. Therefore, we remand this matter to the trial court with directions to vacate those provisions of its order and to set a reasonable amount for respondent's child support obligation from July 1, 2017 onward based on the number of children who remain unemancipated as of that date.

¶ 36. **CONCLUSION**

¶ 37. For the foregoing reasons the judgment of the circuit court of Cook County is affirmed in part, vacated in part, and remanded with instructions.

¶ 38. Affirmed in part; vacated in part; and remanded with instructions.