

2018 IL App (4th) 180201-U

NO. 4-18-0201

IN THE APPELLATE COURT
OF ILLINOIS

FILED

December 14, 2018
Carla Bender
4th District Appellate
Court, IL

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).

FOURTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
RAMCE NURCESKI,)	Circuit Court of
Petitioner-Appellant,)	McLean County
v.)	No. 12D141
ANIFA NURCESKI,)	
Respondent-Appellee.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* Principles of forfeiture and estoppel preclude petitioner from challenging the trial court’s application of the amended version of the child support guidelines under the Illinois Marriage and Dissolution of Marriage Act. The trial court did not err in calculating petitioner’s income or modifying the award of child support.

¶ 2 Petitioner, Ramce Nurceski, appeals from the trial court’s order modifying his child support payments to respondent, Anifa Nurceski. On appeal, Ramce argues the trial court erred in (1) applying the amended version of the child support guidelines; (2) the calculation of his income; and (3) the increase of child support. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Ramce and Anifa married in December 1997. During the marriage, they had three children: J.A.N. (born March 3, 1999), B.S.N. (born October 10, 2001), and A.I.N. (born March 2, 2004). On January 27, 2014, the trial court entered a judgment of dissolution of marriage,

which incorporated the parties' agreement regarding child support and granted sole custody to Anifa. With respect to child support, it stated as follows:

“[Ramce’s] child support is based upon thirty-two percent (32%) of his net income disclosed in discovery. [Ramce] shall pay \$407.36 per month to [Anifa] as and for his regular child support obligation for the minor children.”

¶ 5 On February 27, 2017, Ramce filed a motion to modify child support, alleging a substantial change in circumstances had occurred since the entry of the judgment of dissolution. Specifically, he asserted his oldest daughter, J.A.N., would be eighteen years old in March 2017 and she would graduate from high school in May 2017. He requested that the trial court reduce his child support obligation.

¶ 6 On May 15, 2017, Anifa filed a motion to modify child support, alleging that both the cost of living and Ramce’s income had increased since the entry of the judgment of dissolution. She requested that Ramce’s child support obligation be modified to reflect these changes.

¶ 7 On November 3, 2017, the trial court conducted a hearing on the matter. Ramce testified that he has worked as a manager for Michael’s Restaurant since late 2014 or early 2015. He stated that he does “some” work for Chasers Bar, including taking inventory and ordering supplies. Ramce’s father owns both establishments. Ramce further testified that he sometimes assists with repairs, appears in court, and collects rent for his father’s rental business; however, Ramce maintained that his father did not pay him for those services.

¶ 8 Ramce testified that his only source of income was from Michael’s Restaurant. He stated his total gross monthly income was \$1400 and he worked 35 hours each week. He

explained that, in his absence, three other assistants managed the restaurant. However, he later acknowledged that “[t]hey’re actually service [workers]” and they earn “way less” than him.

¶ 9 Ramce testified that, after the divorce, his father purchased a home for him. He explained that, although his financial affidavit reflects a rent payment of \$750 per month, he “didn’t actually write [his] father a check for *** rent.” In fact, there were times his father paid his rent. He further testified that his financial affidavit accurately reflects a monthly deficit of \$1282.48. He stated that when he would “run short of money” he asked to “borrow money” from his father. Ramce testified that, based on his alleged monthly deficits, he believed his child support obligation should be reduced to \$46.17 per month.

¶ 10 Anifa testified that, during the marriage, Ramce worked as a manager at Michael’s Restaurant and Chasers Bar. She stated that Ramce worked from 9 a.m. until 10 p.m. on Monday through Thursday and until 4 a.m. on Friday. She stated that he also worked on the weekend. According to Anifa, after the divorce, Ramce’s father was rarely at the restaurant.

¶ 11 She further explained that she brought the children to the restaurant almost every day for meals and for Ramce’s scheduled visitations. She testified that the children would complain about being at the restaurant “all the time.” According to Anifa, Ramce informed her that he would like to visit the children on Sunday and every other Monday and Tuesday. When she asked him why, he responded that he worked “during the weekend at Chasers” and he did not want the children home alone.

¶ 12 Anifa testified that she operates a home daycare. She stated that her financial affidavit reflects that she earns \$1200 in gross monthly income from the daycare. She further testified that she began borrowing money from her oldest daughter, J.A.N., when she was sixteen

years old. At the time of the hearing, J.A.N. lived with Anifa while she attended college, and J.A.N. contributed to some of the household expenses. Anifa stated that she paid some of J.A.N.'s expenses as well, including car payments, gas, and insurance.

¶ 13 Anifa presented a "support obligation worksheet," which set forth her gross monthly income of \$1784 and net monthly income of \$1549. It listed Ramce's gross monthly income of \$2682, his net monthly income of \$2220, and \$717 in child support per month.

¶ 14 On November 28, 2017, the trial court conducted another hearing on the matter. J.A.N. testified that her grandfather owns Michael's Restaurant, Chasers Bar, and a couple of rental homes. She stated that her father, Ramce, operates those businesses. She explained that the restaurant typically closes at 9 p.m., Chasers Bar closes around 3 a.m., and Ramce would stay afterwards to clean.

¶ 15 J.A.N. further testified that after the divorce, she had visitations with Ramce at the restaurant because "he's always there." She stopped visiting her father at the restaurant when she was sixteen years old.

¶ 16 On December 11, 2017, the trial court, in its oral ruling, stated as follows:

"I *** find that the method of calculating support offered by [Anifa] to be the preferred method as it takes into [account] the tax consequences of the order. So the second question becomes whether or not to impute income, and the court finds [Ramce's] testimony regarding work hours and compensation to not be credible. Even before [J.A.N's] testimony, I did not find [Ramce] to be credible.

[Ramce] manages a restaurant, *** [he] manages the bar, *** works at the bar, and helps his father with [a] real estate business. His testimony is he only

works 35 hours per week and his affidavit indicates that he makes \$1,400 per month, which is \$350 per week[.] [S]o to believe his testimony, I'd have to believe he only works that amount of time and gets \$10 an hour for doing that. He's been managing this restaurant for a long period of time. The court finds that [is] simply not *** credible[.] [The court] finds, based partially on [J.A.N.'s] testimony that [Ramce] works far in excess of 35 hours per week. He probably works closer to double that ***.

So, the court believes that this is a case where it's appropriate to impute income. [Ramce's] *** testimony was *** that he doesn't pay the rent or the utilities, so *** that amount would have to be imputed ***. *** I think [Anifa's exhibit E] [used] the correct method, so the court finds and sets child support at \$717 per month retroactive to May 15th of this year when [Anifa] filed the counter-petition.”

¶ 17 On February 22, 2018, the trial court entered a written order providing, in pertinent part, as follows:

“A substantial change in circumstances has occurred in that the parties’ oldest child is at least 18 years of age and has graduated from high school.

* * *

The [c]ourt finds [Ramce's] testimony regarding his work hours and income is not credible.

* * *

The [c]ourt finds that the child support calculation found in [Anifa's] [e]xhibit E, which imputes income to both parties and does not assume shared physical care, is the most accurate calculation for child support in this case and the [c]ourt adopts this calculation in setting [Ramce's] child support obligation.

* * *

Effective May 15, 2017, [Ramce's] child support obligation for the parties' two minor children is modified to \$717 per month.

* * *

As of February 28, 2018, [Ramce's] child support arrearage is \$2,842.30. This arrearage is the result of the retroactive change in support due to this order. A judgment is entered for [Anifa] and against [Ramce] in the sum of \$2,842.30 plus judgment interest for child support arrearage accumulated through February 28, 2018.”

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Ramce argues on appeal that the trial court erred in (1) applying the amended version of the child support guidelines; (2) the calculation of his income; and (3) the increase of child support.

¶ 21 A. Forfeiture and Estoppel

¶ 22 Ramce argues, for the first time on appeal, that the trial court erred in applying the new child support guidelines in the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act), effective July 1, 2017, in calculating his child support obligation. See Pub. Act

100-15, § 5 (eff. July 1, 2017) (amending 750 ILCS 5/505). The amended statute provides for an award of child support based upon an income-shares model, calculated using the guidelines provided by the Illinois Department of Healthcare and Family Services. *Id.* The prior version of the statute was based upon a percentage-of-supporting-parent net income model. See 750 ILCS 5/505(1) (West 2016).

¶ 23 Ramce maintains that the amended statute should not apply here because the parties both filed motions to modify child support before the effective date of the amended statute. However, our review of the record reveals that Ramce failed to raise this argument before the trial court during the multiple hearings in this matter, nor did he raise the argument in a post-judgment motion. It is well settled that “[i]ssues not raised in the trial court are [forfeited] and cannot be argued for the first time on appeal.” *In re Marriage of Minear*, 181 Ill. 2d 552, 564, 693 N.E.2d 379, 384 (1998); *McKinney v. Castleman*, 2012 IL App (4th) 110098, ¶ 20, 968 N.E. 2d 185. Additionally, in the trial court, Ramce presented calculations of his child support using worksheets promulgated by the Illinois Department of Healthcare and Family Services, which used computations set forth in the amended version of the statute. In light of the fact that Ramce urged the trial court to accept his calculations, which were based on the amended version of the child support statute, he is estopped from arguing on appeal that it was error for the court to have considered the amended version of the statute. *Czarobski v. Lata*, 227 Ill. 2d 364, 376, 882 N.E.2d 536, 543 (2008) (quoting *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007) (“ ‘A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court.’ ”)).

¶ 24

B. Income

¶ 25 Next, Ramce argues the trial court erred in calculating his net income for purposes of determining statutory child support obligations. We disagree.

¶ 26 The starting point in determining an award of child support is to calculate the noncustodial parent's net income. *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 675, 840 N.E.2d 694, 700 (2005). The Dissolution Act defines "gross income" as the "total of all income from all sources," minus certain deductions. Pub. Act 100-15, § 5 (eff. July 1, 2017) (amending 750 ILCS 5/505(a)(3)(A)). The Dissolution Act defines "net income" as "gross income minus either the standardized tax amount *** or the individualized tax amount *** and minus any [other statutory] adjustments ***." *Id.* (amending 750 ILCS 5/505(a)(3)(B)). Our supreme court has generally defined "income" to include "gains and benefits that enhance a noncustodial parent's wealth and facilitate that parent's ability to support a child or children." *In re Marriage of Mayfield*, 2013 IL 114655, ¶ 16, 989 N.E.2d 601 (citing *In re Marriage of Rogers*, 213 Ill. 2d 129, 137, 820 N.E.2d 386, 390 (2004)). Most often, income comes from sources such as employment and investments. *In re Marriage of Fortner*, 2016 IL App (5th) 150246, ¶ 18, 52 N.E.3d 682. Our supreme court has also found that the term "income," at least for purposes of calculating child support, is broad enough to include gifts from parents. *Rogers*, 213 Ill. 2d at 137. On review, generally, a trial court's findings as to income will not be disturbed absent an abuse of discretion. *Breitenfeldt*, at 675. However, whether payments qualify as "income" under the Act is a question of law reviewed *de novo*. *Fortner*, 2016 IL App (5th) 150246, ¶ 16.

¶ 27 Here, the trial court found Ramce's testimony—that he only earned \$1400 per month and worked part-time managing his father's three businesses—lacked credibility. The trial court stated it reached this conclusion "[e]ven before [the daughter's] testimony" regarding

Ramce's long work hours. Ultimately, the trial court adopted Anifa's calculations set forth in her child support obligation worksheet, which indicates that Ramce's gross income is \$2682 per month.

¶ 28 Anifa's calculation of Ramce's monthly gross income appears to account for the \$1400 monthly income from Michael's Restaurant, plus the approximately \$1282 monthly deficit included in Ramce's financial affidavit that, according to Ramce's testimony, his father paid when Ramce would "run short of money." See *Rogers*, 213 Ill. 2d at 137 (finding that the term "income" includes gifts from parents). Thus, the record provides support for Anifa's position that Ramce's monthly gross income totals \$2682 per month.

¶ 29 In support of her position that the calculation of Ramce's income properly includes gifts from his father, Anifa cites to our supreme court's decision in *Rogers*. In that case, the court considered whether cash gifts and loans received by the father from his family qualified as income for purposes of calculating child support. *Id.* at 131. The father earned \$15,000 per year from a teaching job and also received \$46,000 per year in gifts and loans from his parents. *Id.* at 133. The trial court granted the petition to modify child support and increased the father's child support obligation from \$250 per month to \$1000 per month. *Id.* On appeal, the father argued the amount that he received from his parents should not have been included in the calculation of his net income. *Id.* at 135. Our supreme court disagreed, finding the trial court was correct to include the annual gifts in its net income computation. *Id.* at 137. The court reasoned that, even if such gifts may not be recurring in subsequent years, "[t]hey represented a valuable benefit to the father that enhanced his wealth and facilitated his ability to support [his child]." *Id.* The court noted that any loans were "loans in name only." *Id.* at 140. Because the money

“received from his parents was no less ‘income’ than the gifts [his parents] gave him or the salary received from his teaching job[,]” the court concluded that the trial court properly considered those gifts in its net-income calculation. *Id.*

¶ 30 The reasoning in *Rogers* is equally applicable here. Ramce testified that when he would “run short of money,” he would ask to “borrow money” from his father. The money Ramce received from his father to cover monthly deficits, which totaled approximately \$1282 per month according to his financial affidavit, enhanced Ramce’s wealth and facilitated his ability to support his children. To the extent that Ramce claims the payments he received from his father qualified as loans that he was obligated to repay, Ramce failed to identify the precise amounts that he was obligated to repay in his financial affidavit or in any other document admitted into evidence. Thus, without the admission of evidence regarding the alleged loans, Ramce has no basis to argue that the trial court failed to take these “loans” into account. We thus conclude that the trial court properly computed Ramce’s income for purposes of child support.

¶ 31 C. Child Support

¶ 32 Finally, Ramce challenges the trial court’s decision to increase his child support obligation to \$717 per month. Ramce contends that the trial court’s calculation of child support was “erroneous” because it was based upon “speculation, uncertainty, and lack of precision***.” He further reasserts that the trial court should have used the former version of the child support guidelines under the Act because it was “easier” to compute child support.

¶ 33 Initially, we note that we have already disposed of Ramce’s argument that the trial court erred in applying the new child support guidelines, finding that principles of forfeiture and estoppel preclude him from raising the issue. See Pub. Act 100-15, § 5 (eff. July 1, 2017)

(amending 750 ILCS 5/505). Thus, we consider whether the trial court abused its discretion in calculating its award of child support.

¶ 34 Section 505 of the Dissolution Act provides the statutory guidelines for child support. *Id.* (adding 750 ILCS 5/505(a)(1.5)) (setting forth an income-shares model)). A trial court has the authority to order parents to pay “an amount reasonable and necessary for support.” *Id.* (amending 750 ILCS 5/505(a)). The findings of the trial court as to child support will not be disturbed unless the ruling amounts to an abuse of discretion. *Breitenfeldt*, 362 at 675. A court abuses its discretion when no reasonable person would take the view adopted by the court. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651, 895 N.E.2d 1025, 1037 (2008).

¶ 35 Section 505 of the Dissolution Act sets forth the following steps to compute child support:

“(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.” Pub. Act 100-15. § 5 (eff. July 1, 2017) (adding 750 ILCS 5/505(a)(1.5)).

Section 505 of the Act also states that the “Illinois Department of Healthcare and Family Services shall adopt rules establishing child support guidelines which include worksheets to aid

in the calculation of the child support obligations and a schedule of basic child support obligations that reflects the percentage of combined net income ***.” *Id.* (amending 750 ILCS 5/505(a)(1)).

¶ 36 Here, the trial court adopted the child support calculations presented in Anifa’s “child support obligation worksheet,” which appears to use the guidelines promulgated by the Illinois Department of Healthcare and Family Services. *Id.* Further, as previously stated, the trial court calculated Ramce’s gross monthly income as \$2682 and his net monthly income as \$2220. The “combined net monthly income” of Ramce’s net income (\$2220) plus Anifa’s net income (\$1549) totals \$3769. Ramce’s “percentage share”—i.e. his portion of the \$3769 combined net income—is 58.9%.

¶ 37 According to the “schedule” promulgated by the Illinois Department of Healthcare and Family Services, the corresponding amount of the parties’ combined net income of \$3769, after adjustments for two children, amounts to the parties’ child support obligation of \$1217. See “Income Shares Schedule Based on Net Income,” <https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesScheduleBasedonNetIncome.pdf> (last visited November 9, 2018).

¶ 38 The parties’ child support obligation according to the “schedule” (\$1217), multiplied by Ramce’s percentage share (58.9%), totals approximately \$717 of monthly child support ($\$1217 \times 58.9\% = \717).

¶ 39 Based on the above calculations, which adhere to the statutory guidelines, we conclude the trial court did not abuse its discretion in determining Ramce’s child support obligation is \$717 per month.

¶ 40

III. CONCLUSION

¶ 41

For the reasons stated, we affirm the trial court's judgment.

¶ 42

Affirmed.