THIRD DIVISION
June 26, 2019

No. 1-18-0904

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
KATHRIN DORAN,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 12 D 8454
	)	
MICHAEL S. DORAN,	)	Honorable
	)	Edward A. Arce,
Respondent-Appellee.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County entered on February 2, 2018 is affirmed; the trial court (1) properly calculated respondent's child support arrearage retroactive to August 1, 2017 at $2,225.94; (2) did not abuse its discretion when it imputed income to petitioner and not respondent for purposes of calculating respondent's child support obligation; and (3) did not abuse its discretion in attributing 79.45% of annual overnights with the children to petitioner and 20.55% to respondent in its calculation of guideline child support.

¶ 2 This appeal stems from a post-decree child support modification proceeding. The trial court granted petitioner's motion to modify child support; however, petitioner appeals arguing that the court erred (1) in its arrearage calculation, (2) by imputing income to petitioner and not

respondent, and (3) in attributing 79.45% of annual overnights with the children to petitioner and 20.55% to respondent. We affirm the trial court's February 2, 2018 order and April 23, 2018 order denying both parties' post-judgment motions. The trial court correctly calculated respondent's child support arrearage and appropriately made the arrearage retroactive to August 1, 2018 pursuant to the trial court's September 20, 2017 order. Further, because the record is incomplete and does not include the report of proceedings showing the testimony and exhibits from the hearing relative to the modification proceedings at issue we presume that the omitted report of proceedings justified the trial court's order and find that the trial court did not abuse its discretion in (a) imputing income to petitioner; (b) not imputing income to respondent; and (c) attributing 79.45% of annual overnights with the children to petitioner and 20.55% to respondent in its calculation of guideline child support

¶ 3 BACKGROUND

¶ 4 On August 24, 2015, a judgment for dissolution of marriage was entered between Petitioner, Kathrin Doran, and respondent, Michael S. Doran. The judgment incorporates a marital settlement agreement obligating respondent to pay maintenance to petitioner as well as child support for the parties' two minor children. At the time of this child support modification proceeding, the two children were 14 and 10 years old.

¶ 5 On September 20, 2017 the trial court entered an order stating in relevant part as follows:

> "3. A modified uniform order of support is entered separately to reflect the termination of maintenance as of August 1, 2017. The issue of child [support] is retroactive to August 1, 2017."

¶ 6 On October 30, 2017, petitioner filed her "Motion to Modify Child Support and for Extracurricular Expenses" (Motion to Modify) pursuant to sections 504, 505 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act), 750 ILCS 5/504-505, 510 (West 2016).

In her Motion to Modify petitioner sought an increase in child support from respondent based on his additional employment income with the City of Chicago Department of Water Management[1] of at least $15,948 and an increase in the children's extracurricular activity costs.

¶ 7 On January 4, 2018, the trial court entered an order with respect to the Motion to Modify stating in relevant part as follows:

> "the court having conducted an evidentiary hearing on Petitioner's motion regarding child support modification and extracurricular fees ***. The court is taking the decision under advisement and will notify counsel of his decision regarding child support modification and extracurricular fees."

¶ 8 On February 2, 2018, the trial court issued its order on petitioner's Motion to Modify as follows:

> "This cause came before the court for hearing on Petitioner's Motion to Modify Child Support and for Extracurricular Expenses filed on October 30, 2018. *** The Court, having received testimony from the parties and documents in evidence, and having heard the arguments and representations of counsel ***
>
> FINDINGS
>
> "1. *** An Order was entered on September 20, 2017 which provided that the calculation of child support based upon the maintenance termination would be retroactive to August 1, 2017.
>
> 2. Husband's gross income with the MWRD in 2017 was $75,294.00 *Respondent's Ex. #B.* Husband is entitled to an adjustment for mandatory pension

[1] Respondent's employment with the City of Chicago Department of Water Management is referred to in the trial court's February 2, 2018 order as MWRD.

payments and health insurance for the minor children. Husband also claims certain business expenses for his real estate business which he testified is inactive and provides no income. The business expenses listed on his tax return reduce his federal and state tax obligations.

3. Wife is employed with U-46 School District-Illinois School District U46 and is paid at the rate of $11.25 per hour. Wife's employment is part-time and as of November 3, 2017, Wife had earned the sum of $2,233.82 in gross income. *Petitioner's Ex. #B.* Wife testified that she wants to be available to her children and employment at the school is in the best interests of the children. Prior to her current employment, Wife was most recently employed as a 911 operator on a full-time basis with Norcom where she was paid at the rate of $23.00 per hour. Wife's employment at Norcom was terminated in January, 2017 and Wife received unemployment compensation benefits from January to June, 2017.

***

5. The Court finds that Wife is voluntarily underemployed. Pursuant to 750 ILCS 5/505(a)(3.2), if a parent is voluntarily unemployed, child support shall be calculated on a determination of potential income. 'A determination of potential income shall be made by determining employment potential and probable earnings based on the obligor's work history occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community.' 750 ILCS 5/505(a)(3.2). Accordingly, the Court finds that Wife's gross income shall be imputed as $45,276.00 for the purposes of applying the income shares guideline.

6. The Court will apply the income shares guideline and finds that, after credits and adjustments, Husband's obligation for child support shall be set at $1,088.00 per month. *See attached Exhibit 1*.

7. Wife is awarded relief retroactive to August 1, 2017 in the total sum of $2,225.94 which represents the difference of the amount paid by Husband and the amount being award [*sic*]. Six months x $370.99 per month = $2,225.94.

8. The Court considered Wife's request for an increase of Husband's contribution to extracurricular activities to $250.00 per month, or $3,000.00 per year if annualized. Based upon the Court's review of *Petitioner's Ex. #F, H & I*, the Court finds that Wife has not established that Husband's contribution should be increased to the level requested. However, the documents in evidence substantiate that an increase is warranted.

IT IS ORDERED AS FOLLOWS:

A. Petitioner's Motion to Modify Child Support and for Extracurricular Expenses filed on October 30, 2017 is granted.

B. Respondent MICHAEL S. DORAN is ordered to pay the sum of $1,088.00 per month as and for child support to the Petitioner, KATHRIN DORAN. ***

C. Petitioner is awarded relief retroactive to August 1, 2017 and Respondent MICHAEL S. DORAN shall pay the sum of $2,225.94 as and for retroactive child support to Petitioner KATHRIN DORAN within fourteen (14) days. ***."

¶ 9 Exhibit 1 to the February 2, 2018 order sets forth the trial court's calculation of respondent's guideline child support obligation pursuant to section 505 of the Act. The child

support calculation attributes 79.45% of annual overnights with the children to petitioner and 20.55% to respondent.

¶ 10 On February 22, 2018, petitioner filed "Petitioner's Motion for Rehearing and/or Reconsideration of the Court's Order Dated February 2, 2018 on Petitioner's Motion to Modify Child Support and for Extracurricular Expenses" (Motion for Rehearing). On February 27, 2018, respondent filed his "Motion for Reconsideration and Modification of the Court's February 2, 2018 Court Order" (Motion for Reconsideration). Responses to the post-judgment motions were filed by the parties. On April 23, 2018, the Motion for Rehearing and Motion for Reconsideration "came before the court for hearing" and the trial court entered an order denying both post-judgment motions.

¶ 11 Respondent timely appealed pursuant to Illinois Supreme Court Rule 301 (Ill. S. Ct. R. 304(b)(1) (eff. July 1, 2017)). No record of proceedings or bystander's reports were included in the record relative to the modification proceedings. Exhibits introduced into evidence in the modification proceedings are also absent from the record. On appeal petitioner argues that (1) the trial court miscalculated respondent's trial court arrearage and retroactive date; (2) the trial court's imputation of income to petitioner was not sufficiently supported by the facts; (3) the trial court erred by failing to impute income to respondent from his real estate brokerage and appraisal business; and (4) the trial court erred in calculating respondent's child support obligation by attributing 20.55% of annual overnights to respondent when he only actually had the children for 13% of annual overnights.

¶ 12 This appeal followed solely on petitioner's brief.

¶ 13 ANALYSIS

¶ 14 Standard of Review

¶ 15 On appeal, petitioner challenges the court's determination of respondent's child support and child support arrearage calculation. The trial court has wide discretion to modify a child support award and its decision will not be reversed by a court of review absent an abuse of discretion. *In re Marriage of Alexander*, 231 Ill. App. 3d 950, 953 (1992). An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 35-36 (1997). However, we review *de novo* the trial court's interpretation of the Act. *In re Marriage of Lindman*, 365 Ill. App. 3d 462, 465 (2005). In doing so, well-settled principles of statutory construction are adhered to with our primary objective being to determine and give effect to the intent of the legislature. *Id*. at 466. The best indicator of legislative intent is the language of the statute to which we must apply its plain and ordinary meaning and not read into the clear language of the statute exceptions that the legislature did not express. *Id*.

¶ 16 Having established the applicable standard of review, we address the merits of petitioner's arguments on appeal.

¶ 17 Calculation of Respondent's Arrearage

¶ 18 Petitioner first argues the trial court incorrectly calculated respondent's child support arrearage arguing respondent's prior child support obligation was $661.86 per month not $717.01 per month as calculated by the trial court. Petitioner is mistaken.

¶ 19 The trial court properly calculated respondent's child support arrearage. The parties' September 20, 2017 uniform order of support requires respondent to pay child support *every other week* in the amount of $330.93. There are 52 weeks in a year and respondent is required to make payments every other week or bi-weekly. Accordingly, to determine how many child support payments respondent is required to make in a year we must divide 52 by 2 which is 26 payments of $330.93. To determine respondent's annual child support obligation we therefore

multiply 26 payments by his obligation of $330.93 which is $8,604.18 per year in child support. To determine respondent's monthly child support obligation we divide his annual obligation of $8,604.18 by 12 months in a year which equals $717.01 per month.

¶ 20 Petitioner also appears to argue that the trial court erred in its calculation of respondent's child support arrearage by failing to take into account the actual child support payments made by respondent. Specifically, petitioner states:

> "the Defendant-Appellee made fourteen payments to the Plaintiff-Appellant since August 1, 2017, which equates to a total of $2,982.98 out of 14 checks ($213.07 x 14 checks equals $2,982.98), rather than the incorrect total contained in the Court's February 2, 2018 order in the amount of $2,225.94."

¶ 21 The above statement dehors the record and thus the argument is waived. See *Bachman v. Kent*, 293 Ill. App. 3d 1078, 1081 (2004) (Arguments unsupported by citation to the record or pertinent authority are waived). There are no transcripts from proceedings relative to the modification proceedings and nothing in the record otherwise provides a foundation or basis for petitioner's figures. *Id*.

¶ 22 Additionally, without citing to any authority for her position, petitioner also argues that the trial court should have made respondent's child support arrearage retroactive to September 5, 2012 when she filed her pre-decree dissolution action. We disagree. Section 510 of the Act expressly prohibits petitioner's requested relief stating that a support judgment "may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510 (West 2016); see also 750 ILCS 510 (West 2018). The trial court's September 20, 2017 order states that the "issue of child support is retroactive to August 1, 2017" and neither party raises any challenge to this order.

¶ 23 Imputation of Income

¶ 24 Petitioner next argues the trial court's "February 2, 2018 Order does not specifically show how the evidentiary record established the income of the parties as determined by the [trial] Court" and further takes the position that the court's findings as to each party's income, specifically the imputation of income to petitioner and not respondent, is unsupported by the facts.

¶ 25 We first note that as with the prior child support statute, here, where the trial court applied guideline support, nothing in section 505 of the Act requires the trial court to set forth explicit findings for its award of child support and, in particular, its decision to impute income to petitioner and not respondent. *Reyna v. Reyna*, 78 Ill. App. 3d 1010, 1017 (1979).

¶ 26 Moreover, on appeal, every reasonable intendment not negated by the record will be indulged to support the trial court's order. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *O'Berry v. O'Berry*, 36 Ill. App. 2d 163, 166 (1962) (citing *Union Drainage District v. Hamilton*, 390 Ill. 487, 493-94 (1945)). Where a complete report of proceedings showing the testimony and exhibits is omitted from the record, we presume that the omitted report of proceedings justified the trial court's order. *Id*. (citing *Vinyard v. Barnes*, 124 Ill. 346, 350 (1888); *City of Chicago v. Tearney*, 187 Ill. App. 441, 442 (1914); *Adair v. Adair*, 51 Ill. App. 301, 302 (1893)); *Foutch*, 99 Ill. 2d at 392.

¶ 27 Two hearings were conducted with respect to the instant child support modification proceedings - the first on petitioner's Motion to Modify and the second on both parties' respective post-judgment motions. The trial court's January 14, 2018 order states that the first hearing was an evidentiary hearing and the trial court's February 2, 2018 order confirms that the court received testimony from the parties and documents in evidence and heard the arguments and representations of counsel relative to the Motion to Modify. In its April 23, 2018 order denying each party's post-judgment motion the court notes that the cause "came before the court for

hearing on Petitioner's Motion for Rehearing And/Or Reconsideration of the Court's order Dated February 2, 2018 filed on February 22, 2018 and Respondent's Motion for Reconsideration and Modification of the Court's February 2, 2018 Court Order filed on February 27, 2018." However, as previously noted, there is no record of proceedings or bystander's report with respect to either hearing. Also omitted from the record are the exhibits introduced at the hearings. Such omissions require this court to presume that the omitted report of proceedings justified the trial court's order. See *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166.

¶ 28 Petitioner does not argue that the trial court does not have authority to impute income for purposes of calculating child support only that the court erred by (1) imputing income to petitioner and (2) not imputing income to respondent.

¶ 29 Section 505(a)(3.2) of the Act allows the court to impute income to a parent for purposes of calculating child support and states as follows:

> "Unemployment or underemployment. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community. If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person." 750 ILCS 5/505(a)(3.2) (West supp. 2017).

¶ 30 The statute specifically states that imputation of income is appropriate where a parent is "voluntarily unemployed or underemployed" and, in such instances, directs the court to calculate child support based on that parent's "potential income." *Id.* The statute further instructs that "potential income" is arrived at by determining that parent's "employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community." *Id.* There is nothing in section 505(a)(3.2) that requires the court to make written findings as to these determinations. See *Id.*

¶ 31 With respect to her own income, petitioner states, without citation to actual evidence in the record that (1) she cannot obtain fulltime employment because she is the sole custodian and has residential possession of the children; (2) there was no evidence that she worked fulltime at Norcom when earning $23 an hour; (3) she was forced to obtain employment as a teacher at a substantially reduced rate of pay so that she could care for the children after school without incurring additional cost of after school care; and (4) she enrolled in the Supplemental Nutritional Assistance Program (SNAP) to provide for the children and to allow them to attend school for free.

¶ 32 The trial court, in its February 2, 2018 order after an evidentiary hearing found that petitioner was voluntarily underemployed. While petitioner claims she never worked on a fulltime basis, in the absence of a record evidencing otherwise, we are compelled to accept the findings of the trial court in its February 2, 2018 order, specifically stating that "[p]rior to her current employment, Wife was most recently employed as a 911 operator on a *full-time basis* with Norcom where she was paid at the rate of $23.00 per hour." (Emphasis added). See *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166. Petitioner argues the May 2013 award of sole custody and primary residential possession of two children, ages 14 and 10, now inhibit her

ability to maintain such fulltime employment. However, the trial court heard the evidence and, in the absence of a report of proceedings or bystanders report, it is presumed the court reached the correct conclusion. *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166.

¶ 33 Furthermore, the trial court imputed income to petitioner of $45,276. This figure is consistent with petitioner's work history which the statute expressly directs the court to consider in determining a parent's potential income. See 750 ILCS 5/505(a)(3.2) (West supp. 2017). Moreover, absent a record of proceedings and with no evidence in the record to suggest an abuse of discretion, we are required to presume that the omitted report of proceedings further justified the trial court's decision to impute income to petitioner. *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166.

¶ 34 The same is true of the trial court's decision not to impute income to respondent. The trial court found that respondent's gross income with the City of Chicago Department of Water Management in 2017 was $75,294. The court also found that respondent "claims certain business expenses for his real estate business which he testified is inactive and provides no income. The business expenses listed on his tax return reduce his federal and state tax obligations." Petitioner states that this business generated gross income of $15,408 in 2011, the year prior to petitioner filing the pre-decree dissolution action. Petitioner concedes that since 2011 the business has shown a net loss, but argues that respondent is hiding money or voluntarily reducing business income to avoid paying child support because he would not otherwise continue to keep a business operating at a loss. However, as noted in the trial court's findings, these business expenses reduce respondent's federal and state tax obligations. Additionally, as with petitioner's income, we find that there is no record to substantiate petitioner's claim that the trial court abused its discretion by not imputing income to respondent and presume that the

omitted report of proceedings further justifies the trial court's decision not to impute income to respondent. *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166.

¶ 35 Percentage of Annual Overnights Attributed to the Parties

¶ 36 Finally petitioner argues that the trial court erred in calculating child support based petitioner having 75% and respondent having 25% of the annual overnights with the children stating that she actually had the children for 87% of the overnights while respondent only had 13% of the overnights. The only support for this argument is petitioner's citations to certain allegations contained in her Motion for Rehearing. While not accurately cited to in her briefs, petitioner does allege that respondent only exercised 48 overnights with one daughter and none with his other daughter, however, these allegations were denied in respondent's response to the Motion for Rehearing. Again this court must presume that the omitted report of proceedings justified the trial court's decision regarding each party's overnight parenting time and, as such, we affirm the trial court. *Foutch*, 99 Ill. 2d at 391-92; *O'Berry*, 36 Ill. App. at 166.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 39 Affirmed.