2019 IL App (4th) 190020-U

NO. 4-19-0020

FILED
July 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF SUELLEN BUTTRAM, Petitioner-Appellee, and ARON BUTTRAM, Respondent-Appellant.	) Appeal from the) Circuit court of) Macon County) No. 16D401)) Honorable) Robert Charles Bollinger,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) By finding respondent's allegation of a substantial decrease of his income to be unproven, the trial court did not make a finding that was against the manifest weight of the evidence, and it follows that the denial of his petition to modify child support was not an abuse of discretion.

(2) In his petition to modify child support, respondent alleged only a decrease in his income as a ground for reducing his child support obligation, and in the trial on the petition, the trial court was correct to limit respondent's evidence to that ground and to bar him from attempting to prove any additional, unpleaded ground for reducing child support.

(3) After respondent had been litigating *pro se* in this case for some eight months, the trial court did not abuse its discretion by denying him a continuance, in the midst of the trial, to look for an attorney.

(4) Although initially the trial court ordered both parties to submit child support calculations, the court did not err, subsequently, by allowing petitioner, in lieu of submitting a child support calculation, to take the position that there had been no substantial change of circumstances and that, hence, there was no occasion for calculating child support.

(5) Because of the lack of a reasoned argument supported by citation to relevant authority, respondent has forfeited his assertion that the trial court abused its discretion by sustaining foundational objections to tax documents that he offered in the trial.

¶ 2 The Macon County circuit court granted a petition by petitioner, Suellen Buttram, to dissolve her marriage to respondent, Aron Buttram, and the court ordered respondent to pay child support in the amount to which the parties had agreed in a marital settlement agreement. A few months later, respondent petitioned to reduce the amount of child support. After an evidentiary hearing, the court denied respondent's petition for the modification of child support, thereby keeping the amount of child support the same as prescribed in the judgment of dissolution. Respondent appeals.

¶ 3 We note that although respondent has filed an appellate brief, petitioner has not done so. It would be a mistake, however, to reverse a trial court's judgment simply because the appellee has filed no brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976). "A considered judgment of the trial court"—which the judgment before us is—"should not be set aside without some consideration of the merits of the appeal." *Id.* The issues that respondent raises are easily decided without an appellee's brief, and thus, we will proceed to the merits of the appeal. See *id.*

¶ 4 Respondent argues that for five reasons, we should reverse the trial court's judgment and remand this case for the calculation of a reduced monthly amount of child support.

¶ 5 First, respondent maintains that the trial court abused its discretion by refusing to reduce his child support obligation.

¶ 6 Actually, the pertinent threshold question is whether, by finding that respondent had failed to prove the alleged substantial change of circumstances, *i.e.*, a reduction of his income, the trial court made a finding that was against the manifest weight of the evidence.

Because we answer that question in the negative, it necessarily follows that denying the petition to modify child support was not an abuse of discretion.

¶ 7 Second, respondent contends that the trial court abused its discretion by refusing to allow him to present evidence that was beyond the scope of the factual allegations in his petition to modify child support.

¶ 8 We hold that not only was it within the trial court's discretion to limit respondent's evidence to the cause of action he had alleged in his petition but that it was necessary for the court to do so. Otherwise, petitioner would have been denied fair advance notice of the alleged bases of recovery against which she had to defend.

¶ 9 Third, respondent accuses the trial court of abusing its discretion by denying him a continuance to look for an attorney. Because respondent waited until the trial to request such a continuance and because he made no showing that he had been diligently looking for an attorney, we cannot say the court abused its discretion by denying a continuance.

¶ 10 Fourth, respondent argues the trial court erred by letting petitioner get away with not filing a calculation of child support.

¶ 11 Instead of filing a calculation of child support, petitioner took the position that there had been no substantial change of circumstances and that, hence, there was no occasion for calculating child support. The correct monthly amount of child support, in her view, was the amount set forth in the unappealed judgment of dissolution. The trial court decided this was a coherent, acceptable position for petitioner to take. We think so, too.

¶ 12 Fifth, respondent claims that the trial court abused its discretion by declining to admit in evidence his tax documentation.

¶ 13 The trial court sustained petitioner's foundational objections to those documents. To convince us that the court thereby abused its discretion, respondent would have to (1) show that, contrary to the court's rulings, he in fact laid an adequate foundation for the admission of those documents or (2) cite an authority that exempted those documents from the laying of a foundation. Respondent does neither.

¶ 14 Therefore, we affirm the judgment.

¶ 15 I. BACKGROUND

¶ 16 A. The Judgment of Dissolution of Marriage,
With the Incorporated Marital Settlement Agreement

¶ 17 On November 17, 2017, the trial court entered a judgment dissolving the parties' marriage. In the judgment, the court found that one child, A.E.B., age four, had been born of the marriage and that the parties had freely and voluntarily entered into a marriage settlement agreement, which addressed A.E.B.'s custody and support. By the terms of the marital settlement agreement, personally signed by both parties on November 17, 2017, A.E.B. was to live with petitioner; respondent was to have parenting time; and he was to pay $900 per month in child support, the amount that had been payable under a temporary order. The marital settlement agreement, which, the parties stipulated therein, was "fair and equitable," made the $900 per month in child support "permanent" and "continu[ing]" but subject to "modification as allowed by Illinois law."

¶ 18 B. Respondent's Petition for the Modification of Child Support

¶ 19 On March 22, 2018, respondent filed a petition for the modification of child support. The only ground he alleged for the proposed modification was that "[t]he supporting parent's income ha[d] changed from $4,500.00 per month to $1,847.50 per month."

¶ 20 C. A Status Hearing

¶ 21 On April 19, 2018, the trial court held a status hearing on the petition to modify child support. Both parties appeared in the status hearing *pro se*. The court asked the parties if they intended to represent themselves. Respondent answered in the affirmative. Petitioner answered that she did not know yet; she first wanted to see respondent's financial affidavit so she would have something to take to an attorney.

¶ 22 The trial court scheduled an evidentiary hearing far enough in the future to give both parties enough time to review each other's documents and decide if they "want[ed] to talk with an attorney." The court ordered both parties to file financial affidavits by May 4, 2018, and child support calculations by May 11, 2018.

¶ 23 D. The Evidentiary Hearing on Respondent's Petition to Modify Child Support

¶ 24 1. *Respondent's Complaint of Having Received No Child-Support Calculations and No Updated Financial Information From Petitioner*

¶ 25 On December 10, 2018, the trial court held an evidentiary hearing on respondent's petition for the modification of child support. Respondent appeared *pro se*. Petitioner appeared with her attorney.

¶ 26 The trial court first asked respondent if he wanted to make an opening statement. Respondent told the court: "I have yet to receive any of their paperwork, documentation that you ordered." The court turned to petitioner's attorney, who stated that she had mailed her client's financial affidavit to respondent's address of record. The court looked in the record and noted "a financial affidavit from [petitioner] placed on file with the proof of service to [respondent] on May 3, 2018." Also, the court noted, petitioner "ha[d] filed *** her proposed calculations[,] which essentially provide[d] that the child support order should not change from $900 per month."

¶ 27 Respondent asked: "Where [are] the calculations[,] though?" The trial court answered:

> "THE COURT: Well, apparently they don't believe there should be any change[,] so that's why they are not recalculating it. Okay. I will have to determine based on the evidence whether there should be a change. You are the petitioner. So[,] you would have the burden of proof. Okay.
>
> So[,] this is what they filed. All right. Then the financial affidavit that [petitioner] filed, I don't have a clean copy of it."

¶ 28 Petitioner's attorney had a clean copy of her client's financial affidavit, and she handed it to respondent. After looking at petitioner's financial affidavit, respondent complained that it covered only one month, from March to April 2018; he wanted an affidavit "up to the present day."

¶ 29 The trial court asked respondent why he thought he needed such information. Respondent answered: "Because *** there has been a big difference in money ***, a big incline [on petitioner's part] and a big decline on my part." The court then observed:

> "THE COURT: Okay. So, Mr. Buttram, in your petition that you filed back in March, you alleged that your child support obligation should be changed.
>
> [RESPONDENT]: Correct.
>
> THE COURT: Because there has been a substantial change in circumstances in that your income went down from $4,500 a month to $1,847.59 per month. You did not check the box indicating that [petitioner's] income had changed[,] and that would be a basis for changing child support.
>
> Do you understand that?

[RESPONDENT]: I did not change what?

THE COURT: Why don't you come forward, both sides. Here is a copy of the petition you filed in this case March 22nd of 2018. You checked the box indicating that child support should be reduced because your income significantly went down.

[RESPONDENT]: Correct.

THE COURT: You didn't check the box indicating you are seeking a change in child support because [petitioner's] income went up.

Do you understand?

[RESPONDENT]: Well, what I am getting at is I have my daughter over 146 days, and I am going to press that issue[,] then[,] if that's the case.

THE COURT: Well, that's not something that's been alleged in any petition. So, I will take up the petition you filed. All right. I have continued this a number of times. I have allotted time today. I don't know why [petitioner's] updating her financial affidavit is going to have anything to do with what you have alleged in your petition as a reason to reduce child support.

So, today I am prepared to hear your evidence to indicate to me why your child support should be reduced because your income substantially went down. All right. You may be seated.

All right. Any further opening statement, Ms. Couri [(petitioner's attorney)]?

MS. COURI: I would waive, Your Honor."

¶ 30 2. *The Sustaining of a Foundational Objection to Tax Documents Offered by Respondent, Followed by His Motion for a Continuance*

So That He Could Look For an Attorney—a Motion the Court Denied

¶ 31 The trial court asked respondent if he had any witnesses. He answered in the negative. The court asked respondent if he himself would like to testify. Respondent replied: "Can I give this—this is evidence." The court had him show the documents to petitioner's attorney. Respondent did so, commenting: "She's already got all of this information." Then, at the court's direction, respondent handed up the documents, and the court marked them as defendant's exhibit No. 1. The court asked petitioner's attorney:

> "Ms. Couri, is there any objection to the admission of [d]efendant's [e]xhibit No. 1?
>
> MS. COURI: I would object as to lack of foundation, Your Honor.
>
> THE COURT: The objection is sustained due to lack of foundation as to the exhibit. It will not be admitted into evidence.
>
> You may call your first witness[,] or you may testify under oath, [respondent].
>
> [RESPONDENT]: I am not sure what's going on. There's legal tax documentation that we base this child support off of[,] and now we cannot allow that into evidence?
>
> THE COURT: You didn't lay any foundation for it. If you want to present foundation under the rules of evidence, I will let you—give you that opportunity. I will reconsider admitting it into evidence once proper foundation is laid.
>
> [RESPONDENT]: I'm not sure what—I need to get an attorney. I can't afford it, but I will try to find some way to get an attorney because this is—I don't understand this at all.

THE COURT: Well, we are in the middle of a hearing now. Okay.

Is there any objection to continuing this to allow [respondent] to obtain counsel?

MS. COURI: I would object, Your Honor. Thank you.

THE COURT: Well, we have already started the hearing. I have given you multiple opportunities to hire an attorney. We've continued this case repeatedly. So, the request for a continuance is denied for lack of good cause shown.

So, you have elected to represent yourself. You may present your evidence.

What else do you want the court to consider?"

¶ 32 3. *The Sustaining of Foundational Objections to Respondent's Child Support Calculations*

¶ 33 Again without any prefatory sworn testimony, respondent presented child support calculations, which the trial court marked as defendant's exhibit Nos. 2 and 3. The court stated:

THE COURT: ***

All right. What has been marked as [d]efendant's [e]xhibit No. 2 appears to be a printout of a [c]hild [s]upport [s]hares [e]stimator and support obligation worksheet.

Is there any objection to the admission of [d]efendant's [e]xhibit No. 2?

MS. COURI: Yes, Your Honor. Lack of foundation.

THE COURT: All right. So[,] for the same reason, I have heard no testimony, nothing to lay any foundation for the exhibit, the objection is sustained. It will be refused.

Defendant's [e]xhibit No. 3, which, again, appears to be a child support estimator with calculations. I assume this is all to be—these three pages are to be one document, is that correct?

[RESPONDENT]: Yes.

* * *

THE COURT: Ms. Couri, is there any objection to the admission of [d]efendant's [e]xhibit No. 3?

MS. COURI: Yes, sir. Lack of foundation.

THE COURT: All right. Well, I have heard no testimony from any witness laying foundation under the rules of evidence for the admission of the documents. So, for the same reason as the first two exhibits, they will be refused over objection.

Do you have any further evidence that you want to present, [respondent]?

[RESPONDENT]: No.

THE COURT: No?

[RESPONDENT]: No.

THE COURT: All right. I am giving you the opportunity to be sworn under oath and testify or to call a witness.

Do you wish to exercise that opportunity?"

¶ 34 Respondent elected to testify. He was sworn.

¶ 35 4. *Respondent's Testimony*

¶ 36 Respondent testified that "there was a good year because [he] had a contract with Menard's and another company." As it turned out, however, he "could not uphold that contract

because [he lacked] manpower and [he was] the sole proprietor of a business" consisting of himself alone. He remarked: "[T]here's no finagling these taxes. We can get the tax people in here if you would like." The trial court replied:

> "THE COURT: Well, if you want me to consider any witness's testimony, you would have needed to have subpoenaed them to be here today.
>
> * * *
>
> So, what else do you want to testify to in support of your petition?"

¶ 37 Respondent summed up:

> [RESPONDENT]: Other than my tax documentations, I don't have any witnesses or any other information. I supplied everything that I can possibly supply for her, and I just don't know what else to do. It is obvious, I mean it is obvious in every which way in [*sic*] shape or form that I do not make enough to pay $900 in child support. Not even close. This is bankrupting me. I have borrowed until all borrowed out. I have taken all of my inheritance. I have borrowed off of my girlfriend and friends.
>
> I can't go on any longer and keep a stable place for my daughter. If you take every dime I have got, I can't keep a stable home for my daughter. I am just like anybody else trying to have a family and do what's supposed to be done. I put—I paid for half of her schooling in private school. You know how much that costs. You've got kids there.
>
> That's all I got, Your Honor."

¶ 38 Petitioner's attorney then cross-examined respondent, and she began by having him identify plaintiff's exhibit No. 1, the financial affidavit he filed on May 3, 2018. It emerged

on cross-examination that the affidavit suffered from some omissions. Although, in the affidavit, respondent represented that he owned only three motor vehicles—a 2007 Chevrolet, a 2001 Dodge, and a 1991 Nissan—he admitted on cross-examination that, at the time he signed the affidavit, he additionally owned a Harley Davidson motorcycle, which was worth $3000.

¶ 39 Also, although respondent represented in his affidavit that he owned only one parcel of real estate, 2254 Karl Lane, Decatur, where he lived, he admitted on cross-examination that, at the time he signed the affidavit, he actually owned three additional parcels of real estate in Decatur: a two-bedroom house at 1027 East Buena Vista Avenue, which he was renting out at $700 a month; 1368 East Riverside Avenue, which was for sale but which he had not listed with a realtor or on Craig's list; and 932 North McClellan Avenue, which, in late January or early February 2018, his father bought for him for $14,000.

¶ 40 At some point, respondent received more help from his father in the forms of a loan in the amount of $40,000 (unmentioned in respondent's financial affidavit May 3, 2018); financial support in an unspecified amount; and an "inheritance," likewise in an unspecified amount. Petitioner's attorney asked respondent:

> "Q. Did you label all of your debts in your financial affidavit?
>
> A. I believe so because the—yes, if there is the over $40,000 one that's borrowed from my father, yes, that's the debt.
>
> Q. Did you label it in your financial affidavit?
>
> A. It is in there. There is a $40,000 debt in there, that I borrowed from him besides my inheritance.
>
> * * *

THE COURT: Just to clear something up. An attachment to [respondent's] affidavit indicates, 'My father has been keeping me afloat with partially financially supporting me.'

Is that what you are referring to, [respondent]?

A. That is. And then there is one also that says that I borrowed $40,000 from him.

THE COURT: I don't see that. So, why don't you show him the document and have him point it out. I don't see that.

* * *

A. It was in the—it may be in the first document or the first financial affidavit.

THE COURT: Well, the one you filed May 3, 2018, is that the one you have in front of you?

A. This is the one I have in front of me.

THE COURT: Okay. You are supposed to identify your debts.

Show me where the $40,000 is listed so we are all on the same page.

(Brief pause in the proceedings.)

THE COURT: The record will reflect [respondent] is paging through his affidavit.

A. It is not in here. It is, apparently, in my briefcase."

¶ 41 After cross-examining respondent, petitioner's attorney moved for a directed finding, but the trial court denied the motion because respondent had testified that his income had decreased. Both parties then rested, and the court heard closing arguments. Respondent more

or less repeated what he had said in his testimony. Petitioner's attorney argued that respondent could not be believed. The court then told respondent it would allow him to make a rebuttal argument but that, first, the court wished to point out some concerns it had about the financial affidavits respondent had filed.

¶ 42 When the trial court compared the financial affidavit that respondent filed in October 2017 and the financial affidavit he filed most recently, it appeared to the court that, instead of decreasing, respondent's monthly income had increased from $750 to $2525. Respondent said, "Yes. That's because of the rental income." Then respondent explained that the financial affidavit from October 2017 had been botched by his attorney, who had "misrepresented" him in the divorce case, and that the signature on the financial affidavit really was not his.

¶ 43 The trial court had no further questions for respondent. The court announced it would take the matter under advisement.

¶ 44 E. The Trial Court's Decision

¶ 45 In a docket entry of December 11, 2018, the trial court denied respondent's petition for the modification of child support. For the following reasons, the court found his financial representations to be unreliable:

> "[Respondent] stated in his financial affidavit filed with the [c]ourt on [October 12, 2017] (approximately one month prior to entry of the [j]udgment) that his gross monthly income was $750.00. *** Approximately [four] months after the [j]udgment was entered (on [March 22, 2018]) [respondent] filed a petition seeking to modify his child support obligation. In his petition, which [respondent] certified under oath, [he] stated that his income was substantially higher at the

time the [j]udgment was entered ($4,500.00 per month). Thus, either [respondent's] financial affidavit filed [October 12, 2017,] is materially inaccurate[,] or his petition filed [March 22, 2018,] is materially inaccurate. Less than [two] months later (on [May 3, 2018]), [respondent] filed another financial affidavit with the [c]ourt[,] wherein he certified under oath and subject to penalty of perjury that his monthly gross income was $2,528.00. [Respondent] also indicated on his most recent financial affidavit that he receives an unspecified amount of financial support from his father. During his testimony, on cross-examination, [respondent] admitted that he owned several parcels of real estate that he failed to list in paragraph [16(c)] of his most recent financial affidavit. If the [c]ourt accepts as true the information [respondent] placed in his pre- and post-[j]udgment financial affidavits, th[e]n [respondent's] income substantially increased since the entry of [j]udgment. [Respondent] had the burden of proving his allegation that there was a substantial change in circumstances as a result of a significant reduction in his income since entry of [j]udgment. 750 ILCS 5/510(a). [Respondent] has not met his burden of proof. As such, [his] petition should be denied."

¶ 46 This appeal followed.

¶ 47 II. ANALYSIS

¶ 48 A. The Factual Question of Whether There Had Been a Substantial Change of Circumstances as Respondent Alleged in His Petition

¶ 49 On March 22, 2018, respondent petitioned for the modification of child support. The only ground he pleaded for the proposed modification was an alleged "substantial change in

circumstances" (750 ILCS 5/510(a)(1) (West 2016)), namely, that "[t]he supporting parent's income ha[d] changed from $4,500.00 per month to $1,847.50 per month."

¶ 50 This petition to modify child support was a "pleading": a formal document in which respondent set forth his allegations or claim. See *Golf Trust of America, L.P. v. Soat*, 355 Ill. App. 3d 333, 335-36 (2005). "The purpose of a pleading is to present, define, and narrow the issues and limit the proof needed at trial." *Id.* at 336. A trial court lacks authority to adjudicate an issue unless the issue is raised in the pleadings. *IMC Global v. Continental Insurance Co.*, 378 Ill. App. 3d 797, 804-05 (2007). Thus, in the hearing on the proposed modification of child support, the only ground for modification the trial court had authority to consider was that respondent's monthly income allegedly had decreased from $4500 as of November 2017, when the court entered the judgment of dissolution, to $1847.50 as of March 2018, when respondent filed his petition for modification. See *id.*

¶ 51 Respondent had the burden of proving this substantial change of circumstances (see *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 34 (1997)), and the trial court decided he had failed to carry his burden of proof. The question for us is whether that decision is against the manifest weight of the evidence (see *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370 (1996)) or, in other words, whether it is clearly evident, from the evidence in the record, that respondent carried his burden of proof (see *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010)). Another way of describing our standard of review is to pose the question of whether the court made an unreasonable and arbitrary decision, a decision not based on the evidence, when deciding that respondent had failed to prove a substantial decrease in his income. See *id.*

¶ 52 On the question of how much income respondent was receiving each month as of November 2017 and March 2018, the trial court had only respondent's word. Not every

reasonable trier of fact would find respondent's representations in this regard to be credible. See *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 31 (a trial court is in the best position to determine a witness's credibility, and a reviewing court will not overturn a credibility finding unless it is against the manifest weight of the evidence).

¶ 53 It is true that in November 2017 the judgment of dissolution of marriage set the amount of child support at $900 per month, but that amount was pursuant to a marital settlement agreement, which was incorporated into the judgment, and therefore, it is unclear that the parties arrived at the amount of $900 per month by using the statutory guidelines (750 ILCS 5/505(a)(1) (West 2016)). Thus, the trial court had only respondent's word that his monthly income was $4500 in November 2017.

¶ 54 Likewise, the trial court had only respondent's word that his monthly income was $1847.50 as of March 2018; and the court gave some defensible reasons for disbelieving him. For example, in his financial affidavit of May 3, 2018, respondent omitted some of his real estate holdings (as he admitted on cross-examination)—including a house from which he was receiving rental income—and although he listed his monthly income as $2528, he added, at the end of the affidavit: "My father has been keeping me afloat with partially financially supporting me." The affidavit, however, fails to specify the amount of such financial support. Not only that, but the affidavit represents "[g]ifts of money" as being zero, although financially "supporting" one's son means giving him money to live on. See The New Oxford American Dictionary 1708 (2001) (defining the transitive verb "support" as "provid[ing] with a home and the necessities of life").

¶ 55 For all those reasons, we are unable to say it was unreasonable or arbitrary of the trial court to end up being skeptical about respondent's allegation of a substantial decrease in his income. See *Nord*, 402 Ill. App. 3d at 294. The court would have had to believe respondent to

find this alleged substantial change in circumstances—all the court had was respondent's word—and because disbelieving him is (given the record) a defensible choice, we should defer to that choice. See *Blume*, 2016 IL App (3d) 140276, ¶ 31. By finding the alleged substantial change of circumstances to be unproven, the court did not make a finding that was against the manifest weight of the evidence. See *Barnard*, 283 Ill. App. 3d at 370.

¶ 56 B. The Trial Court's Insistence That Respondent Confine His Proof to the Substantial Change of Circumstances He Alleged in His Petition

¶ 57 At the beginning of the hearing on December 10, 2018, when the trial court asked respondent if he wished to make an opening statement, respondent complained that although he had provided petitioner with a financial affidavit, he had never received one from her. Petitioner's attorney disagreed; she told the court she had mailed her client's financial affidavit to respondent on May 3, 2018. Respondent insisted he never received it. Therefore, in court, petitioner's attorney handed respondent a copy of her client's financial affidavit. Still, respondent was unsatisfied: he wanted an updated financial affidavit from petitioner, not one from May 2018. The trial court asked respondent why it was essential to the presentation of his case that he receive an updated financial affidavit from petitioner. Respondent answered that, in addition to his own decrease in income, he intended to raise petitioner's (supposed) increase in income as a reason for decreasing his child support obligation. Also, he told the court, he intended to raise a third reason: he had the child for more than 146 days a year.

¶ 58 The trial court then looked at the petition to modify child support and noted that the box corresponding to "The non-supporting parent's income has changed" was unchecked and that the only checked box was the one corresponding to "The supporting parent's income has changed." No other ground for decreasing child support was alleged in the petition.

Consequently, the court told respondent that the only evidence it would hear was evidence pertinent to his own alleged decrease in income.

¶ 59 Respondent argues, on appeal, that the trial court should have "provided [him] the opportunity to present [other] evidence and then move to amend his petition." He quotes from section 2-616(c) of the Code of Civil Procedure: "A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs ***." 735 ILCS 5/2-616(c) (West 2016).

¶ 60 Section 2-616(c) presupposes, however, that a party already presented proofs that went beyond the factual allegations of the pleadings. It is one thing to say that *after that happens* (for whatever reason), the trial court, to further the ends of justice, has the discretion to allow an amendment that conforms the pleadings to the proofs. *Benzakry v. Patel*, 2017 IL App (3d) 160162, ¶ 85. It is another thing to say, *as an initial matter*, that a party has a right to present proofs that go beyond the factual allegations of the pleadings, on the assumption that pleadings can always be amended later. Section 2-616(c) does not authorize trial by ambush. See *id.* "The issues in a case are created by the pleadings and allegations, to which the proof must correspond ***." *In re Jackson*, 243 Ill. App. 3d 631, 651 (1993). "[D]ue process requires that both parties know in advance of a proceeding what issues will be tried at that proceeding." *Delarosa v. Approved Auto Sales, Inc.*, 332 Ill. App. 3d 623, 627 (2002). In his petition to modify child support, respondent gave petitioner advance notification that the only ground she would have to defend against was respondent's alleged decrease of income. Presumably, petitioner prepared for the hearing accordingly. If, in the hearing, the trial court had allowed respondent to present evidence of additional grounds, of which he had given petitioner no advance notice and against which, therefore, she might well have been unprepared to defend, the petition would be

misleading, and petitioner would be blindsided. To prevent that unfairness to petitioner, the court was correct to limit the evidence to the cause of action set forth in the petition. See *Jackson*, 243 Ill. App. 3d at 651. Otherwise, pleadings would serve no real purpose.

¶ 61 C. The Trial Court's Refusal to Allow a Continuance on the Day of Trial

¶ 62 In the trial on his petition to modify child support, respondent offered some tax documentation in evidence. Petitioner's attorney objected on the ground of a lack of foundation, and the trial court sustained the objection.

¶ 63 Upon receiving that unfavorable ruling, respondent remarked, "I need to get an attorney. I can't afford it, but I will try to find some way to get an attorney because *** I don't understand this at all." The trial court inquired of petitioner's attorney whether she objected to continuing the hearing so that respondent could obtain counsel. She answered that she did indeed object. The court then denied respondent's motion for a continuance, giving three reasons for doing so—none of which respondent regards as valid.

¶ 64 First, the trial court observed, the hearing already had begun. Nevertheless, respondent argues, no testimony had been heard yet, and in his view, "[i]t would have been a very convenient time to stop the hearing and allow [respondent] time to retain an attorney."

¶ 65 Apparently, it would have been inconvenient to petitioner, who had appeared with her attorney in the expectation of having a trial. "Because of the potential inconvenience to the parties, witnesses, and the court, especially grave reasons for granting a continuance must be given once a case has reached the trial stage." *Needy v. Sparks*, 51 Ill. App. 3d 350, 358 (1977). This case had reached the trial stage, and therefore, it was reasonable of the trial court to condition a continuance on respondent's coming forward with an especially grave reason for granting a continuance. See *id.* That it only now dawned on respondent, after some eight months,

that he was out of his depth and needed an attorney did not qualify as a serious reason to grant a continuance on the scheduled day of trial.

¶ 66 Second, the trial court commented that respondent had received "multiple opportunities to hire an attorney." Respondent disagrees with that comment because only once, on April 19, 2018, had the court advised him that he might want to consider hiring an attorney and in none of the six subsequent hearings had the court repeated that advice.

¶ 67 The trial court had no obligation to advise respondent at all on his need for an attorney. That was respondent's business. He had from April 19, 2018, to the date of trial, December 10, 2018, to hire an attorney if he so desired, and absent a showing that he had been diligently looking for an attorney, the court was justified in denying a continuance. See *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 294 (1980).

¶ 68 Respondent argues he "acted with diligence by filing what he thought were proper pleadings and in attempting to present evidence and exhibits." But the diligence had to relate to the purpose of the requested continuance. Because respondent requested a continuance to look for an attorney, he was required to show he had been diligent in looking for an attorney, not in litigating *pro se*. See *id.* Or, alternatively, if respondent had not been looking for an attorney, his inaction had to be nonnegligent. See *Demos v. Haber*, 101 Ill. App. 3d 901, 903 (1981) (on its own initiative, the trial court transferred the plaintiff's case from the *pro se* branch of the small claims court, in which representation by an attorney was forbidden, to the branch that heard general municipal matters, in which representation by an attorney was allowed, and then, a mere two hours after the transfer, the court denied the plaintiff a continuance to retain an attorney; the denial of a continuance was an abuse of discretion). Respondent made no showing of diligence in

looking for an attorney, and the record appears to lack any excusing circumstances comparable to those in *Demos*.

¶ 69 The third reason the trial court gave for denying respondent a continuance was that the case already had been continued repeatedly. Even so, respondent observes, not all the continuances had been on his motion.

¶ 70 True, but even if *none* of the continuances had been on respondent's motion, the trial court would have been within its discretion in denying him a continuance on the day of the trial absent a showing that he had been diligently looking for an attorney. See *Thilman*, 87 Ill. App. 3d at 294; *Needy*, 51 Ill. App. 3d at 358; *Thomas v. Thomas*, 23 Ill. App. 3d 936, 940 (1974). Thus, we find no abuse of discretion in denying respondent a continuance on the day of the trial. See *Thomas*, 23 Ill. App. 3d at 940.

¶ 71 D. Excusing Petitioner From Filing a Calculation of Child Support

¶ 72 The trial court had ordered both parties to file their calculations of what the amount of child support should be. Respondent filed his calculation, but petitioner did not do so; instead, she filed a document denying there had been any substantial change in circumstances and asserting that the amount of child support consequently should remain the same. Respondent asserts: "The [c]ourt should have required [petitioner] to file a proper calculation despite her opinion that child support should not be decreased, and it was error for the [c]ourt to not do so[,] and so the mat[t]er should be reversed and remanded."

¶ 73 Not only does that assertion lack any citation to authority but it lacks any reasoned argument to support it. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 13 (finding a party's argument to be forfeited because the "entire argument [was] one conclusory paragraph unsupported by any citations to authority"). We do not see the logical

connection between the outcome in this case and the lack of child support calculations from petitioner. The burden was on respondent to prove the allegation in his petition: that his present income was substantially less than the income he had been receiving on the date of the dissolution of marriage. The trial court found that respondent had failed to carry that burden. Petitioner herself had no burden of proof; she was not required to prove anything. Child support calculations from her could have made no difference in the court's determination of the threshold issue of whether respondent's monthly income had decreased from $4500 as of November 2017 to $1847.50 as of March 2018, as he alleged in his petition. Until respondent proved that allegation in his petition, there was no occasion for calculating child support.

¶ 74 E. The Sustaining of Petitioner's Foundational Objections to Respondent's Child Support Calculations

¶ 75 Respondent argues:

> "The [j]udge refused to accept as exhibits from [respondent] his calculation of child support. *** It was an abuse of discretion in this matter for the [c]ourt to refuse to accept the child support calculation exhibits of [respondent]. The [j]udge had actually asked the parties to file their calculations with the clerk at an earlier hearing[,] and [respondent] did so. It is this same calculation that he attempted to present as evidence."

¶ 76 The exhibits to which respondent refers apparently are defendant's exhibit Nos. 2 and 3. Petitioner objected to both exhibits on the ground of a lack of foundation, and the trial court sustained the objections, remarking that it had "heard no testimony from any witness laying foundation under the rules of evidence for the admission of the documents."

¶ 77 To have a document admitted in evidence, the proponent must lay a foundation by presenting evidence that the document is what the party claims it is. *Piser v. State Farm Mutual*

Automobile Insurance Co., 405 Ill. App. 3d 341, 348 (2010). Typically, "the proponent establishes the identity of the document through the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that a particular item is, in fact, what its proponent claims it to be." (Internal quotation marks omitted.) *Id.* at 349. In the present case, the trial court sustained petitioner's foundational objections because the court had heard no such testimony. To make good on his claim that the court thereby abused its discretion (see *Village of Woodridge v. Board of Education of Community High School District 99*, 403 Ill. App. 3d 559, 570 (2010)), respondent would have to cite some authority that exempted him from laying a foundation for those documents. Respondent cites no such authority. We are aware of no case holding that a document is self-authenticating simply by virtue of having been filed with the circuit clerk. Again, "[a]rguments unsupported by citation to legal authority are considered as forfeited on appeal." *Neuhengen v. Global Experience Specialists, Inc.*, 2018 IL App (1st) 160322, ¶ 155.

¶ 78 III. CONCLUSION

¶ 79 For the foregoing reasons, we affirm the trial court's judgment.

¶ 80 Affirmed.