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2019 IL App (5th) 170412-U

NOTICE
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NO. 5-17-0412

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
SIMON Z. TAYLOR,)	Fayette County.
)	
Petitioner-Appellant,)	
)	
and)	No. 17-D-48
)	
CASEY M. TAYLOR, n/k/a Casey M. Carroll,)	Honorable
)	Kevin S. Parker,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the father failed to demonstrate a substantial change in circumstances warranting a reduction in child support was not against the manifest weight of the evidence. The court was not required to impute income to the mother where the evidence showed that she worked part-time outside the home and supplemented her income by selling crafts and doing other work from home in order to minimize child care expenses. The court was not required to find that the mother was not credible where she calculated her monthly income incorrectly but provided all of the necessary information to allow the court to determine her income.

¶ 2 The petitioner, Simon Z. Taylor, appeals an order denying his petition for a modification in child support. He argues that (1) the court's finding that he failed to

demonstrate a substantial change in circumstances justifying a modification in child support was against the manifest weight of the evidence, and (2) the court erred in refusing to allow further inquiry into statements by the respondent, Casey Carroll, that he claims "appeared false and misleading" and in failing to make express findings concerning Casey's credibility. Simon also asks this court to remand this matter to the trial court because "new and material evidence has been discovered" after he filed this appeal. We affirm.

¶ 3 The parties were married in July 2004. Their only daughter, Aaralyn, was born in September 2006. The parties' marriage was dissolved by a court in Washington State on May 9, 2009. At that time, Simon was serving full-time in the United States Army, while Casey was a stay-at-home mother to two-year-old Aaralyn. The Washington court found that Simon's net income at that time was \$2011 per month. It imputed an income of \$1807 per month to Casey, finding that she was "voluntarily unemployed." The court ordered Simon to pay Casey \$306 per month in child support for Aaralyn.

¶ 4 Both parties relocated multiple times after their marriage ended, and Simon was honorably discharged from the Army in January 2013. When these proceedings began in 2017, Simon was living in Portland, Oregon. Casey and 10-year-old Aaralyn were living in Fayette County, Illinois, with Casey's younger daughter from a subsequent relationship.

¶ 5 In May 2017, Simon filed a petition to register the Washington dissolution judgment in the circuit court of Fayette County. He then filed a petition to modify child support. In his petition, Simon alleged that two substantial changes in circumstances had

occurred since the dissolution order was entered. First, he alleged that his income was "significantly reduced while he attends college." Second, he alleged that Casey's income had increased because she was "currently working[,] as opposed to when the previous order was entered and she was unemployed." He argued that these changes in circumstances justified modifying the original child support order.

¶ 6 Prior to the hearing in this matter, both parties submitted financial affidavits to the court. Simon stated in his affidavit that his gross monthly income was \$1633, including regular employment earnings of \$1333 per month and a stipend of \$300 per month from the Post-9/11 GI Bill. He reported deductions of \$425 per month for a net monthly income of \$1208. At trial, he introduced into evidence pay stubs and direct deposit vouchers. These showed that Simon earned \$14 per hour at the beginning of 2017 and that his salary was increased to \$16 per hour in April 2017. The number of hours he worked varied considerably from paycheck to paycheck. We note that, as we will discuss later, it is not clear how he arrived at the figure of \$1333 per month.

¶ 7 In Casey's financial affidavit, she reported a gross monthly income of \$1557, including \$1024 per month in regular employment earnings, \$227 per month in SNAP benefits, and the \$306 per month she received as child support. She reported \$241 in deductions for a net monthly income of \$1316 per month. Attached to her affidavit was a pay stub showing that for the two-week pay period ending July 7, 2017, Casey worked 48 hours at a pay rate of \$10.67 per hour. This represented her regular schedule working for the Fayette County Health Department. As we will discuss later, Casey supplemented her income through sales of crafts, babysitting, and other work she could do from home.

Casey indicated on her financial affidavit that she was both self-employed and employed by the Fayette County Health Department; however, she did not include in her calculation of her monthly income any income from sources other than her regular employment. We note that Casey appeared *pro se*. We further note that, as we will discuss later, her self-employment income was sporadic and variable.

¶ 8 The court held a hearing in the matter on September 19, 2017. Simon testified that when the parties divorced in 2009, he was receiving an "active duty" salary, but that at the time of the hearing, he was "making a lot less than that as a full-time student and working part-time." Simon testified that he was honorably discharged from the military in January 2013. It took him a few months for him to find work after leaving the military. He estimated that he began working in April 2013. Simon further testified that he had been in college either full-time or part-time since his discharge from the Army. He did not specify whether he previously worked full-time while going to college part-time. Simon explained that he received funding for his education from the Post-9/11 GI Bill. This included money for his tuition, money to help pay for textbooks, and a stipend.

¶ 9 Simon testified that at the time of the hearing, he was going to school full-time and working part-time in a dental office. He noted that he would finish his four-year degree in May 2018, and he intended to begin dental school in the fall of 2018. During the school year, he worked 20 hours per week. During the summer, he worked 35 hours per week, except during Aaralyn's visits, when he worked fewer hours. Simon anticipated that when he began dental school, he would only work "some hours here and there" due to the increased demands of his schooling.

¶ 10 Simon called Casey as an adverse witness. She testified that she had a four-year degree, but she acknowledged that she had never held a job that required a four-year degree. She further testified that she had a younger daughter for whom she did not receive any child support.

¶ 11 Because Simon's arguments concerning Casey's credibility focus on her testimony related to her current income, we must set forth that testimony in detail. Simon's attorney first asked Casey if Exhibit B was an accurate reflection of her income. Exhibit B included copies of pay stubs that Casey provided to Simon during discovery. They showed that she worked 24.75 hours per week, rather than the 24 hours per week reflected in the pay stub attached to her financial affidavit. Casey testified that her hours were reduced slightly shortly after she provided counsel with the pay stubs in Exhibit B. She explained that she previously took a 45-minute lunch break, but her employer told her to take a full hour for lunch due to budgetary constraints.

¶ 12 Counsel then questioned Casey extensively about her self-employment income. He focused on her sales of crafts on Etsy. Casey testified that she sells knit and crocheted items and other crafts through an online "shop" on Etsy. She explained that her sales from the Etsy shop vary "depending on the time of the year." She noted that most of her sales are made around Halloween and Christmas. She acknowledged, however, that she "maybe" sold a knitting pattern for \$5 sometime in the first half of 2017.

¶ 13 Casey acknowledged that in response to a request to admit, she told Simon's attorney that she currently had no outside income. Counsel asked her whether she wanted to change that answer in light of her testimony about her Etsy shop. Casey replied, "No. I

would like to clarify my answer." Counsel responded, "Please do." Casey then explained that her Etsy sales were seasonal. She further explained that at the time she answered the request to admit, she had sold only one or two items all year. She stated, "When I gave you my tax return for last year, I told you that I had my self-employment." Counsel objected to this testimony, arguing that it was unresponsive and that Casey was giving a narrative. The court overruled the objection, telling counsel, "You asked her to clarify and she's attempting to clarify."

¶ 14 Counsel went on to confront Casey with a printout of a review for a pair of earrings she sold in April 2017. Casey testified in response, "I sold those earrings for maybe \$8." Counsel then stated, "That's not the point. The point is I've asked you very specifically for all the income you are to provide, but instead of providing that, you've been evasive—" At this point, the court interrupted, stating, "Counsel, save that for argument. You'll have plenty of opportunity to make argument. Let's stick to the evidence right now."

¶ 15 Counsel indicated that he would move on, but he then asked Casey, "So based on those inconsistencies that I've provided, do you want to adjust the amount of income that you're earning per year pursuant to what you've testified to?" In response, Casey testified as follows:

"It would be hard to give you a number and say this is how much I make in a month on my Etsy shop because it varies drastically. It varies month to month, year to year, which is why I gave you my tax return, because it has everything and it has more of a general idea of what I might make with that self-employment

income in a year. *** And an eight-dollar sale here or there does not change my income that much."

Counsel responded, "But it changes it." He asked Casey to give a "ballpark estimate" of what she expected to earn from the sale of crafts and other outside income that year. She testified that she reported \$3800 in self-employment income in 2016. She explained \$1206 of this came from sales of crafts on Etsy, and the remainder came from babysitting and an online website-rating job she previously held, neither of which she was doing anymore.

¶ 16 Casey testified on her own behalf that she worked full-time until just before Aaralyn was born. At that point, she explained, she and Simon decided that it would be better for her to stay home to care for their baby. They made this decision for two reasons. First, the cost of daycare would exceed Casey's salary. Second, they wanted their daughter to be raised at home rather than in a daycare facility.

¶ 17 Casey testified that since the dissolution, she had cobbled together an income by working part-time outside the home and supplementing her income with "side jobs" where she could work from home. She explained that she did this so she would not have to put her daughters in daycare full-time. Casey testified that her job with the Fayette County Health Department was originally only two days a week, but when she was given the opportunity to work a third day, she took it. She further testified that she receives public assistance to help pay for child care. She explained that the amount of child care assistance she is eligible for is based on her income. As such, when she began working a third day at the Fayette County Health Department, the share of the child care cost she

was required to pay "more than doubled." Casey further testified that she hoped to begin working full-time in a few years, when Aaralyn would be old enough to babysit for Casey's younger daughter. This plan would allow her to increase her hours without incurring additional child care costs.

¶ 18 After the parties testified, the court heard arguments. Simon's attorney began by arguing that applying the new Illinois child support guidelines to the parties' stated incomes, Simon's child support obligation should be reduced from \$306 per month to \$234 per month. (We note that in reaching this figure, Simon's attorney used a monthly income of \$1333 for Simon, apparently ignoring the \$300 per month he received as a stipend under the Post-9/11 GI Bill.) He argued, however, that income should be imputed to Casey because she was "voluntarily underemployed" and had followed a pattern of being voluntarily underemployed throughout her adult life. He urged the court to impute \$5009 per month in income to Casey. This figure was based on statistics from the United States Labor Department for individuals with a four-year college degree. Simon further argued that Casey was not a credible witness because she had provided confusing and incomplete information about the craft sales from her Etsy shop and her other self-employment income.

¶ 19 Counsel concluded his argument at this point, saying, "Nothing further, Your Honor." The court, however, asked him to address "the threshold question of change of circumstances." In response, counsel argued that because Simon had "begun matriculating full-time" as a student, his ability to continue to pay \$306 per month in child support was "just not there." He further noted that Simon's efforts to better himself

through education would ultimately inure to the benefit of Aaralyn. The court asked, "Would you agree or disagree that [the] future benefit would only be after the child is, at minimum, 16 or 17 years of age?" Counsel replied, "Based on the testimony, yes, Your Honor."

¶ 20 Casey argued that Simon's increased earning potential might never benefit Aaralyn. She emphasized that, as the court noted, Aaralyn would be 16 or 17 years old before Simon graduated from dental school. She argued that he might not get a job as a dentist until after Aaralyn turned 18. Casey argued that if income is imputed to her based on her college degree, it should also be imputed to Simon because he held an associate's degree. She also noted that she turned down a full-time position because, after doing the math, she determined that working full-time would actually leave her with less money to support her daughters because she would lose her child care assistance, food stamps, and Medicaid. Casey further argued that Aaralyn's expenses increased as she got older.

¶ 21 The court issued its decision in a docket entry on September 26, 2017. The court first noted that the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) allows courts to modify child support orders upon a showing of a substantial change in circumstances. See 750 ILCS 5/510(a)(1) (West 2016). The court then noted that in Simon's petition to modify, he relied primarily on "a reduction in his income due to his pursuit of higher education" and secondarily on an increase in Casey's income. The court found that Simon's decision to go to school full-time, "while perhaps laudable, was voluntary and neither fortuitous nor unavoidable." The court emphasized that parents are responsible for making choices that do not deprive their children of support, an obligation

that is "not obviated by the hope or plan of future increased earnings." The court further found that any change in circumstances resulting from Casey's increased income was "more than offset by the presumed increase in [the] expenses of raising a child."

¶ 22 The court also rejected Simon's argument that income should be imputed to Casey, stating, "The Court rejects the suggestion that the Respondent, a single mother of two, is somehow shirking her mutual obligation to support the parties' child by only working 24 plus hours a week and supplementing her income selling crafts over social media sites." The court concluded that Simon failed to meet his burden of demonstrating the requisite substantial change in circumstances. It therefore denied his petition to modify child support.

¶ 23 Simon filed a motion to reconsider the court's ruling. He argued that Casey committed perjury or was in contempt of court because she did not include an estimate of her average monthly earnings from her Etsy shop in her calculation of her monthly income. Simon also argued—for the first time—that his honorable discharge from the military four years earlier constituted a substantial change in circumstances. The court denied the motion to reconsider. This appeal followed.

¶ 24 Simon first argues that the court erred in finding that he failed to demonstrate a substantial change in circumstances warranting a modification in his child support obligation. He argues that the evidence demonstrated substantial changes in the financial circumstances of both parties. As such, he contends, the court's finding to the contrary was against the manifest weight of the evidence. We disagree.

¶ 25 A child support order may be modified upon a showing of a substantial change in circumstances. *In re Marriage of Rash*, 406 Ill. App. 3d 381, 388 (2010) (citing 750 ILCS 5/510(a)(1) (West 2008)). A decision to modify child support is a matter within the sound discretion of the trial court, and we will not reverse its decision absent an abuse of that discretion. *Id.* However, a court may only consider modifying child support after it has determined that a substantial change in circumstances has occurred. *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 823 (2004). The party seeking to modify child support has the burden of demonstrating that the requisite substantial change in circumstances has occurred. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 34 (1997). The existence of such a change is a question of fact. Thus, we will not reverse the court's finding on this question unless it is against the manifest weight of the evidence. *Armstrong*, 346 Ill. App. 3d at 821.

¶ 26 Simon's argument that the court's finding was against the manifest weight of the evidence has three components. First, he argues that the evidence demonstrated that his income was significantly lower than it was when the Washington court ordered him to pay child support of \$306 per month due to his discharge from the Army. Second, he argues that the evidence demonstrated that Casey's income had increased since the initial order was entered because she was no longer unemployed. And third, he contends that, assuming the actual increase in Casey's income does not constitute a substantial change in circumstances, the court should have imputed income to her. We do not find any of these arguments persuasive.

¶ 27 In support of his contention that there was a substantial change in his circumstances due to his discharge from the Army, Simon urges this court to take judicial notice of the fact that active-duty members of the military are paid substantially higher wages than individuals who have only a high school diploma are paid in civilian employment. (We note that the record does not indicate what, if any, training Simon received in the Army that might give him marketable job skills, and neither party testified concerning Simon's level of formal education.) Simon further urges us to take judicial notice of the fact that the military provides additional benefits, such as on-base housing and medical benefits.

¶ 28 We decline to do so. While these observations may well be true statistically, the record in this case belies any claim that Simon's earning capacity decreased solely as a result of his decision to leave the Army. As we have discussed, the evidence showed that he was earning \$16 per hour when the hearing was held in this matter. If he chose to work full-time at this rate of pay and attend school part-time, his gross monthly income would have been \$2773 per month from his employment. There was no evidence that full-time work was not available for Simon. He also received a \$300-per-month stipend from the Post-9/11 GI Bill, although we do not know whether this stipend would remain available if Simon were to attend college part-time. Even assuming the stipend would not be available, the evidence shows that if Simon worked full-time, his income at the time of the hearing would have been *more* than his net monthly income of \$2011 when the original order was entered. To find that Simon's discharge from the Army constituted a

substantial change in circumstances justifying a reduction in his child support obligation in the face of this evidence would be absurd.

¶ 29 We note that it is not clear whether Simon was living on a military base without having to pay rent at the time the Washington court entered the dissolution order. If so, the increase in Simon's earning potential would be offset to some extent by the need to pay for housing. However, in light of the increase in Simon's earning capacity and the lack of evidence on this point, this possibility does not alter our conclusion that the evidence supports the trial court's finding.

¶ 30 In further support of his claim that his honorable discharge constituted a substantial change in circumstances, Simon calls our attention to *Edwards v. Edwards*, 125 Ill. App. 2d 91 (1970). The initial dissolution order in that case called for the father to pay \$95.20 per month in child support. *Id.* at 93. The order provided that this amount was to be paid " 'through government allotment during the period of [the father's] service in the United States armed forces.' " *Id.* Several months after the father left the military, he filed a motion to modify his child support obligation. *Id.* The trial court reduced his child support obligation to \$20 per week after holding a hearing at which it considered the financial circumstances of both parents at the time of the hearing. *Id.* at 93-94.

¶ 31 The mother appealed, arguing that the trial court erred in finding that the father's discharge from the military constituted a substantial change in circumstances. *Id.* at 94. In rejecting her argument, the appellate court first emphasized that the decision to modify a child support order is a matter within the discretion of the trial court. *Id.* at 95. The appellate court found that the trial court did not abuse its discretion in finding a

substantial change in circumstances after considering the father's discharge from the military, the resulting discontinuation of a government allotment for child support, and the subsequent financial circumstances of the father. *Id.* The court also noted that the express language of the original support order contemplated that the amount of support would at least be reviewed upon the father's discharge from the military. *Id.*

¶ 32 We find no support in *Edwards* for Simon's argument that a discharge from the military alone is sufficient to demonstrate a substantial change in circumstances justifying a reduction in child support. As we have just discussed, the *Edwards* court upheld the trial court's finding that the father's discharge from the military constituted a substantial change in circumstances in light of his subsequent financial condition and the fact that his discharge meant that he would no longer receive a government allotment for child support. See *id.* In other words, the court found that the father in that case had demonstrated a substantial change of circumstances justifying a reduction in child support only after considering all of the pertinent changes that *actually occurred* after his discharge from the military. Here, as we have discussed, the court considered the actual circumstances at the time of the hearing and reached the opposite conclusion. For the reasons we have already discussed, we do not find the court's conclusion to be against the manifest weight of the evidence.

¶ 33 Simon, however, suggests that the court's refusal to find that his honorary discharge from the Army constituted a substantial change in circumstances "creates unintended consequences" and a "slippery slope." Specifically, he asserts that allowing the court's ruling to stand might force veterans "to shoulder a burden they can't afford

outside the military," thus forcing them to continue serving when they want to leave the military. Simon argues that this will lead to "a form of back door conscription." We find this argument hyperbolic and inappropriate.

¶ 34 Moreover, the claim has no merit. As the *Edwards* court recognized, a parent's discharge from the military *can* constitute a substantial change in circumstances. This is particularly true in light of the military benefits Simon points to in his brief—such as housing and medical insurance. However, whether a substantial change in circumstances has occurred that would justify a modification in child support is a fact-dependant inquiry that must be made considering all of the relevant circumstances of the case. See *Rash*, 406 Ill. App. 3d at 388. As we have already discussed, the facts in this case show that whatever Simon's financial circumstances were immediately after his discharge from the Army, he failed to show a substantial change in his circumstances at the time he filed his petition to modify child support four years later. The court's finding to that effect was not against the manifest weight of the evidence.

¶ 35 Simon next argues that the evidence showed that a substantial change in circumstances had occurred because Casey was no longer unemployed. We reject this contention for two reasons. First, as the court found, the increase in her income is offset by the presumed increase in the cost of raising the child. See *In re Marriage of Riegel*, 242 Ill. App. 3d 496, 499 (1993) (noting that courts may presume that the cost of raising a child increases as the child grows older); *People ex rel. Stokely v. Goodenow*, 221 Ill. App. 3d 802, 805 (1991) (noting that the cost of raising a child is presumed to increase over time both because "the child has grown older and the cost of living has risen").

Second, even though Casey obviously has more income now that she is employed, the Washington court imputed income to her of \$1807 per month. Thus, the amount of child support ordered was based on an assumption that she had \$1807 per month at her disposal.

¶ 36 Simon complains that it was inappropriate for the court to balance the presumed increase in Aaralyn's needs against the increase in Casey's income. He argues that the court essentially found that there were two substantial changes in circumstances, but ignored them because they "canceled each other out." We disagree. Not all changes in a parent's circumstances warrant modifications to child support. *Rash*, 406 Ill. App. 3d at 388. Changes in circumstances warrant modifying child support when this "equitable action by the court" is necessary to protect the child's best interest. *Singleteary*, 293 Ill. App. 3d at 35. The purpose of the child support provisions in the Dissolution Act is "to protect the rights of children to be supported by their parents in an amount commensurate with their income." *Id.* at 34. To that end, the increased needs of the child must be balanced against the ability of each parent to meet those needs. *Stokely*, 221 Ill. App. 3d at 805. As such, we believe the trial court correctly found that any increase in Casey's income did not warrant a reduction in child support because it can be presumed that the child's needs have increased.

¶ 37 Moreover, as previously noted, the amount of child support ordered by the Washington court was based on a presumption that Casey would have \$1807 in income if she were working. Although Illinois's child support guidelines did not take into account the income of both parents prior to the enactment of a 2017 amendment to the

Dissolution Act (see Ill. Legis. Serv. 2016, Pub. Act 99-764 (eff. July 1, 2017) (amending 750 ILCS 5/505)), Washington's guidelines did take both parents' incomes into account when the original support order was entered (see Wash. Rev. Code §§ 26.19.020, 26.19.080(1)). To the extent Casey's actual income rose to the level of the income that was previously imputed to her, it would make no sense to consider her employment a substantial change in circumstances because the income was already accounted for in setting the amount of child support.

¶ 38 The difference between Casey's actual income in 2017 and the income imputed to her in 2009 was not substantial. The evidence in the record showed that Casey earned approximately \$1109 per month from her job with the Fayette County Health Department ($\$10.67 \text{ per hour} \times 24 = \$256 \text{ per week} \times 52 = \$13,312 \text{ per year} \div 12 = \1109 per month). The evidence also showed that she earned approximately \$317 per month from various forms of self-employment ($\$3800 \text{ per year} \div 12 = \317). This gives Casey a gross monthly income of \$1426, which is still less than the income imputed to her by the Washington court. She also received \$227 in SNAP benefits; however, means-tested benefits such as SNAP benefits are not included in a parent's income for purposes of child support. See 750 ILCS 5/505(a)(3)(A)(i) (West Supp. 2017).

¶ 39 Simon argues that Casey's 2016 tax refund should also be included in her monthly income. Her tax refund was \$6771, or \$564 per month. We note, however, that because Simon did not offer Casey's 2016 tax return into evidence—even though it was provided to him during discovery—we have no way to know how much of her refund was attributable to the Earned Income Tax Credit or Additional Child Tax Credit and how

much was attributable to an overpayment of taxes. The former is generally considered to be income, while the latter is not. See *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 40 (explaining that tax refunds based on the overpayment of taxes are not income because they are already included in the party's gross income); *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 390-91 (2002) (same). Even giving Simon the benefit of the doubt and assuming that Casey's entire refund constituted income, her actual gross monthly income was \$1990 at the time of the hearing. This figure is not substantially higher than the \$1807 per month upon which the initial calculation was based, especially in light of the presumed increase in Aaralyn's needs. As such, we find that the court correctly rejected Simon's claim of a substantial change in circumstances based on an increase in Casey's income.

¶ 40 We next consider Simon's contention that the court should have found a substantial change in Casey's circumstances because it should have imputed income to her. There are two components to this argument. First, he argues that income should be imputed to Casey because she only works outside the home 24 hours per week. And second, Simon argues that Casey should be earning \$5009 per month, an average salary for a person with a four-year college degree according to Labor Department statistics. We find neither of these points persuasive.

¶ 41 Simon emphasizes that the Dissolution Act now requires the court to impute income to a parent who is "voluntarily unemployed or underemployed." See 750 ILCS 5/505(a)(3.2) (West Supp. 2017). His argument correctly states the law, but it overlooks a key point. Prior to the recent amendments of the Dissolution Act, courts had the

discretion to impute income to a parent who was voluntarily unemployed (or underemployed), but only after finding that (1) the parent was voluntarily unemployed (or underemployed), (2) the parent was attempting to evade a child support obligation, or (3) the parent unreasonably failed to take advantage of a job opportunity. *Blume*, 2016 IL App (3d) 140276, ¶ 30; *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). Under the current version of the statute, imputation of income is no longer discretionary once a court finds that a parent is voluntarily unemployed or underemployed. 750 ILCS 5/505(a)(3.2) (West Supp. 2017). However, this does not change the fact that a court may not impute income unless it makes this finding. See *Gosney*, 394 Ill. App. 3d at 1077. Here, the court did not make such a finding.

¶ 42 The trial court explicitly rejected Simon's claim that income should be imputed to Casey due to the fact that she works outside the home only 24 hours per week. Uncontroverted evidence showed that Casey supplemented her income by working from home. Uncontroverted evidence also showed that the cost of child care would increase if she were to work full-time outside the home. Simon highlights a statement that Casey made during her closing argument in which she noted that she turned down a full-time position because the loss of her child care assistance, SNAP benefits, and Medicaid coverage would more than cancel out the increased income. Statements made during closing arguments are, of course, not evidence. Moreover, in light of the reasons Casey gave for this decision, we do not believe it was an unreasonable one. See *Blume*, 2016 IL App (3d) 140276, ¶ 30; *Gosney*, 394 Ill. App. 3d at 1077. The court found that Casey was

not shirking her responsibilities to the parties' child, and we believe that finding was supported by the evidence we have just discussed.

¶ 43 The court did not expressly address Simon's argument that income should be imputed to Casey because she was earning less than the national average for any individual with a four-year college degree. We find that the evidence in the record does not support his claim that income should be imputed to Casey based on these statistics.

¶ 44 The obvious flaw in Simon's argument is that the Labor Department statistics he relies on do not account for a great many factors that determine an individual's actual earning capacity. They do not account for the loss in earning potential Casey experienced because of the parties' joint decision that she should leave the workforce to care for Aaralyn full-time. The Labor Department statistics also do not take into account the fact that some degrees are more lucrative than others or the fact that wages are higher in some geographic areas than in others. These are factors that a court must consider when determining how much income to impute to an underemployed parent. See 750 ILCS 5/505(a)(3.2) (West Supp. 2017) (mandating that the determination of "potential income" take into account the parent's "work history, occupational qualifications, prevailing job opportunities, *** and earnings levels in the community").

¶ 45 If, as in this case, there is insufficient evidence to allow the court to determine a parent's potential income based on these considerations, the statute creates a rebuttable presumption that the parent's potential income is 75% of the federal poverty level for a family of one. See *id.* Casey's actual income at the time of the hearing exceeded this figure. The poverty level for a family of one at the time of the hearing was \$12,060 per

year. See 2017 Poverty Guidelines, <https://aspe.hhs.gov/2017-poverty> (last visited Mar. 11, 2019). Seventy-five percent of that figure is \$9045 per year, which is less than Casey's actual income. Thus, the record in this case contains no evidence that Casey's potential income exceeded her actual income, and it certainly does not support Simon's suggestion that Casey's potential income was \$5009 per month.

¶ 46 In summary, the court did not find that Casey was voluntarily underemployed, and the court rejected Simon's argument that there was a substantial change in circumstances based on the actual incomes of both parties. These findings were not against the manifest weight of the evidence. As such, we agree with the court that Simon failed to demonstrate a substantial change in the circumstances that would justify a reduction in child support.

¶ 47 We now turn our attention to Simon's arguments concerning Casey's credibility. He argues that (1) the court erred in refusing to allow his attorney to inquire further into testimony that he claims was false or misleading, and (2) the court erred in failing to make express findings concerning Casey's credibility. He also notes that judgments may be voidable if they are based on false testimony or concealment of evidence. We reject these arguments.

¶ 48 The record affirmatively rebuts Simon's claim that the court refused to allow his attorney to question Casey on matters related to her credibility or the completeness of the evidence of her income she supplied. Counsel cross-examined Casey extensively concerning the alleged inconsistencies and gaps in the evidence she supplied. Casey, who appeared *pro se*, did not make objections to any of these questions. At one point, the court interrupted counsel and told him to "save that for argument." At that point in his

cross-examination, counsel was not asking a question; rather, he was arguing that Casey's statement about the insignificance of the income she made from the sale of a pair of earrings was "not the point" and accusing her of being "evasive." Although the court did stop counsel from arguing with Casey while she testified, the court did not stop him from questioning her on any matters relevant to her credibility.

¶ 49 We also reject Simon's claims that the court erred in accepting Casey's testimony and/or in failing to make any express determinations concerning her credibility. We emphasize that the trial court is in a better position than is this court to assess the credibility of witnesses and to resolve any conflicts in the evidence. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 35. Moreover, we find nothing in the record to suggest that there was any reason for the court to treat Casey's testimony as suspect.

¶ 50 We acknowledge that Casey's *calculation* of her monthly income in her financial affidavit was incorrect based on the evidence she supplied. As noted earlier, she did not include the income she made from selling crafts or other self-employment earnings in her calculations. She also determined that her income from the Fayette County Health Department was \$1024 per month, a figure derived from doubling the gross income in her biweekly paycheck. As we explained earlier, a more accurate figure would have been \$1109 per month.

¶ 51 However, it is clear that Casey provided accurate and complete *information* concerning her sources of income to both the court and Simon's counsel. She provided both counsel and the court with copies of her pay stubs, and she testified that she provided Simon's attorney with a copy of her 2016 tax return. Although counsel chose

not to admit the tax return into evidence, Casey testified that her income from self-employment was \$3800 for that year, including \$1206 from her Etsy shop. We can discern no pattern of deception and no effort to hide income.

¶ 52 It is also worth noting that Simon's calculation of his income suffered from a similar infirmity. He alleged that his monthly gross income was \$1333 from regular employment. However, as mentioned earlier, it is not clear how he arrived at this figure. He testified that he worked 20 hours per week during the school year, and his pay stubs indicated that he earned \$16 per hour. Based on this evidence, his gross monthly income from his job should have been \$1387 ($\$16 \times 20 \text{ hours} = \$320 \text{ per week} \times 52 = \$16,640 \text{ per year} \div 12 = \1387 per month). On his financial affidavit, Simon reported \$7825 in gross income from employment during the first six months of 2017, which would yield a gross monthly income of \$1304. However, the direct deposit voucher attached to the financial affidavit showed that although Simon earned \$7825 for the hours he worked in the first six months of 2017, his total pay, including holidays and paid time off, was \$8327, or \$1388 per month.

¶ 53 Although neither party's calculation of income was entirely clear or accurate, the court had before it all of the pertinent information necessary to make its determination. The court apparently found Casey to be credible, and we find this determination to be reasonable. We do not believe there is anything in the record to suggest that Casey misled the court or hid income. We find no error in the court's ruling.

¶ 54 Finally, we consider Simon's request that this court remand this matter for a new hearing because material evidence was "discovered" after he filed this appeal. That

evidence consists of a notice Simon received in March 2018 informing him that the Department of Veterans Affairs (VA) determined that he has a service-connected disability with an onset date of August 1, 2016. He argues that because his disability is rated at 60%, "all but eliminating his capacity to maintain substantial gainful employment," the VA notice is material evidence that must be considered by the trial court. We note that the VA notice is not really newly discovered evidence concerning the circumstances that existed at the time of the hearing in this matter; rather, it is an indication that circumstances may have changed since that time. In any case, we believe that filing either a motion to reopen proofs or a new motion to modify child support based on the disability determination would be a more appropriate avenue for raising this claim. We therefore decline to remand for further proceedings on the basis of the notice from the VA.

¶ 55 For these reasons, we affirm the court's ruling.

¶ 56 Affirmed.