NO. 4-10-0418 Order Filed 5/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
DIANA D. McCALL, n/k/a DIANA D. GORDON,	)	Circuit Court of Champaign County
Petitioner-Appellee,	)	No. 98D308
and	)	
ALLEN D. McCALL,	)	Honorable
Respondent-Appellant.	)	Arnold F. Blockman,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

Held: (1) The emancipation of one of the parties' minor children does not mandate a reduction of child-support payments.

(2) Where the trial court explained how the child-support payor's deceitful activities impacted the court's previous calculation of child support to the benefit of the payor, the trial court was not merely punishing the payor when it refused to modify child support.

In May 2008, respondent, Allen D. McCall, filed a petition to modify his child support and maintenance payments to petitioner, Diana D. McCall, now known as Diana D. Gordon. After a lengthy hearing on respondent's modification petition and other pending matters, the trial court denied respondent's petition.

Respondent appeals, asserting the trial court erred by not reducing his monthly child-support payments. We affirm.

I. BACKGROUND

The parties married in May 1980 and had two children,

Evan (born in January 1989) and Morgan (born in October 1991). In May 1998, petitioner filed a petition for the dissolution of the parties' marriage. In July 1998, the trial court awarded the parties a judgment of dissolution but did not enter the written dissolution judgment until September 2000. In December 1999, the court approved the parties stipulated order that awarded petitioner custody of the parties' children. In January 2003, the court entered its final judgment on the ancillary issues and ordered respondent to pay petitioner $4,665 in child support and $5,920 in maintenance each month. Respondent filed a motion to reconsider, which the court denied.

In March 2003, respondent appealed the trial court's January 2003 judgment and the denial of his motion to reconsider (case No. 4-03-0286). In April 2003, petitioner filed a petition to fix attorney fees for the appeal. The next month, the court granted the petition and ordered respondent to pay $2,500 for petitioner's attorney fees on appeal. In June 2003, respondent appealed the court's May 2003 order (case No. 4-03-0509). On appeal, this court consolidated the two cases, affirmed the trial court's January 2003 judgment, and reversed the court's May 2003 order. *In re Marriage of McCall*, Nos. 4-03-0286, 4-03-0509 cons. (March 30, 2004) (unpublished order under Supreme Court Rule 23), *appeal denied*, 211 Ill. 2d 581, 823 N.E.2d 967 (2004).

In October 2003, respondent filed a petition to modify maintenance. In February 2004, petitioner filed a petition to modify child support. In July 2005, the trial court granted both

petitions and ordered respondent to pay petitioner $7,800 in child support and $5,000 in maintenance each month.

On August 10, 2007, petitioner filed a petition for adjudication of indirect civil contempt for respondent's failure to comply with court orders. That same day, petitioner also filed a petition for educational expenses, seeking respondent to contribute to Evan's college expenses. On October 30, 2007, the court entered an agreed order on some of the issues raised in the August 2007 indirect-civil-contempt petition. On November 19, 2007, petitioner filed another indirect-civil-contempt petition, asserting respondent failed to comply with the October 30, 2007, order.

On April 18, 2008, petitioner filed a petition to enjoin, noting respondent had filed a petition for modification of child support and maintenance in Cook County and seeking to prevent him from proceeding in that case. In re Marriage of McCall, No. 08-D-02954 (Cir. Ct. Cook Co.). After an April 24, 2008, hearing, the trial court granted the petition and ordered respondent to dismiss the Cook County case. The court reserved the issue of attorney fees. On May 6, 2008, respondent filed a motion to modify child support and maintenance in this case and a motion for change of venue. In July 2008, the court denied the change-of-venue motion. On November 26, 2008, petitioner filed a motion for sanctions under Illinois Supreme Court Rules 219(a) and 219(c) (eff. Mar. 28, 2002), which the court took under advisement with the case.

A December 4, 2008, docket entry states the trial court commenced an evidentiary hearing on the pending matters and heard evidence. However, a reading of the record in its entirety indicates the hearing was actually held on December 2, 2008. The appellate record does not contain a report of proceedings under Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005) for that proceeding. It appears from the docket entry and statements at the later proceedings that, at the hearing, petitioner began her presentation of evidence by calling respondent as an adverse witness. After hearing some of respondent's testimony, the court granted the continuance prayed for in petitioner's sanction motion and reopened discovery.

On August 3, 2009, the trial court resumed the hearing. We note the appellate record does not contain the exhibits and evidence depositions admitted at the hearing. The relevant evidence that we do have is discussed in the analysis section.

When respondent rested his case on August 6, 2009, petitioner made a motion for a direct finding that respondent had failed to meet his burden of proof as to the matter of modification of maintenance, not child support. In explaining to respondent counsel that petitioner's motion was not addressing child support, the court made the following statement:

> "As to the argument, he's moving for a directed finding not on the modification of child support because he's claiming that there's evidence--I mean, there's obviously--

> obviously, the child support should be modified because of one of the children had reached 18, but he's asking for a directed finding on the issue of maintenance based on the argument that there hasn't been a showing of change of circumstances."

The court denied petitioner's request for a directed finding.

At the conclusion of all of the evidence, the trial court ordered the parties to file written closing arguments. In October 2009, the court heard arguments on the written submissions. On December 23, 2009, the court entered a 49-page memorandum opinion and order, addressing all of the outstanding issues except for the amount of attorney fees.

As to respondent's request for child support, the trial court found a substantial change in circumstances based on Evan turning 18 and graduating from high school. However, the court denied respondent's modification request. The court first addressed the other reasons for modification of child support raised by respondent and found (1) respondent's change in employment was voluntary and not in good faith, (2) respondent failed to prove his medical condition substantially inhibits his ability to earn a living, (3) respondent was now in a better income position since he did not have his own practice and was receiving tax-free disability income in addition to his $400,000 plus salary, and (4) the evidence did not show respondent had to diminish his assets to meet his support obligations. The court

then explained reducing respondent's child-support payments to 20% of net income using the figures and deviation factors used in 2005 would be unfair, unjust, and inequitable because respondent hid his real income situation from the court during the 2005 proceedings. The court noted four specific instances of misrepresentation that, if known in 2005, the child-support-guideline calculations would have been much higher.

Regarding the payment of Evan's college expenses, the trial court noted petitioner requested respondent pay 100% of them as punishment for his misrepresentations. The court responded it would be equitable and consider all of the facts and circumstances. Included in the factors the court considered was respondent had paid $7,800 per month in child support and $5,000 per month in maintenance, "a hefty amount of money by any standard." Moreover, respondent did not agree to contribute to Evan's education at Miami of Ohio University before he enrolled there. The court also noted Evan had attended public schools before college and the parties had attended public universities. The court ordered respondent to pay half of Evan's college expenses based on the cost of attending the University of Illinois, not Miami of Ohio.

On January 21, 2010, respondent filed a notice of appeal. This court dismissed the appeal on petitioner's motion. *In re Marriage of McCall*, No. 4-10-0063 (March 9, 2010) (motion order dismissing appeal). In April 2010, petitioner filed another indirect-civil-contempt petition, which remained pending

at the time of respondent's June 2010 notice of appeal. On May 10, 2010, the trial court entered a memorandum opinion and order on the amount of attorney fees. The order addressed all of the issues that were reserved in the court's December 2009 order. Additionally, the order contained a finding that no just reason existed to delay enforcement or appeal under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). On June 2, 2010, respondent filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Rule 304(a).

II. ANALYSIS

On appeal, respondent only really challenges the trial court's denial of his request for a reduction in his monthly child-support payments. While respondent did include the court's denial of his request for modification of maintenance in listing his issue, he did not provide any argument or support authority addressing maintenance, and thus he has forfeited any issue as to maintenance. See *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 333, 815 N.E.2d 1251, 1256 (2004). Petitioner asserts respondent has also forfeited his child-support issue by failing to provide citation to legal authority and the appellate record. While respondent's brief does not completely comply with Illinois Supreme Court Rule 341(h) (eff. Sept. 1, 2006), a great deal of respondent's argument focuses on the trial court's order, which is easily located in the record. Accordingly, we find respondent has not forfeited his child-support issue.

The modification of child-support payments lies within the trial court's sound discretion, and thus this court will not disturb a trial court's modification order absent an abuse of that discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135, 820 N.E.2d 386, 389 (2004). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005).

The record on appeal is lacking a transcript, the exhibits, and the evidence depositions related to the hearing on respondent's motion to modify child support and maintenance. Respondent, as the appellant, had the burden to present a sufficiently complete record. See *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001). Regarding an incomplete record, our supreme court has stated the following:

> "This court has long recognized that to support a claim of error, the appellant has the burden to present a sufficiently complete record. [Citations.] From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant. [Citation.] An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be re-

> viewed absent a report or record of the proceeding. [Citations.] Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009).

Additionally, the supreme court has stated "[a]ny doubts stemming from an inadequate record will be construed against the appellant." *People v. Hunt*, 234 Ill. 2d 49, 58, 914 N.E.2d 477, 481 (2009).

Section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510(a)(1) (2008)) provides a trial court may modify child support when a substantial change in circumstances has been shown. In this case, the trial court found a substantial change in circumstances occurred since Evan had turned 18 and graduated from high school. See *In re Marriage of Tieman*, 237 Ill. App. 3d 847, 852, 604 N.E.2d 1098, 1102 (1992) (noting the child's attainment of majority is a substantial change in circumstances). Moreover, section 510(d) of the Dissolution Act (750 ILCS 5/510(d) (West 2008)) provides the following:

> "Unless otherwise provided in this Act, or as agreed in writing or expressly provided

> in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier ***."

While the parent's obligation to support a child terminates as provided in section 510(d), that termination of support for one child does not automatically mean a reduction in child-support payments when the parties still have at least one minor child. In rejecting a payor's unilateral reduction of child-support payments when one child was emancipated, our supreme court explained the following:

> "The modification of such payments is solely a judicial function which is to be administered only by the court and in its discretion. [Citation.] It is the function of the court to determine whether there should be a *pro rata* reduction in lump-sum periodic support payments when one of several children is emancipated, or whether other equitable considerations require that the reduction be a lower amount, or *in fact whether there should*

> *be any reduction in the payments*. Automatic reduction in support payments in a case such as the one before us constitutes an infringement upon the discretionary powers of the court to modify an award. *** In view of the foregoing, we hold that the unilateral *pro rata* reduction of lump-sum periodic support payments for the benefit of more than one child upon the emancipation of a child is impermissible under the new act, as well as under the common law." (Emphasis added.) *Finley v. Finley*, 81 Ill. 2d 317, 329, 410 N.E.2d 12, 17-18 (1980).

Additionally, section 510(a) of the Dissolution Act uses the language, "[a]n order for child support *may* be modified." (Emphasis added.) 750 ILCS 5/510(a) (West 2008). Thus, the trial court was not required to reduce respondent's child-support payments when Evan turned 18 and graduated from high school.

Moreover, without citing legal authority, respondent suggests the trial court was bound by its comment regarding petitioner's request for a directed finding. First, the court's comment appears to highlight the fact evidence clearly existed for a modification of child support, not that a modification would clearly take place. Second, even if the court was commenting a modification would take place, the comment was irrelevant to the issue before the court, and the court had yet to hear all

of the evidence in the case and the parties' arguments. The fact the court later declined to modify child support after the aforementioned comment does not entail the court abused its discretion.

Respondent further contends the trial court abused its discretion because the court would not reduce his child support as punishment for his lack of credibility. We disagree.

First, the trial court knew of respondent's concealment and other devious activities when it made the comment highlighted by respondent in addressing the directed-finding request. Second, the trial court addressed respondent's lack of credibility; history of misrepresentation, concealment, and fraud as to his assets; and refusal to comply with discovery in a separate section from its analysis of respondent's modification petition. Third, in response to petitioner's request to pay all of Evan's college expenses that noted respondent's fraudulent activities, the court made a point that, while it was upset with respondent for his behavior and activities, it needed to be equitable and consider all of the circumstances.

Additionally, the court thoroughly explained its logical reason for not modifying child support. The court noted how it calculated the amount of child support in 2005, the statutory guidelines (see 750 ILCS 5/505(a)(1) (West 2008)), and what it would typically do with a modification due to the emancipation of one minor, *i.e.*, reduce the child support to the now appropriate percentage of income. However, the court declined to

follow the normal procedure because respondent had not fully presented his financial picture to the court in 2005. The record that we do have contains evidence supporting that finding. The court found the enumerated missing information would have made the child-support-guideline calculations much higher. Since respondent's child-support payment would likely have been higher than the $7,800 amount for two children, it is logical that a reduction for the remaining child was not warranted. Moreover, the court explained respondent was actually in a better position income wise at the time of the hearing on the current petition than in 2005. While the court's refusal to modify child support was tied to respondent's misrepresentations, deceit, and hiding of income, the court explained how that impacted the 2005 child-support payments, and thus we disagree the trial court was merely punishing respondent when it denied the modification petition.

To the extent respondent challenges the trial court's factual findings, *i.e.*, respondent's job change was not made in good faith, the record does not contain all of the evidence presented at the hearing, and thus we presume the trial court's finding had a sufficient factual basis and conformed to the law (see *Gulla*, 234 Ill. 2d at 422, 917 N.E.2d at 397).

Accordingly, we find the trial court did not abuse its discretion by not modifying respondent's child-support payments.

III. CONCLUSION

For the reasons stated, we affirm the Champaign County circuit court's judgment.

Affirmed.