

NOTICE
Decision filed 01/10/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 210100-U

NO. 5-21-0100

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
RICHARD L. REED,)	Effingham County.
)	
Petitioner-Appellant,)	
)	
and)	No. 12-D-40
)	
RACHELLE A. REED,)	Honorable
)	Jeffrey A. DeLong,
Respondent-Appellee.)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Cates and Wharton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s denial of the petition to modify maintenance is affirmed where petitioner failed to provide any evidence explaining his reduced income.
- ¶ 2 Petitioner, Richard L. Reed, appeals the trial court’s order denying his petition to modify maintenance contending that: (1) *ex parte* communications occurred between the trial court and respondent’s counsel; (2) petitioner’s constitutional rights were violated when he was forced to use a public room to attend the April 1, 2021, Zoom hearing; and (3) the trial court erroneously denied his petition to modify maintenance because the statute does not require him to provide a reason for his reduced income and the court is without authority to require him to find another line of work. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Petitioner, Richard L. Reed, and respondent, Rachelle A. Reed, were divorced on December 10, 2013, following 18 years of marriage. On April 10, 2014, the trial court's property distribution order awarded Rachelle, *inter alia*, \$1000 for monthly maintenance based on Richard's monthly income of \$4500. On March 12, 2015, the trial court increased the monthly maintenance award to \$1500 after finding that Rachelle was unemployed and disabled due to numerous health conditions. Thereafter, the trial court reduced the monthly maintenance award to \$1250 on February 23, 2017, \$750 on July 6, 2018, and \$547.73 on November 6, 2019.

¶ 5 The November 6, 2019, order noted that Richard provided un rebutted testimony that he was a homeless veteran making \$150 a month, but his financial affidavit revealed that he grossed \$21,909 the year before with a monthly rent or mortgage payment of \$750. The court further found that:

“[T]he most accurate current income of petitioner is based on last year's income. Furthermore, the petitioner did not meet his burden to show why income would have decreased so much within the last year. The court also seriously questions petitioner's credibility based on the history of this case as well as the testimony regarding being homeless and paying rent or a mortgage. Petitioner's current maintenance payment is reduced to \$547.73 per month starting in December 2019. This calculation is based on the statutory calculations of maintenance with the party's income.”

¶ 6 On May 29, 2020, Rachelle filed a petition for adjudication of indirect civil contempt contending, *inter alia*, that the “last maintenance payment made by the petitioner in full was a significant time ago.” Richard responded to the petition contending that “a payment of \$1200 was

made on 05/01/20” and that “when funds were available, the Petitioner has made payments to cover most overdue payments.”

¶ 7 On June 5, 2020, Richard filed a petition for reduction of spousal maintenance. Richard alleged that he was currently ordered to pay Rachelle \$547.73 each month. He claimed that the maintenance guidelines, outlined in section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West 2020)), required the maximum payment to be less than one third of the payor’s annual income but the court-ordered payment was “more than five times the current income of petitioner.” He further claimed the “respondent has other means of support,” spousal maintenance was no longer warranted, and requested a termination of his maintenance obligation.

¶ 8 On June 12, 2020, a hearing was held on Rachelle’s rule to show cause at which time the court found Richard was delinquent on his maintenance payments but, due to Covid-19, gave him additional time to make the payments. The court directed Richard to provide information to Rachelle regarding any surgery or medical reason he was unable to work. Richard’s petition to reduce maintenance was set for September 14, 2020.

¶ 9 On August 10, 2020, Richard filed a financial affidavit that stated his gross income in 2019 was \$8887 and in 2020 (through August 10, 2020) was \$495.50. The document listed his total income available per month as negative \$635.79 after paying maintenance, rent, and gas. The attached 2019 federal tax form also listed Richard’s income as \$8887 based on Schedule 1, line 9. No copy of Schedule 1 was included in the filing.

¶ 10 On September 14, 2020, the court noted the parties agreed that Rachelle would file an updated financial affidavit and comply with the outstanding discovery within the next 21 days. On December 2, 2020, Rachelle filed a financial affidavit stating her 2018 income was \$12,142 and

her 2019 income was \$6600. Her income was comprised of \$1000 monthly from her mother and the \$547.73 court-ordered maintenance. Excluding Richard's maintenance payments, her total available monthly income was negative \$277.

¶ 11 On December 3, 2020, the court noted that neither party produced the items the court previously ordered. Richard was ordered to update his medical information, including records and reports, regarding his inability to work, and Rachelle was ordered to produce copies of her 2018 and 2019 bank statements as well as an affidavit regarding production of any trust documents.

¶ 12 A status hearing was held on February 24, 2021, at which time the court determined that the parties were ready for hearing. Richard's previously filed exhibits were removed by court order and Richard was directed to file his exhibits under seal because they contained confidential information. Richard refiled his exhibits, consisting of his 2020 federal and Illinois tax returns under seal on March 3, 2021.

¶ 13 A Zoom hearing was held on April 1, 2021, at which time Richard, *pro se*, submitted his tax returns and financial affidavit into evidence. The court asked Richard if he had any evidence he wished to present as to the factors, and Richard replied, "It's all in the tax returns and on the financial affidavits." He affirmatively declined the opportunity to testify on his own behalf or call any witnesses at the hearing.

¶ 14 Rachelle's counsel was asked if he had any witnesses and responded, "Well, in light of what it is that he is saying, if he is resting at this point in time, then we would move for a directed finding that he has not established a significant change in circumstances. *** I don't think that there is anything that he has submitted that would constitute a substantial change in circumstances and the motion should be dismissed." Richard responded by stating, "My tax returns show a substantial change, Your Honor. And Mr. Karpus is just trying to buffalo the Court." Richard

stated that his tax returns revealed that his total income was \$1099 in 2020¹ and the year before his total income was \$1800, which was almost a 50% reduction. Thereafter the court denied the motion for a directed verdict and asked Rachelle's counsel if he wished to call any witnesses.

¶ 15 Counsel called Rachelle to testify at which time she stated that her health continued to decline, especially now that she was having to care for her mother. She stated that she did not have much daily energy and, while her pain had increased, her medication had decreased because insurance denied her prescription. Rachelle stated she had fibromyalgia and back pain. She named her physicians, stating she saw Dr. Kowalski every three months after fighting breast cancer for seven years and that she saw her oncologist once a year. She stated that she was unable to work. She further testified that Richard last paid her maintenance in February of 2021 and that he was currently about \$7500 behind on his maintenance obligation. She stated that she relied on the maintenance for income because her only other source of income was from her mother who was helping her so she would not lose everything. She stated she had an obligation to pay her mother back for the funds she borrowed. Richard declined his opportunity to cross-examine Rachelle.

¶ 16 Richard's closing argument was limited to stating, "Last year I paid \$2479.67 in maintenance with a total income of \$1099. That's roughly 250 percent of my income." Rachelle's attorney requested denial of the petition due to the lack of explanation as to why Richard's income dropped from \$22,000 in 2018 to \$1800. Richard replied, "Well I don't know about 2018. I don't have those things with me. The fact of the matter is in 2019, you lowered the maintenance. We have been through all this as to why my income went down. You lowered it in 2019. Since that

¹Richard's 2020 federal tax return revealed \$1099 in income from Schedule 1 and an adjusted gross income of negative \$1455. Schedule 1 was not included in the submission. Richard's 2020 state tax return also listed his adjusted gross income as negative \$1455. Both returns were prepared by an accounting service in Effingham.

time, my income has continued to go down. I pay roughly 250 percent of my income. The law says 30 to 40 percent. I'm way beyond that. The only thing I can do is ask for a reduction."

¶ 17 Following the hearing, the trial court stated:

"The Court considering the evidence or more importantly, the lack thereof, is going to deny your Motion to Reduce or Petition to Reduce. The Court heard nothing about your impairment as to present and future earnings. Why there is a change of employment status or why there is this less income, other than you just made less. The Court has had this case in front of me numerous times, as did the previous Judge, and it seems that each year we say we make less but there is no proof as to why. So as to this motion for this time, the motion is denied ***."

¶ 18 Thereafter, the trial court asked if any other matters were pending, and Rachelle's counsel advised the court of the pending contempt petition. The court asked Richard if he was ready to proceed on that motion and Richard replied, "I wish we had stuff set where I wasn't sitting in the middle of the public discussing financial matters." The trial court asked Richard if he wanted to reset the matter for a different day where he could sit somewhere else, and Richard stated that he would prefer that; the trial court set the matter for a live in-person hearing on June 2, 2021. The trial court's April 1, 2021, docket entry stated, "Richard failed to meet his burden to modify maintenance by presenting no testimony as to why he continues to decrease his income or his ability to obtain employment in another line of work." On April 7, 2021, Richard appealed.

¶ 19

II. ANALYSIS

¶ 20 On appeal, Richard contends that (1) improper *ex parte* communications occurred between the trial court and Rachelle's counsel prior to the April 1, 2021, hearing; (2) his constitutional rights were violated when he was forced to use a room for the public to attend the April 1, 2021,

Zoom hearing; and (3) the trial court erred in denying his petition to modify maintenance because the statute does not require him to provide a reason for the decreased income and the court is without authority to require him to find another line of work.

¶ 21 *Ex Parte Communications.*

¶ 22 On appeal, Richard claims that prior to the April 1, 2021, hearing, Rachelle’s attorney was allowed in the courtroom while he was left outside. He states that counsel returned with the bailiff and Richard was informed that the hearing would be by Zoom. Rachelle and her attorney would be in a conference room while Richard was placed on a public computer room near the entrance of the courthouse. Richard claims he was entitled to be in the room where the communication took place that determined where the hearing would take place, citing Illinois Supreme Court Rule 63(A)(4) (eff. Dec. 16, 2020). In response, Rachelle’s counsel states there were no *ex parte* communications between the court and counsel prior to the hearing on April 1, 2021. He states that court personnel simply clarified the confusion as to whether the case would be in person or via Zoom.

¶ 23 First, we note that nothing in Richard’s brief claims that Rachelle’s counsel spoke with the presiding judge. However, even if counsel’s communications included the judge, communication on how and where the proceeding would occur is allowed. Rule 63(A)(5)(a) permits *ex parte* communications “for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits.” Ill. S. Ct. R. 63(A)(5)(a) (eff. Dec. 16, 2020).

¶ 24 Equally notable is the fact that Richard made no complaint or objection at the hearing that would have allowed the trial court to address the allegation or provide clarification of this issue. “[A]n issue not presented to or considered by the trial court cannot be raised for the first time on review.” *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994) (quoting *Kravis v. Smith Marine, Inc.*,

60 Ill. 2d 141, 147 (1975)). As such, we find that Richard forfeited this claim. *Allstate Property & Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶ 17.

¶ 25 Constitutional Rights Violation

¶ 26 Richard also contends that his constitutional rights were violated because he had a right to privacy under the fourteenth amendment and this right was violated when he was “forced to participate from a public computer located at the entrance of the courthouse.” However, “Black’s Law Dictionary defines ‘hearing’ as a ‘judicial session usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.’ ” *People v. Johnson*, 206 Ill. 2d 348, 358 (2002) (quoting Black’s Law Dictionary 725 (7th ed. 1999)). “ ‘Litigation is a public exercise; *** It follows that in all but the most extraordinary cases—perhaps those involving matters of weighty national security—complaints must be public.’ ” *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 236-37 (2000) (quoting *Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998)). We also note that Richard presented no complaint regarding his lack of privacy prior to the trial court’s completion of the hearing and entering its order denying Richard’s petition. As such, we find this issue is also forfeited. See *Daniels*, 162 Ill. 2d at 58; *Trujillo*, 2014 IL App (1st) 123419, ¶ 17.

¶ 27 Denial of Maintenance Reduction

¶ 28 Finally, Richard contends that the trial court erred in denying his petition for reduction of maintenance because the statute does not require him to provide a reason for his decreased income and the court is without authority to require him to find “another line of work.” We review the trial court’s decision to deny Richard’s petition for modification for an abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). An abuse of discretion occurs when “ ‘the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no person would take the view adopted by the trial

court.’ ” *Id.* (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)). Issues of statutory interpretation are reviewed *de novo*. *In re Marriage of Burdess*, 2020 IL App (3d) 190342, ¶ 19.

¶ 29 Here, the trial court denied Richard’s request for a reduction in his maintenance obligation due to a lack of evidence that would explain Richard’s reduced income. A modification request requires a showing of a substantial change in circumstances based on statutory factors under subsection (a) of section 504 and subsection (a-5) of section 510 of the Illinois Marriage and Dissolution of Marriage Act. See 750 ILCS 5/504(a), 510(a-5) (West 2020). Notably, the factors in subsection (a-5) include: “(1) any change in the employment status of either party and whether the change has been made in good faith” and “(3) any impairment of the present and future earning capacity of either party.” *Id.* § 510(a-5)(1), (3).

¶ 30 Richard’s contention that he was not required to provide a reason for his reduced income has no merit, as “good faith” is statutorily required. A reduction in maintenance may be justified based upon “[a] good-faith, voluntary change in employment which results in diminished financial ability.” *In re Marriage of Horn*, 272 Ill. App. 3d 472, 476 (1995). “The test for determining if a decision was made in good faith is whether the change was prompted by a desire to evade financial responsibilities ***.” *Id.* As such, some evidence must be presented to allow the court to determine if the income reduction was based in good faith.

¶ 31 While proof that a party seeking modification due to a changed employment status had a motive to evade financial responsibility “may defeat a showing of good faith, the converse is not true—the absence of such evidence does not, without more, establish [a party’s] good faith” in changing employment. *In re Marriage of Imlay*, 251 Ill. App. 3d 138, 142-43 (1993). If no evidence is submitted in support of a claim of reduced income that reveals an impairment in the

obligor's ability to work, income at the prior rate may be imputed to the obligor. See *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶¶ 30-31.

¶ 32 Here, Richard's evidence consisted of his financial affidavit and his tax records. He specifically declined the opportunity to provide any testimony or call any witness that would explain the reduced income. While the tax records and financial affidavit reveal a reduction in income, there was no evidence submitted that would allow the trial court to determine whether Richard's reduced income was made in good faith or solely to evade his maintenance obligation. As Richard provided no evidence explaining the income reduction and no evidence of any impairment to earn income now, or in the future, we find the trial court's denial of Richard's petition to modify maintenance was not an abuse of discretion.

¶ 33

III. CONCLUSION

¶ 34 For the reasons stated herein, we affirm the trial court's denial of Richard's petition to modify maintenance.

¶ 35 Affirmed.